

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 125/92

Opposed Application No:

DATE OF DECISION 18.2.1993

shri Bhaktadas Roy ----- Petitioner

Shri M.A. Mahalle ----- Advocate for the Petitioners

Versus

Union of India & 14 Others. ----- Respondent

Shri V.S. Masurkar ----- Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. PRIOLKAR, MEMBER (A)

The Hon'ble Shri V.D. DESHMUKH, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?



( V.D. DESHMUKH )  
MEMBER (J)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY.

O.A.125/92.

Shri Bhaktadas Roy,  
8th Floor,  
16, Belvedere, Bhulabhai Desai Road,  
BOMBAY - 400 026.

.. Applicant.

Vs.

1. Union of India, through  
the Secretary, Ministry of  
Finance, Department of Revenue,  
NEW DELHI.
2. Chairman,  
Central Board of Direct Taxes,  
NEW DELHI.
3. Chief Commissioner of Income-tax,  
Aayakar Bhavan, Ashram Road,  
AHMEDABAD.
4. Union Public Service Commission,  
through its Secretary,  
NEW DELHI.
5. Shri O.P. Bhardwaj, Member  
Central Board of Direct Taxes(Retd.)  
Bapunagar, New Delhi.
6. Shri P.C. Halakhandi,  
Chief Commissioner of Income-tax(Retd.)  
Paradise Flat, Near Ketout Petrol Pump,  
Ambawadi, Ahmedabad-380 006.
7. V.R. Nair,  
Chief Commissioner of Income-tax,  
BANGALORE.
8. Shri S.N. Shende,  
Director General (Investigation),  
Delhi.
9. Shri B. Madhavan,  
Chief Commissioner of Income-tax-II,  
Calcutta.
10. Shri G.P. Singh.
11. Shri A.R. Mandal,  
Chief Commissioner of Income Tax-III,  
Calcutta.
12. Shri N.K. Nayak,  
Chief Commissioner of Income-tax-II,  
Aayakar Bhavan, Bombay.
13. Shri S.S. Roy,  
Director General (Investigation),  
Aayakar Bhavan, Bombay.
14. Shri P.N. Mitta, Director General  
(Investigation), Ahmedabad.

15. Shri S. Govindrajan,  
Chief Commissioner of Income-tax,  
Patiala. .. Respondents.

Coram : Hon'ble Shri M.Y. Priolkar, Member (A).  
Hon'ble Shri V.D. Deshmukh, Member (J).

Appearances :

1. Shri M.A. Mahalle, Counsel  
for the applicant.
2. Shri V.S. Masurkar, Counsel  
for the respondents.

JUDGMENT :

Date : 18 Feb - 93.

[ Hon'ble Shri V.D. Deshmukh, Member (J) ]

The applicant was promoted as the ~~Chief~~ <sup>93</sup> Commissioner of Income-tax in May, 1983. He is working in various charges as Commissioner of Income-tax (Appeals since then). It is stated that with effect from 18.7.1991 he has been posted as Commissioner of Income-tax on the administrative side in the city of Bombay.

2. The appellate wing of the Income-tax Department <sup>S</sup> performing the functions of deciding appeals arising out of the orders of the Assessing Officers. It is stated that the Deputy Commissioner <sup>S</sup> of Income-tax (Appeals) are assigned cases which are not very complicated and in which the income limit is Rupees One lakh, while the Commissioners of Income-tax (Appeals) have to decide the cases in respect of company assessments passed by the Deputy Commissioner of Income-tax, Assistant Commissioners of Income-tax and other Income tax Officers. The Commissioner of Income-tax (Appeals) is also required to dispose of the other cases involving the income above Rupees One lakh.



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3. According to the applicant the confidential reports of the Commissioners of Income-tax were written till the financial years 1986-87 by the Zonal Member of the Central Board of Direct Taxes and the Reviewing Officer was the Chairman of the said Board. However, since the financial year 1987-88 the Chief Commissioner of Income-tax ~~wrote~~ writes the Annual Confidential Reports of the Commissioners of Income Tax (Appeals), as well as <sup>S</sup> Commissioner <sup>(S)</sup> of Income-tax (Administration) and the <sup>(S)</sup> Reviewing Officer ~~of~~ Zonal Member of the Central Board of Direct Taxes.

