

Adverse
Remedies

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

B
6

O.A. No. 526 OF 1989
~~E.A. No.~~

DATE OF DECISION 27.7.1992.

Miss. A.G. Dalvi, Petitioner

Mr. M.R. Anand, Advocate for the Petitioner(s)

Versus

Union of India, Respondents

Mrs. M.R. Bhatt, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

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 ? >

Miss. A.G. Dalvi,
Income Tax Officer
Ward 2
Income Tax Office
Ahmedabad.

..... Applicant.

(Advocate: Mr. M.R. Anand)

Versus.

1. Union of India
(Notice to be served through
Secretary, Ministry of
Finance, Central Secretariat,
New Delhi)
2. Chief Commissioner of
Income Tax (Gujarat)
Income Tax Office,
Ashram Road,
Ahmedabad.

..... Respondents.

(Advocate: Mrs. M.R. Bhatt)

ORAL ORDER

O.A.No. 526 OF 1989

Date: 27.7.1992.

Per: Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The applicant was working as I.T.O., Ahmedabad during the financial year 1.4.1986 to 31.3.87. For this period, certain adverse remarks were communicated to her by the Annexure A-2 letter dated 26.3.87. She filed a representation dated 3.7.87 (Ann. A-3) against these remarks which was partly rejected by Shri P.C. Halakhandi, Chief Commissioner of Income Tax, Ahmedabad by his Annexure A-4 letter dated 19.11.87. An appeal was made (Ann.A-5) to the Central Board of Direct Taxes. This was also rejected on 7th July, 1989 by the Government of India and this letter was sent to the applicant as an enclosure to the Ann.A-6 letter dated 25.7.89 sent to her by the office of the second respondent.

2. Hence this application has been filed seeking the following reliefs:

"(A) To quash and set aside the impugned Confidential Report at Annexure A-2, and the impugned orders at Annexure A-4 and A-6, as illegal, unconstitutional, without jurisdiction, null and void and of no effect whatsoever.

(B) To direct the Respondent-authorities to maintain the service record of the applicant as if the impugned Confidential Report at Ann. A-2, and the impugned orders at Annexure A-4 and A-6 do not exist.

(C) To consider the applicant's case for future promotions, crossing Efficiency Bar, future postings and other benefits of service, as if the impugned Confidential Report at Annexure A-2 and the impugned orders at Ann.A-4 and A-6 do not exist."

3. At the time of final hearing, the learned counsel for the applicant raised only one important point with regard to this application, which goes to the root of the matter. He states that Shri P.C. Halakhandi was a Commissioner of Income Tax in the first instance and, in respect of the report for the period 1986-87 which was initiated by the reporting officer Mr. Mohanlal, Inspecting Assistant Commissioner of Income Tax Ahmedabad Range-IV, he acted as the reviewing authority and had passed some remarks. Very soon thereafter, he became the Chief Commissioner of Income Tax, Ahmedabad who is normally the authority competent to dispose of the representation against the adverse remarks. The learned counsel contends that as Shri P.C. Halakhandi had already given remarks as a reviewing authority he was

not authorized to dispose of the representation filed by the applicant. He contends that the Ann.A-4 order of Shri P.C. Halakhandi is highly improper and he should have refrained himself from dealing with this representation and entrusted the matter to any other competent authority.

4. A perusal of the original records produced before us confirms these facts.

5. The respondents however submit that when Shri P.C. Halakhandi became the Chief Commissioner during the period he, ipso facto, had full powers to deal with the representation. Therefore the order passed him cannot be impugned.

6. We have heard the parties and given our anxious consideration to the rival contentions.

7. The purpose of providing an opportunity to represent in this matter is to see that a higher disinterested authority is able to consider the remarks of the reporting/receiving authority for confirmation, amendment or cancellation. This procedure implies that the same person can not discharge two functions in this procedural ~~claim~~ ^{claim}. In other words, though he had become the Chief Commissioner, and is normally the officer competent to dispose of representations, Shri P.C. Halakhandi, having given his comments as a reviewing officer, is precluded from dealing with the representation.

VP

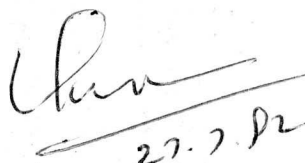
8. In this view of the matter, we are satisfied that the applicant's representation was not disposed of properly. In the circumstances, we hold that all subsequent proceedings are liable to be quashed.

9. For the aforesaid reasons we dispose of this application by quashing the Ann.A-4 order No.CS.V-3/87 (CC) dated 19th November, 1987 of the Chief Commissioner Shri P.C. Halakhandi as also the letter of the Government of India dated 7th July, 1989 enclosed to Ann.A-6 rejecting her appeal but described as a representation, and direct the present Chief Commissioner of Income Tax, Ahmedabad, who, we understand is a person other than Shri P.C. Halakhandi, to dispose of, de novo, the Annexure A-3 representation dated 3.7.87 filed by the applicant in accordance with law, within two months from the date of the receipt of this order.

10. The application is disposed of as above. There will be no order as to costs.



(R.C.Bhatt)
Member(J)


27.7.82

(N.V.Krishnan)
Vice Chairman

vtc.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Application No. CA/526/88 of 199

Transfer Application No. _____ Old Writ Pet. No. _____

C E R T I F I C A T E

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated : 3/9/92

Countersigned :

Christian 22/9/92
Section Officer/Court Officer

Deegan
Sign. of the Dealing Assistant.

INDEX SHEET

PART IES

Miss A. G. Davis

VERSUS

U. O. J. & O.R.S.

[illegible]

INDEX SHEET

NAMES OF THE

PART IES

~~W.R.I.Y. employees Union & ORS.~~
VERSUS
~~U.O.F. & ORS.~~

PART A B & C

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNALAHMEDABAD BENCHAPPLICANT (S) Miss A G DalviRESPONDENT(S) Union of India & CoPARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF
EXAMINATION.

1. Is the application competent ? Y
2. (A) Is the application in the prescribed form? Y
(B) Is the application in paper book form ? Y
(C) Have prescribed number complete sets of the application been filed ? Y
3. Is the application in time ? Y
If not, by how many days is it beyond time ? —
Has sufficient cause for not making the application in time stated ? —
4. Has the document of authorisation/ Vakalat Nama been filed.? Y
5. Is the application accompanied by B.D./I.P.O. for Rs.50/-? Number of B.D./I.P.O. to be recorded. DD 6 194272
6. Has the copy/copies of the order(s) against which the application is made, been filed ? Y (Anne AG P.33)
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? Y
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? Y
(c) Are the documents referred to in (a) above neatly typed in double space ? Y
8. Has the index of documents has been filed and has the paging been done properly ? Y

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO BE
RESULT OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application ?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with annexures filed.
 - (a) Identical with the original.
 - (b) Defective.
 - (c) Wanting in Annexures
No. _____ Page Nos. . _____ ?
 - (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the Respondents been filed ?
14. Are the given addressed, the registered addressed ?
15. Do the names of the parties stated in the copies, tally with those indicated in the application ?
16. Are the transactions certified to be true or supported by an affidavit affirming that they are true ?
17. Are the facts for the cases mentioned under item No.6 of the application.
 - (a) Concise ?
 - (b) Under Distinct heads?
 - (c) Numbered consecutively?
 - (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons ?

Y

m

Y

Y

m

Y

Y

Y

Y

Y

Y

Y

Y

Y

checked.
Mha
5/11/85

347 550/89
29/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT AHMEDABAD

ORIGINAL APPLICATION NO. 526 OF 1989

Miss A.G. Dalvi Applicant

vs

Union of India & anr. Respondents

I N D E X

Sr.No.	Annexures.	Particulars	Page nos.
1.	-	Memo of application	1 to 14
2.	A-1	A copy of the order dt.15.6.89 deleting the adverse CR.	15
3.	A-2	A copy of the Confidential Report for the year 1986-87	16.
4.	A-3	A copy of the representation dt. 3.7.87.	17-20
5.	A-4	A copy of the reply dated. 19.11.1987.	21
6.	A-5	A copy of the appeal memo dt. 21.12.87.	22-32
7.	A-6	A copy of the communication dt. 25.7.89 along with the enclosure dt. 7.7.89.	33-34

Copy served to
Mr. R.P. Bhatt
Wm. ...
29-11-89

ADP
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DD 194272.
6 555

~~Copy of~~
~~DDP~~
~~DDP~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT AHMEDABAD

ORIGINAL APPLICATION NO: 526 OF 1989

Between

Miss A.G. Dalvi Applicant

And

1. Union of India
2. Chief Commissioner of Income
Tax, Gujarat, Ahmedabad ... Respondents.

DETAILS OF APPLICATION

1. Particulars of the Applicant :

- | | | |
|---|---|---|
| (i) Name of the Applicant | : | Miss A.G. Dalvi |
| (ii) Name of father | : | Shri Gopinath |
| (iii) Designation and office
in which employed | : | Income-tax Officer
Budget & Statistics Ward 2
Income tax Office (5)
Ahmedabad. |
| (iv) Office address | : | Income tax Office
Ashram Road, Ahmedabad |
| (v) Address for service
of all notices | : | Miss A.G. Dalvi
Income tax Officer
Budget & Statistics
Income tax Office, Ward 2
Ashram Road (5)
Ahmedabad. |
| | : | 6th Floor
Insurance Co.
Building |

2. Particulars of the Respondents :

(i) Name and/or designation : Union of India
of the Respondents. (Notice of the appli-
cation to be served thro'
the Secretary, Ministry
of Finance, Central
Secretariat, New Delhi).

