

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex (BDA)
 Indiranagar
 Bangalore - 560 038

Dated : 19 SEP 1988

APPLICATION NO. 889 / 88(F)

W.P. NO. /

Applicant(s)

Shri M. Ramaiah

V/s

To

Respondent(s)

The Chief Commissioner (Admn) &
 Commissioner of Income Tax, Bangalore

1. Shri M. Ramaiah
 No. 37, 2nd Main Road
 2nd Cross, Valmikinagar
 Bangalore - 560 026
2. Dr M.S. Nagaraja
 Advocate
 35 (Above Hotel Swagath)
 1st Main, Gandhinagar
 Bangalore - 560 009
3. The Chief Commissioner (Adm) &
 Commissioner of Income Tax
 Karnataka Circle
 Central Revenue Building
 Queens' Road
 Bangalore - 560 001
4. Shri M.S. Padmarajaiah
 Central Govt. Stng Counsel
 High Court Building
 Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAN/INTERIM ORDER
 passed by this Tribunal in the above said application(s) on 9-9-88.

Encl : As above

OC

R. Venkatesh
 DEPUTY REGISTRAR
 (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER, 1988

Present: Hon'ble Shri P. Srinivasan

.. Member(A)

APPLICATION NO. 889/1988(F)

Shri M.Ramaiah,
37, 2nd Main Road,
2nd Cross, Valmikinagar,
BANGALORE-560026.

.. Applicant

(Dr.M.S. Nagaraja, Advocate)

vs

Chief Commissioner (Admn)
& Commissioner of Income Tax,
Karnataka-I, BANGALORE.

.. Respondent

(Shri M.S.Padmarajaiah, Advocate)

This application having come up for
hearing, Shri P.Srinivasan, Hon'ble Member(A) made the
following:

ORDER

In this application, the applicant, who is working as an Upper Division Clerk (UDC) in the Income Tax Department at Bangalore, is aggrieved with an adverse remark recorded in his confidential report for 1986-87 by the reporting officer and the rejection by the Chief Commissioner of Income Tax of the representation made by the applicant against those remarks. The rejection of the representation by the Chief Commissioner of Income Tax was conveyed to the applicant by a letter dated 30-11-1987. The adverse entry which is challenged in this application was recorded in the confidential report against item No.21, namely integrity. It reads as follows:-



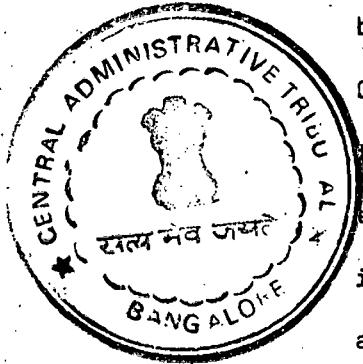
P. Srinivasan

"21. Integrity: Doubtful. A list of incriminating material was found by IAC, R-II, Bangalore in his table drawers and the matter is under investigation by the Department's vigilance."

2. Dr.M.S.Nagaraja, learned counsel for the applicant, submitted that in recording an adverse remark touching on the integrity of the applicant in the manner in which he did, the reporting officer had violated specific instructions issued by the Ministry of Home Affairs governing the subject as also the instructions printed in the confidential report format, explaining as to how the entry about the integrity of an official should be recorded. As per the order of the Chief Commissioner of Income Tax rejecting the applicant's representation, Dr.Nagaraja submitted that it was not a speaking order. In his order, the Chief Commissioner did not consider each point raised by the applicant and give reasons as to why the objections of the applicant comprised in each such point were unsustainable. He also relied on two decisions of the Tribunal - one of the Madras Bench in SASHIDHARAN VS A.P.SUDHIR 1988 6 ATC 385 and the other of the Delhi Bench in TEJINDER SINGH VS UNION OF INDIA 1988 6 ATC 666 in support of his contention that adverse remarks recorded in disregard of the instructions on the subject were bad and were liable to be struck down. Dr.Nagaraja submitted that the adverse remarks extracted above, doubting the integrity of the applicant were such as to affect his career prospects and as such, they should not have been made without conducting a proper enquiry into the alleged incident in which the applicant would have been given a hearing. The applicant was due for promotion as Tax Assistant and these adverse

