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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 532/92

Transfar Application No:

DATE OF DECISION: 27-4-94

Shri S. S. Mishra Petitioner

Shri M. A. Mahalle Advocate for the Petitioners

Versus

Union of India & Another Respondent

Shri K. D. Kelkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M. R. Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R. Kolhatkar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 532/92 with

M.P. No. 246/93

Shri S. S. Mishra

.... Applicant

V/s.

Central Board of Direct Taxes,
through its Secretary,
New Delhi.

Chief Commissioner of Income-tax,
12 Sadhu Vaswani Road,
Pune

Commissioner of Income-Tax,
Kendriya Rajaswa Bhavan,
Nasik.

.... Respondents

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)

Appearances :

Shri M.A. Mahalle, Counsel
for the Applicant.

Shri K.D. Kelkar, Counsel
for the Respondents.

JUDGMENT

Date : 27-4-94

1 Per : Hon'ble Shri M. R. Kolhatkar, Member (A) 1

1. The prayer in this O.A. relates to expunction of adverse remarks in the Annual Confidential Report 1989-90 of the Applicant. The adverse remarks as originally communicated were to some extent modified. Hence the same are indicated below in full.

Original remarks:

Part - III - Filed in by Reporting Officer :

Col. 14 - Comments of the Reporting Officer of item-11:

* I agree only in respect of achievements of targets relating to disposal of Summary and Scrutiny assets., IT/WT. budget collections; however, reduction in gross demand and number of entries is not according to targets fixed by the Board especially substantial amount of

current demand is raised at the ~~far~~ end of the year, upsetting over-all target. D.C. was made aware of this aspect, from time to time in my monthly D.Os."

Col. 21- General Observations :

" The D.C. is in the habit of misutilising his official position to satisfy his personal needs. He had also violated norms of financial powers in utter disregard of Rules in the matter of purchase of office articles, use of Telephone facilities and staff car. He did not apply his mind while writing Annual C. Rs. of his Officers in F.Y. 1988-89. He should be kept away from handling sensitive cases, involving investigation and assessments and be assigned jobs like Audit, Training or authorised Representative ".

Remarks as modified :

" (a) Remarks in Col. 14 are required to be treated as Advisory."

" (b) Adverse remarks in Col. 21.

These remarks were in nature of General observations that the D.C. was in the habit of misusing his official position for his personal needs and that he has also not observed proper procedure or norms in purchase of office articles, in use of telephone facilities and staff car. After going through the representation and the CIT's counter Comments, I am of the view that these adverse remarks of the C.I.T. are in order and are required to be upheld."

Except the sentence " He should be kept away from handling sensitive cases, involving investigation and assessment and be assigned jobs like Audit, Training or Authorised Representative" all the remarks included in Col. 21 under the Heading "General Observations" require to be upheld"

2. The contention of the Applicant is that remarks which are treated as advisory have no factual basis or where there is a slender factual basis, the constraints

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under which Applicant worked and also good work done by the Applicant and efforts put in by the Applicant have not been taken into account. In his representation, both to CIT dated 27.09.1990 as well as to CBDT dated 30.05.1991, he had pointed out that he had achieved the target of reduction of gross arrears demand as well as target of reduction of gross current remand but there was undisputedly a shortfall of Rs. 13,38,000 in the target of reduction by 10% of total I.T. Demand compared with actual arrear remand carried forward as on 01.04.1990 of Rs.1,95,08,000. Regarding arrear entries, actual shortfall was 597. (as against entries carried forward of 7511) which after deducting entries not fallen due of 483 was only 114 short which shortfall was marginal.

3. Regarding general observations, he has pointed out that no specific examples of misutilisation of official position to satisfy personal ~~needs~~ or violation of rules regarding purchase of office articles, use of telephone facilities or staff car have been given to him even after he asked for the same in his representation to C.I.T.

4. So far as the telephone is concerned, there was ~~correspondence~~ about the need for economy in telephone expenditure and in particular C.I.T. Nasik had desired to have explanation as to why STD facility available at Aurangabad office was not discontinued in spite of earlier instructions dated 22.12.1987.

According to Applicant, these instructions were received (1987) when he was not the Deputy Commissioner and on receipt of the letter dated 2.3.1990, STD facility was in fact discontinued. In his earlier representation, he pointed out that CIT had deputed his office clerk to gather information regarding payment of bills in respect of each telephones. In his subsequent representation to C.B.D.T., he has given a table, which shows that in 1989-90, there was reduction in bills of office telephone as compared with 1988-89; there is a slight increase in the bill for residential telephone there but on an over all basis/ is reduction from Rs.1,27,980 in 1988-89 to Rs. 81,325 in 1989-90 vide page 123 of O.A.