2. Chief Commissioner of
Income tax (Gujarat)
Income tax Office
Ashram Road
Ahmedabad - 380 009.

(ii) Office address of the : Same as in item 2(i)
Respondents above.

(iii) Address for service : As mentioned above.
of all notices

3. Particulars of the order against which application
is made :

The application is made against the following
orders :

- | | | |
|------------------|---|---|
| (i) Order No. | 1 | 1. D.O. Letter C.S.V.3/87- 122 |
| (ii) Date | 1 | (CC-1) dated 26.5.87 passed
by respondent no.2. |
| (iii) Passed by. | 1 | 2. No.C.S.V.-3/87(CC) dt.
19.11.87 passed by
respondent no.2 |
| | | 3. F No.A-28018/3/89-AD.VI
A dated 7.7.89 passed by
resp. no.1. |

(iv) Subject in brief : Communication of adverse confidential Remarks for the year 1986-87, spoiling the service record of the applicant in violation of the relevant rules, regulations and govt. circulars.

4. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which she wants redressal is within the jurisdiction of this Tribunal.

5. Limitation :

The applicant & further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

6. Facts ~~ix~~ of the case :

The facts of the case are given below :

6.1. The applicant is a Citizen of India. She is working as Income-tax Officer, Class II for the last about thirteen years. Prior to that she was working in the sub-ordinate capacity and she has put in, in all more than 30 years of service. The applicant started her service in the clerical cadre and was promoted to the various higher posts from time to time as and when promotions were due. The promotions included non-selection and selection posts. Similarly, the applicant crossed the Efficiency Bar as and when they were due.

In 30 years of service she has not been subjected to any departmental inquiry. Nor has she ever been adversely commented upon as far as her performance and efficiency are concerned for the simple reason that her disposal of the cases was amongst the highest amongst her colleagues in whatever division or zone she was working.

6.2. To the utter shock and surprise of the applicant by communication dated 21st July, 1986, she was given adverse confidential report for the year 1985-86. Some of the remarks were made by the reporting Officer which were confirmed and others were added by the Reviewing Officer, Shri P.C.Halakhandi. The applicant challenged these remarks before this Hon'ble Tribunal by way of O.A. No.636/87. The Hon'ble Tribunal was pleased to uphold the plea of the applicant and remanded the matter to the department by an ordinal order dated 9th December, 1988 passed by the Hon'ble Vice Chairman, Shri Trivedi, for fresh consideration of her representation and pass speaking order thereon. The representation of the petitioner was fully upheld by an order dated 15th June, 1989 and the adverse remarks communicated to her for the year 1985-86 were duly deleted. Not only that, but all the columns for which adverse remarks were given, the new remarks given were good. This would show that the earlier observations of Shri P.C.Halakhandi, the then Chief C.I.T., were wholly unjustified. A true copy of the order dated 15th June,

Anne.A-1 1989 is annexed hereto and marked Annexure A-1.

6.3. In the year 1986-87 the petitioner was working in the Summary Ward as an I.T.O. Grade 'B'. This ward is concerned with the income tax returns of salaried assessees. It is well known that salaried groups do not have much income to hide and therefore there could hardly be any prosecution to that class. Inspite of all these, while her representation against the previous years adverse C.R. were ~~not~~ pending before the respondent authorities, she was again given adverse C.R. for the years 1986-87. The remark was on two counts. The remarks in column says "comments on Column 12 and 13 : performance with regard to the proposing cases for prosecution is poor". The remark in column 18(1)(a) as to speed says : "inadequate". The applicant was shocked by this kind of adverse remarks for the simple reason that there was no question of prosecution as far as the applicant's department is concerned and as far as the speed is concerned, her output was the highest in the range. A true copy of the adverse C.R. dated 26th May, 1987 is annexed hereto and marked Annexure A.2.

Ann.A-2

6.4. The applicant made representation against this by her letter dated 3rd July, 1987 and pointed out that she had worked in three different departments during the year. She had also held additional charge for quite some time. The applicant also pointed out that she was working ~~x~~ in a ward where tax is deducted at source from salary. So the possibility for ordering prosecution is meagre. The applicant also

pointed out that she was under very heavy pressure of work and under-staffed and even then she had proposed two cases for prosecution in her additional charge which was reasonable looking at the nature of the work, i.e. summary assessment from returns of salaried assesseees. The applicant, therefore, requested that the remark was baseless and should be deleted. As far as the remark in column 18(1)(a) as to speed is concerned, the applicant gave her actual figures with three other employees who were working with her in the similar summary assessment ward and showed that, in fact, her average was 580 per month which was the highest and three other officers working in summary ward had lower disposal. It may also be noted that the target fixed by the department was 500 per month. Thus the applicant not only done better than others, but far exceeded the target fixed by the department itself. The applicant, therefore was constrained to observe that such remarks were nothing but intentional harrasment and they are made for extraneous considerations. A true copy of the representation dated 3rd July, 1987 is annexed hereto and marked Annexure A-3.

Ann.A-3

6.5. The petitioner received a two lines reply dated 19th November, 1987 from Shri P.C.Halakhandi, then Chief C.I.T. By this reply the remarks in column 15 as to inadequate proposals for prosecution was deleted and the remark in column 18(1)(a) as to inadequate speed was confirmed. A true copy of the said reply is annexed hereto and marked Annexure A-4.

Ann.A-4

6.6. Aggrieved and dissatisfied by the impugned reply at Annexure A-4, the petitioner preferred an appeal dated 21st December 1987 addressed to the respondent no.1 authority. The applicant gave brief history of her meritorious service career and pointed out that remark as to inadequate speed is baseless and is not sustainable on any reason or reasoning though no reasons are given in the order at Annexure A-4. The applicant also pointed out that she was working under the I.A.C. and during the relevant year she was never told that her speed is less than adequate. The applicant also pointed out that she was holding the summary charge and that the speed could only be measured by number of assessment orders passed by the officer concerned. The applicant also referred to the chart given with her representation at Annexure A-3 showing that not only her speed was adequate but she was the fastest. The applicant also pointed out an extra ordinary factual position that out of the 24 officers who were given adverse C.R. 23 were promotees and only one was direct recruit. The applicant pointed out that adverse remarks as to speed was retained even after she had shown the mathematical precision that she was the fastest, in the summary assessment. This was done without passing a speaking order and without giving her a hearing though she had requested for the same. The applicant also pointed that her representation was required to be disposed of within six weeks, but it was disposed of after more than four months and almost at the end of the year 1987. This delay was also not fair. The applicant again requested that just should be done to her so that the power to write CR

is not used arbitrarily to ~~xpoin~~ spoil her service career.

A copy of the memo of appeal dated 21st December, 1987 is annexed hereto and marked Annexure A-5.

Ann.A-5

6.7. The applicant again received a non-speaking reply dated 7.7.89 along with a covering letter of 25th July, 1989. The applicant was told by this one line letter that her appeal is rejected not only for the year 1986-87 but even for the year 1987-88. This one order disposed of both the appeals without slightest reasoning in support of either. A true copy of the reply dated 25th July, 1989 together with the copy of the letter dated 7.7.89 is annexed hereto and marked Annexure A-6 collectively.

Annex.A-6

6.8. The applicant was surprised by this order at Annexure A-6 and submitted a review petition dated 1.8.89 and the applicant received a reply dated 21st September, 1989 saying ~~xx~~ that review petition is not maintainable. Accordingly the reply at Annexure A-6 has become final.

