

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No. 167 of 1996

Present : Hon'ble Dr. B.C. Sarma, Administrative Member.

Hon'ble Mr. D. Purkayastha, Judicial Member.

Satyendra Kumar Roy

...Applicant

-v e r s u s -

1. Union of India, through the Secretary, Ministry of Finance, Department of Revenue, New Delhi - 110 001.
2. Chairman, Central Board of Direct Taxes, North Block, New Delhi - 110 001.
3. Chief Commissioner of Income Tax, P-7, Chowringhee Square, Calcutta-69.
4. Dy. Commissioner of Income Tax, HQs.(Admn) Calcutta, P-7, Chowringhee Square, Calcutta-69.

...Respondents.

For the applicant : Mr. B. Mukherjee, Counsel.

For the respondents : Mr. S.K. Dutta, Counsel.

Heard on 3.11.97

Order on 24.11.97

O R D E R

D. Purkayastha, JM

One applicant Sri Satyendra Kumar Roy holding the post of Income Tax Officer under Deputy Income Tax Commissioner, Range 4, Calcutta, 10 Middleton Road, filed this application for cancellation and quashing the impugned adverse remarks recorded against the applicant in his ACR and communicated to him vide letters dated 26.6.91 & 26.7.91 and also setting aside the impugned rejection letters dated 20.12.91, 12.10.93 and 6.2.95 issued by the respondents. He also sought for direction upon the respondents to forward his memo of appeal to the Chairman, Central Board of Direct Taxes for his consideration of his appeal in accordance with the law.

2. The grievance of the applicant, as it appears from the application in short is that he made a representation to the Chairman for expunging of adverse remarks in his ACR, but that was not forwarded to the Chairman by the respondent No. 3. The second grievance of the applicant is that the adverse entries in his ACR for the year 1989-90 was communicated to him by a letter dated 26.6.91 whereas adverse entries

in his ACR for 1990-91 was communicated to him after one month i.e. on 28.7.91 by a letter dated 26.7.91. So, he was not given any opportunity to correct his fault for the purpose of improvements in the next year i.e. 1991. He made a representation for correction of ACR but that was refused by the respondent No.3. Thereafter, he made an appeal to the Chairman, Central Board of Direct Taxes, New Delhi that was also refused to be forwarded by the respondent No.3. Hence, he filed this case before this Tribunal.

3. The respondents contested the case by filing a written reply. They denied all allegations made in the application and it is stated that the applicant had challenged the two adverse remarks for 2(Two) years which were communicated to him by letter dated 26.6.91 & 26.7.91 respectively for the period of 1989-90 and of the period of 1990-91 as such two adverse remarks are of different years and applicant had different cause of action, so, he cannot challenge the same in one application. It is also stated that the applicant's statutory representations against the said adverse remarks had been rejected in 1991-92 & communicated to the applicant. The appeal against such rejection had also been rejected by letter dated 12.10.93. Thereafter applicant submitted further memorandum on the same ground addressed to the Chairman, CBDT, New Delhi and that was not forwarded as it was barred by limitation. And thereby, the application is not maintainable and liable to be rejected.

4. Mr. B. Mukherjee, Id. counsel appearing on behalf of the applicant submits that the respondents have no authority to retain the memorandum addressed to the Chairman and respondents were bound to forward the memorandum of appeal to the Chairman, Central Board of Direct Taxes for proper appreciation in respect of grievance made out in the memorandum. By refusing of forwarding the said memorandum to the Chairman of the Board, the respondents acted arbitrarily, illegally and thereby, respondents should be directed to forward the same to the Chairman for getting appropriate reliefs as sought for. He further submits that adverse remarks of the ACR were arbitrarily made by the officers under whom he did not work and adverse remarks of the ACR was not within one month from the date of entry

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as per instructions of the Government issued from time to time, thereby, very purpose of object of maintaining ACR of the Govt. servants has been frustrated. So, due to noncommunication of adverse remarks of ACR within the stipulated period <sup>to the applicant,</sup> as per instructions of the Govt. of India should be quashed, adverse entries in ACR renders invalid, and entries are liable to be expunged.

5. Mr. S.K. Dutta, Id. counsel for the respondents has produced the records as per our direction and submits that the memo of appeal dated 8.4.93 addressed to the Chairman, Central Board of Direct Taxes was forwarded to Chairman, Central Board of Direct Taxes under order No. 262 by letter dated 26.5.93 and that was rejected by the competent authority. The applicant subsequently made another memorandum addressed to the Chairman on 17.10.94 and that was not forwarded to the Chairman, CBDT, New Delhi. The memo of appeal dated 17.10.94 of the applicant addressed to the Chairman, Central Board of Direct Taxes, New Delhi indicates that appeal filed by the applicant to the Chairman earlier was rejected by the Board. So, second memo of appeal was not forwarded. Hence, the application is devoid of merit.