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remarks could deprive him of that promotion. The incident on which the adverse remarks were based was that the Assistant Commissioner found in the applicant's drawer, papers relating to assessment to tax of certain parties who were assessed in Circle IV, Bangalore, which the applicant should not have retained with him, having left Circle IV more than six months before they were discovered with him. These papers included assessment orders which should have been despatched to the assessee but had not been so despatched, returns of income which should have been kept in the file of the assessee in Circle IV and other such documents. Merely because these papers were found in the possession of the applicant, the reporting officer should not have rushed to the conclusion that the applicant had committed a dishonest act and that, therefore, his integrity was doubtful. Any conclusion regarding the applicant's integrity based on the said incident could be arrived at only after a proper enquiry was held and the explanation of the applicant was duly considered. When the adverse remarks were recorded, no departmental enquiry had been commenced against the applicant and the matter was still under investigation. At best, the reporting officer could have entertained a doubt about the integrity of the applicant and in such a situation, the instructions on the subject were that the entry relating to integrity in the confidential report should be left blank and a confidential note in a closed cover should have been submitted by the reporting officer to his immediate superior for enquiry. Only as and when such an enquiry resulted in a finding against the applicant after considering his objections, could an entry be made in the confidential report. These were the instructions circulated by the Ministry of Home Affairs and also printed in the format of the confidential report for the guidance of the reporting and reviewing officers.



The reporting officer had to follow these instructions and the Chief Commissioner should have borne these instructions in mind when considering the representation of the applicant. Since neither of them bothered to follow the instructions, the adverse remarks, Dr.Nagaraja contended, should be struck down as bad.

3. Shri M.S.Padmarajaiah, learned counsel for the respondents, sought to refute the contentions of Dr.Nagaraja. Instructions issued by the Ministry of Home Affairs in regard to the entries against the column 'integrity' were not rules framed under Article 309 of the Constitution. On the other hand, they were only guidelines and in an appropriate case, the reporting officer was not precluded from making adverse remarks against that column based on actual incident that had taken place and which raised serious doubts about the integrity of the official reported on. In this case, the applicant, who was working in Circle IV as a UDC till 6-6-1986 and was thereafter posted to Circle II was found in possession of important documents relating to assessments falling within the jurisdiction of Circle IV on 10-12-1986 when the Inspecting Assistant Commissioner examined the contents of the drawers of the applicant's table in Circle II. The applicant was unable to explain as to how these papers and documents were still in his possession when he should have handed over them to his successor in Circle IV on his relief from that Circle on 6-6-1986. On the face of it, the applicant's action in retaining these documents more than six months after he had left Circle IV particularly in a department which had dealings with the public was a serious slur on his integrity. Confidential reports are written on the

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work and conduct of an official based on his performance generally as well as on specific incidents that may have occurred in the course of his work. Adverse remarks in a confidential report do not amount to imposition of a penalty requiring a formal enquiry and an opportunity of being heard being given to the official reported on. The instructions of the Ministry of Home Affairs contained in the memorandum dated 21-6-1965 require supervisory officers to maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and to verify the truth of such suspicion by making confidential enquiries. When recording the confidential report, this diary had to be consulted and material in it utilised for filling up the column about integrity. If the column cannot be filled up on account of the unconfirmed nature of the suspicion, then and then only was the supervisory officer to leave the relevant entry in the confidential report blank and submit a confidential note to his immediate superior. In this case, even though the reporting officer may not have maintained a diary, he had material with him on the basis of which he could come to the judgement that the applicant's integrity was doubtful. Documents relating to another Circle were found in the applicant's possession six months after he had left the Circle and the applicant was questioned soon after this discovery as to how these documents remained with him. A detailed statement of the applicant was recorded on 19-1-1987 by the Income Tax Officer, Vigilance Branch of the Income Tax Department, in which the applicant's attention was drawn to each and every document that was recovered from his table drawers and the applicant could not offer a satisfactory explanation