4. The applicant claims that his performance as the Commissioner of Income-tax (Appeals) from the financial years 1985-86 till the financial years 1989-90 had been excellent and he presumes that his performance must have been assessed in the Confidential Reports as "Very Good" or even "Outstanding". It is also his case that his disposals were also much above the average disposals during the above said years. The applicant however, received a communication of adverse Annual Confidential Remarks for the financial years 1987-88 and the Reporting Officer was Shri Halakhandi, the Respondent <sup>Then</sup> No.6. <sup>ing</sup> @the/Chief Commissioner of Income-tax, Ahmedabad. The Review/Officer for the year i.e. 1987-88 was the Respondent No.5 Shri O.P. Bhardwaj who was the Zonal Member of the Central Board of Direct Taxes at that time.

5. The applicant made a representation to the <sup>These</sup> Board of Direct Taxes against ~~this~~ adverse remarks. However, by the letter dtd. 9.3.1990 (Annexure 1) the applicant was informed by the Under Secretary to the Government of India that the competent authority after

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carefully considering the representation of the applicant  
not  
had been acceded to the request of the applicant for  
~~expunction~~ of the adverse remarks. The letter informed  
the applicant that the appeal/against the decision and  
it had to be filed within six months from the receipt of  
the letter.

6. The applicant thereafter filed an appeal  
against the said order however, by the letter sent in  
the month of June, 1991 (Annexure 2) the applicant was  
informed that the Finance Minister had rejected the  
appeal of the applicant.

7. Some time in July, 1991 the meeting of the  
Departmental Promotion Committee (DPC) was held but the  
name of the applicant was not included in the panel of for  
promotion to the cadre of Chief Commissioner of Income-tax  
and on the basis of these recommendations the order was  
issued on 19.11.1991 by which 9 Commissioners of Income-tax  
were promoted as Chief Commissioner<sup>s</sup> of Income-tax. The  
applicant however, admits that all of them are senior to  
the applicant. The applicant states that he reliably  
learnt that he was not included in the panel because the  
Confidential Reports for the financial years 1987-88  
assessed him as "Average" and ~~for~~ <sup>the</sup> which subsequent years  
as "Good".

8. Being aggrieved by this non inclusion in the  
panel of promotees the applicant filed the present  
application. He has attacked the adverse remarks on  
various grounds which we shall consider <sup>at</sup> the appropriate  
stage. The applicant claims in the application that the  
panel drawn by the D.P.C. in June, 1991 and the order

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dtd. 19.11.1991 promoting the respondent Nos.7 to 13 being quashed. It is to be pointed out that in his application the applicant claims the various reliefs in the alternative. He claims in the alternative to the above relief# that the respondents be directed to include the name of the applicant in the panel drawn for the post of Chief Commissioner of Income-tax as per due seniority. He further claims in the alternative that the adverse Annual Confidential Remarks for the years 1987-88 be quashed and the confidential remarks for the years 1988-89 and 1989-90 be upgraded as 'Very Good' or in the alternative all the 3 Annual Confidential Remarks be placed out of consideration and review D.P.C. may be ordered within reasonable time. Finally he claims all the <sup>Con-</sup> ~~subsequent~~ benefits such as seniority, arrears if any and interest at the market rate on the arrears.

9. The Respondent Nos.1 to 4 i.e. the official ~~respondents~~ filed their written statement and deny all the contentions of the applicant. They denied that the adverse remarks were unjustified or without any power or authority and were liable to be quashed. According to them the adverse remarks were put after proper ~~examination~~ <sup>assessment</sup> of the functioning of the applicant and were perfectly within the power of the Chief Commissioner of Income-tax or the reviewing authority. They deny that the proceedings of the D.P.C. of July, 1991 were in any manner vitiated and were liable to be set aside. Only Respondent No.8 Shri S.N. Shende out of the other respondents filed his written reply. We took into consideration all the <sup>pleadings</sup> ~~proceedings~~ and heard the learned Counsels for both the sides.

