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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.1281 OF 1996.

DATE OF ORDER :- 11TH FEBRUARY, 1998.

BETWEEN:

Shaik Fayaz Basha,
Stenographer Grade I,
O/o the Commissioner of Income Tax,
Governorpet,
Vijayawada- 520 001. ...

APPLICANT.

AND

1. The Chief Commissioner of Income Tax,
Andhra Pradesh, Aayakar Bhavan,
Basheerbagh, Hyderabad- 500 004.

2. Sri K.Seshagiri Rao,
Senior P.A.,
O/o the Director of Income Tax,
Aayakar Bhavan, Basheerbagh,
Hyderabad - 500 004. ...

RESPONDENTS

COUNSEL FOR THE APPLICANT : PARTY- IN- PERSON

COUNSEL FOR THE RESPONDENTS : MR. V. VINOD KUMAR, CGSC

CORAM :

HONOURABLE MR.H. RAJENDRA PRASAD, MEMBER(ADMINISTRATIVE)

HONOURABLE MR.B.S.JAI PARAMESHWAR, MEMBER(JUDICIAL)

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O R D E R.

(Per Hon. Mr. B.S.Jai Parameshwar, Member (Judicial))

1. Heard the applicant in person and Mr. V. Vinod Kumar, the learned Standing Counsel for the respondent No.1. The respondent No.2 though served in person, has remained absent.

2. The facts giving raise to this O.A. may, in brief, be stated thus:-

(a) The applicant is working as Stenographer Grade I in the office of the respondent No.1. He submits that on transfer from the office of the Deputy Commissioner of Income Tax (Assessments), Special Range, Guntur to the office of the Deputy Commissioner of Income Tax (Assessments), Special Range, Hyderabad, the applicant reported for duty on 3.6.1993 in the office of the Deputy Commissioner of Income Tax (Assessments) Special Range-2 (Administration), Hyderabad and worked for some time.

(b) Subsequently by an office order, he was attached to the Deputy Commissioner of Income Tax (Assessments), Special Range-IV. He submits that he was not assigned any additional responsibility during the year 1993-94 and there was no need of making any remarks against him in his confidential report. He submits that he did not cause any inconvenience, trouble or injury hurting the feelings of either his superiors or his colleagues while working in the said office during the year 1993-94. On the other hand, he submits that he suffered humiliation on the influence of his immediate official superior. He states that he attended to the work of the Deputy Commissioner of Income Tax (Assessemnts) Special Range IV and also that the Deputy Commissioner of Income Tax (Assessments)

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Special Ranges II and III and that he discharged the duties faithfully and carried the instructions of his official superiors obediently.

(c) Vide D.O.letter No.Con.798/94/1728 dated 27.7.1994(Annexure-A9) he was communicated the adverse entries found in the annual confidential report for the year 1993-94.

(d) On 4.1.1994 as per Annexure-A.10 the applicant submitted his representation. The Commissioner of Income Tax, Andhra Pradesh (II), Hyderabad considered the adverse remarks as well as the representation of the applicant and by the confidential letter of even number dated 24.10.1994 it was informed that the adverse remarks made against the columns 9 and 10 of the ACR were expunged and other adverse remarks were sustained.

(e) In the meanwhile it appears that the respondent No.2 who happened to be his junior was promoted to the next higher grade.

3. The applicant has filed this O.A. for the following reliefs :-

(i) The petitioner is requesting the Hon'ble Tribunal to direct the Chief Commissioner to expunge the remarks against Cols.14, 15 and 18 of the confidential report of the petitioner for the year 1993-994.

(ii) Consequently the petitioner is requesting the Hon'ble Tribunal to direct the Chief Commissioner to promote the petitioner to the cadre of Senior P.A. with effect from 23.9.1994 on which date the respondent No.2 Sri K.Seshagiri Rao, Stenographer Grade I was promoted as Senior P.A. who is junior

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to the petitioner.

4. The applicant submits that he discharged his duties faithfully and that the adverse entries contained in the ACR for the year 1993-94 were not warranted and liable to be expunged.

5. The respondent No.1 has filed the counter justifying the expunged entries in the ACR of the applicant. He further submits that the officer who made the entries had sufficient opportunity to personally weigh the work of the applicant; that the said assessment of the officer was expunged and confirmed by the higher authorities in the official line and that there are absolutely no reasons for granting any reliefs in this O.A.

The respondent No.2 had not filed any separate counter.

