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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 461 of 2013
Cuttack this the ~~18~~ 19th day of July, 2013

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER (J)
HON'BLE SHRI R.C.MISRA, MEMBER (A)

.....

Sri Biranchi Narayan Dash, aged about 55 years, Son of Late Banshidhar Dash residing at House No. MB-90, BRIT Colony, Badagada, Bhubaneswar-751 018 in the district of Khurda at present Deputy Commissioner of Income Tax.

.....Applicant

By the Advocate(s)-M/s.Bijay Panda,B.B.Sahu

Δ -VERSUS-

Union of India represented through

1. 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. Union Public Service Commission, represented through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110 011.
4. Secretary, Department of Personnel & Training (DOPT), Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi 110 001.

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5. The Chief Commissioner of Income Tax (in short CCIT), Odisha.
6. Sri Kamala Kanta Mohapatra, Ex-CCIT, Odisha, C/o. The Chief Commissioner of Income Tax (in short CCIT), Odisha, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007 in the District of Khurda.

...Respondents

By the Advocate(s)-Mr.L.Jena & Mr.P.R.J.Dash

ORDER

(oral)

A.K.PATNAIK, MEMBER (JUDL):

In this second round of litigation filed by the Applicant (Sri Biranchi Narayan Dash) who is working as Deputy Commissioner of Income Tax, inter alia, praying therein as under:

- “(i) To adjudicate whether Respondent No.2 or Respondent No.6 should have acted as Competent Authority in respect of Applicant’s ACR for the period 2007-08;
- (ii) To quash the impugned orders under Annexures-A/1 & A/6 of this OA for the ends of justice;
- (iii) To hold that the impugned downgrading the Applicant’s ACR for the period 2007-08 should have been ignored thereby sustaining ‘Very Good’ rating given by the Reporting Officer;
- (iv) To award /compensation and/or cost to the Applicant;

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- (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;
- (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 OA."

2. Copy of this OA has been received by Mr.P.R.J.Dash, Learned Additional CGSC for the Union of India for Respondent No.3 and by Shri L.Jena, Learned Additional CGSC for the Union of India for Respondent Nos.1, 2,4 and 5 respectively. Accordingly, we have heard Mr.B.Panda, Learned Senior Counsel appearing for the Applicant and Mr.P.R.J.Dash, Learned Additional CGSC for Respondent No.3 and Mr.L.Jena, Learned Additional CGSC for Respondent Nos.1,2,4 and 5 and perused the records.

3. It appears from the record that on receipt of below bench mark grading in the ACR/CCR for the F.Y 2007-08 recorded by the CCIT, Odisha, Bhubaneswar, applicant submitted representation dated 24.5.2010 to Respondent No.2 praying, for the reasons stated therein, for expunction/up-gradation of the recording

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made in his ACR/CCR for the FY 2007-08. The said representation was considered and rejected by the authority who recorded the below bench mark grading in his ACR/CCR. Being aggrieved, applicant filed OA No. 326 of 2010 which was disposed of on 6.7.2012. Relevant portion of the order is quoted herein below:

"....Law is well settled in a plethora of judicial pronouncements that none should be the judge of his own action. It is also legitimate expectation of the applicant that the Respondent No.2 should decide the matter after taking into consideration all the points raised by him. The service jurisprudence do also provide that the authority to whom grievance is placed should consider and dispose of the same. In the above back ground, we find serious flaw in the decision making process of the matter of deciding the representation by the Respondent No.6 though the same was addressed to the Respondent No.2.

In view of the above, without expressing any opinion on the merit of the matter, this OA is disposed of with direction to the Respondent No.2 to consider and dispose of the representation at Annexure-A/3 and communicate the result thereof, in a well-reasoned order, to the Applicant, within a period of 60(sixty) days from the date of receipt of copy of this order. No costs.

4. Thereafter, the Chairman, CBDT, New Delhi (Respondent No.2) issued order which reads as under:

"2 (a) That it is not disputed that the review of the said ACR for 2007-08 has been done by Shri S.C.Gupta on 14.7.2008 while he was posted

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as CCIT, Shimla. However, it can be seen from the records that Shri S.C.Gupta was the reviewing Authority in the ACR in the capacity of CIT, Bhubaneswar and hence Shri Gupta was competent to review the ACR. Since the designation of CIT, Bhubaneswar was not indicated by Shri Gupta while reviewing the ACR, it led to the impression that the review of the ACR was done by virtue of his posting as CCIT, Shimla and not as CIT, Bhubaneswar.