10. The applicant has filed M.P.No.1004/92 for

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production of certain documents before hearing commenced. <sup>had</sup> We ~~are~~ directed on 15.12.1992 that the official respondents shall produce the documents mentioned in the said M.P. ~~(even if they intended to claim privilege over~~ the documents, for perusal of the Tribunal. The respondents produced all the documents pursuant to these directions at the time of hearing. Initially the learned Counsel for the applicant requested that he may be granted inspection of the documents. Secretary to the Government of India, Ministry of Finance, Department of Revenue claimed privilege over the documents by his affidavit dtd. 24.12.1992. During the submissions on this point Mr. Mahalle, learned Counsel for the applicant fairly agreed that it would be sufficient if the documents were perused by the Tribunal and he left the question of the inspection by him or the applicant to the discretion of the Tribunal. We ~~are~~ decided to peruse the documents <sup>leave</sup> ourselves and not even granted for the inspection to the applicant or his Counsel. We accordingly perused all the confidential reports ~~(for)~~ the relevant years and the proceedings of the D.P.C. produced by the official respondents. In his application (M.P.NO.1004/92) the applicant has also requested only for production of the documents, as the documents were produced and examined by us, the M.P. stands disposed off.

11. The applicant had contended in his Original Application that the respondents Nos. 5 to 15 were promoted vide the impugned panel. At the same time <sup>that</sup> he admitted ~~all~~ of them were senior to him. The respondent Nos. 1 to 4 in the written reply (para 16) stated that not only the Respondent Nos. 5 to 15 were promoted <sup>from</sup> the said panel but three more commissioners of Income-tax were also promoted to the grade of



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Chief Commissioner of Income-tax (CCIT). The applicant filed M.P.348/92 for including these three officers viz. Shri Lalit Mohan, Shri Ravikant and Shri Bhuvanendra Nigam as Respondents. In his application it was of the contention of the applicant that all the above three officers were junior to him and hence the panel deserved to be quashed. He requested certain grounds which he had already urged in his application in the amendment application also. This application was however, never served on the Respondent Nos.1 to 4. The applicant was specifically directed on 23.6.1992 to serve the copy of the application to Shri V.S. Masurkar, learned Counsel for the Respondent Nos.1 to 4. The copy however, was not served either to Shri Masurkar or the respondents till the date of the hearing. It may also be pointed out that no orders allowing this application came to be passed. Mr. Mahalle, learned Counsel for the applicant urged that the M.P. be allowed as it was served on the 3 junior officers who were to be impleaded as respondents. We are unable to appreciate and accept these contentions. The service of the application merely on the proposed respondents is not enough in the present case as ultimately the relief claimed would be against the official respondent Nos. 1 to 4. No doubt it was obligatory to serve the application on these 3 Officers alleged to be juniors to the applicant if the case of the applicant against them was to be considered, but it was also necessary to serve this application on the respondent Nos.1 to 4 against whom ultimately the directions were sought by the applicant. In the above circumstances we ~~are~~ rejected the M.P. for amendment i.e. M.P.348/92.

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12. It will be necessary to reproduce the Confidential remarks concerning the applicant for the financial years 1987-88.

"He is in the habit of writing lengthy orders, as a result of which the same becomes repetitive. He tends to lose clarity of expression and thought. His final summing up on the points at issue is very short and the points raised are not discussed in detail. His views on the same are cursory. He decides the appeal without analysing and meeting the arguments of both the parties."

By letter dtd. 19.12.1988 the applicant was informed that otherwise he was adjudged as an average officer. The applicant challenges this remarks on various grounds. He has given particulars about number of appeals decided by him during the relevant years and he claims that his performance so far as to numerical disposals were concerned, was better than that the average performance of any Commissioner of Income-tax (Appeals). We are of the opinion however, that the adverse remarks cannot be held to be unreasonable merely because numerical disposals of the applicant were more than satisfactory. It is ultimately for the reporting officer and the reviewing <sup>meets</sup> ~~meets~~ <sup>and</sup> officer to assess the ~~import~~ <sup>import</sup> of his ~~appeal~~ <sup>appeal</sup> orders. The applicant contended that the Chief Commissioner of Income-tax was concerned only with the administrative side of the department and he had not any authority to assess the performance of the Commissioner of Income-tax (Appeals). Admittedly however, the Chief Commissioner of Income-tax <sup>is the head of</sup> ~~is selected~~ in the department in respect of both administration as well as the appellate wing. The applicant <sup>cannot deny</sup> ~~cannot deny~~ that the Chief Commissioner of Income-tax <sup>had</sup> ~~for~~ the power to call for the records of the Commissioner of Income-tax (Appeals) and assessed <sup>by</sup> ~~the~~ the performance thereof. We find that there is ~~absolutely~~

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no substance in this contention. It was also contended that in any case it was not proper and reasonable that the Chief Commissioner of Income-tax should have the authority to assess the performance of the Commissioner of Income-tax (Appeals), and it was necessary to completely separate the administrative and judicial wings of the Income-tax Department. The applicant referred to Article 50 of the Constitution of India in support of this contention. The said Article ~~State~~ <sup>they</sup> directs that the ~~said~~ should make efforts to separate the judiciary from the executive. In our opinion ~~These~~ <sup>are the</sup> ~~this~~ directions applicable so far as the constitutional branches of the judiciary and the ~~they~~ <sup>different</sup> ~~for~~ executive and ~~cannot be extended to the directive~~ disciplines of the same department. In any case it is a matter of ~~appellate and~~ <sup>administration</sup> ~~were~~ admittedly the Chief Commissioner of Income-tax has the supervisory power over the administration as well as the appellate wings of the Income-tax Department. We do not find that the ~~adverse remarks can~~ <sup>be</sup> held to be without any authority.

13. The applicant contended that Shri O.P. Bhardwaj, the Respondent No.5 and Shri Halakhandi, the Respondent No.6 acted malafide against him and the remarks of "Average Officer" for the financial years 1987-88 had to be quashed. He has relied upon the ~~causes for~~ certain ~~instances~~ in which the adverse remarks were quashed or the remarks "Average" was upgraded. The question however, <sup>will</sup> ~~was~~ entirely depend upon the performance of the individual officer and the facts in each case. The applicant relied upon the decision in the case of S.R. Jhulka Vs. Union of India 1988(6) A.T.C. 18 C.A.T. Chandigarh. In this case it was held



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that it was the duty of the Reviewing Officer, if he was not sufficiently familiar with the work of the concerned official, to verify the correctness of the remarks of the Reporting Officer after making such enquiries as he may consider necessary. It was held that the Reviewing Officer should give a hearing to the concerned officer before recording his remarks. The applicant also relied upon the decision of the Supreme Court in D.T.C. Vs. D.T.C. Mazdoor Congress 1991(1) SLJ 114. In this case the Supreme Court held that the term efficiency was elusive and relative and capable of being applied in diverse circumstances. The Supreme Court observed that if the superior officer develop likes and dislikes he was likely to favour the persons liked by him and put adverse remarks against the persons disliked by him. There cannot be any doubt about the principles which have been laid down in the above two cases. But in our opinion it would be necessary to find out whether the adverse remarks in the present case suffered from any <sup>be</sup> ~~informatives~~ or any subjective or malicious intentions.

14. The applicant also urged that Shri Bhardwaj the Respondent No.5 was already criticised by this Tribunal in the Judgment in O.A.62/90 decided on 12.3.1991. The observations reproduced in the application are obviously based on the facts in that case. It would be necessary for us to examine the facts in the present case before coming to the conclusion that the remark put by the Respondent No.5 was subjective or malafide.



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15. The applicant on the basis of his numerical disposals ~~and~~ presuming that the confidential remarks about his performance for the financial years 1986-87 must have been "Very Good". The confidential file shows that the then Reporting Officer, who was neither the Respondent No.5 nor the Respondent No.6, has given the ~~general~~ remarks and overall assessment of the applicant as "Very Good". However, it is extremely pertinent that the Reviewing Officer who was the Chairman of the Central Board of Direct Taxes, and who was neither the Respondent No.5 nor the Respondent No.6 found that the assessment of the Reporting Officer was too generous, that there were not instances of quality work and hence the overall rating should have been good and not very good. We would repeat that this assessment was done by the Chairman of the Board against whom the applicant could not have any grievance.

15. The Confidential Reports of the applicant for the financial years 1987-88 shows that the applicant did not rank as Good or Very Good. The Reporting Officer assessed him as an Average Officer and the Reviewing Officer agreed with the Reporting Officer. As has been <sup>stated earlier</sup> ~~stated earlier~~ these remarks were communicated to the applicant and the applicant had the opportunity ~~for~~ of making representation, and after it was rejected of filing an appeal as well. The reasons given by the Appellate Authority for dismissing the ~~Appeal~~ were attacked by the learned Counsel for the applicant. However, on going through the A.C.R. file we find that it is not necessary to upset these remarks. The Reporting Authority for the financial years 1987-88 was Shri Halakhandi, the Respondent No.6 and the Reviewing ~~Officer~~



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Authority Shri Bhardwaj, the Respondent No.5. No doubt the applicant has alleged malice especially as against ~~Shri~~ Bhardwaj. The A.C.R. file however, shows that Shri Bhardwaj did not act in subjective manner. In the first place he did not down grade the higher remark put by the Reporting Officer. In the second place the A.C.R. file of 1987-88 shows that Shri Bhardwaj had relied upon the remarks put by one of the Member<sup>s</sup> of the Income-tax Appellate Tribunal at Ahmedabad on the quality of the orders passed by the applicant in the appeals heard and decided by him. The Hon'ble Member had observed that the applicant wrote detailed orders but containing mostly repetition of the orders passed by the Income-tax Officers, and the views of the applicant were expressed in a very short cursory manner. The A.C.R. file further shows that the then Chief Commissioner of Income-tax (Administration) Shri Halakhandi had retired/ <sup>and for</sup> the representation made by the applicant was sent to Shri Bhardwaj for his comments. Shri Bhardwaj ~~perused~~ the ten appellate orders which were submitted by the applicant to show his performance and came to the conclusion that the remarks made by the Chief Commissioner of Income-tax (Administration) were valid and justified. It is therefore obvious that Shri Bhardwaj, the Respondent No.5 did not accept ~~to be found~~ and ~~the~~ remarks of Shri Halakhandi as a result of ~~the~~ the Respondent No.6 without any malafide intention and also did not make his comments on the representation of the applicant subjectively or with any ulterior motive. According to him the model orders relied upon by the applicant himself showed that the remarks were justified. We do not find therefore that there is ~~no~~ <sup>any</sup> substance in the allegations of the malafides made by the applicant.



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The applicant relies upon certain authorities laying down that the adverse remarks must be communicated to the concerned officer. We shall consider ~~this~~ <sup>these</sup> authorities while considering the confidential reports for the years 1988-89 and 1989-90 because so far as the remarks for the years 1987-88 are concerned, they were communicated to the applicant and the applicant had full opportunity to adjudicate against them.

16. The applicant relies upon the decision of the C.A.T., Madras in Gurunihal Singh Vs. Union of India & Others decided on 18.3.1988 (1988(7)ATC 840). It was held in the above case that when a representation was made against the adverse remarks an employee ~~can~~ <sup>can</sup> be asked for clarification and specific instances on which adverse remarks are based in order to make an effective representation, if communication indicating adverse remarks lacks precision. In our opinion the applicant cannot have the benefit of this decision as the adverse remarks for the years 1987-88 are not lacking precision. <sup>See</sup> We have also ~~show~~ <sup>seen</sup> the material on the basis of which the remarks of the Reporting Officer were accepted by the Reviewing Officer, and ~~now~~ <sup>with</sup> the representation made by the applicant was properly dealt by the Respondent No.