6.9. Aggrieved ~~by~~ and dissatisfied by the impugned adverse CR at Annexure A-2 and the subsequent orders at Annexures A-4 and A-6, the applicant approaches this Hon'ble Tribunal by way of this petition on the following main grounds amongst the others :-

6.10. The applicant~~x~~ submits that the adverse CR at annexure A-2 is absolutely baseless and without

any material. The applicant is given this remark only for her assessment as there was no other work on which the question of speed or non-prosecution could have arisen. Both the remarks were given by the Reporting Officer under whom the applicant was working in the assessment ward for substantial part of the year. As the representation of the petitioner at Annexure A-3 and subsequent representations which was also annexed with her memo of appeal to respondent no.1 authority clearly show that her speed was the fastest and well beyond the target fixed by the department itself, it is impossible to believe that anybody could say that her speed was inadequate. The remark is directly contrary to the department's own record and ~~xxxxx~~^{made} baselessly for extraneous considerations. Such remarks are clearly illegal and bad in law and liable to be quashed and set aside.

6.11. The applicant submits that the impugned remark at Annexure A-2 and its confirmation by the respondent authorities is also discriminatory, arbitrary and violative of her fundamental rights under Article 14 and 16 of the Constitution of India. When it is clearly shown that she was the fastest in the assessment ward and she is sought to be dubbed as one with inadequate speed when others with lesser speed are not so assessed, it would clearly show that the applicant has been singled out for arbitrary treatment in violation of her fundamental right of equality enshrined under Article 14 and 16 of the Constitution of India.

6.12. The applicant submits that the impugned adverse CR at Annexure A-2 and its confirmation is vitiated

by legal malafides as will be clear from the fact that though she is the fastest, she is described as less than adequate in speed. Secondly she was given an utterly baseless remarks that she is poor in the proposals for prosecution, when it is wellknown that in summary assessment wards there is no question of large prosecutions. Thirdly the remark as to lack of proposals for prosecution would show that in other departments of her work she was not rated as such. Thus when she is good in other departments of her work and when it could be shown that she is the fastest as far as the assessment work is concerned, how could one still maintain that the applicant's speed is inadequate. This would only show that the respondent authorities are ignoring the relevant considerations for writing C.R. and are guided by extraneous and irrelevant considerations clearly showing malafides. The applicant says that the malafides of the respondent authorities are further clear from the fact that Shri P.C.Halakhandi, then Chief C.I.T. had earlier also written adverse CR which were utterly baseless and which are now quashed by the higher authorities pursuant to the direceive of this Hon'ble Tribunal. The same Shri Halakhandi communicated this remarks also again without any basis and justification. The applicant has repeatedly pointed out that there is no basis for the remark and still remarks are confirmed without passing a speaking order.

It is elementary principles of law that the authority exercising appeal powers are discharging quasi judicial functions. They are supposed to deal with the pleas and contentions of the petitioner against the impugned action or the order. So when the applicant preferred an appeal giving specific reasons showing that why the remarks are unjustified and baseless, those pleas and contentions have to be dealt with and there is no point in merely giving a one line reply that the representation is rejected or that remarks are confirmed. Such a course of action is clearly in violation of principles of natural justice and fair play and shows that the appellate and revisional authorities have failed to exercise their jurisdiction. The impugned orders at Annexure A-4 and A-6 are therefore, required to be quashed and set aside.

6.13. The applicant submits that the respondent authorities are required to make mid term appraisal of the officer before they can write ~~their~~ adverse CR at the end of the year. It is not as if adverse ~~CR~~ C.R. can be written without there being any material in support of the same during the year. In the applicant's case, no mid term appraisal has taken place. At least the petitioner was not communicated of any material showing that her speed was less than adequate. Besides prior to this CR the applicant had put in service of more than 30 years and she had never received any adverse CR except the one for the previous year which was quashed. In such a case before relying on the adverse CR, the higher authorities should have obtained opinion from other superior officers who had opportunity to observe the work of the applicant. This is in accordance

with the well established policy of the Government.
No such procedure is followed in the applicant's case.
For all these reasons the impugned action is bad in
law, and liable to be quashed and set aside.

7. Relief Sought :

In view of the factual premises and submissions
made in paragraph 6 above, the applicant prays that
the Hon'ble Tribunal may be pleased :

- (A) To quash and set aside the impugned
Confidential Report at Annexure A-2, and
the impugned orders at Annexure A-4 and A-6,
as illegal, unconstitutional, without juris-
diction, null void and of no effect
whatsoever.
- (B) To direct the Respondent-authorities to
maintain the service record of the applicant
as if the impugned Confidential Report at
Annexure A-2, and the impugned orders at
Annexure A-4 and A-6 do not exist.
- (C) To consider the applicant's case for
future promotions, crossing Efficiency
Bar, future postings and other benefits
of service, as if the impugned Confidential
Report at Annexure A-2 and the impugned orders
at Annexure A-4 and A-6 do not exist.

- (D) To grant any other appropriate relief/
remedy deem just and proper by the Hon'ble
Tribunal in the facts and circumstances of
the case.

8. Interim order, if prayed for :

Pending final decision on the application,
the Hon'ble Tribunal be pleased to grant interim relief
by way of injunction order, restraining the Respondent
authorities from considering the impugned Confidential
Report at Annexure A-2, and the impugned orders at
Annexure A-4 and A-6, for the purpose of applicant's
promotion, crossing Efficiency Bar, future promotions,
etc.

9. Details of the remedies exhausted:

The applicant declares that she has availed of
all the remedies available to her under the relevant service
rules, by making a representation as spelled out in para
6 and making an appeal as mentioned in the same para.

10. Matter not pending with any other Court, etc.

The applicant further declares that the matter
regarding which this application has been made is not
pending before any court of law or any other authority or
any other Bench of the Tribunal.

11. Particulars of Bank Draft/Postal Order in respect of the Application fee.

1. No. of Indian Postal Orders : 194272
2. Name of the Issuing Post Office: High court P.O.
3. Date of issue of Postal Orders : 29-11-59
4. Post Office at which payable : High court P.O.

12. Details of Index

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of Enclosures :

1. Annexure A-1 to A-6 as mentioned in the Index.
2. Vakalatnama
3. Postal Orders in respect of Application fee.

In Verification

I, Miss Ashalata Dalvi, Daughter of Shri Gopinath aged adult, working as Income-tax officer, in the office of the Chief Commissioner of Income-tax, Ashram Road, Ahmedabad, resident of Ahmedabad, do hereby verify that the contents from paras 1 to 13 are true to my personal knowledge and belief, and I have not suppressed any material facts.

Place: Ahmedabad

Date : 29-11-59

TO: The Registrar
C.A.T. Ahmedabad, Bench.

Signature of the Applicant.

M. K. Anand
Advocate for the Applicant

checked by Mr. M. R. Anand
Learned Advocate for Petitioner
with second set & 2 spares
copies copy served/not served to
other side
Chief Clerk

29/11/59 Dy. Registrar C.A.T. Bench

Confidential
No. A. 2/C. 23-Gaz./89-90

A-1 15
Office of the Deputy
Commissioner of Income-tax,
Ahmedabad Range-2, Ahmedabad,
Dt: 15/6/1989

To
Miss A.G. Dalvi,
Income-tax officer,
Ward-2(5),
Ahmedabad.

Sub:-Representation against
adverse remarks -
Miss A.G. Dalvi, ITO, Group 'B'
Ahmedabad - P.Y. 1985-86 -

.....

The representation dated 26/8/1986 made by
you against adverse remarks made in your Confidential Report
for P.Y. 1985-86 has been considered by the Chief Commissioner
of Income-tax (A.M.) Ahmedabad in the light of the order dated
9/12/1988 of the Central Administrative Tribunal, Ahmedabad.
The adverse remarks have been deleted and substituted by the
following remarks in various columns:

<u>Column No.</u>	<u>Chief CTR's comments.</u>
15 (a) - Knowledge of Direct Tax Laws.	Good
15 (b) - Knowledge of Accounts.	Good
15 (c) - Knowledge of procedure.	Good
17. <u>Other qualities:</u>	
ii) Drafting orders.	Good
v) Investigating capacity.	Good
vi) Capacity to handle pressure of work.	Good
19. Nature of placement for which the officer is suited.	Deleted.
24. General assessment.	: She is advised to be more careful and vigilant in future.

Please acknowledge the receipt.

(Signature)
15-6-89
(SUNIL VERMA)
Deputy Commissioner of
Income-tax, Ahmedabad-
Range-2, Ahmedabad.

6-1
10-6-1989
True copy
M.R. Anand

A2

A-2 16

CONFIDENTIAL.

D. No. CS.V-3/87-(CC-I).

No. : 448618

Telegram : AAYAKAR

Tele No. 448618

(निजी Personal)

462176

(पब्लिक पब्लिक PABX)



G.R.PATWARDHAN.

