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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 236/2008

Jodhpur this the 28th day of February, 2013.

Reserved on 25.02.2013

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Roop Chand S/o Sh. Shankar Ji
R/o IV/8 Income Tax Colony, Sector 11 Hiran Magri,
Udaipur

.....Applicant

(Through Advocate Mr. Kamal Dave)

Versus

1. Union of India through the Secretary, Ministry of Finance
Department of Revenue, Govt. of India
New Delhi
2. The Central Board of Direct Taxes (CBDT)
Govt. of India, Ministry of Finance, Department of Revenue
New Delhi
3. The Chief Commissioner of Income Tax,
Udaipur
4. The Commissioner of Income Tax, Kota

(Through Advocate Mr Varun Gupta)

5. Shri M.C. Singhal, Commissioner of Income Tax
Indore

.....Respondents

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ORDER

Per Justice Kailash Chandra Joshi, Member (J)

By way of this application the applicant has prayed for following relief (s):

1. *"That by appropriate order or direction by quashing order dated 15.04.2008 (A/1), 07.03.2008 (A/2) and 27.11.2006 (A/3) adverse entries made for the financial year 2005-2006 may kindly ordered to be expunged and further respondents may further be directed to allow all consequential benefits in real terms.*
2. *That the respondents may further be directed to allow all consequential real monetary benefits as if no orders impugned in the present Original application were ever passed.*
3. *Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.*
4. *Costs of the application may kindly be awarded in favour of the applicant."*

2. It has been brought out by the applicant that he is working in the respondent-department and while serving as Assistant Commissioner of Income Tax Kota, was served with a letter dated 27.11.2006 communicating adverse remarks in the ACR for the financial year (FY) 2005-06 and alongwith impugned communication the relevant column 15, 16 as well as 11, 12, 19 (2), 19 (3) were also made available to him. While the reporting officer found performance of the applicant as good in view of the entries made in the ACR, the reviewing officer considering the remark made by the reporting officer disagreed with the rating given by the reporting officer and after reaching to the conclusion of disagreement on column Nos. 11, 12, 19 (2), 19 (3) and 19 (4) rated his performance inadequate and poor. The applicant immediately after receiving adverse entries for the FY 2005-06 submitted as detailed reply with requisite and essential enclosures

having direct nexus with the remarks. The reply submitted by the applicant very categorically dealt every aspect of the entries made, apart from very effectively making a case of arbitrariness and malafide on the part of the reviewing authority and he pointed out the erroneous and illegal decision of the reviewing authority. The Chief Commissioner of Income Tax, Udaipur vide its communication dated 7.3.2008 rejected the representation of applicant. It has been averred in the OA that order dated 7.3.2008 passed by the Chief Commissioner of Income Tax, Udaipur [A/2] was mechanical without application of mind and also without having dealt with the defence raised by the applicant. The applicant vide letter dated 11.3.2008 requested for the review of the order dated 7.3.2008 but the Department of Revenue, Ministry of Finance in its communication dated 15.04.2008 [A/1] also rejected the request and stated that the ACR for 2005-06 has been taken on record.

3. Counsel for the applicant further averred in the application that before entering the adverse entries in the ACR the authorities are required to first provide counseling subsequent to which guidance of the authorities is to be extended to the concerned officer and subsequent to above two stages it should be the finding of the authority concerned to arrive at a conclusion that despite above counseling and guidance the employee failed to show the desired improvement; then only adverse remark can be included in the confidential report. In the present case none of these stages

were followed by any of the officer responsible even the representation submitted by the applicant was not considered in view of the defences raised and the rejection order clearly indicates the mechanical approach by the authority.

4. The respondents by way of their reply denied the facts averred in the OA. It has been averred in the reply that tone and tenor of the comments of the reporting officer clearly suggest that he was not satisfied with the performance of the officer but still showing sympathy he rated the performance of the applicant 'good' as is clear from column no. 15 & 16 of ACR. The reporting officer failed to understand that there has to be a harmony and synchronization between the comments made and the ratings given and reporting officer failed to assess the performance of the applicant objectively. Precisely for these reasons the reviewing officer justifiably disagreed with the comments of the reporting officer and changes made by the reviewing officer are in consonance with the power and authority of reviewing officer who has done a fair and objective assessment of the applicant's work.

