

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 420 of 1987.

DATE OF DECISION 07-04-1989.

Shri N. L. Parihar

Petitioner

Shri R. M. Vin

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri R. P. Bhatt

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(9)

Mr. Nand Lal Parihar, I.R.S.,
5, Rarul Shopping Centre,
Nr.Umiya Vijay Society,
Setellite Road,
Ahmedabad - 380 015.

..... Petitioner

(Adv. : Shri R. M. Vin)

Versus

- 1) Union of India, through
The Secretary,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 001.
- 2) Shri P. C. Hadia, I.R.S.,
Commissioner of Income-tax
(Appeals)
Aaykar Bhavan,
R. C. Circle,
Baroda - 390 007.
- 3) Shri G. C. Agarwal, I.R.S.,
Commissioner of Income-tax,
1669, Civil Lines,
Kanpur (U.P.),
- 4) Commissioner of Income-tax,
Raika Bagh Palace,
Jodhpur - 342 001.

..... Respondents

(Adv. : Shri R. P. Bhatt)

J U D G E M E N T

OA/420/87

Date : 07-04-1989.

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

By an application filed under Section 19 of the Administrative Tribunals Act, 1985 the petitioner Mr. N.L. Parihar of the Indian Revenue Service challenges the communications dated 20-2-1986 and dated 13-7-1987 regarding the orders respectively of the Central Board of Direct Taxes and of the President of India on his representation and memorial respectively regarding adverse remarks communicated to him. The petitioner has alleged mala fide against Mr. P. C. Hadia respondent No.2 and Mr. G. C. Agarwal

respondent No.3 for the adverse remarks communicated to him. The respondent No.3 communicated the adverse remarks for the work of the petitioner for the year 1984-85 by a D.O.Letter dated 16-7-1985 and by another D.O.Letter dated 18-7-1985. He communicated remarks against column No.13 for the year 1984 which was not earlier communicated inadvertently in the said letter. These two letters, therefore, constitute the communications of the adverse remarks. In order to appreciate ~~exactly~~ the nature of the challenge, the adverse remarks are reproduced as under:

14. Comments on Col.12

"All assessment in scrutiny cases have been finalised by him in a routine and summary manner. The same are being cancelled or set aside by the CIT u/s.263/264 being erroneous or prejudicial to the revenue.

Show cause notice for initiating disciplinary proceedings against him has been given to him on 4-3-1985.

15(a) Technicalability "Inadequate"

(b) Knowledge of Direct Tax Laws. "Inadequate"

(c) Knowledge of procedure. "Inadequate"

16. Relations with-

(a) Superiors "Inadequate"

(c) Public "Inadequate"

17. Other qualities.

(i) Decision making "Inadequate"

(b) Soundness "Inadequate"

(ii) Drafting of orders "Inadequate"

(iii) Guidance of staff "Inadequate"

(v) Investigation capability "Inadequate"

18. Integrity "Doubtful"

General observations.

"It appears that he has no intention or desire to learn work. He is an incorrigible character."

Col. No. 24 General Assess- "He is an "immature person
ment and "a problem child". He
is a great liability on the
Department. On no account he
is even satisfactory. A
hopeless Officer, incorrigible,
irresponsible and his actions
indicate "corrupt".

The petitioner was asked to offer any representation
concerning the remarks within the prescribed time. He sent
a representation through the Commissioner dated 27th
August, 1985 to the Central Board of Direct Taxes which
was replied to by a letter from Shri N. L. Soni enclosing
a letter dated 20-2-1986 from the Under Secretary to the
Government of India in the Department of Revenue of the
Ministry of Finance turning down the request for
expunction of the remarks. He submitted a memorial to the
President which also was rejected by a letter dated
13-7-1987 from Under Secretary to the Government of
India, and communicated to the petitioner.

