

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:478.97

Dated, this Thursday the 28th day of OCTOBER, 1999.

Shri V.R.Desai _____ Applicant.

Shri P.A.Prabhakaran _____ Advocate for the
Applicant.

VERSUS

Union of India, & 3 Ors _____ Respondents.

Shri M.I.Sethna alongwith _____ Advocate for the
Shri V.D.Vadhavkar
Respondents.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

(i) To be referred to the Reporter or not? No
(ii) Whether it needs to be circulated to other Benches
of the Tribunal? No
(iii) Library? No B.N.BAHADUR

(B.N.BAHADUR),
MEMBER(A) 28/1/99.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:478.97
DATED THE 28th DAY OF OCTOBER,99.

CORAM;HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Vinayak Ramchandra Desai,
resident of:
"Vishnu Prasad" 2nd Floor,
69, Ranaid Road,
Dadar(West),
Mumbai - 400 028. ... Applicant.

By Advocate Shri P.A.Prabhakaran.

v/s.

1. Union of India, through
the Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi-110 001.
2. Chief Commissioner of Income Tax,
Mumbai,
3rd floor, Aayakar Bhavan,
M.K.Road,
Mumbai - 400 020.
3. Commissioner of Income Tax,
Bombay City XII,
C-11, 6th Floor,
Pratyaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.
4. Dy.Commissioner of Income Tax
Range 15 C-11,
Pratyaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051. ... Respondents

By Advocate Shri M.I.Sethna alongwith
Shri V.D.Vadhavkar.

Bnd

OF-448.97

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(ORDER)

This is an application made by Shri V.R.Desai seeking the relief from this Tribunal for a direction to respondents to expunge all adverse remarks communicated to him on 31/7/95 and 6/11/95. It also seeks quashing of the order dated 31/12/96 and another order dated 31/3/97. These aforesaid orders are annexed at Annexures B-1, B-2, B-3 and B-4 of the application. One other consequential relief is sought at para 8(d) of the application. Basically, the matter pertains to a prayer against a series of adverse entries recorded by respondent No.4 in the ACR of the applicant for the year 1994-95.

2. The facts of the case as put up by the applicant, are that the applicant had joined Income Tax Department in Group 'C' and through a series of promotions, was made Income-tax Officer, Group 'A' against 1986 quota, which post was later re-designated as Assistant Commissioner of Income Tax. He was promoted as Assistant Commissioner senior scale in 1990 and states that he is eligible for further promotion since 1995. The applicant goes on to give details of his various postings at para-4.2 of the application (he uses this chronological description to make certain contentions in his arguments later).

3. The applicant contends that he had unbearable work load in the year 1993-94, when certain crucial cases were assigned to him. Some displeasure was communicated to him orally in June, 94. The applicant had been pleading that the work given to him needed bifurcation. The applicant goes on to explain in great details how his request went unheeded.

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4. The applicant avers that the adverse remarks in the year 1994-95 were essentially recorded because of the assessments done by him during 1993-94. It is challenging these remarks that the applicant is before us.

5. The respondents have filed a reply in the case denying the allegations made in the application and pointing that it deserves to be dismissed. It is denied that the adverse remarks made in the CR of 1994-95 relate to the work of the applicant of the year 1993-94. It is denied that the sensitive cases, referred to as Shaikh cases, by the applicant were assigned to him. It is stated that these were already in existence. Thereafter, the issue relating to these cases and the facts and the merits and demerits of the role of the applicant have been discussed in great detail. The respondents deny that the applicant had an unmanageable load of work and state that he has finalised assessment amounting only to Rs.43 crores against the target of 50crores. The statement of the respondents goes on to deny the specific details which have been made in the application regarding certain cases, certain assignment of work, etc. They have sought to justify all the adverse entries made and state that the officer has not been systematic in work or consideration in approach in handling important cases. It is denied remarks are made on subjective basis.

6. I have gone through all records in the case and have carefully considered the arguments made by learned counsels on both sides. The learned counsel for the applicant made detailed and strenuous arguments taking me over all records pointedly.

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One of the main purposes and in his arguments was an attempt to show how the adverse remarks where linked to the type of work which was assigned to him and the fact that no adequate staff was provided to him. It was averred that additional strength was asked for from time to time but was not provided. Various documents pointed out by the learned counsel for applicant was carefully noted, and seen by me, though they are not being recorded here page by page. The central point made while referring to them however is carefully considered. Referring to the communication of adverse remarks, it was stated that communicating adverse remarks in instalments is not correct, and while there was no rule against it, it was certainly improper and also that there was delay in communicating remarks. Infact, it is stated that the achievement of disposal of cases amounting to Rs.43 crores assessment was good performance.