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for it. This was sufficient material for the reporting officer to conclude that prima facie, the applicant's integrity was doubtful. So far as the reporting officer was concerned, his suspicion became confirmed after the statement of the applicant was obtained in January 1987. That being so, he was not obliged, even according to the instructions of the Ministry of Home Affairs, to leave the column relating to 'integrity' blank and to submit a confidential note to his immediate superior. Satisfaction about the doubtful nature of integrity of a reporting officer when writing the confidential report of his subordinate is not the same as the satisfaction of the disciplinary authority after formal enquiry under the Central Civil Services (Classification, Control and Appeal) Rules, that the official concerned was guilty and deserved to be punished. Therefore the adverse remarks in this case were validly made on the basis of relevant material and there was no violation of the instructions on the subject.

4. I have given careful thought to the contentions urged on both sides. I would straightway agree, as it is the settled position in law, that recording of adverse remarks in a confidential report, does not constitute imposition of a penalty on the official reported upon. It is also trite that vague remarks affecting the integrity without confronting the subordinate official with the incidents giving rise to suspicion would be bad. Further, when an adverse remark is based on a specific incident, that incident should be set out along with the remark in the confidential report so that the subordinate official is in a position to controvert the conclusion when representing against the remark. I have gone through the instructions

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of the Ministry of Home Affairs and the instructions printed for the guidance of the reporting and reviewing officers in the format of the confidential report. According to these instructions, when the reporting officer doubts the integrity of his subordinate, but his suspicion is not confirmed, the column relating to integrity has to be left blank and a confidential note submitted to the superior officer. But where the reporting officer has striking evidence to indicate that all is not well with his subordinate,

I am unable to agree that he ~~should~~ not record the particular incident or material available before him and on that basis express an opinion that the integrity of his subordinate official is doubtful. In this case, the applicant was found in possession of assessment orders, returns of income, relating to the Circle in which he was working six months earlier. Circle IV in which he was earlier working was located in the main Income Tax Office while Circle II in which he was working when the papers were found in his possession is located in Unity Building about two kilometres away. He had obviously ~~packed~~ ^{picked up} all the papers when he left Circle IV and brought them with him to Circle II. Prima facie, this was cause enough to cast a serious doubt about his integrity. In my view, what is required when recording an adverse remark relating to integrity in the confidential report is a prima facie doubt based on specific incidents. When there are no specific incidents and doubt is created in the mind of the reporting officer either from what he has heard in a general way about his subordinate or because of some strange behaviour of the subordinate official which may not constitute sufficient evidence to record an adverse remark, then the procedure set out in the



instructions may have to be followed. After all the column relating to integrity is meant to be filled in and so far as it is filled in on the basis of an honest and bona fide opinion, based on clear incidents, it is not to my mind open to question, nor would it constitute a violation of the instructions on the subject. Formation of an opinion about integrity at ^{the} this stage of writing a confidential report cannot be equated to holding an official guilty of a specific charge in disciplinary proceedings for the purpose of punishing him. If, however, as a result of a departmental enquiry that may be instituted in respect of the incident giving rise to the adverse remark in this case, the disciplinary authority totally exonerates the applicant of all guilt, then, of course, the applicant would have a right to represent that the adverse remarks be eliminated and he be given all the benefits of such elimination, but not till then. The judgements of this Tribunal in Sashidharan's case and in Tejinder Singh's case relied upon by the applicant, were based on facts which were different from those obtaining here and those decisions have no bearing on the present case.

5. In the view I have taken in the matter, the application is devoid of merit and is, therefore, dismissed. Parties to bear their own costs.

TRUE COPY

Sd/-

(P. SRINIVASAN)
MEMBER(A)



Deputy Registrar (JD)
DEPUTY REGISTRAR (JD)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE