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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 14 OF 2004  
Cuttack, this the 11<sup>th</sup> day of August, 2005.

KRUSHNA KUMAR GHOSE

APPLICANT.

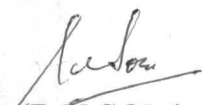
VERSUS

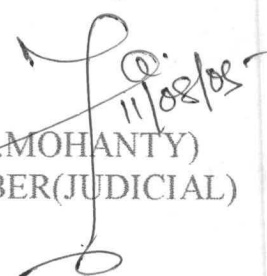
UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of CAT or not? *yes*

  
(B.N.SOM)  
VICE-CHAIRMAN

  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.14 OF 2005  
Cuttack, this the 11<sup>th</sup> day of August, 2005

**C O R A M:-**

**THE HON'BLE MR. B. N. SOM, VICE - CHAIRMAN  
AND  
THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDL.)**

Krushna Kumar Ghose, Aged about 53 years,  
S/o. Late Harendranath Ghosh,  
At- Presently working as Senior Tax Assistant,  
Office of the Income Tax Officer, Ward - 1 (2)  
Range-I, Bhubaneswar, Revenue Building,  
Rajaswa Vihar, Bhubaneswar, Dist.Khurda.

..... APPLICANT.

For the Applicant: M/s.J.M .Pattnaik, S.Mishra,  
P.K.Rout, A.P.Mishra,  
P.K.Nayak, Advocates.

-VERSUS-

1. Union of India represented by the Chairman,  
Central Board of Direct Taxes, North Block, New Delhi-1.
2. Chief Commissioner of Income Tax, Orissa, Ayakar Bhawan,  
Vani Vihar, Bhubaneswar, Dist. Khurda.
3. Additional Commissioner of Income Tax (Hqrs.)(Admn.) and (Vig.)

Bhubaneswar, Dist. Khurda.

4. The Addl. Commissioner of Income Tax,  
Rourkela Range, Rourkela.
5. The Income Tax Officer, Keonjhar Ward, Keonjhar.

..... RESPONDENTS.

FOR the Respondents: Mr. U.B.Moahaptra,  
S.S.C.(Central)

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## ORDER

### MR. M.R.MOHANTY, MEMBER (JUDICIAL):-

Applicant Shri Krushna Kumar Ghosh, while working as Tax Assistant, under the I.T.O. Keonjhar, was issued with a notice under Annexure-1, dated 24.04.1996 by the Additional Commissioner of Income Tax, Rourkela 4 to show cause as to why adverse remarks (reported upon by the Reporting Officer against the Applicant) for the year 1995-1996 should not be sustained. Applicant submitted his reply under Annexure-3 dated 09.05.1996. Under Annexure 4 dated 10.06.1995, the Income Tax Officer of Keonjhar intimated the Applicant that on consideration of his representation made against the

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show cause notice the Reporting Officer sustained the adverse entries made against him for the financial year 1995-1996. As during the havoc wreck of the Super cyclone, all the personal papers of the Applicant were destroyed, the Applicant approached the authorities to supply him the documents with regard to the adverse remarks in order to enable him to make an effective representation. Since the Respondents did not act on his prayer for supply of the documents asked for, the Applicant approached this Tribunal in O.A .No. 200/2002 and this Tribunal, while disposing of the said O.A. issued directions, on 02.04.2003, to the Respondents to supply the documents asked for by the Applicant. In pursuance to the said order of the Tribunal, the Respondents supplied the documents (under Annexure-9 dated 02.05.2003) to the Applicant. Thereafter, the Applicant (under Annexure-10 dated 03.07.2003) made an appeal to the Chief Commissioner of Income Tax, (Orissa) Bhubaneswar praying for expunction of the adverse remarks recorded in his A.C.R. for the year 1995-96. While the said appeal was pending consideration by the competent authority, the Applicant again approached this Tribunal in O.A .No. 451 of 2003; which was disposed of on 19-08-2003 with a direction to the Applicant to first work out his remedies

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with the Department before approaching the Tribunal. While the matter stood thus, the representation (which was pending consideration) having been rejected under Annexure-12, dated 20<sup>th</sup> October, 2003, the Applicant has visited this Tribunal (in the third round of litigation); wherein he has sought for the following reliefs:-

- (a) To quash the order of rejection of the representation on dated 03.07.2003 vide ANNEXURE-12 along with ANNEXURE-4 and ANNEXURE-1;
- (b) To direct the Respondent No.2 to give due promotion as due as per the provisions of law along with the monetary benefits within a reasonable time at par with their counter parts who have superceded to him."