2. We may first address ourselves to the allegations
regarding mala fide. The only specific allegation which
can be extracted from the voluminous farrago ~~book~~ is best
stated in the words of the applicant :

"At about that time, the applicant had on his file
the assessment case of one Shri Badri Prasad
Agarwal. The said assessee was closely related to
Shri G. C. Agarwal and the latter took a personal
interest in his case. By force of his superior
authority Shri G. C. Agarwal tried to influence
the applicant's decision in the case of that
assessee, and told the applicant to decide the
assessment case of Shri Badri Prasad Agarwal in
a favourable manner. The applicant, however, did
not allow his influence to work on him and in view
of the undue pressure that was being put on him by
Shri G. C. Agarwal thought it proper not to deal
with or decide that case."

To this, respondent No.3 against whom it is directed has replied as follows :

"It is denied that I have ever tried to influence the decision of the applicant in any ~~case~~. Except the vague statement that Badri Prasad Agarwal was closely related to me and that I took personal interest in his case and tried to influence the decision of the applicant, the applicant has not been able to say what was the relationship Badri Prasad Agarwal had with me or what I wanted the applicant to do in his case. I have no relation whatsoever of any kind at Hanumangarh. In fact, I have no relations in Rajasthan."

The applicant, however, has reiterated his allegation in his rejoinder. Respondent No.2 against whom the allegations of mala fide are made as him as an instrument of respondent No.3 is slightly denied the same. We are not satisfied that the allegations of mala fide have been substantiated and must regard them as having been irresponsibly made in the circumstances.

3. The second question is whether the adverse remarks have any foundation. In the detection of defects in the ordinary course of supervision and whether any attempt was made for guiding the officer prior to the recording thereof as is required in terms of the instructions which have been brought to our attention in the summary of the circular dated 20-5-1972. Contrary to the inadequacy of material leading to such adverse remarks as experienced in several cases, we find that there is substantial documentation of the comments of the supervising officers regarding the slip-shod, defective, erroneous and casual nature of work the petitioner in this case. Specifically by letters

dated 20-7-1981, 22-10-1984, 14-11-1984 and by the charges drawn up and by the letter dated December, 1984 the specific cases and particulars have been communicated to the petitioner. No doubt, the petitioner has given a lengthy explanation and representations relating thereto. It is neither expected of nor proper for us to go into the question of ~~whether~~ where the merits of this controversy lie, whether the supervising officers were justified in drawing their conclusions or whether the petitioner is justified in advancing explanation which have merit ~~now~~ are matters which belong to the sphere of internal administration of the Revenue Department. Sufice it to say that the communication of adverse remarks cannot be flawed ~~in~~ on ground of either total absence or inadequacy of record of the incidents on which they are based or their lack of prior communication to the petitioner for giving him guidance.

4. The petitioner has complained that the remarks on the face of them are vague and the uniform phraseology "inadequate" in a number of columns shows non-application of mind. The respondents in their reply have dwelt on the summary and casual manner in which the cases have been disposed of and in which reviews have taken place in which the judgement of the petitioner has been viewed as flawed and how the petitioner was subjected to specific admonishment because his work was found unsatisfactory so that the remarks against each column had more than sufficient basis and the use of the uniform phraseology "inadequate" might not be regarded as of non application of mind in this case.

Regarding Column No.24 in the communication dated 16-7-1985 we do find that the remarks are some what intemperately worded and putting the best construction on them shows the exasperation of the recording officer which had best not avoided for making a balanced general assessment. We cannot regard them as mala fide but they amount to such downright condemnation that they defeat the purpose of communicating them to improve them.