7. It was argued that there was delay in disposal of the representation and the time limits laid down were flouted.

8. Learned counsel sought to draw support on various grounds from the citations in the case of R.M.Dayal v/s. Union of India (1998(3)ATC-118).

9. Arguing the case on behalf of respondents the learned counsel referred to the reply and sur-rejoinder. He rested his arguments from substantially on the written statement. Most of these arguments are reproduced in gist in the relevant paragraph above. It was argued that, letter of the Dy.C.I.T. dated 16/12/94 (Exhibit A-4) was important in as much as it shows how in October,94 the Senior Supervisory officer had discussed with



the applicant certain important matters in the case cited and how guidance had been given. The point made is that the adverse remarks have not sprung as a surprise.

10. It was argued by learned counsel for respondents that the entire action cannot be void just because the time schedule in disposing of representations has not been adhered to strictly. It was argued that too much was being made out as if what was given was a punishment when no punishment has been given. Learned counsel made the point that it was not for this Tribunal to reassess the evidence in such cases.

11. It must be said at the outset that the learned counsel for applicant had strenuously referred to which brief details of the factors involving the work given and how several instances were relevant in the adverse remarks being not justified. He has sought to link the work of the department and specially the applicant in minute detail to draw virtually as evidence against the recording of adverse entries. While these have been gone into to see whether any malice is discernable, or whether any arbitrariness is evident, it must be borne in mind that the law settled in such matters is quite clear. It is not for this Tribunal to go into the details of each fact cited as if it was an Appellate Authority. Needless to say, it is relevant for the Tribunal to see if the orders/decisions/judgements are in any way arbitrary or capricious or tainted with malice, even malice in law. This does not mean that fresh assessment of evidence will be done like an Appellate Authority.

~~Appellate Authority.~~ It is in this background that I have viewed

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all details of the cases but have strictly kept to examining the aspects relating to arbitrariness, etc referred to above.

12. It must be said that nowhere in the papers or arguments made is there any justification for concluding that the superior officer had any malice to the applicant. This cannot be seen to be proved from the evidence before us., nor can it be said that the action in recording the type of adverse remarks made would lead one to believe that they are totally arbitrary. There is no evidence to show that they are recorded in a perverse manner, or without basis. Beyond this it would not be possible for this Tribunal to go as if in appeal, or to assess minutely by way of finding as to whether these remarks are too strong or should be watered down or expunged. The cases assigned to applicant, the work load, the adequacy of staff and such factors cannot therefore be gone into very great detail. One would agree with the contention made, that this would be beyond the scope of the Tribunal and outside the scope of settled law.

13. The case of R.M.Dayal v/s. State of Maharashtra cited by Counsel for the applicant refers specifically to All India Service Rules where specific provisions are available. Also it talks of arbitrary exercise of power by the authority writing the CR and other factors. On the facts and circumstances, this case cannot be said to apply or help the present applicant. Another case cited by the learned counsel for applicant is that of R.N.Chaubay v/s. Union of India (1993)23 ATC 80 the point was sought that action for not achieving targets can be taken only when attributable to negligence or deliberate act on the part of the person.



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14. The learned counsel for respondents rebutted this by saying that respondents had not taken any action against him like punitive action or a smaller action. The ratio in this judgement would therefore not apply towards the case of adverse entries in CR.

15. I have gone through this judgement and find that this was a case of penalty and cannot in any way be said to help the applicant since the point here is one of adverse entry in CR. It has also been strongly argued by learned counsel for applicant that communication of adverse remarks in instalments is not a correct thing though that he has agreed that there was no rule. Though it may certainly not be a healthy practice to communicate remarks in instalments as it has been done but no rule has been infringed through this action or any serious prejudice caused against the applicant.

16. Another point made by the applicant is that the appeal filed before the Chief Commissioner of Income Tax has been disposed of (Annexure A-10 and A-11) by him by what is called a cryptic order dated 31/3/97. I have seen the file titled "Adverse Remarks in the ACR of Shri V.R.Desai, Assistant Commissioner of Income Tax, Bombay" which has been produced before us in original. I find therein that the Chief Commissioner of Income Tax has gone through the matter personally and has considered the facts of the case and has personally recorded his orders. It can therefore not be said that he has disposed of the representation of the applicant without application of mind. Thus, it cannot be said that the disposal of the

representation of Chief Commissioner of Income Tax suffers
~~of the representation of Chief Commissioner of Income Tax suffers~~ *Ans*

Ans

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from any infirmity, even though the letter communicating rejection is not detailed, these details have been made available to Tribunal. (AIR 1991 SC 1216).

17. In consequence of the discussions above, this application is hereby dismissed. There will be no orders as to costs.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER (A)

28/10/99

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