

FINAL ORDER

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK


Original Application No.72 of 2010
Cuttack this the 07th day of August, 2012

Kumud Ku Nath Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be circulated to PB for onward transmission?
? ✓


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A No. 72 of 2010

Cuttack, this the 07th day of August, 2012

CORAM:

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

And

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

Shri Kumud Kumar Nath, aged about 52 years, S/o.Late Shyam Sundar Nath residing at Plot No.A/92, Sahidnagar, PO/PS-Sahidnagar, Bhubaneswar-751 007 and at present working as Deputy Commissioner of Income Tax, Circle 2(1), Cuttack Office of Addl. Commissioner Income Tax, Range(2), Cuttack, Arundoya Market, Cuttack, Odisha.

.....Applicant

By legal practitioner – Mr. Kailash Ch. Kanungo, Counsel
-Versus-

Union of India represented through

- 1) Secretary Finance, Ministry of Finance, Govt. of India, North Block, New Delhi-110 001.
- 2) The Chief Commissioner of Income Tax, Odisha Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.
- 3) Commissionier of Income Tax, Bhubaneswar, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007, Dist. Khurda, Odisha.
- 4) Commissioner of Income Tax, (A)-I, Bhubaneswar, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007, Dist. Khurda, Odisha.
- 5) Additional Commissioner of Income Tax (Range-1), Bhubaneswar, Office of the Chief Commissioner of Income Tax, Bhubaneswar-751 007, Dist. Khurda, Odisha.
- 6) Mr.A.K.Majumdar, the then Chief Commissioner of Income Tax, Orissa, Bhubaneswar (Retd.), C/o. the Chief Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007. *Al*

- 7) Mr.S.C.Gupta (Ex Commissioner of Income Tax, Bhubaneswar and at present Member of Appellate Tribunal for Forfeited Property, 4th Floor, A Wing Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

....Respondents

By legal practitioner - Mr. U.B.Mohapatra, SSC

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ORDER

A.K.PATNAIK, MEMBER(J) : Applicant is presently working as Deputy Commissioner of Income Tax, Circle 2(1), Cuttack. Calling in question the legality and validity of the order dated 12.3.2009 (Annexure-A/3) whereby and whereunder his request for passing a reasoned and speaking order on his representation made against the adverse entry in his ACR/CCR for the year 2006-07, has been rejected by Respondent No.2, Applicant has moved this Tribunal in the present Original Application seeking the following relief:

- i) To quash the order at Annexure-A/1 and A/3 for the ends of justice.
- ii) To hold that the adverse remarks in the ACR of the Applicant at Annexure-A/1 are required to be expunged and direct the Respondents to expunge the adverse remarks in the ACR of the Applicant in respect of the period (2006-07) for the ends of justice;
- iii) To hold that all the remarks in the ACR of the Applicant as recorded against

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Column No.19 Part-III at Annexure-A/4 are required to be expunged and direct the respondents to expunge the said remark/entries in the ACR of the Applicant in respect of the period 2006-07 for the ends of justice.

2. Succinctly stated, the facts of the matter are that applicant having been communicated with adverse remarks in his Annual Confidential Report for the year 2006-07 vide Annexure-A/1, he submitted a detailed representation dated 04-10-2007 to the Chief Commissioner of Income Tax, Bhubaneswar (Respondent No.2) praying for the following.

"It is, therefore, to be humbly prayed by the petitioner that a speaking and reasoned order may kindly be made in respect of all the matters/issues mentioned in this petition in the light of the decision of the Hon'ble Supreme Court in the case of Canara Bank v V.K.Awasty [2005 (2) SLJ 463 (SC)], wherein it was held that the old distinction between the judicial/quasi judicial order and an administrative action has withered away and that an administrative action having civil consequences is required to be disposed of through a reasoned and speaking order having all the attributes of a judicial/quasi-judicial order.

In case any further clarification is necessary, the petitioner may kindly be given an opportunity of being heard in person." *AL*

3. In consideration of the above said representation, applicant was communicated with the decision taken thereon vide Annexure-A/3 dated 12th March, 2009, the gist of which reads as under:

"This has reference to your representation dated 04.10.2007 against adverse remarks in your ACR for the Financial Year 2006-07 communicated vide this office letter No. CC/Vig./ACR/Gr.'A'/2007-08/310 dated 12.09.2007.

