

(Lal)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 722/94.

DT. of Decision : 14.12.94.

G. Penchalaiah

.. Applicant.

vs

1. The Chief Commissioner of Income Tax,
Andhra Pradesh, Ayakar Bhavan,
Basheer Bagh, Hyderabad-500 004.
2. The Commissioner of Income Tax,
Lakshmiapuram, Guntur.
3. The Dy. Commissioner of Income Tax,
_____, 500 002
4. The Income Tax Officer,
Ward I, Kurnool.

.. Respondents.

Counsel For the Applicant : Mr. G.V.R.S.Varaprasad

Counsel For the Respondents : Mr. N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMIN.)

O.A. 722/94.

Dt. of Decision : 14.12.94.

ORDER

(As per Hon'ble Shri A.V.Haridasan, Member (Judl.))

The applicant is a Supervisor Grade-II in the office of the Income Tax Officer, Ward I, Kurnool (R-4).

The following entries were made as under:

Col.No.	Extract of the adverse remarks
18(a) Relations with Superiors	Inadequate
18(b) Relations with Colleagues	Inadequate
21 General Remarks (including particulars of outstanding work, if any)	He lacks in devotion to duty. He is also not amenable to proper discipline and direction of superiors. Therefore complaints against his public relations. His overall performance has been merely good.

This entry in the ACR being adverse remarks was communicated to him by the third respondent by his letter dt. 2.8.1993.

The applicant made a representation against the adverse entries in the ACR to the first respondent, the second respondent on a consideration of his representation passed orders expunging the adverse remarks against the Col.No. 18(b) namely, Relations with Colleagues—"Inadequate" and a portion of the adverse entry against Col.No. 21 namely, (He lacks in devotion to duty. He is also not amenable to proper discipline and directions of superiors held that the remaining is adverse entries would stand). Dis-satisfied with the above order and also finding that he was overlooked in the matter of promotion the applicant filed an appeal to the first respondent which was after consideration, rejected by the first respondent by his order dated 4.5.94. Under these circumstances that the applicant has

filed this application under section 19 of the Admin. Tribunals Act for a declaration that the order of the second respondent in so far as it relates to the confirmation of the adverse remarks is highly illegal, arbitrary and for a direction the respondents to consider the case of the applicant with retrospective effect and, if found fit, to promote him with all consequential benefits including arrears of pay, etc. It has been alleged in the application that the adverse entries in the ACR did not have any factual foundation, that the applicant had not been at any time warned, about complaints from anybody that no short coming in his work given to his superiors and that the 4th respondent who had issued a memo to him for being absent for a half day, though he had already handed over a leave application with a clerk has initiated the ACR in his case including the adverse without any proper assessment of his work and conduct.

2. The respondents in the reply statement have contended that the 4th respondent who initiated the ACR of the applicant had reported everything about the applicant only on a dispassionate assessment of work and conduct, that did not have any enmity towards applicant, that the second respondent had after getting comments from the reporting officer and perusing the records, decided that certain notes in the ACR would be deleted by the remaining would stand, after due application of mind and that the first respondent has on an appeal filed by the applicant considered the entire aspect in detail and has for reasons mentioned in the order refrained from interfering with the order of the second respondent. The respondents have therefore contended that the application is devoid of merits and the same has to be dismissed.

(initials)

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3. We have perused the pleadings in this case and have heard at length the learned counsel for both the parties. We have also perused the file which relates to issue of the impugned order.

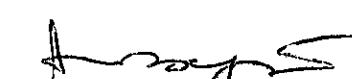
4. The learned counsel for the applicant argued that the submission of his colleagues was inadequate that he was not amenable to discipline etc., has been deleted in the order of the second respondent then the entry that his relationship was not adequate towards superiors cannot stand, because if the person is amenable to discipline and if his overall performance of work is characterised as good, it cannot be said that his relationship with superiors is inadequate. We are not impressed by this argument. Amiability to discipline alone would not make the relationship with superior adequate. In an establishment like the Income Tax Department it is necessary that there should be harmony and understanding between the head of office and staff. Even though a person is amenable to discipline the failure to which would expose him to disciplinary proceedings his relationship with his superior can be cordial, adequate or inadequate also. Therefore mere reasons that the applicant has been classified generally as a good officer and amenable to discipline it cannot be said that the comment that his relationship with superior is inadequate.

5. The learned counsel for the applicant further argues that the observations that there were complaints about public relations of the applicant is not borne out by any records and therefore this part of the adverse entry cannot stand. We have with great care gone through the file by which the representations and appeal of the applicant were considered and

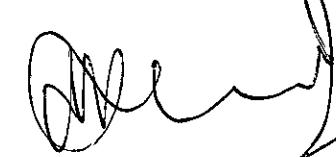
disposed of. The second respondent has considered the case of the applicant on the basis of his representation and the relevant records in a very impartial manner and has ordered expunging of certain adverse remarks, as he felt those remarks were not justified on the basis of the records. Therefore we find that the second respondent has exercised adequate care and caution and we cannot say his decision, is devoid of non-application of mind. The order of the first respondent in appeal against the order of the second respondent also is deleted and struck out. We have seen from the file that the Chief Commissioner of Income Tax has called for their reports from the second respondent and all the relevant materials and has taken the decision that it was not necessary to interfere with the decision of R-2. The arguments that the reporting officer has reason to make an adverse comment against the applicant's conduct and character as he had once issued a memorandum to the applicant when he was absent for unavoidable reasons that too giving leave application to a clerk also was considered by us. We find that the action of the 4th respondent in issuing thememo as no leave application was placed before him and as the applicant was absent till afternoon cannot be faulted. A superior officer being Head of the office is bound to take such action once he was satisfied that the applicant did not attend the office during the forenoon for unavoidable reason and that he had left a leave application with the clerk he decided to drop the matter. This does not show that the 4th respondent had any enmity towards the applicant. Therefore respondent has considered all these aspect which he considered the appeal of the applicant.

6. In the light of what is stated in the foregoing paragraphs and on consideration of the entire facts and circumstances brought out and the pleadings and the facts revealed from the file, we are of the considered view that the applicant does not have a legitimate grievance.

Therefore this application fails and the same is dismissed, leaving the parties to bear their own costs.


(A.B. GORTHI)

MEMBER (ADMN.)


(A.V. HARIDASAN)

MEMBER (JUDL.)

Dictated in Open Court


10-1-95
DEPUTY REGISTRAR (J)

To.

1. The Chief Commissioner of Incom Tax, Andhra Pradesh, Aayakar Bhavan, Basheerbagh, Hyderabad.
2. The Commissioner of Incom Tax, Lakshminagar, Guntur.
3. The Dy. Commissioner of Incom Tax, Tirupathi Range, Tirupathi- 517 501.
4. The Incom Tax Officer, Ward I, Kurnool.
5. One copy to Mr.G.V.S.R.Vera prasad, Advocate, CAT, Hyderabad.
6. One copy to Mr.N.V.Ramana, Addl.CGSC, CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
8. One spare copy.

YLKR