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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O.A. No. 582 of 2010


Cuttack this the 28th day of August, 2012

Sri Biranchi Narayan Dash Applicant
Versus
Union of India & Others. Respondents

FOR INSTRUCTIONS

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


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


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 582 of 2010

Cuttack this the 28th day of August, 2012

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR. A.K.PATNAIK, MEMBER (J)

...

Sri Biranchi Narayan Dash, aged about 52 years, Son of late Banshidhar Dash residing at Home No.NB-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. Chairman, Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110 001.
3. Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110011.
4. Secretary, Ministry of Personnel Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi-110 001.
5. Chief Commissioner of Income Tax (in short CCIT), Odisha, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007, Dist-Khurda.
6. Sri Durgesh Shankar, Member ®, Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110 001.
7. Sri Kamala Kanta Mohapatra, Ex-Commissioner of Income Tax (in short CIT) (Audit), Bhubaneswar – at present Chief Commissioner of Income Tax, Odisha Region, Ayakar Bhawan, Rajaswa Viar, Bhubaneswar-751007, Dist-Khurda.

8. The Commissioner of Income Tax (in short CIT) (Audit), 3rd Floor, Ayakar Bhawan Annexe, Rajaswa Vihar, Bhubaneswar-751 007, Dist-Khurda

...Respondents

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

...

ORDER

C.R.MOHAPATRA, MEMBER(A):

In this Original Application, applicant at present working as Deputy Commissioner of Income Tax (Special Jurisdiction), Bhubaneswar, has sought for the following relief.

- “i) To direct the Respondents to ignore the adverse remarks recorded in the APAR of the applicant for the period from 18.8.2008 to 31.03.2009 as the Respondent No.7 had forfeited his right as on 01.09.2009 to make entries in the APAR of the applicant;

AND/OR

- ii) To hold that all the adverse remarks recorded in the APAR of the applicant required to be expunged and direct the Respondents to expunge the said adverse remarks in the APAR of the applicant for the period from 18.08.2008 to 31.03.2009 for the ends of just.

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 the 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.”

2. The facts of the matter as revealed from the O.A. are that the Reviewing Authority having not agreed with the rating as given by the Reporting Officer in the APAR for the period from 18.8.2008 to 31.3.2009 (only six months) rated the applicant for the said period as “GOOD” which is below the Bench Mark for promotion. The same was communicated to the Applicant vide Annexure-A/2 dated 9.4.2010, calling upon him to submit his representation against such entries. In response to this, applicant submitted his representation dated 26.4.2010(Annexure-A/3).In consideration of the said representation, Respondent No.1 having not acceded to the request of the applicant, this Original Application has been filed seeking the relief as aforesaid.

3. Respondents have filed their counter opposing the prayer of the applicant. They have stated that the O.A. being devoid of merit is liable to be dismissed.



4. We have heard Shri B.Panda, learned counsel for the applicant and Shri U.B.Mohapatra, learned SSC appearing on behalf of the Respondents and perused the materials on record.

5. Before considering the matter on merit, it would be profitable to quote the relevant portion of the order dated 2.8.2010(Annexure-A/1) hereunder.

“AND WHEREAS, on perusal of the “General remarks and overall assessment: made by the Reporting Officer of Shri B.N.Dash in the APAR for the period 18.3.08 to 31.3.09 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.

AND WHEREAS, upon such consideration the Competent Authority has come to the conclusion that no change is warranted in the grading given by the Reviewing Officer in the APAR for the period 18.3.08 to 31.3.09. Therefore the grading may be retained as ‘good’.

6. In this connection, we have gone through the Office Memorandum dated 14.5.2009 dealing with maintenance and preparation of Annual Performance

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Appraisal Reports – communication of all entries for fairness and transparency in public administration. Paragraph-2(vi) reads as under:

“(vi)The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation”.

7. It reveals from part-V of the APAR to be filled by Reviewing Officer that Paragraph-2 thereof provides “Does the Reviewing Officer agree with the remark of the Reporting Officer ? If not, the reasons for disagreeing and the extent of disagreement may be mentioned in brief.

8. Against this, the Reviewing Officer has stated “I do not agree with the rating given by the Reporting Officer”. In so far as General Assessment is concerned, the Reviewing Officer has stated “The performance is rated “Good”. I did not come across any performance which is worthy of being commended.”

9. We have gone through the assessment given by the Reviewing Officer along with the reason assigned thereof

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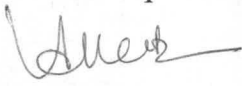
as well as the order disposing of the representation of the applicant at Annexure-A/1. We do not find any cogent reason assigned ~~either~~ by the Reviewing Officer while disagreeing with the rating "Very Good" as given by the Reporting Officer. We also notice the conspicuous absence of the material considered by the competent authority while upholding the rating given by the Reviewing Officer in the APAR of the applicant for the relevant period. Apart from the above, there is nothing on record to show that during the period from 18.8.2008 to 31.3.2009 the applicant had been issued with any memorandum/warning to improve his performance. Admittedly, the material which were considered by the Reviewing Officer while rating the applicant "Good" though prejudicial to the interest of the applicant had not been supplied to him to have his say in the matter. This is against the principles of natural justice. Further, order at Annexure-A/1 disposing of the representation of the applicant does not throw any light that the competent authority, based on the material placed before him has objectively considered the same that too in consultation with the Reporting/Reviewing Officer.


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10 We observe that the period in question covers only six months w.e.f. 18-08-2008 to 31-03-2009. Obviously there should be another report for the period from 01-04-2008 to 17-08-2008. We would, therefore, direct the Respondents to verify the report obtained by the applicant for the period 01-04-2008 to 17-08-2008 and compare the same with the report for the period 18-08-2008 to 31-03-2009. In case the report of the applicant for the above period has been rated as Very Good we would not hesitate to uphold the rating Very Good given by the Reporting Officer for the period 18.8.2008 to 31.03.2009. Ordered accordingly.

11. With the above observation and direction, this

O.A. is disposed of. No costs.


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


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