I have given careful consideration to your representation and also to the comments of the reviewing officer and CIT (Appeals)-II, Bhubaneswar, who had made the adverse remarks in question. Your representation largely refers to allegations of bias without giving any credible reasons for formation of such belief on your part. As against this the reviewing officer i.e. the then CIT, Bhubaneswar, has listed several specific instances where matters which required careful attention and expeditious action were dealt with in a casual or lackadaisical manner by you despite specific

directions being issued by superior authorities.

Similarly, CIT (A)-II, Bhubaneswar has cited specific cases where assessments made by you could not stand the test of appeal on account of factual/legal infirmities.

Accordingly, after due application of mind, I hereby reject your representation and decline to interfere with the adverse remarks in your ACR under reference."

Being aggrieved with the manner of disposal of his representation, has moved this Tribunal in this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the relief as referred to above.

4. Respondents by citing some of the instances in support of the adverse remarks recorded in the ACR of the applicant for the year 2006-07 have made an effort for sustainability of the said adverse remarks in the ACR, so also the order under Annexure-A/3, rejecting the representation made in that behalf.

5. We have heard Shri K.C.Kanungo, learned counsel for the applicant and Shri U.B.Mohapatra, *Al*

learned Senior Standing Counsel appearing on behalf of the Respondent-Department and perused the materials on record.

Shri Kanungo, besides other points urged, in order to substantiate that the recording in the ACR of the applicant for the year 2006-07 was not only without due application of mind but also tainted with malice, drew our attention to the information obtained under RTI Act, 2005 as at Annexure-A/9 to the O.A. Secondly, he submitted that the rejection order in response to the representation issued by the Respondents at Annexure-A/3 being bald and cryptic as it did not contain any threadbare consideration on the points raised by the applicant, the same is not sustainable in the eye of law.

Replying to the points raised by Shri Kanungo, Shri U.B.Mohapatra, learned SSC submitted that the information received by the applicant through RTI Act is not justiciable before the Tribunal. Shri Mohapatra further submitted that the authority is not bound to take into consideration all the points raised by *Al*

3 the applicant in his representation, which in its opinion is considered irrelevant and not germane to the issue.

6. We have considered the rival submissions and given our anxious thoughts to the arguments advanced at the Bar. On a cursory view, we are at one with Shri Kanungo that Annexure-A/3 whereunder the representation of the applicant has been rejected is bald and cryptic as it does not contain any cogent reason and hence, the manner in which Annexure-A/3 has been issued lacks due application of mind. Further, as it appears, the comments obtained from the reviewing officer and CIT (Appeals)-II, Bhubaneswar, who had made the adverse remarks in question weighed heavily in the mind of the authority to reject the representation are insignificant as the authority cannot escape from the requirement of the law of meeting/answering the points raised in the representation while passing a reasoned order thereon.

7. Reasons substitute subjectivity by objectivity. Failure to give reasons amounts to denial of justice as reasons are live links between the mind of the decision.

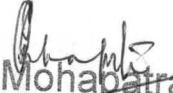
taker to the controversy in question and the decision or conclusion arrived at. Similarly, it is well settled law that points raised in the appeal/representation needs to be answered to the point. But the order of rejection under Annexure-A/3 demonstrates total non-application of mind. When the rules require application of mind on several points and contentions raised by an incumbent in his appeal/representation, it is expected of the authority competent to deal with each and every aspect of the matter so as to enable the Court/Tribunal to appreciate that the authority, keeping in mind the totality of the circumstances, has disposed of the appeal/representation, requiring such disposal an accomplishment of expression "consideration" which appears in the Rule of law as significant one.


8. In the circumstances, the points raised in the counter on which Learned Senior Standing Counsel appearing for the Respondents has laid emphasis are of hardly any consequence in view of the well settled law that when a statutory functionary makes an order based on certain grounds, its validity must be judged

by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated on additional grounds as enunciated by the Hon'ble Supreme Court in **Commissioner of Police, Bombay v. Gordhandas Bhanji**, AIR (39) 1952 SC 16 & **Mohinder Singh Gill v. Chief Election Commissioner**, AIR 1978 SC 851.

9. For the reasons aforesaid, without expressing any opinion on the merit of the matter, we quash the order of rejection under Annexure-A/3 dated 12th March, 2009 and remit the matter back to the Respondents with direction to reconsider the representation of the Applicant at Annexure-A/2 in a well reasoned order, keeping in mind the observations made above and communicate the decision thereon as expeditiously as possible within a period of ninety days from the date of receipt of copy of this order. Ordered accordingly. *De*

10. In the result, this OA stands disposed of to the extent stated above. There shall be no order as to costs.


(C.R. Mohapatra)
Member (Admn.)


(A.K. Patnaik)
Member (Judl.)

