

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 296/95 /199

Date of Decision: 29-08-96

G.S.Suryawanshi

Petitioner/s

Shri M.A.Mahalle

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri K.D.Kelkar

Advocate for the
Respondent/s

CORAM:

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

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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No. 296/1995.

Pronounced, this the 29th day of Aug. 1996.

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

G.S.Suryawanshi,
Assistant Commissioner of
Income Tax,
C/o.Commissioner of Income Tax,
Nagpur.
(By Advocate Shri M.A.Mahalle).

... Applicant.

V/s.

1. Chief Commissioner of Income Tax,
Aykar Bhavan, Sadhu Vasvani Road,
Pune - 411001
2. Director General of Income Tax(Inv.)
West,
Ahmedabad.
3. Director of Income Tax (Inv.),
Aykar Bhavan, Director of
Income Tax,
Sadhu Vasvani Road,
Pune - 1.
4. Commissioner of Income Tax,
Nashik.
5. Deputy Director of Income Tax(Inv.),
Nashik.
6. Deputy Commissioner of Income Tax,
Nashik.
7. Deputy Commissioner of Income Tax,
Jalgaon.
8. ~~M.K.Moghe~~, Deputy Commissioner of
Income Tax, C/o. Central Board of
Direct Tax.
9. C.U.Choure, the then Commissioner
of Income Tax, Nashik, now
the Commissioner of Income Tax,
Kolhapur.

... Respondents.

(By Advocate Shri K.D.Kelkar)

ORDER

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant ~~has~~ challenged the
adverse remarks in his ACR for the financial year

1989-90. The representation against these made to the departmental authorities was rejected. He contends that as a result of the adverse CR, he was not allowed to cross EB from the due date i.e. from February, 1991. He was allowed to cross the EB only on 1.2.1994 i.e. three years after the due date. His request for allowing to cross EB from the due date was also rejected by the respondents on 12.7.1994. He has challenged this communication also. The adverse remarks communicated to the applicant by the letter are dt. 27.6.1990/at pages 28 and 29 and the same are reproduced below for ready reference :

"Column No.14 - Comments of the Reporting Officer of item 11

In respect of Evasion Petitions, the disposal was only two (2) against the workload of 21. The disposal of Evasion Petitions was therefore very poor without any other compensating achievement. The concealed income detected was only Rs.4,67,902/- against the target given by me of Rs.25 lacs.

Column No.15 - Comments on Columns 12 and 13 :

In the case of Shri K.G.Wani, the matter could not be conclusively finalised by him. In the case of M/s.Jugal Vastralaya and M/s.Jugal Saree Emporium the assessee had offered Rs.1,25,000/- only to cover the transaction of Rs.75,000/- and the huge stock difference computed by the ITO. In the case of M/s. Vijay Cloth Stores, one document regarding property transaction of Rs.11 lacs was found. The ITO had, however, inflated the stock valuation initially by valuing the stock at sale price. There was no surrender in this case. In respect of the cases mentioned at para 5, detailed reports have not yet been received. I have no comments regarding his work as ITO Ward 2(5).

Column No.18 - Other Qualities :

Column No.18(2) Guidance of Staff : Inadequate.
Column No.18(4) Investigating capability : Inadequate.

Column No.21 : General observations :
(Here mention any special ability, traits or performance relevant future assignments)

The officer, inspite of having competent Inspectors, could not give the expected qualitative output. In 22 cases, the final report of CIB verification was not received from him although the matters were pending for long. In general, the quality of his reports was poor. He did not display the required initiative and capacity. He has also been warned by the C.I.T. Nasik for insubordination vide memo dt.1.3.1990 (copy attached)."

The applicant represented against these adverse remarks vide his representation dt. 24.7.1990 (at page 41); the same was rejected by letter dt. 10.2.1993 (at page 24). The applicant, however, [redacted]

[had] filed a mercy petition against the rejection of the representation on 12.8.1993(at page 47) to which there does not appear to have been a reply.

Subsequently, the applicant was permitted to cross EB w.e.f. 1.2.1994 and he was also promoted as Assistant Commissioner on 14.5.1994. [redacted]

2. So far as the adverse entries in the C.R. are concerned, the contention of the applicant is as below :

Column No.14 :

The thrust of this comment was that the disposal of Evasion Petitions was very poor and the achievement against target of [redacted] concealed income detected was very low. According to the applicant the superior Officers had raised no queries and no target relating to Evasion Petitions was

was given and that it is not correct to say that there was no compensatory achievement, inasmuch as, the time of Inspectors was utilised in respect of conducting raids under section 132. Regarding Concealment, the applicant contends that the system of fixing a target for detecting concealment is basically wrong. The District in which he was working was a backward area and did not have much potential for detecting concealment.