मुख्य आयुक्त (प्रशा.) तथा आयकर आयुक्त, गुजरात-1.
CHIEF COMMISSIONER (ADM.) &
COMMISSIONER OF INCOME-TAX, GUJARAT-1.

प. बा. नं. 211 नवरांगपुरा, अहमदाबाद-9.

P. B. No. 211, Navrangpura, Ahmedabad-9.

दिनांक : the 26th May, 1987.

Dated : the 5th Jyaishta, 1909.

Dear Miss Dalvi,

I give below for your information the adverse remarks made in your Confidential Report for the F.Y.1986-87.

2. The object of communicating these adverse remarks to you, is that you should know the directions in which your work and/or conduct has been found unsatisfactory, so that you may endeavour to exert your best to eradicate the defects.
3. It may be added that if you wish to offer any explanation concerning these comments, please do so (in duplicate) within six weeks of the receipt of this letter. The explanation would be considered carefully and wherever the comments need any modification on such consideration, they would besuitably modified.
4. Please acknowledge receipt,

Yours truly,

(G. R. Patwardhan)

Miss A.G.Dalvi,
Income-tax Officer,
Budget & Statistics,
C.I.T's Office, Ahmedabad.

: Adverse remarks by the Reporting Officer :Col.No.Remarks.

15. Comments on
columns 12
and 13.

The performance with regard to proposing cases
for prosecution is poor.

(1)
18(a) Speed.

Inadequate.

.....

for copy
M.R. Patwardhan
A

copy
16/6/87

A 3 A 3 17

From:

Miss A. G. Dalvi,
Income-tax Officer,
HQ. B & S,
Ahmedabad.

Dated: 3rd July, 1987

To

The Chief Commissioner (Admn.) &
Commissioner of Income-tax,
Gujarat-I, Ahmedabad.

Sir,

Reg.:- Adverse remarks in Confidential report
for F.Y. 1986-87- Miss. A. G. Dalvi,
I.T.O., Class-II, Ahmedabad.

Kindly refer to your D.O. Letter (Confidential)
No. CS-V-3/87(CC-1) dated 26/5/1987, conveying the adverse
remarks made in my Confidential Report relating to the work
done by me in the F.Y. 1986-87 and inviting my explanation
concerning those remarks in duplicate.

2. I may mention here that, as per the information
given in my appraisal report, I have worked during the year
on various postings as under:-

From 1/4/1986 to 9/7/1986 as Chief Auditor-III, Ahmedabad.
From 10/7/1986 to 31/10/1986 as ITO, VI-G/VI-F, Ahmedabad.
From 1/11/1986 to 31/3/1987 as ITO, VI-D, Ahmedabad holding
additional charge of VI-F, Ahmedabad. As such I have worked
under the I.A.C., Range-IV, Ahmedabad from 1/10/1986 to
31/10/1986 as I.T.O., VI-F and from 1/11/1986 to 31/3/1987
as I.T.O., VI-D holding additional charge of I.T.O.
VI-F, Ahmedabad.

3. After giving the above details, I am giving
the following explanation with a request to expunge the
adverse remarks communicated to me.

Col. No. 15- Comments on Col. 12 & 13

The performance with regard to proposing cases
for prosecution is rated as poor by the I.A.C. without
giving any reasons. The remark given by the I.A.C. is not
correct. I may mention here that I have proposed two cases
for prosecution from VI-F(TDS) of which I was holding
additional charge. The jurisdiction of VI-F is limited to tax
deducted at source from salary only and ^{not} from any other
income like income from contract, insurance commission,
interest etc. As such the possibility for prosecution

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(2)

is meagre. Further ~~most~~ of the time this charge had remained with me as an additional one. I may add here that there was a separate Inspector for attending TDS work in past years, while during the year there was only one Inspector posted in grievance cell of the whole Narayan Chambers i.e. Circle-IV-VI & VIII who was also asked to attend to the work of salary circle having six wards. In spite of repeated oral and written requests no Inspector was posted for T.D.S. work. But at the end of February, 1987 the very same Inspector who was attached to the grievance cell as well as salary circle was asked to look after the T.D.S. work. ^{Not} ~~For~~ only that but all the time he was kept busy by the I.A.C. himself in attending his own work. Considering the above narrated facts and circumstances, I feel that proposing of two cases for prosecution ^{can} ~~was~~ not be called poor. Any way I take the liberty to ask that if the charge of T.D.S. is that important why no separate officer was posted in that charge, but it was given as an additional charge all the time ? And if T.D.S. charge is that potential, how many cases are proposed for prosecution since the inception of this Section and creation of this Charge ? And how many Officers have got adverse remarks for not proposing prosecution cases from that charge ? If none, then why am I selected for this count ? Salary Ward is not a big charge for potentiality of prosecution cases. How many of the other Salary Officers have proposed cases for prosecution and how many of them have been given adverse remarks for not proposing cases for prosecution ? Why this special favour is done to me alone by the I.A.C. Range-IV, Ahmedabad ? In any cases proposing two cases for prosecution is not poor and salary ward is not that big or potential that prosecutions can be proposed from that charge. And if none of the other Salary I.T.Os. have proposed cases for prosecution, why am I chosen for giving adverse remarks ? In view of all the above stated facts the adverse remarks in Column No.15 may kindly be deleted.

Column No.18(1)(a) Speed :- In this column the remarks conveyed are 'Inadequate', but no reasons have been given, as to why my speed is considered as inadequate, for the obvious reasons that there are no reasons for giving these remarks. Normally the speed in Summary Ward, reflects, mainly through the disposal of assessments. I may state here that it was only from 1/11/1986 when I was

(3)

posted as I.T.O., VI-D, Ahmedabad that I was given a chance to show my ~~xxx~~ speed and since then to the end of March, 1987. I have given as much of disposal, which is more than the norms fixed by the Board i.e. 500 per month. I have given disposal of 2900 I.T. Assessments within five months which gives an average of 580 assessments per month. Without prejudice to the target fixed by the Board, I give below the comparative figures of other officers of Salary Circle.

<u>I.T.O.</u>	<u>Ward</u>	<u>Months</u>	<u>Disposal</u>	<u>Average.</u>
Shree M.K. Menon	VI-A	8-1/2	4377	480
Shree J.B. Shah	VI-C	4-1/2	2420	570
Shree T.S.C. Nair	VI-E	6-1/2	3255	501
Miss A.G. Dalvi	VI-D	5	2900	580

From the above figures, it is apparent that my average disposal per month not only exceeds the Board's target but is also the highest amongst Circle-VI I.T.Os. Hence, considering the above figures, my average disposal of 580 assessments per month and the fact that I was also holding additional charge of VI-F, it is apparent that I am no more lagging behind the other Officers of Salary Circle. In spite of the fact that my average disposal is the highest, I have been chosen by the I.A.C., A.R. IV, Ahmedabad for giving adverse remarks which shows his subjective approach. I can not resist, but to add here that it was apparent from his attitude towards me that he had determined to harm me for the best reasons known to him, and these adverse remarks ~~xxx~~ are simply an expression of his pre-determination. This is nothing but a clear case of intentional harassment caused to an Officer. Even after giving disposal of 580 assessments per month and proposing two cases for prosecution, if the I.A.C. gives adverse remarks, it is he who deserves an explanation for giving adverse remarks. Instead, surprisingly enough, the explanation is called for from my side. There is no other alternative, but to put up all these facts before you for getting justice. Inconvenience, if any caused to the administration may kindly be excused.

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(4)

In view of the explanation given above, I request you to kindly expunge both the adverse remarks. I may kindly be granted personal interview, if you are ~~not~~ satisfied with my explanation.

Yours faithfully,

Carl sh
(MISS. A. G. DALVI)
Income-tax Officer,
(H. Q. / B&S), Ahmedabad.

*True copy
M K Mani
S*

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GOVERNMENT OF INDIA

OFFICE OF THE CHIEF COMMISSIONER (Adm.) &
COMMISSIONER OF INCOME TAX & EXCISE
Ahmedabad, Gujarat, India-380 009

MAHATMA BHAVAN, NAVRANGPURA, AHMEDABAD-9

No. CS.V-3/87 (CC)

dt./dd. 19th Nov. -1987

From : Mr. Dalvi (Adm.) &
Commissioner, Ahmedabad, Gujarat
To :

Mrs A.G. Dalvi,
Income Tax Officer (B&S)
Ahmedabad.

Sub: Communication of adverse remarks
in the CR for 1986-87.

Ref: Your representation dated 3-7-1987.

