

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 190/93 WITH M.A. NO. 533/94

T.A. NO.

DATE OF DECISION 9-3-1995

Shri V.S. Shah

Petitioner

Party-in-Person

Advocate for the Petitioner (s)

Versus

Union of India & Another

Respondent

Mr. H.R. Bhatt

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

JUDGMENT

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

✓ 5

Shri V.S. Shah,
Sr. Authorised Representative-I,
Income-Tax Appellate Tribunal,
Ahmedabad,
Residing at : 54, Shri Sthanakvasi
Jain Society, Narangpura,
Ahmedabad.

..... Applicant

(Advocate : Party-in-Person)

Versus

1. The Union of India through:
The Secretary,
Central Board of Direct Taxes,
New Delhi - 110 001.

2. The Chief Commissioner of Income-Tax,
Gujarat, Ahmedabad.

..... Respondents

(Advocate : Mr. M.R. Bhatt)

JUDGMENT

O.A. NO.190/93 WITH N.A. NO.533/94

Date : 9-3-1995

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

The present application has been filed seeking relief by way of expunction of adverse entries in the A.C.R. of the applicant for the year 1982-83. In pursuance thereof, the applicant has also sought consequential relief by way of grant of selection grade as also promotion as C.I.T. from an earlier date.

2. The short facts of the case are as under. The applicant is a member of the Indian Revenue Service (Income Tax) and is currently working as Senior Authorised Representative-I at Income Tax Appellate Tribunal at Ahmedabad. He was not granted non-functional selection grade with effect from 1-1-86, when it became due, in view of the fact that the applicant had received adverse entries

in the A.C.R. for the year 1982-83. Non-functional selection grade was actually granted to him only from 1-4-1989. For the very same reason, the applicant was not found suitable to be promoted as Commissioner of Income Tax in the D.P.C. held in September, 1990 when Officers junior to him were promoted with effect from 24-12-1991. The Board had rejected the applicant's representation against adverse remarks in the A.C.R. of 1982-83 vide letter dated 21-1-86. His further representation against non-grant of non-functional selection grade was also rejected by the Board vide letter dated 7-5-1992. Similarly, his representation against non-promotion as C.I.T. was also rejected vide Ministry of Finance letter dated 27-2-1992.

3. The adverse remarks against the applicant which was conveyed to him under D.O. letter by the then Commissioner dated 9-1-84 read as under:

"Out of the disposal of 1805 appeals, he set aside 702 assessments to be done de novo by the ITO/WFO. This shows that he has been skirting the issues rather than deciding them. It may be stated in passing that in the months of February and March, 1982, he disposed of 741 appeals which include 428 orders where assessments were set aside. So this is not a new trend with him."

He had thereafter represented in writing and had also sought personal interviews. It is the contention of the applicant that the nature of the adverse remarks is a factual issue and could directly be checked up with the records in question. In fact, the applicant had given a detailed representation showing the nature of the orders in question and as to how the remand in question became inevitable in view of certain judicial factors. In the

opinion of the applicant, the remand was inevitable in the nature of the cases and the interest of the public revenues demanded that such a remand be done. It is the contention of the applicant that the rejection letter as contained in the letter of 4th October, 1985 does not show any detailed reasoning. The rejection letter is reproduced below:

"Please refer to your representation dated 27-2-84 against the adverse remarks recorded in your Confidential Report for the F.Y. 1982-83.

2. Your above representation has been duly considered by the Board and it has been decided that there is no justification to expunge/modify the adverse remarks. Your representation has, therefore, been rejected."

4. In their written reply, the respondents had raised a preliminary objection that the representation being essentially one against expunction of adverse remark, which application should be treated as time barred as it related to the year 1982-83. As regards the preliminary objection, it is seen on record that the applicant has been pursuing the matter departmentally regarding the expunction of adverse remarks and on 20-5-92 a final reply has also been sent by the Govt. of India, Ministry of Finance in this regard. In any case, since the grievance in question has wider ramifications, the Tribunal has considered the Miscellaneous Application for condoning the delay and the Tribunal was also pleased to grant the same in the interest of justice as was done by CAT, Bombay Bench in its order in O.A. No.424/89 decided on 4-2-1992 (1993 24 ATC 299).

5. The matter was heard at length. The adverse

remarks made in the A.C.R. for the year 1982-83 draws an adverse judgment on the Officer, as having a tendency to shirk by resorting to remanding of cases coming up before him. The matter in effect pertains to 702 cases where the Officer had passed remand orders. The applicant has given a break-up of these cases as under:-

<u>"Sr. No.</u>	<u>Broad reasons for setting aside the appeals</u>	<u>Approx. No. of assets set-aside</u>
1.	The Officer had relied upon an earlier years order which order was set aside either by me or my predecessor or by the Tribunal, etc.	155
2.	The W.T.O. was not aware of the Tribunal's judgment in the case of the Sarlaadevi Sarabhai (C-I) D Trust which was in favour of the department.	93
3.	The appellant was relying upon the Gujarat High Court judgment in the case of Arunchiti Bal-krishna and the Supreme Court judgment in the case of Nizam both of which were not at all practically touched by the W.T.O.	74
4.	Sham Trusts and my appellate order given in the earlier year of F.Y. 1981-82 in the case of Mallika Sarabhai Trust No.30 made applicable.	208
5.	The question of valuation of unquoted equity shares of private limited Cos.	142
6.	Miscellaneous	30
	Total	702

He has also shown certain detailed reasons for the necessity to remand these cases.

6. Be that as it may, the fact remains that an Officer of this level has to be judged by total disposal. It is understood that in actual fact, his total disposal for the year was 1408 cases and even if the remand cases were taken out, the remaining output of actual disposal also is not an inconsiderable number. In any case, in a quasi-judicial office, the need for remand cannot be entirely ruled out and therefore, unless and until the individual orders are specifically looked into, the charge of shirking of work cannot be sustained. Since the charge is one which is factual in nature and because also of the fact that there was adverse entry only for one year, it makes it all the more incumbent for the department to look into the validity of the adverse remark which is a verifiable remark. For this purpose, department alone can be the best judge to decide whether the remand order was called for in a particular case and we find from the reply that no such detailed exercise seems to have carried out.

7. In the higher civil services in particular, it is necessary that the morale is kept high and every administrative action should foster this morale to ensure that members of such services can function independently. To ensure this, it is necessary to remove any doubts regarding factual positions and therefore, wherever such an exercise is possible, the same should be carried out, as such an exercise alone will instil confidence in the minds of the civil servants concerned.

8. In the particular circumstances of the case also, the adverse entry being one of a factual nature and since this

adverse entry had a wider ramification so as to result in delayed promotions, it is all the more necessary that the department should go into the factual aspect of the matter and give a speaking order as to the decision that it might like to take on the representation made by the applicant. We find that such a speaking order is missing in this case and therefore, the tribunal directs that the representation regarding expunction of adverse remark should be reconsidered by the respondents whereafter, they may give a speaking order on the adverse entry in question within a period of 8 weeks from the date of receipt of this order. If on such an examination, there is some change in the entries in the C.R. for the year in question, consequent action to convene a review D.P.C. for consideration of the case of the applicant for N.F.S.G. and reconsideration of promotion as C.I.T. will also have to be taken by the respondents. It will be open to the applicant to challenge the speaking order, if it aggrieves him. In view of the above judgment, M.A. No.533/94 does not survive.

9. No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

kvr

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 041190/93 of
Transfer Application No. _____ of

CERTIFICATE

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

Dated : 22.03.95

Countersign :


16/3/95

Section Officer.


Signature of the Dealing
Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

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