5. Regarding the finding of the integrity of the officers having been doubtful both parties have canvassed a number of specific instances and explanations relating thereto in support of the respective contentions. It is not for us to analyse how far the allegations and explanation were respectively well founded or satisfactory but a perusal of the respective pleas shows that the respondents came to their ~~own~~ finding on the basis of some material and in a bonafide manner. Whether the finding that the petitioner's integrity is doubtful can be sustained on a careful and complete examination of his explanation or not, it does not detract from the justification and even the necessity of recording it at the stage of it and by persons who were competent to record it, did so. Learned advocate for the applicant has relied upon AIR 1979 S.C. 1622 Gurdial Singh's case for the plea that the non-consideration of explanation and the non-issuance of integrity certificate cannot be acted upon and that the opportunity to improve the work or conduct or to explain circumstances which adverse record is not an empty formality and its object is to enable the Superior Authorities to decide on a consideration of the explanation whether the adverse report is justified.

He has also cited the judgement of Andhra Pradesh High Court 760 SLR 1981(3) in the case of M. S. Sharma V/s. State of Andhra Pradesh & Others and Gujarat High Court's judgement 1978(1) SLR 489 M. M. Valand V/s. The State of Gujarat & Another and AIR 1984 S.C. 531 A. K. Chaudhry V/s. State of Bihar & Others in support of his plea and contentions regarding the procedure for considering the representation of the officers against adverse remarks and the consequences of non-communication. We must stated ~~the~~ the facts and circumstances of this case are clearly distinguishable from those in the cases discussed by the learned advocate for the petitioner. The adverse remarks have been communicated, the representation against them has been considered and rejected and the superior authorities and the President have all been duly moved by appropriate memorial which have been considered and rejected. The question whether the adverse remarks regarding integrity namely it being doubtful should have been recorded or not has to be considered in the light of relevant instructions. Such instructions are as follows :

"The procedure for filling up the column relating to integrity is as follows :

(a) Supervisory officers should maintain a confidential diary in which instances which create suspicious about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report, this diary should be consulted and the material in it utilised for filling the column about integrity. If the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following paragraphs.

(b) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.

(c) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow-up action is taken with due expedition.

(d) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed this fact can also be recorded and duly communicated to the officer concerned.

(e) There are occasions when a reporting officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Deptt. Such instances occur when an Officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely or when an officer has worked under the reporting officer only for a brief period or has been on long leave etc. In all such cases, the reporting officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has been heard nothing against the officer's ~~xx~~ integrity as the case may be. This would be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form a definite judgment about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.

(f) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity the inquiries that follow ~~xx~~ do not disclose sufficient material to remove the suspicion or to confirm it. In such a case, the Officer's conduct should be watched for a further period, and in the meantime, he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices.

(MHS ON No.51/4/64-Ests. (A) dt. 21.6.65)

In this case after perusing the reply given by the respondents, especially the respondent P. C. Hadia, it appears to be clear that there was material for filling

the column about integrity and that such material was maintained by the superior authorities. Enough notice was given to the petitioner regarding such material and it is not established that a copy of the diary should have been necessary to be supplied for enabling the petitioner to reply or explain his conduct with reference to it. There may be two opinions on the adequacy of the material pointing to any definite finding but if the competent officer was so satisfied there is no bar placed by the instructions for making a record in the A.C.R. in the relevant column. The procedure for a separate report is only regarding unconfirmed nature of the suspicions. On a perusal of the relevant contentions in this regard, We do not find that the decision to record that the integrity was doubtful is unfair although it is open to the petitioner to satisfy the superior authorities after giving adequate explanation as to how these suspicions can be removed.

6. We have made some observations regarding the intemperate wording of the general assessment of the petitioner in the communication dated 16-7-1985. We would rely upon the competent authorities to consider whether these remarks can be suitably reviewed and torned down. We would, however, not give any directions in the matter as ~~now~~ the relevant appellate authority would be an appropriate forum for re-considering the remarks in the light not only of the observations we have made but, also of all the facts and circumstances and the record of the work

of the petitioner which may not have been brought out in this case and which it would be relevant and appropriate for the supervisory or appellate administrative authorities of the petitioner to consider.

7. It is, therefore, found that the petition has no merit and subject to the observations made above, is rejected. There shall be no order as to costs.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman