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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA Nos.484 & 485 of 2010
Cuttack this the 6th day of July, 2012

CORAM:

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)
AND
THE HON'BLE MR. A.K.PATNAIK, MEMBER (J)

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OA No.484 of 2010:

Sri Biranchi Narayan Dash, aged about 52 years, Son of late Banshidhar Dash residing at House No.MB-90, BRIT Colony, Badagada, Bhubaneswar-751018 – at present Deputy Commissioner of Income Tax (Special Jurisdiction), Bhubaneswar in the district of Khurda

...Applicant

By the Advocates: M/s.B.Panda, B.B.Sahu & B.Panda

-Versus-

1. Union of India represented through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
2. Central Board of Direct Taxes, represented through its Chairman, Department of Revenue, North Block, New Delhi-110 001.
3. The Union Public Service Commission, represented through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110 011.
4. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi-110 001.
5. The Chief Commissioner of Income Tax (in short CCIT), Orissa, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007 in the district of Khurda.
6. Shri Durgesh Shankar, Member (R), Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110001.
7. Shri S.C.Sen, Ex-Chief Commissioner of Income Tax (in short CCIT), (Retired on superannuation), Odisha Region, Bhubaneswar through the Central Board of Direct Taxes, Department of Revenue, New Delhi-110 001.
8. Mr.S.C.Gupta, Ex-Commissioner of Income Tax (in short CIT), Bhubaneswar through the Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110 001.

...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

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7. Shri S.S.Gandhi, Ex-Chief Commissioner of Income Tax (in short CCIT), (Retired on superannuation), Odisha Region, Bhubaneswar through the Central Board of Direct Taxes, Department of Revenue, New Delhi-110 001.
8. Mrs. Jahanzeb Akhtar, Ex-Additional Commissioner of Income Tax (Hqrs) (Technical), Office of the Chief Commissioner of Income Tax, Odisha Region, Bhubaneswar, through the Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110 001.

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By the Advocates: Mr.U.B.Mohapatra, SSC

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ORDER

C.R.MOHAPATRA, MEMBER(A):

Since the point to be decided arises out of common question of facts, both the above mentioned Original Applications are

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being disposed of through this common order. However, for the sake of convenience, the facts as elucidated in O.A.No.484 of 2010, are being referred to.

2. Applicant, presently working as Deputy Commissioner of Income Tax (Special Jurisdiction), Bhubaneswar has moved this Tribunal seeking the following relief.

- i) To direct the Respondents to ignore the adverse remarks recorded in the ACR of the applicant for the period 2006-07 as the Respondents No. 7 & 8 had since retired on superannuation. AND/OR
- ii) To hold that all the adverse remarks recorded in the ACR of the Applicant required to be expunged and direct the Respondents to expunge the said adverse remarks in the ACR of the applicant for the period 2006-07 for the ends of justice. AND
- iii) To quash the impugned order in Annexure-a/1 for the ends of justice. AND
- iv) To award compensation and/or cost to the Applicant. AND
- v) To direct for appropriate action against the erring officers for causing undue motivated harassment and damage to the applicant for sake of vindication of justice. AND
- vi) To pass any other and further order as deemed fit in the nature and circumstances of the case. AND
- vii) To allow any other ground(s) at the time of hearing of the O.A.

3. While working as Deputy Commissioner of Income Tax (Special Jurisdiction), Bhubaneswar the Applicant was communicated with ACR for the period 2006-07, wherein he had been graded/rated **“Good”** which is below Bench Mark **“Very Good”** required for promotion to the next higher grade. Based on the guidelines issued by

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the DOP&T O.M.No.21011/01/2010-Estt(A) dated 13.4.2010 asking him to make representation if any, against the said entry in his ACR, the applicant submitted his representation dated 24.5.2010 to the Chairman, CBDT, New Delhi (Respondent No.2) requesting him to upgrade the rating in his ACR for the year 2006-07. In consideration of his representation, the applicant was communicated with order dated 2.8.2010(Annexure-A/1) which reads as under:

“WHEREAS on receipt of copies of APAR for the year 2004-05 and 2006-07 in terms of provision contained DOPT's O.M.No.21011/1/2010-Estt.(A) dated 13.4.2010, Shri B.N.Dash (01585) DCIT, Bhubaneswar charge has made the representation dated 24.5.2010 to upgrade the final grading in the ACR for the year 2004-05 and 2006-07.

2. AND WHEREAS, the representation submitted by Shri B.N.Dash to upgrade the final grading in the ACR for the year 2004-05 and 2006-07 has been considered by the Member ®, CBDT being the next higher authority to the Reviewing Officer (henceforth referred as Competent Authority).

3. AND WHEREAS, on perusal of the “General remarks and overall assessment made by the Reporting Officer of Shri B.N.Dash in the ACR for the year 2004-05 and 2006-07 and the supplementary information furnished by Shri B.N.Dash regarding his performance, the Competent Authority has observed that neither in his self appraisal nor in the representation he has pointed out anything done by him which could be categorized as anything but ordinary. Nothing displays any initiative, any lateral thinking or any special aspect of work done apart from self opinion on himself that would justify a grading higher than what he has been evaluated at.

4. AND WHEREAS, upon such consideration, the Competent Authority has come to the conclusion that there is no reason to interfere with the grading given by the Reporting/Reviewing Officer in the ACR for the year 2004-05 and 2006-07. Therefore, the grading may be retained as ‘good’.

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5. The representation dated 24.5.10 of Shri B.N.Dash, Deputy Commissioner of Income Tax Bhubaneswar addressed to the Member, Central Board of Direct Taxes, is disposed of accordingly”.

4. The tenor of disposal of representation being prejudicial to his interest and consequently, being aggrieved the applicant has moved this Tribunal in the present Original Application seeking relief as referred to above.

5. On being noticed, Respondent-Department have filed their counter inter alia opposing the relief sought in the O.A. They have submitted that in consideration of the representation and the materials submitted by the applicant, the Competent Authority did not find any reason to accede to his /request. Accordingly, it has been submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Applicant has filed rejoinder to the counter more or less reiterating the same stand point as urged in the Original Application.

7. The basic point raised by Shri B.Panda, learned counsel for the applicant is that the Reviewing Officer being not sufficiently familiar with the work of the officer reported upon, it cannot be said that the decision taken by him vide Annexure-1 while considering the representation of the applicant is fair & equitable.

Shri Panda further urged that the grading in the ACRs of the applicant for the year 2004-05 and 2006-07 as communicated in the year 2010 being too late, it is but natural that no objective

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consideration on the representation made by the applicant could be made by the Reviewing Authority.

8. In response to the above Shri U.B.Mohapatra, learned Senior Standing Counsel submitted that the grading in the ACR is initiated by the Reporting Officer based on the assessment of performance of an officer reported upon which is subsequently either confirmed or altered by the Reviewing Officer. In the instance case both Reporting and Reviewing Officer are in agreement with the grading "Good" as given to the applicant. However, the fact remains that as per prevalent practice the grading "Good" which is below the Bench Mark "Very Good" having not been considered adverse, the same was not being communicated previously to the official/officer reported upon soon after those remarks were recorded calling upon him/her to submit his/her representation. It was only after the directive issued by the Hon'ble Supreme Court, DOP&T issued Memorandum dated 13.04.2010 for communication of grading/rating to the officials/officers who have been rated/graded Good which is below the Bench Mark Very Good requiring them to submit representations, if any, and as such, as a follow up action, the Respondent-Department took initiative for communicating the same to the applicant asking him to submit his representation. In the meantime, the Reporting Officer who had initiated the ACRs and the Reviewing Officer, who had confirmed the grading given by the

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former having retired from service, there was no scope to seek their suggestion in the matter and as such, the matter was considered by the Chairman, CBDT (Respondent No.2), who in consideration of the representation of the applicant and additional information as submitted by him and other related documents came to a conclusion that there was no reason to interfere with the grading given by Reporting and Reviewing Officer in the ACRs of the applicant for the years 2004-05 and 2006-07. According to Shri Mohapatra there being due application of mind by the Respondent No.2 as the next higher authority to Reviewing Officer, it cannot be said that rejection of the prayer of the applicant made in his representation suffers from non application of mind.

9. We have heard Shri B.Panda, learned counsel for the applicant and Shri U.B.Mohapatra, learned SSC appearing on behalf of the Respondent-Department and perused the materials on record. We have also given our anxious thoughts to the arguments advanced at the Bar.

10. Before considering the matter, we would like to note that it is the settled position of law that judicial review is not directed against the decision but is confined to the decision making process. The Tribunal is not expected to sit in judgment on merits of the decision. It is not open to the Tribunal to reappreciate or reappraise the decision taken by the competent authority against the weight of

materials on record, based on which an employee has been graded Outstanding, Very Good, Good, Average, Below Average etc. as the case may be. The purpose of adverse entries is primarily to forewarn the Government servant to mend his ways and to improve his performance. The Reporting/Reviewing Authority is/are the best judge to assess the report in the ACR/CCR of an employee. In such matters Tribunal is not competent to decide what remark should have been given to a particular employee. The Tribunal is also not empowered to sit as an appellate authority over the decision of the authorities' at the helm of the affair in the Department. The Tribunal could come to the aid of an employee in such matters only where it is established that there has been violation or infringement of any statutory rules prescribed by the Government in the mode of writing ACR/CCR and/or ACR/CCR so written and grading given is influenced by irrelevant and extraneous considerations. The adequacy or reliability of the recording is not a matter to be considered by the Tribunal.

11. Within the above parameters we have to consider the matter. It is an admitted fact that the immediate authority being the Reporting Officer who was well aware and familiar on the performance of the applicant had rated him Good, which had as well been confirmed by the Reviewing Officer. In the circumstances, it cannot be said that the said Reporting Officer and Reviewing Officer,

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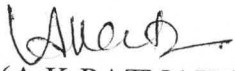
as the case may be, had not assessed or evaluated the performance of the applicant for the period under report. No material/document has been produced before us to lend credence to the idea that the Chairman, CBDT while taking decision on the representation has not acted in an objective manner. In the circumstances, we are entirely in agreement with Shri U.B.Mohapatra, learned SSC that the representation of the applicant has been considered by Respondent No.2 in its proper perspective that too with the desired level of objectivity.

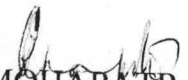
12. In so far as delay in communicating the ACRs to the applicant is concerned, since the initiative that has been taken by the Respondent-Department in this regard is pursuant to DOP&T Memorandum dated 13.4.2010, the point raised by Shri B.Panda holds no water.

13. Before parting with the matter, it is needless to mention that the applicant has also urged mala fide exercise of power in the matter of grading in his ACR. It is trite law that allegations of mala fide are serious in nature and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegation to substantiate the same by corroborative materials. If sufficient averments and requisite materials are not on record, the Court would not make 'fishing' or roving inquiry. Applicant has not annexed to the O.A. any such materials to substantiate his plea on mala fide. Mere

assertion, vague averment or bald statement is not enough to characterize the action as mala fide.

14. For the reasons discussed above, we hold that the applicant has not been able to make out a case for the relief sought. In the result, the O.As are dismissed. No costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


(C.R.MOHAPATRA)
MEMBER (ADMN.)