I have considered the above representation. My decision is as under:

Regarding column 15: The adverse remarks is deleted.

Regarding col.18(1)(a): The remark is confirmed.

(P.C. BELAKHANDI)
Chief Commissioner (Adm.)
Ahmedabad.

True copy
M-R Manu
Ad

A-5
Ahmedabad
21st December, 1987. 22

From:-

Miss A.G. Dalvi,
Income-tax Officer, (HQ. Stts.),
Office of the Chief CIT, Gujarat,
Ahmedabad.

To:-

The Secretary,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 001.

(Through the Chief Commissioner (Adm),
Gujarat, Ahmedabad.)

Sir,

Sub:- Confidential Report for Financial Year 1986-87
Adverse Remarks in C.C. Roll - Miss A.G. Dalvi,
Income-tax Officer, Class-II, Ahmedabad -
Appeal against.

I beg to submit the following facts by way of appeal
against the order/communication by the Commissioner
of Income-tax (Adm), Gujarat, Ahmedabad with a sanguine
hope that the matter will be sympathetically
considered and decided judicially.

Brief History

I am a promotee Income-tax Officer since 1975. I have
put more than 12 year's service as officer before
which I was UDC and then an Inspector. In all, I have
served this Department, for 30 years. I had a spotless
career record and an unblemished service vitae. Now,
for the year 1986-87, my postings were as under.

- 1) 1.4.1986 to 2.7.1986 as Chief Auditor-III, Ahmedabad.
- 2) 10.7.1986 to 31.10.1986 as ITO, Cir. VI-G/VI-F, Ahmedabad.
(Due to change of nomenclature)
- 3) 1.11.1986 to 31.3.1987 as ITO Cir. VI-D, Ahmedabad,
holding addl. charge of ITO, Cir. VI-F.

.....2/-

Cause of Grievance

There appears no problem with my first posting (as Chief Auditor-III). But the next postings under IAC, Ahmedabad Range-IV, Ahmedabad, did not go well as per his notions. Therefore the IAC gave me adverse entries in my C.R. in two columns, which were communicated to me, and which is Annexure(A). My reply, which is elaborate and exhaustive is made Annexure(B) to this appeal. After considering the explanation, the Chief CIT deleted adverse entry in one column and confirmed in another column. Annexure(C) would show the position. Therefore the adverse entries for 1986-87 is as follows:-

18(1)(a) speed ; Inadequate

This is the cause of grievance and this appeal is emanating from the above situation.

Arguments why it can not be sustained :-

At the outset, one can not help, but to agree, the above remarks are baseless, devoid of logic, and even out of context, as no reason or reasoning are given for this remark. Nowhere during the year, the IAC issued any memo, to draw my attention, regarding my 'Inadequate speed'. During the innumerable discussions, the IAC had with me (all other ITOs were also present, and such meetings were numerous) he did not tell me or make me aware that my speed is below par. I can quote from the circular, issued, with regard to mid-term ^{Appraisal} Appraisal Reports, that the ITOs may be made aware of their defects or faults, so that they could improve upon their performance. This was not done. The whole process is vitiated. An adverse remark without a base can not be sustained, by any right thinking person. Therefore, I would request you to expunge the same.

As stated in this epistle, I was working in a Summary Charge (according to norms) during the year. I understand 'Speed' in a summary charge, has to be understood with relation to the number of assessments.

.....3/-

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This fact has been orally confirmed by the then Chief CIT Shri G.R. Patwardhan when he was at Ahmedabad. The present chief who took decision, on my representation, was also present during such 'hearing session'.

At the juncture, a deviant detour may be necessary. During the year 1986-87, an unprecedented number of promotee ITOs got adverse remarks at the hands of Direct Recruited IACs. In Ahmedabad alone 24 Officers were given adverse, such as my case, which lacked in reason, cohesion and even the remarks exhibited utter lack of appreciation of the work done by the incumbents. Out of the 24, only one was Direct Recruit, and he was only given a most harmless remark, though it was termed as adverse remark. As an agitation was brimming up at the instance of our Association, a hearing session was arranged Range wise. The author IAC had to hear the arguments in defence, by the Association Representatives. Chief CIT alongwith another CIT were present. During such meetings, the Chief CIT agreed that almost all remarks have to go, as they are not properly conceived and delivered. But, it is my misfortune, that the present Chief confirmed one remark.

May I invite your attention to the Annexure(B) to this appeal? You are requested to go through the chart showing disposals of ITO, of Circle-VI (page No.3) This would show I had given the highest numbers of assessments. Therefore, my 'Speed' has to be termed as the 'best available'. I understand, none of the other ITOs, who figure alongwith me in the said chart got adverse. If their speed is adequate or good, how can my speed be 'inadequate' when actually my speed is better than them. I would request you, at this juncture, if you are going to give adverse to all those ITOs with 'Inadequate speed' you should also confirm my remarks. Otherwise, there is absolutely no case for confirmation. On any count, this remark should go.

Thus, I have showed, in this appeal, that my remarks have to be expunged, and I may be given suitable remarks which would actually commensurate with my performance.

.....4/-

I may further point out that as discussed on page 3 of Annexure(B), I have exceeded the target of 500 assessments per month fixed by the Board, which proves that my speed is better than that expected by the Board. In view of this also the adverse remark requires to be expunged.

May I take the liberty to invite your attention to my representation dt.3.7.1987, which is Annexure(B). In the last paragraphs, I had requested for personal hearing, with the Chief, before the matter was disposed of. I had made it clear, that, if my explanations were not found satisfactory, for any reason whatsoever, a personal hearing may be given. This act of 'natural' justice and fairplay was denied to me. I am grieved about this kind of arbitrary methods by the Authorities at Ahmedabad. I would request you to seize this opportunity, to do justice to me and set the norms right.

I would request you, to appreciate the facts of my case. I had received two adverse entries out of which, one is confirmed by the Chief CIT. Before arriving at this decision, he has gone through my explanation. Therefore, I believe that when he confirms a remark, naturally, he has to give his reasons for doing so. In my case, it is not done. Therefore, the confirmation of one remark suffers from legal infirmity. Therefore, too, this remarks should go.

Before I conclude and set rest on the matter; I would draw your attention, through the entire sequence of events, that has culminated in confirming (one adverse remark). The letter intimating me the adverse ^{remark} was sent to me on 26.5.1987. My explanation was forwarded on 6.7.1987. The Chief CIT confirmed one remark on 19.11.1987. This would show that there was delay beyond the prescribed time of six weeks. As no time schedule is adhered to, I would request you to expunge the remark, on account of legal 'latches'.

.....5/-

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Should my explanations at this level is found to be inadequate or insufficient, before deciding on the issue, I may be given a personal hearing. In case, you need any further details, I may be called upon, to submit the same, and I would do so. My earnest request is that the remarks should be expunged at any cost.

I have submitted the facts in great details with a view to enable you to decide judicially whether the Chief Commissioner (Adm), Gujarat, Ahmedabad was justified in not expunging the remaining remark given by the Reporting Officer in Col.No.18(1)2. Both the Reporting and Reviewing Officer did not write to inform me of my defects at any time during the period under consideration. In the end, I sincerely pray that early action may be taken in this matter so that my future prospects are not jeopardised.

This appeal is filed in time i.e. within six weeks of service of the order of the Commissioner of Income-tax (Adm), Gujarat, Ahmedabad dt.19.11.1987.

Yours faithfully,

M. R. D.

(Miss A.C. DALVI) ITO (HW. STTS),
Office of the Chief Commissioner
of Income-tax (Adm), Gujarat,
Ahmedabad.

*True copy
M.R.D.*

CONFIDENTIAL.

PATWARDHAN.

સા. નં. : ૩૫૫૫

Telegram : AAYAKAH

2. નં./Tele No. 440618

(Not Personal)

462176

(Departmental)

મુખ્ય અધિકારી (સા. નં.) આ અધિકારી અધિકારી, ગુજરાત-૧.

CHIEF COMMISSIONER (ADM.) G

COMMISSIONER OF INCOME-TAX, GUJARAT-1

સા. નં. નં. 211 નવરાંગપુરા, અમદાવાદ-૯.

P. B. No. 211, Navrangpura, Ahmedabad-9.

તારીખ :

the 26th May, 1987.

Dated : the 5th Jyaishta, 1909.

Dear Miss Dalvi,

I give below for your information the adverse remarks made in your Confidential Report for the F.Y. 1986-87.

The object of communicating these adverse remarks to you, is that you should know the directions in which your work and/or conduct has been found unsatisfactory, so that you may endeavour to exert your best to eradicate the defects.

It may be added that if you wish to offer any explanation concerning these comments, please do so (in duplicate) within six weeks of the receipt of this letter. The explanation would be considered carefully wherever the comments need any modification on such consideration, they would be suitably modified.

Please acknowledge receipt,

Yours truly,

G. R. Patwardhan

(G. R. Patwardhan)

Miss A.G. Dalvi,
Income-tax Officer,
Budget & Statistics,
C.I.T.'s Office, Ahmedabad.

Adverse remarks by the Reporting Officer :

Sol. No. Remarks.

15. Comments on columns 12 and 13.

The performance with regard to proposing cases for prosecution is poor.

(1)
18(a) Speed.

Inadequate.

*Micro copy
M. K. M. M.*

Annexure B

From:

Miss A.G. Dalvi,
Income-tax Officer,
HQ. B & S,
Ahmedabad.

Dated: 3rd July, 1987

To

The Chief Commissioner (Admn.) &
Commissioner of Income-tax,
Gujarat-I, Ahmedabad.

Sir,

Re:- Adverse remarks in Confidential report
for F.Y. 1986-87- Miss. A.G. Dalvi,
I.T.O., Class-II, Ahmedabad.

Kindly refer to your D.O. Letter (Confidential)
No. CS-V-3/87(CC-1) dated 26/5/1987, conveying the adverse
remarks made in my Confidential Report relating to the work
done by me in the F.Y. 1986-87 and inviting my explanation
concerning these remarks in duplicate.

2. I may mention here that, as per the information
given in my appraisal report, I have worked during the year
on various postings as under:-

From 1/4/1986 to 9/7/1986 as Chief Auditor-III, Ahmedabad.
From 10/7/1986 to 31/10/1986 as ITO, VI-G/VI-F, Ahmedabad.
From 1/11/1986 to 31/3/1987 as ITO, VI-D, Ahmedabad holding
additional charge of VI-F, Ahmedabad. As such I have worked
under the I.A.C., Range-IV, Ahmedabad from 1/10/1986 to
31/10/1986 as I.T.O., VI-F and from 1/11/1986 to 31/3/1987
as I.T.O., VI-D holding additional charge of I.T.O.
VI-F, Ahmedabad.

3. After giving the above details, I am giving
the following explanation with a request to expunge the
adverse remarks communicated to me.

Col. No. 15- Comments on Col. 12 & 13

The performance with regard to proposing cases
for prosecution is rated as poor by the I.A.C. without
giving any reasons. The remark given by the I.A.C. is not
correct. I may mention here that I have proposed two cases
for prosecution from VI-F (TDS) of which I was holding
additional charge. The jurisdiction of VI-F is limited to tax
deducted at source from salary only and ^{not} for from any other
income like income from contract, insurance commission,
interest etc. As such the possibility for prosecution

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(2)

is meagre. Further most of the time this charge had remained with me as an additional one. I may add here that there was a separate Inspector for attending TDS work in past years, while during the year there was only one Inspector posted in grievance cell of the whole Narayan Chambers i.e. Circle-IV-VI & VIII who was also asked to attend to the work of salary circle having six wards. In spite of repeated oral and written requests no Inspector was posted for T.D.S. work. But at the end of February, 1987 the very same Inspector who was attached to the grievance cell as well as salary circle was asked to look after the T.D.S. work. ^{Not} For only that but all the time he was kept busy by the I.A.C. himself in attending his own work. Considering the above narrated facts and circumstances, I feel that proposing of two cases for prosecution ^{can} ~~was~~ not be called poor. Any way I take the liberty to ask that if the charge of T.D.S. is that important why no separate officer was posted in that charge, but it was given as an additional charge all the time? And if T.D.S. charge is that potential, how many cases are proposed for prosecution since the inception of this Section and creation of this Charge? And how many Officers have got adverse remarks for not proposing prosecution cases from that charge? If none, then why am I selected for this count? Salary Ward is not a big charge for potentiality of prosecution cases. How many of the other Salary Officers have proposed cases for prosecution and how many of them have been given adverse remarks for not proposing cases for prosecution? Why this special favour is done to me alone by the I.A.C. Range-IV, Ahmedabad? In any cases proposing two cases for prosecution is not poor and salary ward is not that big or potential that prosecutions can be proposed from that charge. And when none of the other Salary I.T.Os. have proposed cases for prosecution, why am I chosen for giving adverse remarks? In view of all the above stated facts the adverse remarks in Column No. 15 may kindly be deleted.

Column No. 18(1)(a) Speed :- In this column the remarks conveyed are 'Inadequate', but no reasons have been given, as to why my speed is considered as inadequate, for the obvious reasons that there are no reasons for giving these remarks. Normally the speed in Summary Ward, reflects, mainly through the disposal of assessments. I may state here that it was only from 1/11/1986 when I was

(3)

posted as I.T.O., VI-D, Ahmedabad that I was given a chance to show my ~~work~~ speed and since then to the end of March, 1987, I have given as much of disposal, which is more than the norms fixed by the Board i.e. 500 per month. I have given disposal of 2900 I.T. Assessments within five months which gives an average of 580 assessments per month. Without prejudice to the target fixed by the Board, I give below the comparative figures of other officers of Salary Circle.

<u>I.T.O.</u>	<u>Ward</u>	<u>Months</u>	<u>Disposal</u>	<u>Average.</u>
Shree M.K. Menon	VI-A	8-1/2	4377	480
Shree J.B. Shah	VI-C	4-1/2	2420	570
Shree T.S.C. Nair	VI-E	6-1/2	3255	501
Miss A.G. Dalvi	VI-D	5	2900	580

From the above figures, it is apparent that my average disposal per month not only exceeds the Board's target but is also the highest amongst Circle-VI I.T.Os. Hence, considering the above figures, my average disposal of 580 assessments per month and the fact that I was also holding additional charge of VI-F, it is apparent that I am no more lagging behind the other Officers of Salary Circle. In spite of the fact that my average disposal is the highest, I have been chosen by the I.A.C., A.R. IV, Ahmedabad for giving adverse remarks which shows his subjective approach. I can not resist, but to add here that it was apparent from his attitude towards me that he had determined to harm me for the best reasons known to him, and these adverse remarks ~~are~~ are simply an expression of his pre-determination. This is nothing but a clear case of intentional harassment caused to an Officer. Even after giving disposal of 580 assessments per month and proposing two cases for prosecution, if the I.A.C. gives adverse remarks, it is he who deserves an explanation for giving adverse remarks. Instead, surprisingly enough, the explanation is called for from my side. There is no other alternative, but to put up all these facts before you for getting justice. Inconvenience, if any caused to the administration may kindly be excused.

...4...

(4)

In view of the explanation given above, I request you to kindly expunge both the adverse remarks. I may kindly be granted personal interview, if you are not satisfied with my explanation.

Yours faithfully,

G. A. Dalvi
(MISS. A. G. DALVI)
Income-tax Officer,
(H. Q. /B&S), Ahmedabad.

*The copy
is known
ad*

~~Annexure~~

OFFICE OF THE CHIEF COMMISSIONER (Adm) &
COMMISSIONER X OF X AND COMBETAL X GUYANA X X
300000000, 300000000, 300000000-330 009

DAYAKAR BHAVAN, NAVRANGPURA, AHMEDABAD-9

No. CS.V-3787 (CC)

al./did. 19th Nov. 1957.

१. मूल आधुन (प्रभा.) व
२. मूल आधुन, युक्त-१, अन्तर्गत
३. १०

Mrs A.G. Dalvi,
Income Tax Officer (B & S)
Ahmedabad.

Sub: Communication of adverse remarks
in the CR for 1986-87.

Ref: Your representation dated 3-7-1987.

I have considered the above representation. My decision is as under:

Regarding column 15: The adverse remarks is deleted.

Regarding col. 18(1)(a): The remark is confirmed.

(P. C. MALAKIANDI)
Chief Commissioner (Adm.)
Ahmedabad.

Free copy
M. R. Richards
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Confidential
No.AR.2/CR.23/Gaz./99-90

Office of the Deputy
Commissioner of Income-tax,
Ahmedabad Range-2, Ahmedabad.

Dt: 25/7/1989.

To
Miss A.G. Dalvi,
Income-tax Officer,
Ward-2 (5)
A H M E A B A D.

Sub:-Representation against
adverse remarks in the
ACR for the FYs 1986-87
and 1987-88 -

.....

Please refer to your representation
against the adverse remarks in the A.C.R. for F.Ys. 1986-87
and 1987-88.