6. The point for consideration is whether there is any justification for expunging the unexpunged remarks contained in the ACR of the applicant for the year 1993-94. We have perused Annexure-A.9 in which the details of the adverse entries found in the ACR are mentioned. The respondent specifically contends that the Reporting officer had assessed the work the conduct of the applicant and also cited the instances wherein the applicant proceeded on leave when the work in the office was at optimum level and that the remarks were considered by the higher authorities and found satisfied and allowed to remain.

7. The applicant during the course of his submissions made an attempt to convince us that the adverse entries made by the reporting officer were not justified. We even enquired about the incidents mentioned by the reporting officer in the ACR. Further his explanation appeared to be to be us/impolite. In the explanation the applicant attempts to

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define the word 'adverse' as if his official superiors were not aware of the said definition.

8. The Court or Tribunal cannot interfere with the remarks made by the officer who had an opportunity to assess the work and conduct of his subordinates unless it is shown that the said adverse remarks were made out of bias or malice. In the instant case, the applicant has not made out a case that the Reporting officer made those adverse remarks in the ACR out of any malice or bias. If really the applicant had obeyed the orders of the Reporting officer, we feel that the Reporting officer would not have made such remarks in the ACR. There was absolutely no reason for the reporting officer to quote certain instances wherein the applicant ^{had} misbehaved and vitiated the atmosphere in the office.

9. In this connection, we feel it proper to reproduce herein, the observations made by the Hon'ble Supreme Court of India in the case of STATE OF ORISSA v. JUGAL KISHORE KHATUA (1997 SCC(L&S) 1768). In para 6 the Hon'ble Supreme Court has been pleased to observe as follows :-

"6. The Tribunal has also expressed the view that the adverse remarks were not justified in view of the substantiation report and the comments sent by the Reporting Officer. In taking this view the Tribunal has transgressed the limits of its jurisdiction. While exercising the power of judicial review in respect of adverse remarks in the ACR, the Tribunal does not function as an appellate forum in respect of the assessment made by a superior officer about the performance of an employee working under him. Such assessment is made by the reporting authority which is subject to scrutiny by the countersigning authority as well as by the higher authority which considers the representation of the employee against the remarks. In the present case, we find that the performance of the respondent had been assessed not only by the Reporting Officer but also by the countersigning authority and the Commissioner of Commercial Taxes, while dealing with the representation of the respondent, has agreed with the said assessment. The Tribunal was in error in

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interfering with the said assessment as reflected in the adverse remarks made in the ACR of the respondent."

10. The Commissioner of Income Tax -II, Hyderabaad has considered the representation of the applicant and has given some relief and found necessary to retain certain adverse remarks. He is an impartial officer. He has considered the remarks as well as assessment made by the reporting officer and he has allowed to remain certain adverse remarks in the ACR. In this view of the matter, the adverse remarks in the ACR of the applicant for the year 1993-94 have been scrutinised by the higher authorities and found them to be in order. In that view of the matter, we feel that there is no reason to interfere with the adverse remarks made in the ACR.

11. The applicant may, if so advised, submit a detailed representation to the to the Chief Commissioner of Income Tax, A.P. Hyderabad, against the unexpunged adverse remarks in the ACR for the year 1993-94 within one month from the date of receipt of a copy of this order. If such a representation is received, then the Chief Commissioner of Income Tax may consider the same in accordance with rules and uninfluenced by any of the observations made by us during the course of this order.

12. With the above observations, the O.A. is disposed of. No order as to costs.

B.S.JAI PARAMESHWAR
11.2.98
(B.S.JAI PARAMESHWAR)
MEMBER(JUDICIAL)

H.Rajendra Prasad
(H.RAJENDRA PRASAD)
MEMBER(ADMINISTRATIVE)

DATED THE 11TH FEBRUARY, 1998.

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Realty Register

O.A.1281/96.

To

1. The Chief Commissioner of Income Tax,
Andhra Pradesh, Aayakar Bhavan,
Bahseerbaagh, Hyderabad-4.
2. One copy to Mr. Shaik Fayaz Basha, Party-in-person,
O/o the Commissioner of Income Tax,
Governorpet, Vijayawada-1.
3. One copy to Mr.V.Vinod Kumar, Addl.CGSC. CAT.Hyd.
4. One copy to HBSJP.M.(J) CAT.Hyd.
5. One copy to D.R.(A) CAT.Hyd.
6. One spare copy.

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE

VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

The Hon'ble Mr. B. S. Jai Parameswar M(A)

DATED: 11 - 2 - 1998.

ORDER/JUDGMENT:

M.A./K.A./C.A.No.

in
O.A.No. 1281/96.

T.A.No. (W.R.)

Admitted and Interim directions
issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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