5. The applicant relied upon the decision of C.A.T. Chandigarh in S.R. Julka Vs. Union of India and Others (1988 (6) AT Cases page 18) decided on 4.9.1987. It was held in the above case that where the confidential report was not objective but tainted with malice, the entire report had to be rejected, even if some adverse remarks mentioned therein were justified. In the present case we have already come to the conclusion so far as the



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remarks for the years 1987-88 are concerned that they  
were not/<sup>the</sup> result of <sup>any</sup> ~~the~~ mala<sup>fide</sup> intention. While  
considering this authority we must also mention<sup>ed</sup> that  
<sup>Confidential (in)</sup> the adverse remarks for the years 1987-88 are more or  
less of the same nature as the remarks for the preceding  
years 1986-87<sup>which</sup> also we have discussed. Reliance has  
been placed on the decision of C.A.T. Madras M.Sasidharan  
Vs. Shri A.P. Sudhir, Dy. Collector of Central Excise,  
Cochin and others (1988 (6) AT cases 385), decided on  
8.10.1987. The Tribunal had held in the above case that  
unless countersigning officer had personal knowledge  
<sup>of</sup> and the employees worked<sup>ed</sup> there should not be the adverse  
remarks. In the present case we have already discussed  
the confidential reports which shows<sup>ed</sup> that the reviewing  
Officer had merely accepted the assessment made by the  
Reporting Officer and we have already found that neither  
of them acted mala<sup>fide</sup>. The applicant therefore ~~does~~ not  
<sup>not</sup> benefited by this decision also.

17. The applicant relied upon the decision of  
C.A.T. Madras in the case of S. Krishnan Vs. Principal  
Collector of Customs and Central Excise decided on  
27.3.1991 (1991 All India Services Law Journal, page 450).  
In this case the adverse entries in certain columns  
were not expunged and the gradation in the other column  
was upgraded which was contradictory to adverse entries  
in the earlier said columns, and it was held that the  
adverse entries were also liable to be expunged. It is  
obvious from the facts that the decision is not applicable  
in the present case.

18. The rejection of the representation of the  
applicant was also challenged on the ground of bias  
<sup>against</sup> ~~in~~ alleged especially Shri Bhardwaj, the Respondent No.5.

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We have already rejected the contention that Shri O.P. Bhardwaj acted malafide against the applicant. The concerned files show that the assessment was based on the ~~remarks~~ of the Hon'ble Member of the Income-tax Appellate Tribunal and when the representation was sent <sup>The Resp. No 5</sup> to him he made his comments after perusing the ten model orders produced by the applicant himself. We do not find therefore that the Respondent No.5 was either biased or acted malafide in the present case. The applicant relied upon the decision of Himachal Pradesh Administrative Tribunal in the case of Besri Ram Vs. State of Himachal Pradesh and Others decided on 29.4.1991 (1991 of All India Services Law Journal 519). In view of the above findings the decision is clearly not applicable in the present case.

19. It was contended by the learned Counsel for the applicant that although the allegations of the malafides were made against the Respondent Nos.5 and 6 they had chosen not to file any separate reply and the contentions of the applicant must be accepted. It is true that no separate affidavits are filed by these respondents, but the written reply has been filed by the Respondent Nos. 1 to 4. As has been stated earlier ultimately if the applicant succeeds the directions have to be given against these respondents and in our view their reply is sufficient. We have also discussed the confidential reports for the relevant years as well as the A.C.R. file and the manner in which the representation made by the applicant was dealt with. We do not find that there is any substance in the contentions of the applicant in this regard. The applicant relies upon the Judgment in <sup>the</sup> case Besri Ram (Supra) in this connection also Para 11 of the Judgment however, shows that the facts of the