3. The respondents contend that the Evasion Petitions are the most important source of information for investigation wing and therefore, it is wrong on the part of the applicant to say that the disposal of the Taxation Evasion Petitions is mainly the job of the Inspectors. It is also not correct to say that there was no target for Evasion Petitions and clearly the applicant had failed to get the work of Evasion Petitions done from his subordinates. Regarding participation of the applicant in search, it is stated that the same is part of his job. The respondents have also contended that the applicant cannot challenge the system of fixing of targets set up by his controlling authorities.

4. Regarding adverse remarks under Column-15, the applicant contends that in the case of Shri K.G.Vani, the ITO assessing the case did not complete the assessment. In the case of Jugal Kishore Vastralaya, the superior Officer had not disapproved the findings given by the applicant. In the case of Vijay Cloth Stores the case was transferred on his recommendation for deeper

investigation. In the case of M/s.Jugal Saree Emporium the applicant had worked out excess stock of Rs.4,30,537/- while in the case of M/s.Jugal Vastralaya he worked out deficit of Rs.4,41,636/-. Hence the applicant was directed to report the case to the Assessing Officer.

5. In regard to remarks under columns 18, 18(2) and 18(4) the applicant states that these remarks are entirely subjective and no instances have been given as to how his work under these heads was inadequate. The respondents contend that the remarks were passed on observation of the work of the applicant at Dhule where he was working for more than 10 months in the financial year. In regard to column 21, the contention of the applicant is that never in the past had his reports been termed as poor.

6. Lastly, regarding the remark "that he has also been warned by C.I.T., Nasik vide memorandum dt. 1.3.1990", the applicant points out that this related to his joining at Dhule in anticipation of receipt of the orders of transfer without getting clearance from the immediate superior, but he joined at Dhule, to which place he had desired a transfer at the instance of another superior viz. Deputy Commissioner of Income Tax and that he ^{had} made a representation ~~and~~ that a recorded warning was directed to be issued to him by the C.I.T., Nasik on 1.3.1990, but he made a ~~further~~ ^{out} ~~and~~ ^{still} ...6.

representation to the Chief C.I.T., Pune and the then C.I.T. by his order dt. 25.6.1990 observed that as there are mitigating circumstances, the reference in para 5 of the C.I.T. wherein it is stated that a copy of the warning be kept on ACR file of the appellant is expunged. Thus the applicant states that although warning was expunged on 25.6.1990 the warning remained on his C.R. because in the adverse entries communicated to him by the letter dt. 27.6.1990 his immediate superior had referred to the warning memo ~~even~~ even after the appellate orders of the Chief C.I.T. dt. 25.6.1990 expunging the direction that to keep the warning on his C.R. ^{that} these remarks still ^{are} ~~remain~~ on his C.R. and therefore, ~~they~~ liable to be expunged. The Respondents have conceded that the Chief C.I.T. had directed not to keep the warning issued by the C.I.T., Nasik in the C.R. of the applicant. The C.R. file which was produced before us showed that although the Chief C.I.T. had directed expunction of the remarks regarding warning being recorded on the C.R. still the remarks remained on the C.R. file for the year 1.4.1989 to 28.2.1990.

(7) The main contention of the applicant is that the various adverse remarks recorded in his C.R. file for the year 1989-90 are based on bias harboured by the Reporting Officer against him for having joined at Dhule in advance ~~of~~ receipt of formal

orders. He also contends that although the then Reporting Officer was made a party respondent (R-8) by name, he has not bothered to file any counter in response to the application. For this purpose he relies on the Judgment of the CAT, Principal Bench in Lakh Ram V/s. UOI & Ors. (1983(3) CAT 321). That was a case in which the applicant had alleged mala fides of Enquiry Officer in a disciplinary proceeding, ^{but} still he was not changed. In my view, that Judgment relates to bias of Enquiry Officer in the disciplinary proceedings and it has no bearing on the facts of the instant case self-. The applicant had given a self-assessment report and in connection with the self-assessment report, the Reporting Officer had given counter comments, ^{and} these counter comments are purely factual and based on departmental records. It cannot be held that these comments should be expunged on the ground of mere allegation of bias. The applicant has next relied on the case of Besri Ram V/s. State of H.P. and Ors. (1991(2)(CAT) 519). That was again a case of disciplinary proceedings and the allegation was that R-3 was biased with whom the petitioner had altercation and the Tribunal on facts held that the bias was sustained. In my view, the ratio of this Judgment does not apply to the facts of the present case. The applicant next relies on the Judgment of