6. We have perused the records produced before us and we have considered the submission of Id. counsel for both the parties. The said rejection letter bearing No.C/1024 dated 12.10.93 runs as follows.

"I am directed to append below the extract of the Board's decision against your appeal for expunction of the adverse remarks recorded in your ACR for the years 1989-90 & 1990-91, for your information."

*ansd*

"After careful consideration of the appeal of Sri Satyendra Nath Roy, Tax Officer, the competent authority has rejected his request for correction of the adverse remarks recorded in the ACR for the financial years 1989-90 and 1990-91. The grievance of the applicant is that adverse entries in his ACR for the year 1989-90 was communicated to him on 26.6.91 after six months of the recording as per Annexure-8 to the application. Similarly adverse entries for 1990-91 was communicated to him by letter dated 26.7.91 Annexure A-1. Thereby he was not given any opportunity to cure the defects for the next year i.e. in the year of 1991. The very object of recording the ACR of the employee is frustrated. Therefore, the adverse entries should be expunged due to

inordinate delay in the matter of communication of the same to him. According to the given instruction, the adverse remarks ought to have been communicated to him within one month from the date of recording of the same by the Reporting Officer. The second grievance of the applicant is that his memorial addressed to the President has not been forwarded to the Chairman of the Central Board of Direct Taxes & it was retained in the office of the Commissioner of Taxes, Calcutta, illegally, arbitrarily without any justification.

7. In view of the circumstances, we would like to refer the decision of the Hon'ble Apex Court reported in State of Haryana Vs. P.C. Wadha, 1987 (1) SCJ 115 where their Lordship held,

"The whole object of the making and communication of the adverse remarks is to give the officer concerned an opportunity to improve his performance, conduct or character, as the case may be. Adverse remarks should not be understood in terms of punishment but really it should be taken as an advice to the officer concerned so that he may act with the advice and improve his service career. The whole object of making adverse remarks would be lost if the same are communicated to the officer concerned after an inordinate delay."

8. In the instant case, applicant's adverse remarks for the year from 1989-90 was communicated on 10.7.91 by letter dated 26.6.91 (Annexure A-1) and adverse remarks for the year from 1990-91 was communicated on 22.8.91 by a letter dated 26.7.91 thereby, the applicant has been prejudiced since he did not get opportunity to improve his defects as made out in the ACR for the year 1989-90. In view of the judgment of the Hon'ble Apex Court, it cannot be said that the object of communication of the adverse remarks was not lost. The contention of the Id. counsel for the respondents, Mr. Dutta is that the instructions related to prior action on adverse remarks are only directory not mandatory and the mere fact of delay does not have the effect of obliterating remarks all together.

9. Hon'ble Apex Court in the case of State of Haryana Vs. P.C. Wadha mentioned above has discussed the very object of maintaining the ACR of the Government employees. And it is categorically opined by the Hon'ble Apex Court that the whole object of making adverse remarks

would be lost, if they are communicated to the officer concerned after an inordinate delay.

10. In view of the aforesaid specific findings of the Hon'ble Apex Court, we are unable to accept the contention of the Id. counsel, Mr. Dutta on that score. The remarks in the ACR is likely to visit the applicant with civil consequences in the matter of consideration of higher promotion.

11. The matter of ACR of Govt. servant relates to the matter of consideration of promotion, thereby it cannot be said that delay in communication of the adverse remarks would not be fatal to the applicant. So it remains no doubt that in this case the inordinate delay ~~had~~ <sup>misgoverned</sup> frustrated the spirit of the directions issued by the Govt. of India and object of making the ACR cannot be overlooked stating that the instructions are directory and not mandatory. Moreover, it can be said that when the applicant made a representation to the authorities, thereby, ~~there~~ is an obligation on the part of the authorities to dispose his representation with speaking and reasoned order disclosing the reasons as to why the authority did not file any materials to consider his representation made therein. In case of Union of India and Ors. Vs. E.S.C. Nambudir (1991) 3 SCC 38, it has been observed by the Hon'ble Apex Court,

"The decision, rejecting the representation does not adversely affect any vested right of the government servant nor does it visit him with any civil consequences. Therefore, in the absence of any statutory rule or statutory instructions requiring the competent authority to statutory record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, it must act in a fair and just manner. It is required to consider the questions raised by Govt. servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing...."

"...principles of natural justice are intended to prevent miscarriage of justice and are now applied even to administrative orders which involve civil consequences...."

"There is, instead of giving reasons in view of the expunging law of judicial review to enable the citizen to discover the reasons behind the decision. Right to reason is an

indispensable part of a ground system of judicial review. Under our Constitution, the administrative decision is subject to judicial review if it affects the right of a citizen. It is, therefore, desirable that reasons should be stated. If any challenge is made to the validity of an order on the ground of it being arbitrary or malafide it is always open to the authority concerned to place the reasons before the court which have persuaded it to pass orders. Such reasons must already exist on records as it is not permissible to the authorities to support the order by reasons contained in the records.