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case required that the affidavit in reply ~~not~~ to have been filed by the Respondent No.3 and the Tribunal <sup>cought</sup> in the absence of such affidavit in reply accepted/contentions of the applicant. The Tribunal found that there was a direct nexus between the alleged altercations which took place on 6.11.1984 between the applicant and the Respondent No.3 and the disciplinary proceedings against the applicant. On the facts of the present case we do not find that the contentions of the applicant can be accepted merely because the Respondent No.5 and 6 have <sup>not</sup> been filed separate affidavits in reply. The applicant also relied upon the judgment of the Supreme Court in Express Newspapers Pvt. Ltd. and others Vs. Union of India and Others (AIR 1986 S.C. 872) in para 115 the Hon'ble Court found that although definite allegations of mala fides on the part of the respondents particularly the Government at the Centre were made, surprisingly none of the respondents except the Respondent No.2 and the Respondent No.5 filed reply, denying the allegations, <sup>that</sup> <sup>such</sup> <sup>as</sup> It was held/ in the absence of <sup>the</sup> reply therefore, and <sup>as</sup> The reply of the Respondent Nos. 2 and 5 were not sufficient <sup>appellants</sup> <sup>in</sup> the contentions of the <sup>appeals</sup> were to be accepted. The <sup>individual</sup> <sup>in</sup> decision does not show that whenever the <sup>out</sup> <sup>in</sup> reply is not filed the Court is bound to accept the allegations of the mala fides. In fact the Court has to see whether the contentions are made <sup>out</sup> <sup>in</sup> on the record and has also to consider the replies filed by the other respondents. In the present case we do not find any substance in the allegations of the applicant after perusing the reply of the respondent Nos. 1 to 4, the Confidential files and the A.C.R file for the years 1987-88. The applicant therefore does not receive any benefit of this decision also.

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20. The applicant relies upon the confidential letter dtd. 22.4.1988 (Annexure A7(i)) By this letter the applicant was informed by Shri P.N. Chaudhary, Dy. Commissioner of Income-tax (Jud.) for the Chief Commissioner of Income-tax (Administration) that the report for the performance of the applicant for the month of March, 1988 was "Very Good". We have seen the confidential file and we have already discussed the assessment of the applicant for the period 1.4.1987 to 31.3.1988. This file however, does not show that while assessing this overall performance the applicant was even ranked as a 'Good' Officer. The report about his performance only for the month of March, 1988 therefore does not help the applicant in any manner.

21. We shall now consider the case of the applicant as regards his ranking in the confidential file for the years 1988-89 and 1989-90. The file shows that he was assessed as a Good Officer for the years 1988-89 and also for the years 1989-90. The said ranking made by the Reporting Officer was accepted by the Reviewing Officer for both the years. This ranking was accepted for the years 1989-90 by Shri Bhardwaj himself, the Respondent No.5. It is the contention of the applicant that no communication was sent to him about the confidential reports for these years and he was also not included in the panel of promotion of the candidates selected by the D.P.C. held in July, 1991. In this connection it is necessary to refer to the guidelines on D.P.C.s which are reported in 1989 All India Services Law Journal Volume 33. In para 4 the procedure to be observed by the D.P.C.s has been indicated. In para 6.3.1(iii)

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it is stated that in respect of posts which/in the level of Rs.3700/- to Rs.5000/- and above the bench mark ~~grade~~ <sup>IV</sup> ~~IV~~ should <sup>be for</sup> "Very Good". It is thus obvious that the minimum bench mark for this grade was "Very Good". It is not disputed that the applicant fell in this grade. The applicant relies upon the judgment of C.A.T. Jabalpur Bench in O.A.291/88 in Jugal Kishore Goel Vs. Union of India and others decided on 17.5.1989. It was submitted in this case that if the minimum bench mark for consideration for promotion was "Very Good" and the ranking of the officer as good was not enough <sup>The</sup> ~~to~~ good remarks had to be treated as adverse and had to be conveyed to the applicant. It was taken into consideration that the 'good' remarks eliminates the officer from the empanelment and bars him from being considered for promotion. ~~This~~ <sup>These</sup> submission <sup>s</sup> were accepted by the Tribunal as having some force. The Tribunal further held that in view of the decision of the Supreme Court in the case of Gurudial Singh Fijji the non communidated remarks had to be ignored and thereafter gave the directions for constituting the review D.P.C.