(b) That as per the extant instructions of the DOP&T any appeal against the below benchmark grading/adverse remarks in the ACR lay before the CCIT, Bhubaneswar being the next higher authority to the reviewing officer and certainly not before the Chairman, CBDT;

(c) That the CCIT, Bhubaneswar (Shri K.K.Mohapatra), after taking all these facts into considerations, rightly decided the representation of the officer as the Appellate Authority in the case even though the representation was addressed to the Chairman, CBDT.

3. AND WHEREAS, in view of the above facts, the Chairperson, CBDT is of the view that the Chief Commissioner of Income Tax, Bhubaneswar (Shri K.K.Mohapatra) was the competent Authority to deal with the representation of Shri B.N.Dash and there is no reason to interfere with the order dated 4th June, 2010 passed by the CCIT, Bhubaneswar.

4. AND WHEREAS upon such consideration, the Chairperson, CBDT has decided to retain the order dated 4.6.2010 of the CCIT, Bhubaneswar against the representation of Shri B.N.Dash, DCIT on below benchmark grading in the ACR for 2007-08.

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5. Accordingly, in compliance of the Hon'ble CAT, Cuttack Bench order dated 6.7.2012 in OA No. 326/2010 representation dated 24.5.2010 of Shri B.N.Dash, DCIT against the below bench mark grading in the ACR for 2007-08 is disposed of."

5. It was/is the specific case of the Applicant that as the Reviewing Authority became CCIT during the relevant period he had not seen the 123 search assessment orders and 13 orders u/s 220 (6) of the Income Tax Act, 1961 and therefore his interference in the matter was uncalled for and hence illegal. Had the Reviewing Authority well before communication of the ACR for the period 2007-08 been in service he could not have also quantified and assessed his contribution in passing the said 123 search assessment orders because the same were as a result of joint effort of the applicant and also the Reporting Officer who accorded approval u/s.153D of the Income Tax Act, 1961. Further case of the Applicant is that Respondent No.6 had not disposed of the matter in a just and fair manner by taking into consideration all materials and the specific instruction of the DOP&T. Had Respondent No.6 taken into consideration all the points raised by him in his representation the victimization and discrimination

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meted out to him would have been exposed. Therefore the consideration given by the Respondent No.6 was no consideration as the same was actuated with motive and intention.

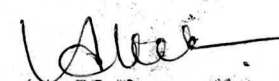
6. We may state that an employee has a right to make representation to next higher authority when he feels any injustice was/is caused to him and in that event it cannot be said that the said higher authority has no power to assess the action taken by an authority ^{against whose} ~~which~~ action representation is made by an employee. Every higher authority has inherent power and authority to look into an action taken by an authority to whom power is vested to do a particular matter. In the instant case when the applicant has submitted representation to the Chairman, CBDT, New Delhi who ^{is} ~~admittedly~~ above in rank to the CCIT and there was specific ^{to} ~~that~~ direction ^{to} the Chairman, CBDT, New Delhi to consider the said representation, instead of giving detailed consideration, the Chairman, CBDT, New Delhi should not have rejected the representation upholding the order of the CIT or CCIT especially when allegation/personal aspersion was raised against the authority who ^{is} ~~have~~ considered and rejected the representation against the

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below bench mark grading. This was also not the spirit of the order of this Tribunal. The points raised by the Applicant in his representation need thorough investigation/examination and reply in detailed order meeting/answering all the points. In view of the above, we quash the order dated 5th October, 2012 (Annexure-A/1) & the order dated 4.6.2010 (Annexure-A/6) and remit the matter to the Chairman, CBDT, New Delhi (Respondent No.2) to consider the representation of the Applicant dated 24.5.2010 and communicate the result thereof in a well-reasoned order (meeting/answering all the points raised by him in seriatim) within a period of 120 days from the date of receipt of copy of this order.

7. In the result, without expressing any opinion on the merit of the matter, this OA stands disposed of at this admission stage. There shall be no order as to costs. As prayed for copy of this order along with OA be sent to the Respondent No.2 by speed post at the cost of the Applicant for which learned Counsel for the Applicant undertakes to furnish the postal requisite meantime.


(R.C.Misra)
Member (Admn.)


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