In view of the aforesaid well-settled guidelines of the Hon'ble Apex Court, the respondents under obligation to record the reasons for rejecting the representation against the adverse remarks.

12. It is found from the letter dated 28.12.91 ~~that~~ <sup>there</sup> it is stated ~~by~~ <sup>to</sup> the concerned authority that after careful consideration, ~~of~~ <sup>by</sup> the Chief Commissioner of Income Tax, Calcutta has expunged the adverse remarks recorded against him at item No.14 of para III of the CR. However, the remarks recorded in the instant item No. 18(1) (b), 18(5), 20(b) of para II and item No.4 of para IV have been sustained. From another letter dated 12.10.93 Annexure-A-5 to the application also shows that after careful consideration of the appeal of Sri Satyendra Kumar Roy, Tax Recovery Officer, competent authority has rejected his request for expunction of the adverse remarks recorded in ACR for the financial years of 1989-90 & 1990-91. After receipt of the said order the applicant filed another memo of appeal on 17.10.94 stating inter-alia that the said orders dated 12.10.93 and 19.4.94 did not contain even minimum details for the basing of such rejection. On receipt of the said memorandum dated 17.10.94 addressed to the Chairman of Central Board of Direct Taxes, New Delhi (Annexure A-7 to the application), the applicant has <sup>been</sup> intimated by another letter dated 6.2.95 (Annexure A-2 to the application) that

"The undersigned is directed to communicate that the competent authority, after careful consideration does not find your above appeal to be suitable to forward to the Chairman, CBDT, New Delhi."

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So we find that all the representations of the applicant were disposed of by the authorities concerned in a cryptic manner without disclosing any reasons for which his representations were not found to be accepted, when it is specifically stated by the respondents that he has been prejudiced due to inordinate delay of the communication of adverse entries

made in the ACR. So we are satisfied that representations of the applicant were not properly dealt by the concerned authorities in accordance with the law and the decision enunciated by the Hon'ble Apex Court as stated above.

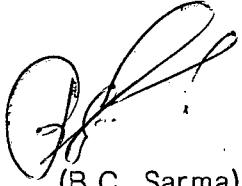
13. It also remains undisputed in this case that the applicant's memorandum dated 17.10.94 has not been forwarded to the Chairman by the Chief Commissioner of Income Tax, W.B. Calcutta on the grounds stated in the letter dated 6.2.95 (Annexure A-8 to the application). The employee has right to represent his grievance to the authorities concerned who is ultimate authority or absolute authority to decide the matter in question. From the Annexure A-7 to the application, it is clear that memorandum was made to the Chairman through Chief Commissioner, Income Tax, thereby it cannot be said that since the memorandum was not addressed to the Chief Commissioner, Income Tax, he has no legal authority to decide the representation not addressed to him. In the instant case, it is found that the Chief Commissioner, Income Tax is nothing but a forwarding authority of the memorandum (Annexure A-7 to the application) dated 12.10.94 addressed to the Chairman, CBDT, New Delhi. So the refusal order of forwarding of memorandum to the Chairman as contained in the letter dated 6.2.95 (Annexure A-8 to the application) is arbitrarily and without jurisdiction. Thereby the said order dated 6.2.95 is not sustainable. Moreover, we have gone through the records produced by Mr. Dutta, Id. counsel and it is not clear from the ~~table, memo of appeal Recd.~~ notes of the said office ~~order~~ at all placed before the Chairman, CBDT, New Delhi for consideration of his representation. So the action of the respondents in the matter of disposal of the representation for expunging adverse entry made in the ACR for the years 1989-90 and 1990-91 suffers from arbitrariness and reasonableness. However, we are not going to expunge the remarks on the grounds stated above, since the Chairman is competent authority to decide the matter properly in accordance with rules. So, it would be appropriate to direct the respondent No.2 to forward the memorandum dated 17.10.94 to the Chairman, CBDT, New Delhi for consideration of his representation in accordance with the law within one month from the date of communication of this order and

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disposal of the same with reasons and speaking order should be passed by the Chairman, CBDT, New Delhi within two months after receipt of the memorandum dated 17.10.94 by the Chairman, Central Board of Direct Taxes, New Delhi. And accordingly we allow the application and order that the respondent No. 3 shall forward the memorandum dated 17.10.94 addressed to the Chairman, CBDT, New Delhi within one month from the date of communication of this order and the Chairman of the CBDT, New Delhi should dispose of the representation within 2 (two) months from the date of receipt of the memorandum from the Chief Commissioner of Income Tax, W.B., Calcutta and result of the representation may be communicated to the applicant within one month from the date of decision of the Chairman, Central Board of Direct Taxes, New Delhi.

14. The case is disposed of accordingly awarding no costs.

  
( D. Purkayastha )  
M e m b e r (J)

  
(B.C. Sarma)  
M e m b e r (A)

24/11/97

a.k.c.