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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH  
AT HYDERABAD.

O.A.No. 265 of 1989.

DATE OF ORDER: 26-12-89.

Between:

A.Prabhakar Rao.

..

Applicant.

Vs.

The Union of India and  
others.

..

Respondents.

Sri K.S.R.Anjaneyulu, Counsel for the Applicant.

Sri G.Parameswara Rao, Counsel appearing for  
Sri M.Suryanarayanamurty, Standing counsel  
for respondents.

FORAM:

Hon'ble Sri B.N.Jayasimha, Vice-Chairman.

Hon'ble Sri M.Narasimhamurty, Member (Judicial).

Judgment of the Bench delivered by  
Hon'ble Sri B.N.Jayasimha,  
Vice-Chairman.

-:-

This is an application by a Stenographer in  
the Income-tax Department challenging the Order No.  
Con.Adv/APL/87-88 dated 8--2--1989 passed by the  
(Admn.)  
Chief Commissioner of Incometax, Andhra Pradesh-I  
Hyderabad.

The applicant states that he has been working  
as Stenographer in the Incometax Department and  
completed more than 23 years of service. He became  
the Office Bearer of the Andhra Pradesh Incometax  
Employees Association during the year 1985--86. For

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the year, 1985--86 the Inspecting Assistant Commissioner of Incometax, Range-III, Hyderabad by his letter DO.No.CRS/NGGs/Cir.III/85-86 dated 1--9--1986 communicated adverse entries in his Confidential report. The report did not disclose any specific instances. He states that the remarks are vague, devoid of particulars and unsustainable. The applicant therefore submitted a representation dated 15-10-88 to the Inspecting Assistant Commissioner of Incometax, Range-III, Hyderabad with a request that the remarks which are invalid and unsustainable may be expunged. The Commissioner of Incometax, Andhra Pradesh-I, Hyderabad by his Memorandum No.Con.Adv.12/88 dated 20-9-1988 expunged adverse remarks against columns 12, 15 and 16 but sustained the remarks against columns 14 and 18. Against this the applicant filed an appeal dated 26--10--1988 to the Chief Commissioner of Incometax , Andhra Pradesh, Hyderabad who passed

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an order dated 8--2--1989 rejected<sup>-ing</sup> the appeal. Hence he has filed this application. He contends that the Chief Commissioner of Incometax has not dealt with the contentions raised by him in his appeal dated 26-10-1988 and has not passed a speaking order.

In the counter filed on behalf of the respondents, it is stated that the remarks were recorded considering the overfall performance of the applicant and the material on record. The two different officers under whom the applicant worked have concurred with the same view that the applicant is not willing to accept additional responsibility. Regarding the contention that he was attached to two officers at <sup>the same</sup> time, the respondents state that as per the applicant's own admission, he was attached to two officers only for a period of less than 5 months during the entire year. It is not correct to say that the adverse entries are motivated by malice. The respondents state that it is not correct to say that the Chief Commissioner of Income-tax had mechanically rejected the appeal of the applicant without any application of mind. It is stated that the Commissioner of Income-tax had considered the representation of the applicant and expunged adverse remarks in certain columns and sustained the remarks in some columns. After considering the relevant facts, the Chief Commissioner of Income-tax rejected the appeal.

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For these reasons the respondents oppose the application.

We have heard Sri K.S.R. Anjaneyulu, learned counsel for the applicant and Sri G. Parameswara Rao, learned counsel for Sri M. Suryanarayana Murthy, learned Standing Counsel for respondents.

The main ground urged by Sri K.S.R. Anjaneyulu, learned counsel for the applicant is that the order of the Chief Commissioner of Incometax is not a speaking order and it has therefore to be set aside. For this proposition, he relied on a decision of the Principal Bench of the Tribunal reported in E.G. NAMBUDIRI VS. UNION OF INDIA (1) wherein it was held:

"While it may be accepted that character roll entries are not the same thing as departmental enquiries and do not entail immediate punishment, but adverse entries in the ACRS of an officer can have adverse affect on his promotion and even in some cases his continuation in service. A person can be retired under certain circumstances on the basis of his ACRs. It is, therefore, necessary that ACRs., though of an administrative nature, have to be written carefully and any representation against

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(1) A.T.R.1987(2) CAT 360.

34

adverse entries must be considered carefully and no impression should be given that the authority <sup>concerned</sup> ~~considered~~ did not apply its mind to such a representation. If no reasons are given and a bald order is passed rejecting the representation, it could be constituted that the concerned authority had not applied its mind."

He, therefore, contends that the orders rejecting the applicant's representation and appeal are bald orders and the order passed by the Chief Commissioner of Incometax is not a speaking order and it has therefore to be set aside.

The learned counsel for the applicant also relies on a decision reported in K.RADHAKRISHNA MENON V. COLLECTOR OF CENTRAL EXCISE, COCHIN (2) wherein the Ernakulam Bench of the Tribunal held that "We are not prepared to accept the contention of the respondents that these orders were passed in an Administrative capacity and therefore are above the principles of natural justice which would have required reasons to be indicated.

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In this case in regard to two columns where the adverse remarks were sustained viz., Column Nos., 14 and Column No. 18. The official submitted a representation giving reasons as to why those remarks should be reconsidered.

Col.No. & Heading.	Adverse remarks.	Decision of the C.I.T., A.P. I
14. Willingness to accept additional responsibility.	Inadequate.	Sustained.
18. General remarks.	Whenever called for dictation, generally he is never present in his seat or in office. He is taking service very lightly.	Sustained.

He stated in the representation that as he was attached to two officers, the fact that he was not available to a particular officer does not mean that he is out of office. He also stated that whenever he left the office, he did so on prior intimation. The Order of the Chief Commissioner of Incometax is as follows:

"After careful consideration of the appeal filed by Shri A.Prabhakar Rao, Stenographer, O/O E.E., Valuation Cell, Hyderabad against the order of the Commissioner of Incometax, Andhra Pradesh-I, Hyderabad and the relevant facts/aspects, the undersigned declines to interfere with the order of the C.I.T., A.P.I. confirming the remarks against columns 14 and 18 in the C.R., for the year 1985-86 of the official. The appeal is rejected."

(36)

In this case, the appellate order is not a speaking order. No material is there to show that the grounds urged by the applicant have been considered by the Appellate Authority. The ratio in NAMBUDIRI's case (cited supra) applies to this case and it ~~will be~~ <sup>has to be</sup> ~~assumed~~ <sup>premed</sup> that the concerned Authority has not applied its mind. Therefore, the order rejecting the representation against the adverse remarks has to be set aside.


It is stated in the counter that the post of Inspector is a selection post at the relevant time and the selection was made on the gradation of the ACRs., of the officials.

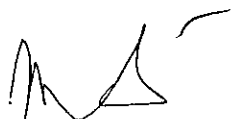
We, therefore, direct the respondents to refer the case of the applicant to a fresh D.PC., for considering his fitness or otherwise for promotion by considering his Confidential Reports, ~~however,~~ without taking into account the adverse remarks made in the Confidential Report for the year, 1985-86. In the event the applicant being graded and found fit for inclusion in the panel, he shall be promoted from the date the person immediately next to him in the panel for the relevant year was promoted.

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With these directions, the application is disposed of. The respondents are directed to implement these orders within a period of three months from the date of receipt of these orders. There will be no order as to costs.

  
(N.N. JAYASIMHA)  
Vice-Chairman.

  
(J. NARASIMHAMURTY)  
Member (Judicial)

Date: 26<sup>th</sup> --12--1989.

  
DEPUTY REGISTRAR (J)  
8-1-90

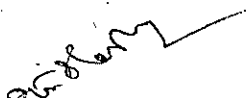
SSS.

TO:

1. The Secretary to Government of India, (Union of India) Ministry of Finance, Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi.
2. The Chief Commissioner of Income Tax, (Admn.) Andhra Pradesh Aayakar Bhavan, Bashir Bagh, Hyderabad.
3. The Commissioner of Income Tax, Andhra Pradesh-I, Aayakar Bhavan, Bashir Bagh, Hyderabad.
4. The Dy. Commissioner of Income Tax, Range-I (Erstwhile I.A.C. Range-III) Aayakar Bhavan, Hyderabad.
5. One copy to Mr. K.S.R. Anjaneyulu, Advocate, 1-1-365/A, Jawaharnagar, Bakaram, Hyderabad-500 020.
6. One copy to Mr. M. Suryanarayana Murthy, SC for I.T. CAT, Hyd.
7. One spare copy.

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*evs*  
Draft by: Checked by: Approved by  
D.R.(J)

Typed by: --- Compared by: ---

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH.

HON'BLE MR.B.N.JAYASIMHA: (V.C.) ✓

AND

HON'BLE MR.D.SURYA RAO: MEMBER (JUDL)

AND

HON'BLE MR.D.K.CHAKRAVORTY: MEMBER: (A)

AND

HON'BLE MR.J.NARASIMHA MURTHY: MEMBER (J) ✓

DATED: 26-12-89

ORDER/JUDGMENT

~~M.A./R.A./C.A./No.~~ in

~~T.A.No.~~

(~~W.P.No.~~)

O.A.No. 265/89.

Admitted and Interim directions  
issued.

Allowed.

Dismissed.

Disposed of with direction.

M.A. Ordered.

No order as to costs. ✓

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