5. It has been further averred in the reply that since the applicant has admitted non-achievement of targets for which no reasons were assigned by the applicant; applicant's performance was logically assessed poor and inadequate. Precisely for this reason the comments of the reporting officer as given in column 16 and 22 were not found to be justified. It has been further averred in the reply that the applicant could not suggest on record any

malice on the part of reviewing authority. Respondents finally averred that the OA filed by the applicant be dismissed as all procedures for assigning the adverse remarks, their communication and due consideration of the representation of the applicant by the competent higher authorities have been made.

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6. Heard both the counsels. Counsel for the applicant contended that since inception applicant represented to the Chief Commissioner of Income Tax, Udaipur regarding malafides of the reviewing authority in detail through Annex.-4 but the Chief Commissioner of Income Tax, Udaipur failed to take notice of the individual example of malafideness on the part of the reviewing authority. He further contended that it is the reporting officer in whose immediate subordination he worked and who graded him as good officer but the reviewing authority without any substance or material on record made adverse remarks in some of the columns. He further contended that in Annex.-4, the applicant referred the incident when he was posted at Sawai Madhopur under the control of reviewing officer and he further explained each and every circumstances in his detailed representation but his representation was rejected vide Annex.-1 & Annex.-2 without any reasoned or speaking order or referring the grounds taken in the representation.

7. Per contra learned counsel for the respondents contended that reviewing authority was having substantial material and facts with him for the grading accorded. The reporting authority rating the applicant as 'good' was in a way self-contradictory as he

himself was not at all satisfied with the officer's work which can be inferred from his remarks made in column No. 15 and 16 of the ACR. The reviewing authority justly graded the ACR and the representation were rejected after due consideration and examination by the higher authorities. Thus, the OA needs to be dismissed.

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8. We have considered the rival contentions of both the parties. The performance of the public servant in discharge of his duty is a highly relevant matter while considering his entitlements to certain benefits. The object of maintaining ACR is to give an opportunity to a public servant to put in high quality performance as also provide an opportunity to the concerned officer to reform himself, to mend his conduct when required, to be disciplined, to do hard work and to latch integrity and character so that he corrects himself and improves efficiency of public service.

9. It is a settled principle of law that the entries in the confidential rolls should not be a reflection of the personal whims and fancies or prejudices, likes or dislikes of the superiors. The entry must reflect a result of objective assessment, fairness, justness and objectivity and real criteria of making such entries.

10. In light of above principles, it is clear whether reporting officer or a reviewing authority whosoever may be, must record the marks or assessment objectively. In this particular case the reporting officer assessed the performance of officer as 'good' for the relevant year although column 15 and 16 contain reference to

shortfalls in performance. The reviewing authority while exercising the powers as reviewing authority recorded adverse remarks with regard to certain shortcoming in performance and held that the assessment of the reporting officer as 'good' was not substantiated. The representation was made by the applicant against the remarks of the reviewing officer and the same was rejected first vide letter dated 07.03.2008 vide Annex. A/2 and further by the higher competent authority vide Annex.-1 dated 15.04.2008. The bare perusal of Annex.-1 and Annex.-2 shows that these are not speaking as well as reasoned orders. The higher authorities ought to have considered grounds raised in the representation in detail and assigned reasons for the rejection of the representation.

11. We are of the considered view that after looking into the ACR of a public servant the competent authorities ought to have passed a reasoned and speaking order. In the instant case the orders passed by the competent authorities lack reasoning and are not clear speaking orders.

12. Therefore, while quashing the order/communication Annex.-A/1 & Annex.-A/2 we are disposing of this OA with the directions to the respondents to reconsider the representation Annex. A/4 dated 26.12.2006 filed by the applicant against the adverse remarks of the ACR of 2005-2006 (FY) and to decide it by a speaking and reasoned order and convey it to the applicant within 4 months from the date of receipt of this order.

Accordingly, the OA is disposed off with no order as to
costs.

Meenakshi Hooja
(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

K.C. Joshi
(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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