2. Respondents have filed a counter stating therein (a) that the Applicant was on leave for a period of 118 days during the period from 1.1.1995 to 14.11.1995 (215 working days) as would be evident from Annexure-R/1; for which letter dated 16.11.1995 (cautioning him) was issued; (b) that during the said period, he had availed a number of spells of leave; (c) that on most of the occasions, he had usually taken headquarters leaving permission on the last working day of the week stating personal work at Puri and (d) that, on many occasions, he did not report for duty on the first day of the next week. It has been

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disclosed in the counter that though the said leave periods were regularized, it would go to show that the petitioner was on unauthorized absence. As regards the super session in the matter of promotion, it has been explained in the counter that due to adverse remarks in his ACR for the year 1995-1996, the Applicant was considered not fit by the DPC for the year 2000-2001. In the said grounds, the Respondents have opposed the prayers of the Applicant .

3. We have heard the learned counsel for the parties and perused the materials placed on record. During oral hearing, the respective parties have reiterated their stand points taken by them in their pleadings. In this backdrop of the matter, for the sake clarity, the adverse remarks recorded in the A.C.R. of the Applicant for the year 1995-96 (and communicated to him under Annexure-1) are extracted herein below:-

- Col.18. Promptness in disposal - "Inadequate"
- Col.19. Punctuality - "Inadequate"
- Col.22. General remarks. - "Irregular worker"

The Reporting Officer has also made the following comments:-

"He has given disposal of 197 returns only out of the total disposal of 4452 Nos. of returns of this ward. He was so poor in disposal that order has to be passed with the direction of Addl. C. I. T., R/R,RKL for doing

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his works by other official in his absence because of public grievances.

He remained on unauthorized leave frequently which were later on regularized. As such he was absent for 211 days viz. E. L. for 168 days, commuted leave for 43 days. Two letters were issued to him directing him to attend office regularly.”

4. Under the provision of writing of Confidential Reports, there exists two courses of action to be taken by the Reporting Officer and the Reviewing Officer. There remains no scope for any authority, other than the Reporting and Review Officer, to write the comments or give remark on the work and conduct of an officer in his confidential reports. The performance of every Government servant is assessed annually through his confidential reports. Confidential reports are of immense importance in one's career. This importance is in the interest of efficiency in service and also is based on the work, conduct, character and capabilities of an official/ officer reported upon; which can be accurately judged from the recorded opinion. It is in the interest of every Government servant to know how well or otherwise he is performing his job assigned to him. In fact, he should be more keen to know, particularly his deficiencies and short comings that may affect his career advancement. Thus, the system of

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confidential reports has two principal objectives. The first and foremost is aimed at to improve the standard in performance of the subordinate on his job. The second one is to assess his potentialities and provide him appropriate feed back and guidance for rectifying his career development in a systematic manner. The CCRs are remedial in nature and not punitive in character.

5. In the instant case, as indicated earlier, the opinion of the Reporting Officer was communicated by the Review Officer to the Applicant, by asking him to show cause as to why the above remarks should not be sustained. Short comings pointed out in the ACR by the Reporting Officer can be said as adverse remarks, requiring the Applicant to show cause only after the same was accepted by the Reviewing Authority; because the Reviewing Authority may or may not agree with the reasonings recorded by the Reporting Officer. Therefore, unless and until the assessment made by the Reporting Officer in respect of an employee reported upon gets a stamp of approval by the Reviewing Authority, the A.C.R. is incomplete and is not worth communicable. In this connection, it would be profitable to quote hereunder Rule 174(12) of P & T Manual, Vol. III; M.H.A.