R.D.Gupta V/s. UOI & Ors. (1990(2)(CAT) 81). That was no doubt a case of allegation of prejudice in the matter of writing of the C.R. But in ~~that~~ case the Tribunal found on a close scrutiny of the facts that the allegation of prejudice was borne out. In my view, in the facts of the present case the ratio of that Judgment does not apply. The applicant ^{the} next ~~cited~~ certain judgments relating to ^{the} need for of senior officers giving guidance, need for taking note/ additional duties and the need for consulting officers under whom the concerned Government Officer had worked. These are all matters covered by Government guidelines. The applicant had worked at Dhule for less than 3 months and the question of obtaining the remarks of the Senior Officer under whom he worked for ~~less~~ than three months does not arise. In my view, therefore, the challenge of the applicant to the adverse entries in the C.R. on these diverse grounds is not sustainable.

8. On consideration of all pleadings and arguments, ~~I~~ am of the view, that the only 'remark' in the C.R. which deserves to be expunged is the 'remark' under column - 21 - General Observations, which reads as follows :

"He has also been warned by the C.I.T. Nasik for insubordination vide memo dt. 1.3.1990."

Since there is a subsequent decision that while the

warning would remain, the same would not remain in the C.R., the whole of this remark deserves to be expunged and the order of the warning, if any, attached is also required to be removed from the C.R. file.

9. The next contention of the applicant is that he was held up at E.B. on 1.2.1991 and he was not allowed to cross E.B. on 1.2.1992 and 1.2.1993. According to him, on expunction of the adverse remarks, his case of crossing EB as on 1.2.1991 needs to be considered. In my view, once the relief of expunction of adverse remarks to the extent of even one sentence is given, the ~~relief~~ ^{question} of considering his case for crossing EB on 1.2.1991 is required to be given, because DPC/expected to consider CR in its entirety and the ^{a possibility that} ~~one~~ remark about warning plays ^a role in decision not to permit him to cross the EB cannot be ruled out. Regarding subsequent dates, the position is as below. There is no indication as to whether the case of the applicant for being permitted to cross EB on 1.2.1992 was considered. The Respondents showed to the Tribunal, the minutes of the meeting of the DPC held on 2.3.1993 which held him not to be fit to cross EB. In other words, the case of the Officer appears to have been reviewed for the first time two years after the initial DPC. But, this does not appear to be in consonance with the instructions of the Government under F.R. 25 which deals with Efficiency Bar. In the Government of India Orders under F.R. 25 produced at page 105 of the Swamy's Compilation of F.R. 14/S.R's (1994 edition) it is stated in regard to follow up

action when EB is enforced as below :

"The decision to enforce EB should be formally communicated to the Government servant concerned in all cases. If a Government servant is not allowed to cross EB on due date, his case may be reviewed again next year. Such reviews should be done annually in accordance with the above time-schedule".

There is no indication that such annual review was conducted and especially in relation to the year 1992. Also ~~whether~~ in relation to 1993 a review has to be conducted consequent on expunction of one remark. A perusal of the C.R. further shows that for the year 1990-91 the final assessment was a 'very good' Officer. For the year 1991-92 the assessment was again a 'very good' Officer. For the year 1992-93, the assessment was a 'very good' Officer. In view of this, there is reason to believe that when the DPC considered the case of the Officer in 1993 it did not apply its mind to the 'very good' C.Rs earned by the Officer. I have already pointed out that no review DPC in respect of EB for the year 1992 appears to have been conducted. Thus, so far as the permission to cross EB is concerned, the applicant has definitely made out a case for affording him relief.

10. The O.A. is therefore partly allowed and is disposed of by passing the following order :

O R D E R

1. The adverse remarks in the A.C.R. for 1990-91 viz. 'He has also been warned by the C.I.T. Nasik for insubordination vide Memo dt. 1.3.1990.' may be expunged.

2. The case of the applicant for eligibility to cross EB for 1991, 1992 and 1993 should be considered by a Review DPC taking into account the expunction of the above adverse remarks and taking into account the CRs of the relevant years.
3. If the Review DPC decides to permit him to cross EB in any year earlier than 1994 then the applicant should be given all consequential benefits including pay fixation and payment of arrears of pay.
4. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.