22. In the present case also we find that as the minimum bench mark for the promotion to the post of Chief Commissioner of Income Tax was "Very Good", and as the petitioner was ranked for the years 1988-89 and 1989-90 as "Good" these remarks ought to have been communicated to the applicant. Because of the failure on the part of the respondents to communicate these remarks to the applicant, <sup>for</sup> We find that it would be necessary to direct the respondents to constitute the review D.P.C. and give further directions that the remarks for the years 1988-89 and 1989-90 be ignored. It was contended on behalf of the applicant that the remarks of the Reporting Officer were down graded by the Reviewing Officer. We have fully discussed the confidential remarks for the

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~~for~~ and we find that they have <sup>for</sup> remarks for the years 1988-89 and 1989-90/ are to be ignored. As a result it would be necessary to direct the respondents to constitute the review D.P.C. At the <sup>must for</sup> same time it seems also be made clear that this application is concerned with the D.P.C. constituted in July, 1991 and not with any further D.P.C. The application was filed on 15.1.1992 and the amendment application was filed on 24.4.1992/ <sup>although for</sup> we have rejected the amendment application ~~but~~ we may point out that the applicant does not challenge the proceedings and the decision of any D.P.C. in this amendment application <sup>to for</sup> which was held subsequently ~~on~~ July, 1991.

23. The applicant challenged the constitution of the D.P.C. held in July, 1991. In fact all the reliefs are claimed only in the alternative and as we are according to the applicant the relief regarding the A.C.R. for the years 1988-89 and 1989-90, it is not necessary to consider the other reliefs. However, we shall briefly mention his points and deal with them. The applicant belongs to Scheduled Caste and it was submitted that in view of the Home Ministry Circular No. 22011/5/86-Est(B) dtd. 10.4.1989 it was necessary that a member belonging to Scheduled Caste/Scheduled Tribe community ought to have been <sup>appointed for</sup> ~~pointed out~~ on the D.P.C. The circular is directive in nature and not mandatory. Similarly the circular was <sup>shall for</sup> applied only when bulk promotions when there are 30 or more vacancies are <sup>were for</sup> to be made. In the present case such was not the circumstances. The learned Counsel for the Respondents has produced before us G.S.R. 563 (E) dtd. 12.5.1988 of the Ministry of Finance. The schedule 3 therein

*[Signature]*

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provides ~~that~~ <sup>for</sup> the composition ~~or~~ <sup>of</sup> the D.P.C. for considering the case <sup>S</sup> of promotion and confirmation <sup>Revenue</sup> ~~Railway~~ of Group A Officers of the Indian ~~Railway~~ Service. The proceedings of the D.P.C. held in July, 1991 clearly shows that the D.P.C. was constituted as per these directions. It was urged on behalf of the applicant that the proceedings of the D.P.C. of July, 1991 were liable to be quashed also for the reason ~~s~~ that Mr. Bhardwaj, the Respondent No.5 was a member of the D.P.C. and the D.P.C. had not given reasons for its decisions. The proceedings of the D.P.C. dtd. 16.7.1991, ~~not~~ <sup>by</sup> however, shows that the Respondent No.5 was ~~a~~ member of D.P.C.. We have already discussed the applicants entire case regarding the confidential remarks for the years 1987-88 and also for the subsequent years. We do not find that any purpose would be served ~~in~~ <sup>by</sup> quashing the proceedings of the D.P.C. or the consequent orders on the ground that the reasons were not given as regards the applicant.

24. The respondents opposed <sup>d</sup> the application on ground of limitation. When the application was admitted it was not admitted subject to the ground of limitation. However, we ~~are~~ agreed with the submission of the learned Counsel for the Respondents that the ground of limitation can be urged even ~~at~~ <sup>in</sup> the stage of final hearing. In the present case however, the application is within time from the date of the appellate order. As the order rejecting the representation of the applicant itself stipulating <sup>-</sup> ~~that~~ the applicant <sup>could</sup> ~~would~~ file an appeal against the order, we find that the period of limitation ~~shall run~~ from the date of the appellate order.

*GJP*