2. In this connection I forward herewith a
copy of letter F.No.A.28018/3/89-Ad.VI(A) dated 7th July 1989
received vide letter No.HC.II/CR/AGD/87-88 dated 19th July '89
of C.I.T., Gujarat-II, Ahmedabad.

3. Please acknowledge the receipt.

crealw
25.7.1989
Encl: as above.

(SUNIL VERMA)
Deputy Commissioner of I.T.,
Ahmedabad Range-2, Ahmedabad.

Copy to: The Commissioner of Income-tax,
Gujarat-II, Ahmedabad.

Dy.C.I.T., A.R.2, Ahmedabad.

For copy
in K Man
R

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Confidential

F.No.A-29018/3/89-AI.VI(A)
Government of India, Ministry of Finance
Department of Revenue

New Delhi, the 7th July 1989.

To:

The Chief Commissioner of Income-tax,
Ahmedabad.

Sub :-Representation of Miss A.G.Dalvi, ITO, Gr.B
Ahmedabad against adverse remarks in
the ACR for the FYs.1986-87 and 1987-88 -

.....

Sir,

I am directed to refer to your letter dated 14.4.1989 and 2.6.1989 on the subject cited above and to say that the Board have carefully considered the representation of Miss Dalvi, ITO and counter comments of the reporting and reviewing officers thereon but do not see any justification to expunge the adverse entries in her ACRs for the years 1986-87 and 1987-88. The representations of Miss Dalvi, ITO are, therefore, rejected. She may be informed accordingly.

2. As regards her representation against supersession in promotion, the case was considered by the DPC held recently but she could not find place in the Select Panel on account of comparative merit.

Yours faithfully,

SI/-

Krishna Saini,
Under Secretary to the Govt. of
India.

...copy...

35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD

O.A. No. 526 of 1989.

Miss. A.G.Dalvi

... Applicant.

Vs.

Union of India & others.

... Respondents.

Written Reply.

I, SUNIL VERMA, Dy.Commissioner of Income-tax(HQ)-I,A'bad
do hereby state as under:-

1. I submit that I am conversant with the facts
of the case and am able to depose to the averments
made herein.

2. The application before the CAT is against the
adverse remarks recorded by the Reporting Officer
in the applicant's Annual Confidential Report for
the F.Y.1986-87. The applicant had worked as an
Income-tax Officer under the administrative control
of the Inspecting Asstt.Commissioner of Income-tax,
Range-IV, Ahmedabad for about 6 months during the

11/4/90

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F.Y.1986-87 and as such the Inspecting Asstt.Commissioner of Income-tax (at present designated as Dy. Commissioner of Income-tax) Range-IV was competent to evaluate the performance of the applicant and write her annual C.R. As an Income-tax Officer having jurisdiction over persons who are responsible to deduct tax from salaries, the applicant was expected to initiate penalty and prosecution proceedings for non-compliance with the relevant provisions of the Income-tax Act. Despite the fact that the potentiality for initiating penalty and prosecution proceedings was very high in her charge, her performance was found to be low. In respect of disposal of assessments also, the Inspecting Asstt.Commissioner found her performance far below the expected target. Keeping in view these aspects, while writing her Annual C.R., the I.A.C., A.R.IV, Ahmedabad, recorded the following adverse remarks against columns No.15 and 18(1)(a).

Col.No.15 - Comments on cols.No.12 & 13 :-

"The performance with regard to proposing cases for prosecution is poor."

Col.No.18(1)(a)-Speed "Inadequate".

The above adverse remarks were communicated to the

applicant under Chief C.I.T.(Adm.)'s letter No.

C.S. V-3/87-(CC.1), dated 26/5/1987.

3. By her representation dated 3/7/1987 filed before the Chief Commissioner of Income-tax, Ahmedabad, she sought expunction of the adverse remarks.. After obtaining the comments of the Reporting Officer and carefully considering the submissions made by the applicant in her representation dated 3/7/1987, the Chief C.I.T.(Adm.), deleted the adverse remarks against col.No.15 and confirmed the remarks against col.No.18(1)(a). His decision was communicated to the applicant by letter dated 19/11/1987. Being not satisfied with the decision of the Chief C.I.T.(Adm.), the applicant, vide her representation dated 21/12/87, requested the Central Board of Direct Taxes, New Delhi, for expunction of the remaining adverse remarks. However, the Central Board of Direct Taxes, after carefully considering the representation and the counter comments given by the Reporting and Reviewing Officers, did not see any justification for expunging the adverse remarks recorded against col.18(1)(a) as confirmed by the Chief C.I.T.(Adm.). The decision of the C.B.D.T. was communicated to the applicant by letter dated 25/7/1989 through the C.I.T., Gujarat-II &

Dy.C.I.T., Range-2, Ahmedabad. The applicant, by her letter dated 1/8/1989, again approached to the C.B.D.T. for reconsidering her case. The Board, however, did not accede to her request on the ground that there is no provision in the rules for filing a second appeal to the Board on the same subject.

4. From the above facts it will be seen that the adverse remarks given by the Reporting Officer against col.18(1)(a) were found to be appropriate by the C.I.T. as Reviewing Officer and Chief C.I.T. and C.B.D.T. as appellate authorities.

5. Without prejudice to the aforesaid, I shall now deal with the application parawise:

(A) With reference to paragraph 6.1 of the application it is submitted that the applicant's claim that her performance and efficiency have never been adversely commented upon is substantially incorrect. Adverse remarks were given against cols. 13, 14, ^{15,} 17, 19 and 24 of the Annual C.R. for F.Y.1985-86. These include adverse remarks for the poor performance towards disposal of assessments. Out of these, remarks against col.13 & 14 were later

expunged by the Reviewing Officer. However, it is a fact that as per the direction of the C.A.T. her representation for expungtion of the adverse remarks, was reconsidered by the Chief C.I.T.(Adm.) in his capacity as appellate authority, the remarks against cols.15, 17 & 19 were deleted and the remarks against col.24 were treated as advisory.

- (B) With reference to paragraph 6.2 of the application it is submitted that the statement that the adverse remarks in respect of all the columns in the Annual C.R. for 1985-86 have been substituted by the word "Good" is not correct. In fact, as can be seen from the Annexure-1 to the application, no such remarks were given against col.19 and 24. The remarks given against col.24 (General Assessment) were treated as advisory in nature.
- (C) With reference to para 6.3, it is submitted that the applicant's contention that her out-put was the highest in the Range is denied, because a number of assessments claimed to have been

completed by her were actually incomplete and further action in most of the cases had to be taken by her successors in office.

- (D) With reference to para 6.4, it is submitted that the assertion that there was not much scope for prosecution in the ward where she was expected to deal with cases involving tax deduction at source from salary, is denied. In fact, there was high potential for prosecution in that ward, because there are always a large number of defaulters in respect of deduction of tax at source from salary and payment there of to the Govt. a/c. within the statutory time limit, who deserve to be prosecuted. As regards her claim that average disposal of assessments per month given by her was the highest as compared to the disposal of three other officers is substantially incorrect. In fact, most of the follow up action in respect of the assessments claimed to have been completed by her had to be attended to by her successors in office. Completion of an assessment does not merely mean an assessment order. Issue & serve of demand notice or refund order are an integral part of the process of assessment. This latter work was neglected by her in

most cases. The figures of disposal claimed by her can therefore be considered as inflated as the assessment made by her were found to be incomplete in many respects. Averments casting aspersion on the reporting/reviewing officer are denied.

- (E) With reference to paras 6.5 & 6.6, it is stated here that by merely comparing the figures of disposal of assessments with those of other officers, the actual work done by the applicant cannot be measured. It has already been pointed out in the above paras that though the applicant had shown a good figure of disposal of assessments *a major portion of the work thereof* had remained to be attended to. However, in respect of the disposal of assessments shown by other officers, follow up action in most of the cases had also been completed by them. The adverse remarks against col.18(1)(a) were recorded by the Reporting Officer only after making an objective assessment of the performance of the officer reported upon. The allegations of arbitrariness against the reporting/reviewing officers are denied.

- (F) With reference to paras 6.7 to 6.11, it is

submitted that the adverse remarks against col. 18(1)(a) by the Reporting Officer, as confirmed by the higher authorities including Central Board of Direct Taxes, are most appropriate as these have been recorded only after a careful and objective assessment of the performance of the applicant. Rest of the averments are denied.

- (G) With reference to para 6.12 it is submitted that averments relating to adverse~~se~~ remarks against col.No.15 are no longer relevant because these adverse remarks were deleted on consideration of her representation dated 3/7/1987. The assertion of the applicant that she is the fastest officer is nothing but misrepresentation as can be seen from the fact that the number of assessments claimed to have been completed by her were incomplete in many respects. Although no speaking communication were sent to the applicant in reply to her representation against adverse remarks, the representations were dealt with in relevant files on merits and all the points raised were considered in the light of facts on record.

(H) With reference to para 6.13, it is submitted that the plea that no mid-term appraisal in respect of the work of the applicant was made by the Reporting Officer does not absolve her of her responsibility for giving a better performance. There is no substance in the averment of the applicant that the higher officers should have sought the opinion of other superior officers "before relying on the adverse C.R.". Since the reporting and reviewing officers were quite familiar with the performance of the applicant, it was not necessary for them to seek the opinion of any other authority, superior or otherwise, while writing her Annual C.R. The adverse remarks recorded by the Reporting Officer are only with reference to the performance of the applicant while working under him and cannot be related to her performance under any other officer during an earlier period.

(I) With reference to paras 7 to 10, it is submitted that for the facts mentioned in the foregoing paras, it will be seen that the adverse remarks have been recorded in the Annual C.R. of the applicant only after evaluating her performance

objectively, and the remarks against col.No.15
have been upheld by the reviewing and appellate
authorities only after an objective consideration
of her representation and the facts on record.
In the circumstances, the applicant does not
deserve any relief and her application may be
rejected with costs and interim order be vacated.

I crave indulgence to file further reply if necessary.

Dated this 7th day of ~~XXXXXX~~^{March}, 1990.

R.P. Bhatt

(R.P. Bhatt)

Advocate for the respondents.

VERIFICATION

I, Sunil Verma
age.37.years, working as Dy.Commissioner of Income-tax(HQ.I)
in the office of Income-tax, resident of. Ahmedabad ...
do hereby verify that the contents of paras. .2. . . .to
. 3(I). . . .are believed to be true on legal advice
and that I have not suppressed any material fact.

Date: 7th March,1990.

Sunil Verma

(SUNIL VERMA)

Dy.Commissioner of Income-tax(HQ)-I
for Chief Commissioner of Income-tax(Admn)
Ahmedabad.

Reply/Rejoinder/written submissions
filed by Mr. *R.P. Bhatt*
learned advocate for petitioner/
Respondent with second set.
Copy served/not served/other side

Dt 17/3/90

Sun
Dy. Registrar C A T (I)
A'bad Bench

45

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT AHMEDABAD

O. A. NO. 526 OF 1989

Miss A.G. Dalvi

::::: Petitioner

v/s

Union of India & ors

::::: Respondents

Rejoinder to Written Reply

I, Miss A.G. Dalvi, submit the following rejoinder to the written reply filed by Shri Sunil Verma, Dy. C.I.T. (H.Q.):

1. I say that during the relevant period Shri Verma's post was IAC Range II and was not incharge of my range and therefore could not be conversant with the facts of my case.

2. As to paras 2, 3 & 4, I say that the facts stated therein are not admitted and specifically denied. I say the conclusion drawn in para 4 from the incorrect factual premises stated by the deponent in paras 2 & 3 are also erroneous. I say that the remark as to proposal for prosecution cases having been deleted the only question remains is regarding inadequate speed. I say that

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46

during the relevant period of about 5 months, I had disposed of 2,900 cases with the average of about 580 cases per month which is far more than the average of all other officers. I say that all my assessment orders were complete, duly signed and entered into demand and collection register and then accounted for in the progress report.

3. As to para 5(A) I say that the remarks of 1985-86 have been quashed by this Hon'ble Tribunal in O.A.No.636/87. The deponent should have mentioned this fact and not tried to mislead by still referring to remarks which have been quashed as if they still exist. This only shows that the respondent authorities are relying on quashed remarks also and not treating it as quashed. This attitude is not proper and not respectful to the judgment of this Hon'ble Tribunal besides being unfair to the petitioner. As far as para 5(B) is concerned, the petitioner craves leave of this Hon'ble Tribunal to refer to and rely upon Annexure A-1 which speaks for itself.

&(D)

4. As to para 5(C), I say that as stated earlier my speed was highest. I say my assessment orders were complete and the deponent is not right in saying that they were incomplete. If he means it, he should have referred to the number of assessments and given the details of assessment orders which were incomplete. I say after assessments orders were completed, but before follow up action in some of the assessment

orders I was transferred from this ward. This is sought to be dubbed as incomplete assessment orders. The fact of the matter is once I am transferred how could I continue to work on my earlier assignment. This again shows the unfairness in passing the remark as to speed against me. This also shows that remark is written without any evidence and without any material basis. I say that follow up in salary circle is mainly issuance of refund orders. The substantial part of this job is clerical. Of the 765 cases disposed of by me in the month of March, 532 entailed refunds. I was transferred to Head quarters and was directed to take over the charge on 15th April leaving me only 9 working days for completing all the work. I say that on March 31, when I was transferred the follow up work had not taken place in case of all I.T.O.s. Following is the statement of the other officers and the number of cases where follow up work had not been completed on that date :

VI-A	M. K. Menon	458
VI-B	M.T. Shah	740
VI-C	J.B. Shah	600
VI-E	T.S.C. Nair	720

The Hon'ble Tribunal may kindly note the fact that the mode of calculating the speed is not part of the reply given to the petitioner in the departmental appeal and revisions. This is an after-thought created after the petitioner had shown that her disposal was the highest. I say that follow up action is always a post disposal process and can never be counted as pre-disposal

process. Secondly in case of the above mentioned Officers doing the comparable job no adverse CRS are given. This also shows that the petitioner is being singled out in a discriminatory and arbitrary manner in violation of fundamental right under Articles 14 and 16 of the Constitution of India. Similarly the Department is not counting the refund orders which I had signed and which were left there by my predecessors. Thus the whole thing is to condemn the petitioner one way or other. I say that it is true that the ITO has to sign the refund orders. But after the assessment orders the entire work is to be done by the clerical staff and this involves large number of people and in case of ITO the refund orders are always signed subsequently. They can never be signed on the same day of passing of the assessment orders. This is so not only in the case of the petitioner but all ITOs and even higher officers. New meaning of disposal given by the deponent is therefore, ~~ixc~~ really is created for the first time just to condemn the petitioner and is not backed by any policy decision of the Government. I say that the deponent has not shown how my work was incomplete in other respect and instead of making vague and baseless allegations, the department should have accepted gracefully that my disposal was the highest.

5. As to para 5(E) I say that it is repetition of what is stated in para (D) and already replied to.

As pointed out hereinabove it is not as if only the disposal figure was good, but work was complete in identically the same manner as it was complete in all ~~the~~ other officers cases. I may also add that in representing to the Board about the disposal work, the department always go by assessment orders only and not by any follow up work. I call upon the deponent to produce the record to show that who is telling the truth in this behalf. I say that the deponent may also produce relevant record to show the time frame in which the follow up action was completed by other colleagues ~~during~~ doing comparable work whose names are mentioned above. I say that the statements made by the deponent in this behalf are not correct and are specifically denied by me.

6. As to para 5(F) I say that the remarks made against me are most improper and vindictive. The petitioner has been condemned without any material in support of the remark. As to para (G) & (H) I maintain and reiterate that I have not been given reasoned order and the representations have not been dealt with in a manner in which a quasi judicial power should be exercised. I maintain that I was the fastest officer and the deponent has not been able to show ~~in~~ any facts to the contrary and is trying to explain away my facts by incorrect statements. I say, at the relevant time I was never advised that I was not fast enough. Obviously this could not have been done because then everybody else in the department would have been labelled slow. I say that opinion of the other officers had to be sought because this was the first adverse CR in case of the petitioner after so many years, and pertaining to only

part of the year. The other part goes unreported by this kind of approach.

7. As to para (I) I say that not only the remarks are not made objectively but they are made without any basis without any material in support. I say the simple truth is that once I had shown that I am the fastest officer, a new story is created that follow up work was not done ignoring the fact that even in that respect the petitioner was not worse of any other officers. It is still surprising that though the remarks in col.15 are quashed by the department, the deponent says that they are upheld. It only shows the non-application of mind.

8. In view of what is stated hereinabove, the Hon'ble Tribunal may be pleased to grant the petition with costs. I may also point out that according to my information notwithstanding the stay granted by this Hon'ble Tribunal against ~~the~~ considering the adverse CR, they still considered the same and again superseded the petitioner by promoting her juniors. The department should be put to explain this conduct on their part.

Place: Ahmedabad

Date : .4.90.

Verification

I, Miss A.G. Dalvi, do hereby verify that what is stated hereinabove are true to my knowledge, information and belief and I believe the same to be true.

Ag. Dalvi
Deponent.