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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 840/95.

Dt. of Decision : 07-10-96.

G. Penchalaiah

.. Applicant.

Vs

1. The Commissioner of Income Tax,
Laxmipuran, Guntur.
2. The Dy. Commissioner of Income-Tax,
Tirupati Range, Tirupathi-517 507.
3. The Income-Tax Officer,
Ward-I, Kurnool.

.. Respondents.

Counsel for the Applicant : Mr. G.V.R.S. Vara Prasad

Counsel for the Respondents : Mr. V. Bhimanna, Addl. CGSC.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

ORDER

ORAL ORDER(PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.))

Heard Mr.G.V.R.S.Vara Prasad, learned counsel for the applicant and Mr.V.Bhimanna, learned counsel for the respondents.

2. The applicant in this OA while working as a Supervisor was given an adverse entry in the confidential report for the year 1993-94. That was communicated to him by the letter No.CR. Sg.No.1/94-95 dated 1-6-94 (Annexure-III). The adverse remarks is against the Col.No.13 and 21 of part-2 of the confidential proforma which was initiated by the officer under whom he was working. Those remarks were confirmed as seen from Col.No.23 of part-3 and further the reviewing officer also commented adversely in Col.No.25 which is the Col. for general assessment. The adverse remarks entered in the confidential report for the year 1993-94 and communicated to the applicant against various Columns indicated above/are reproduced below:-

<u>Heading</u>	<u>Extrate of Adverse Remarks</u> <u>Remarks</u>
Col.No.13 (Timely submission of statements)	.. Inadequate
Col.No.21 (General Remarks)	.. The official has totally neglected the aspect of submission of important monthly statistical reports such as MPR. CAP-I etc., with the result both the officers of this office had to depend on one UDC of Ward-I in order to meet this contingency. The official should learn to show more devotion to duty.
Col.No.23 Does the Reviewing Officer agree with the remarks of the Reporting Officer? If not, the reasons for disagreeing and the extent of disagreement may be mentioned in brief	I agree.
Col.No.24 (General Assessment)	.. The official should improve his performance.

3. The applicant filed an appeal against the same to R-1 vide his representation dated 4-7-94(Annexure-2). That representation was disposed of by R-1 by the impugned order No.Con.Adv.2/94-95 dt. 6-9-94 (Annexure-I) confirming the adverse entries in the CR for 1993-94.

4. This OA is filed challenging the confirmation of the adverse remarks by R-1 by his memorandum No.Con.Adv.2/94-95 dt. 6-9-96 (Annexure-I) and for a consequential relief to expunge the same from the confidential report.

5. The main contention of the applicant for expunging the remarks are as follows:-

The applicant was provided with LDC assistance for submission of the various statistical reports and proper maintenance of the supporting ~~of~~ register. But the post of LDCs were vacant due to some reason or other. Hence, he had to depend on the UDCs to submit the various reports. He had ensured the timely submission of the statements to the Income Tax Officer 1 and 2 taking necessary assistance from UDCs. He submits that the statements were submitted in time as can be seen from the records maintained by him. He further submits that at no time he was ^{informed} ~~performed~~ of his deficiency in not submitting the statements in time. All the time he was under the impression that he was discharging his duties satisfactorily and hence he was not informed of his short coming so far; but surprisingly the adverse remarks in the confidential report for 1993-94 were sprung upon him without any fore-warning or any notice.

6. The respondents have filed a reply. The substance of the reply is that the applicant was not discharging his duties properly. Hence, they have to depend on the UDCs and TAS to complete the work allotted to the Supervisor i.e., the applicant herein. As he was not doing his job ~~is~~ satisfactorily, they have asked the UDCs/TAS to prepare the necessary statements and submit to them directly as they are to be submitted to the Higher officials in time. It is also stated that the inefficiency on the part of the applicant was brought to his notice orally number of times. He was given enough opportunity to explain his case by means of a representation to R-1 when the adverse entries were informed to him. Hence, the applicant cannot have a ground in that he was not informed of his ~~re~~ short ~~comings~~ ^{comings}.

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7. Heard both the parties. The applicant has enclosed the details of the various statements submitted by him in his reply dated 4-7-94. Nowhere it has been brought out in the reply that these statements were prepared by somebody else other than the applicant. The learned counsel for the respondents also could not produce any documentary evidence to prove that the statements have been made out ^{by} UDCs/TAs and not by the applicant. The respondents merely submit that when the applicant was not discharging his duties properly they have no other alternative except to take ^{wise at} recourse of getting the work done through somebody else. If so I do not understand why the respondents could not have informed the applicant in regard to his short comings in writing. Mere stating that the applicant was informed orally will not be sufficient. Even otherwise, some sort of dossier could have been kept regarding the functioning of the applicant in a confidential report folder. But no such confidential folder in regard to the poor performance of the applicant has been maintained. Hence, it has to be held that ^{that} the oral instructions ^{have been} reported ~~by~~ given to the applicant is not authenticated by written warning or confidential records. The respondents ~~themselves~~ submitted that they got the work done through a UDC and other staff as the applicant was not discharging his duties properly. In such a case the proper method is to take disciplinary action against the applicant who is found delinquent in discharging his duties. But no charge sheet has been issued to the applicant. This itself shows that the respondents are not very careful in fore-warning the applicant regarding the short comings of the applicant well in time. When he is not fore-warned ^{regarding} inefficiency/poor performance, if there is any, and no disciplinary action was also initiated it is not justifiable to grant him adverse remark in CR which will come as a surprise to him.

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7. The learned counsel for the respondents submits to the memo conveying the adverse remarks that even in his reply the applicant has admitted that the statements were made by the UDCs. Hence there is no need for the respondents to prove that it was ^{not} prepared by him. I do not consider this statement a very convincing one. The applicant has said that the UDCs were asked to prepare the statement by the officers and he has no objection to give such instructions directly to them. But the statements were seen by him ^{and} hence it cannot be said that the statements were prepared and directly submitted to the respondents by-passing him.

8. In this connection I would like to recall the departmental instructions regarding the communication of the adverse remarks. In the Manual of Office procedure issued by the Director of Inspection, Income Tax department, it is stated that "it would make for better efficiency and contentment of the public services if every reporting officer realized that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to give him at all times the necessary advice, guidance and assistance to correct his faults and deficiencies. If this part of the reporting officer's duty is properly performed there should be no difficulty about recording adverse entries which would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected". From the above it is evident that suitable advice/guidance and assistance should be given to the employees before recording adverse entry in the CR. If the employee persisted in not discharging his duties properly in spite of the advice/guidance and assistance given to him the reporting officer is well within his boundary to record such inefficiency work of the employee in the CR. As stated earlier, in the case of the applicant herein, no such advice/guidance or assistance to correct his fault seem to have been given to him. If they have given him such advice in writing probably the applicant would have corrected himself. In spite of such advice if he has not corrected himself, the respondents on the part of the applicant in the CR.

10. In this connection the observation of the Apex Court in the reported case 1996 (5) SCC 103 (Sukhdee Vs. Commissioner Amravati Division, Amravati and Another) is very relevant. The Apex Court has observed that "the adverse remarks before being given, it is desirable to offer prior opportunity to the employee". It is further observed in the above quoted reference that "it would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks". (Emphasis added). From the above it is clear that an opportunity in writing is to be given to an employee before initiating adverse remarks of the CR. In the present case this procedure has not been followed.

11. The objectivity for writing CR needs no emphasis. Every now and then, both the administrative and judicial sides emphasize the officers initiating report to be more objective in initiating the CR. Objectivity should be the hallmark for the initiation of the CR. In this connection the Apex Court in the reported case 1991 (3) SLR 429 (Subroto Banerji, I.A.S. Vs. Union of India and Others) had observed that the adverse entry not supported by objective data is liable to expunction. In this case there is no satisfactory explanation from the respondents side for not giving fore-warning in writing to the applicant before awarding adverse CR for the applicant. When the respondents complained that the applicant is not discharging duty properly it is for the respondents to bring such deficiency to the notice of the applicant in writing. Mere advise orally, to an employee who is reported to be beyond correction, cannot be a substitute of giving a warning in writing. In view of the enclosures to the reply submitted to R-1 it has to be held that the applicant has not seriously defaulted in submitting the statement. Probabl

failure in one or two occasion should not be taken as a material for giving him an adverse remark. The respondents reply on the judgement of the Apex Court in AIR 1980 SC 563 (UOI Vs. M.E.Reddy) to state that the entry in the adverse remarks cannot be expunged. But this judgement in my opinion is not very relevant to this issue. Even the case law relied on namely, AIR 1991 SC 1990 (UOI Vs. E.G.Nambudiri) is not relevant to this issue.

12. The next adverse entry is in regard to the general assessment. The reviewing officer had entered under the column general assessment as "the official should improve his performance". In what way his performance was deficient during the year has not been brought out. As stated earlier the remarks in Col.13 and 21 of part-2 of CR are not sufficient reasons for adverse comment against the general assessment column. As a matter of fact in part-2 there are number of columns where the qualities of the applicant are to be recorded. It is seen that except under Col.13 and 21 there is no other adverse remarks in any other columns. Hence, it cannot be justifiably said that the reviewing officer has given remarks under Col.24 on the basis of some other entries in the CR format. As the adverse remarks in this connection is vague the same cannot be allowed to continue in the C^K. Hence this remarks is also liable to be expunged.

13. In the result, the impugned order No.Con.Adv.2/94-95 dt. 6-9-94 is set aside. R-1 is directed to ~~xx~~ expunge the adverse remarks entered in Col.13 and 21 of part-2 and in Col.23 and 25 of part-3 and advise the applicant suitably.

14. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member(Admn.)

Dated : The 7th Oct. '96.
(Dictated in the Open Court)

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D.A.NO.840/95

Copy to:

1. The Commissioner of Income Tax,
Lakshmipuram, Guntur.
2. The Dy. Commissioner of Income Tax,
Tirupathi Range, Tirupathi - 517 507.
3. The Income Tax Officer,
ward-I, Kurnool.
4. One copy to Mr.G.V.R.S³vara Prasad, Advocate,
CAT,Hyderabad.
5. One copy to Mr.V.Bhimanna, Addl.CGSC,
CAT,Hyderabad.
6. One copy to Library,CAT,Hyderabad.
7. One duplicate copy.

YLKR

8/11/96
O.A.840/95

Typed By
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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 7.10.96

ORDER/JUDGEMENT
R.A./C.P./M.A.NO.

in

O.A.NO. 840/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED ✓

NO ORDER AS TO COSTS.

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