5. Regarding misuse of car facility, no examples were given by CIT nor is there any correspondence. However, in his original representation, it is stated that ~~on~~ a direction from C.I.T., Nashik, an officer come to Aurangabad to inquire into the use of staff car. He also inspected the log book but ~~at~~ no point of time, the CIT communicated to the Applicant the findings of his inquiry or pointed out any misuse of the staff car.

6. Regarding office articles, this appears to pertain to the purchase of a carpet for the office of Applicant amounting to Rs. 2,340/- for which ~~expostfacto~~ sanction was given by CIT on 8.11.1990.

7. Regarding writing of C.R's of Gazetted Officers, there was correspondence in which Applicant had given some remarks in respect of performance of six officers under him about which, while forwarding representation of officers, he clarified that they were not intended to be adverse remarks.

8. The contention of the respondents is that the ACR's as they finally stand, are fully justified. The overall performance of the Applicant was satisfactory but Applicant had failed in reduction of gross demand and the number of entries as per the targets fixed by C.B.D.T. in spite oral and written advice. Moreover, remarks which are converted into advisory cannot be treated as adverse. So far as remarks about general behaviour are concerned, it is contended that the contents of the representation show that the Applicant was aware of the charge of misuse against him. Regarding purchase of carpet it is contended that Applicant committed financial irregularity by asking the concerned A.C. to prepare five bills of less than Rs. 500/- each. Regarding writing of ACR's it is stated that Applicant spoilt ACR's of 90% of his subordinates through his careless reporting. In their surrejoinder, Respondents have taken the stand that there need not be any specific instances of misuse of telephone and car as they are construed from the bills of telephone and inconsistency in the logbook.

9. Regarding remarks which are treated as advisory, Applicant relies on the case of G. Nanchil Kumaran Vs.

Special Commissioner and Secretary to Government Home Department (TN) (1990 (12) ATC 308 (Madras). That was a case regarding interpretation of AIS (Confidential Rolls) Rules 1970. Although the specific rules and instructions given thereunder do not apply in this case, what is stated therein appears to have general applicability. To quote "Once an entry becomes part and parcel of ACR and it is communicated, any member of Departmental Promotion Committee is most likely to take note of such remarks and might even be influenced ~~influenced~~ by those remarks even though Government might clarify that the remarks were meant to be only instructional in nature. The C.R. is an important document and it provides the basic and vital imputs for assessing the performance of an officer and for his further advancement in his career. Hence adverse remarks should not be allowed to enter into such an important document in the guise of counselling/instructing the official concerned". We are in agreement with these observations. We also note that the Applicant made detailed submissions about the achievement of targets and related matters. But there is no indication that these submissions were given due consideration. We have, therefore, no alternative but to hold that the adverse remarks, though termed advisory, deserve to be expunged.

10. Coming to the second set of adverse remarks, the main contention of the applicant here is that it is well settled by the case of Guru Nihal Singh Pirzada.

1988(3) SLJ 146(CAT) as well as T. L. Sharma Vs. Union of India ATR 1987 (2) CAT 610 that data on the basis of which adverse remarks are given must be supplied. Guru Nihal Singh case related to interpretation of AIS (confidential Rolls) Rules 1970. In that case, applicant asked for material in support of adverse entries conveyed to him. The plea of respondents that if accepted, it would set a bad precedent was negatived by the Tribunal. The Tribunal relied on the observations of the Hon'ble Supreme Court in the case of Gurunihal Singh Fiji Vs. State of Punjab (1979(2) SCC 368) where the Hon'ble Supreme Court observed that the opportunity to be given to the civil servant is not by way of an empty formality, its object partially being to enable the superior authorities to decide on a consideration of the explanation whether the adverse report is justified. The Tribunal quashed the order contained in the communication rejecting the request of the Applicant for specific instances.

11. The Respondents, however, contend that the detailed representation made by the Applicant indicates that the Applicant was well aware of on-going correspondence about misuse of telephone and car facility. We have dealt with the facts of these allegations. We see that the adverse remarks can be categorized into the following :-

(a) a general observation about habitual misutilization of official position.

(b) violation of norms/disregard of rules
in the matter of
i) purchase of office articles.
ii) use of telephone facilities.
iii) use of staff car.

(c) Non-application of mind while writing
C.R.'s of suborderale officers.

So far as the general observation about habitual misutilisation of official position is concerned, the Applicant has pointed out in his representation that the word "habit" connotes "ordinary course of behaviour" and "tendency to perform certain action" and would mean that the Applicant has been following the continuous practice of misutilizing his office for satisfaction of his personal needs and if this be so, such a habit would have been noticed long time back and in any case, during 1988-89, the reporting officer for 1988-89 and 1989-90 being the same person. We see the force in this contention. At all events, such an observation must follow logically as a conclusion of certain specific verified instances. We therefore, first deal with the specific instances of misuse of facilities.

12. In regard to specific instances, we may start with the proposition of the Respondents that the Applicant was aware of specific instances as is clear from his representations. Even then, the Respondents must show that the remarks were justified on the basis of material available with the Department read in conjunction with ~~over~~ ^{over} governments of the Applicant. In

regard to the misuse of telephone facility and car facility, we have noted that the Applicant has produced statistics to show that in fact, there was reduction in telephone bill in 1989-90 as compared to 1988-89 and in regard to misuse of car facility, the Respondents have not been able to produce any thing beyond reference to entries in the log book and statement of the Driver. We are therefore driven to the conclusion that there was no material with Respondents to justify the remarks.

13. The position is different in regard to purchase of office articles. The Applicant has put all the blame for this purchase on his subordinate vide his representation to CEDT where he has stated that "purchase was actually made by charge ACIT Smt. Anuradha Bhatia. In her youthful enthusiasm and possibly due to inexperience, she has purchased it without obtaining prior approval of appropriate authority. However, in respect of this purchase ex post facto sanction of the CIT, Nashik was requested and CIT Nashik after fully satisfying himself has accorded ex post facto sanction for the above vide his office order dated 8.11.1990." It is too much to believe that an Asstt. Commissioner will purchase such office articles for the room of Deputy Commissioner without his specific instructions both in regard to actual transaction as well as the modality of regularizing the same. The short point is : was CIT justified in making an observation about this matter in ACR and our view is that he was so justified.

14. Similar is the position in regard to entry about

non-application of mind in regard to writing of CR's of his subordinates. The Applicant was aware of the correspondence vide his letter dated 6.4.1990 (at page 136), where he has justified his writing the remarks. In fact in his representation, it is ironical that ~~he~~ has stated as below :

~~✓~~ "Many officers in their self-appraisal claim having achieved outstanding achievements. In such case, the Reporting officer is required to look into the real quality and asses the performance, ability etc. and offer qualitative and objective comments." The irony lies in the fact that when his own Reporting officer tried to do the ~~same~~ in relation to the Applicant, the Applicant has felt greatly hurt. It is a different matter that for reasons explained, we have upheld the contention of the Applicant in regard to "advisory" comments. The main point to note is that the Applicant was aware of the correspondence and specific examples and we are driven to the conclusion that these remarks about non-application of mind were also justified in the context in which they were written.

15. The Applicant relies: on O.P. Jain 1991 (3) SLJ 193. (High Court - Rajasthan) for the proposition that instances of earlier year cannot be included in the ACR in question. In our view, the ratio of O.P. Jain's case does not apply. As explained by the Respondents in their counter, the applicant had passed adverse remarks in his subordinates' ACR in the year 1988-89 and

therefore they were rightly reflected in his ACR of 1989-90 and no illegality is caused. The contention of the Applicant that CIT has passed the specific adverse remarks in his ACR at the instance of CCIT is also not borne out by record and therefore his reliance on the case of R.K.Mishra Vs. Union of India O.A. 500/88 CAT, Bombay for the proposition of remarks at the behest of higher authorities being bad is misplaced.

16. We therefore, conclude that only two adverse remarks in the ACR of the Applicant appear to be justified by the material on record of which Applicant was fully aware. Therefore, remarks about "DC is in the habit of misutilization of his official position to satisfy his personal needs" cannot be sustained.

17. We, therefore, dispose of this O.A. by the following order.

O R D E R

18. Application is partly allowed. Remarks in column 14 are directed to be expunged. Remarks in Col. 21 except the following are also directed to be expunged.

"He has not observed proper procedure or norms in the purchase of office articles". He did not apply his mind while writing annual CR's of his officers in ~~last~~ ^{financial} year 1988-89".

19. If the adverse remarks which are directed to be expunged, have been taken into consideration while deciding the claim of the Applicant for further promotion, in that case only, fresh review DPC's should be held to consider the claim of the Applicant for promotion disregarding the ~~adverse~~ remarks directed to be expunged.

20. No order as to costs.

M. R. Kolhatkar
(M. R. Kolhatkar)
Member (A)