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O.M.NO.51/7/68-Estt.(A) dated the 19<sup>th</sup> September, 1969 and D.P. & A.R. O.M.No.51/3/74-Estt.(A) dated the 22<sup>nd</sup> May, 2975 :-

Only such of the adverse entries as are accepted by the countersigning authority, if any, need be communicated. The countersigning authority should, therefore, normally indicate whether it agrees or disagrees with the remarks of the Reporting Officer. It should also record, additional remarks, whenever necessary, if the report is too brief, cryptic or vague along with the adverse entries the substance of the entire report including what may be have been stated in praise of the officer should also be communicated. The improvements made in respect of the defects mentioned in the earlier report should also be communicated to the officer in a suitable form....”

The relevant portion as mentioned under “Contents and manner of writing reports” as issued under CS, O.M.No. 51/5/72-Estt. (A) dated the 20<sup>th</sup> May, 1972 Paras 3.3 and 5.1 reads as under :

“...The Annual Confidential Reports should be based upon the result of such observation as well as the periodical inspections”.

“...In addition to the detailed assessment of specific attributes, every confidential report should carry a general appreciation of the character, conduct and aptitudes and shortcomings of the officer reported upon. Reference to specific incidents may be made, if at all only by way of general nature, e.g. inefficiency, dilatoriness, lack of initiative or judgment, etc.”

6. Here is a case, where, before the assessment as made by the Reporting Officer could be accepted by the Countersigning /

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Reviewing Authority, the said Countersigning/Reviewing authority issued notice to the Applicant to show cause . In other words, the Applicant was asked to show cause at the time when the adverse remarks made in his ACR were in a fluid stage. What we mean to say thereby is that the stage, at which the Applicant was asked to show cause, the adverse entries were in a fluid stage; although it ought to have been communicated after it could become solid/concrete. Therefore, in view of rule position, as extracted above, it can safely be presumed that at a premature stage the adverse entries (made in the ACR) were communicated to the Applicant requiring him to show cause. In addition to the above, we would observe , as indicated earlier, that the manner in which the adverse entries were made in the ACR of the Applicant (and communicated to the him) is de hors the rules, inasmuch as the relevant rules concerning the mode of communication demands that along with the adverse entry, the substance of the entire report (including what may have been stated in praise of the officer) should also be communicated and that the improvements made in respect of the defects mentioned in the earlier report should also be communicated to the officer in a suitable form.

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7. It is the settled position of law as enunciated by the Hon'ble 'Supreme Court of India in the case of RAMCHANDRA KESHAV ADKE vrs. GOBIND JOTI CHAVARE AND OTHERS reported in AIR 1975 SC 915 that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden.

8. That apart, the comments given by the Reporting Officer with regard to unauthorized leave, we would like to note that leave is not a matter of right, but applying for leave cannot be said to be not within one's right. It is within the prerogative of the authorities either to refuse or reject leave application of an employee if it is not satisfied. So far as unauthorized absence of the Applicant is concerned, the Respondents were well within their domain to initiate disciplinary action. But having regularized the leave, as called by them unauthorized leave, the Respondents could not have turned back to say that the Applicant was on unauthorized leave. No opportunity was also given to the Applicant (before making an entry in his ACR) in this regard. At the same time, the 1<sup>st</sup> part of the comments fall to the ground, it is because of the fact that the applicant was on leave for which it is not expected of him to discharge his duties in order to

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achieve the target. It is needless for us to say that the representations filed by the Applicant (against the adverse remarks) were not dealt and disposed of through a reasoned and speaking order. However, we do not like to comment upon the disposal of the representations any more because of the fact, as observed above, the very basis of the communication of adverse entry was bad in law.

9. For the reasons discussed above, the adverse entry as communicated to the applicant under Annexure-1 dated 24.4.1996, is/was no communication requiring the applicant to show cause and/or ought not to have been acted upon. Respondents will be advised to take note of the above observation and do the needful .

10. In the result, this O.A. is disposed of. No costs.

  
(B.N.SOM)  
VICE-CHAIRMAN

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)