

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 2/8/2001

OA No.523/1994

R.C.Prasad s/o Shri Thakur Prasad r/o F-14, Madhuvan Colony, Tonk Phatak, Jaipur, presently posted as Tax Recovery Officer, Department of Income Tax, Jaipur

..Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Govt. of India, New Delhi.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur
3. Deputy Commissioner of Income Tax, Range-II, Jaipur, Department of Income Tax, NCRB, Statue Circle, Jaipur

.. Respondents

Mr. P.P.Mathur, proxy counsel to Mr. R.N.Mathur, counsel for the applicant.

Mr. Gaurav Jain, proxy counsel to Mr. N.K.Jain, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

This application has been filed by the applicant against the adverse remarks communicated to him for the year 1993-94 vide letter dated 9.3.94 (Ann.A1). The applicant had submitted a representation to the Chief Commissioner of Income Tax (CCIT), Jaipur and while disposing of the representation, the CCIT expunged <sup>part of</sup> the adverse remarks recorded in Col. 21 of the ACR as also the adverse entries in Col. No. 18(2) and 18(3), rest of the adverse remarks in



Col. No. 14, 15, 18(1) and other remarks in respect of Col. No. 21 were maintained. This decision of the CCIT has been communicated to the applicant vide letter dated 6.9.94 (Ann.A2). The applicant's prayer in this OA is that the impugned communications Ann.A1 and Ann.A2 may be set-aside and quashed and respondents be directed to expunge the remaining adverse remarks in the ACR for the year 1993-94 and that these remarks shall not be taken into consideration at any time in the service career of the applicant.

2. During the year under consideration, the applicant was posted as Tax Recovery Officer (TRO) under administrative control of DCIT Range-II. He was also looking after the recovery work of the wards/circles falling under the administrative control of DCIT Range-I and DCIT Range-II and Special Range-I, Jaipur. DCIT Range-II, as the reporting officer, has assessed the applicant's performance as 'inadequate' in Col. No. 14, 15, 18 and 21 of the ACR. The period of performance covered is 1.4.93 to 24.2.94. Applicant's plea is that these remarks have been communicated mainly on the ground that applicant did not accept suggestions of the reporting officer to submit an adverse report against one of the Inspectors Shri T.C.Jhanjharia who is stated to have annoyed the reporting officer. Applicant submits that before making any adverse entry, he should have been given an opportunity on the areas of weaknesses and he should have been asked to explain his conduct as enjoined in the directions of the Apex Court in the case of Kamal Kant Chaudhary v. State of Bihar. The applicant contends that the adverse remarks are expressly illegal, arbitrary and unreasonable as the reporting officer has not given even a single instance to corroborate such adverse entries. During the entire year, he was not issued any memo and nor he was asked to improve his work. Regarding the adverse entry in Col. No. 14, the applicant's plea is that the same relates to irrecoverable amount

of Rs 2.6 crores and as TRO he has no power to wipe off such an irrecoverable amount. He has to depend on the recommendations of the Income Tax Officer and after simple verification of the facts, he has to only certify that the amount is, in fact, irrecoverable. It has been stated that one part of his duties was judicial function on which the reporting officer had no jurisdiction, but in that area also adverse entries have been made by the reporting officer. Another plea taken by the applicant is that during the year he was having shortage of staff and he apprised the concerned authority about the same but his plea was not accepted. In the remarks in Col. 18(1) the reporting officer has adversely communicated that TRO did not take effective action in cases of payment of above Rs. 50,000 and of attachment of immovable properties. He has contested this remark saying that the reporting officer has failed to mention even a single case to support his contention in which no action has been taken by the applicant. Similarly in Col. No. 21, it has been stated that "officer is evasive and is not result oriented" but the officer has not given a single instance to substantiate this assessment as the reporting officer. It has not been stated specifically in which of the cases the applicant was evasive and was not result oriented.

3. The applicant has referred to the Govt. of India instructions contained in DG P&T letter No. 27/2/83-vig.II dated 21st January, 1983 wherein it has been prescribed that there are only two levels of writing reports namely reporting officer and reviewing officer and no other authority can make entries in his ACR. But in the case of the applicant the reporting officer has communicated instructions and has invited comments from 3 other Deputy Commissioners, of his own level, and utilised their comments for judging the applicant's performance. Thus, the applicant submits that this is a proof that the reporting officer is annoyed, biased and

prejudiced against him and he has gone beyond the rules and recorded adverse entries in his ACR. He could not have invited comments from other Deputy Commissioners and could not have taken their remarks in the ACR. In view of this the applicant contends that the adverse remarks deserves to be ignored in his ACR.

4. The respondents have filed a written reply to the OA and have stated that the applicant while holding the post of TRO did not act in accordance with the norms of his work and his work was not found satisfactory. On evaluation of his work, the reporting officer has made adverse remarks rightly. The reviewing authority reviewed these remarks and thereafter communicated the adverse remarks to the applicant vide letter dated 9.3.94. On applicant's representation to respondent No.2, respondent No.2 called for the remarks of the reporting officer and also comments of the reviewing authority. After considering all the facts and circumstances and the points raised by the applicant in his representation, passed an order accepting his representation partly. Remarks given in Col. No. 18(2), 18(3) were expunged and rest were upheld. It has been denied that the adverse entries in the ACR were made with ulterior motives and any bias on the part of the reporting officer. The respondents content that no illegality has been committed while making entries in the ACR and the adverse remarks are based on the objective assessment of the reporting officer. There should normally be no scope for the Courts to interfere in the discretion exercised by the competent administrative authorities. It has been mentioned that there is a system of reporting of the work every month which provides indication of the quality of work done or disposals made. The applicant, during the year was advised that he was not sending the monthly reports in time and that he was not covering all cases in his report. His monthly DO letters during 1993-94 covered only 22 cases out of 51 cases of demand

exceeding Rs. 50,000 and 5 cases of attachment of immovable property as against 12 cases. He did not take any action against 29 cases of demand exceeding Rs. 50,000 and 7 cases of attachment of immovable property. It is the plea of the respondents that ACR is based on the subjective assessment of the reporting and reviewing officers and the jurisdiction of the Tribunal in such a matter is very limited. ACR of the applicant has been written taking all the factors into account by the reporting officer and has been reviewed as required under the procedure. The appellate authority after taking into account the remarks of the reporting officer and comments of the reviewing officer has decided to expunge certain remarks while maintaining the rest. Refuting the contention of the applicant that the reporting officer was prejudiced for various reasons, one amongst them was that the reporting officer was expecting the applicant to give adverse report of Shri T.C.Jhanjharia, the respondents have stated that TRO had been asked in December, 1993 to obtain and forward fortnightly performance reports of the work of not only Shri Jhanjharia, but that he was also asked to send report of the performance in respect of Shri Birdhi Chand, Supervisor in the office of TRO. The TRO had to send reports about the performance and punctuality of Shri Birdhi Chand and performance report in respect of Shri Jhanjharia, but these were not sent and thus, the applicant violated the orders of higher authorities. The respondents have stated that their action was correct and in accordance with law and has taken into account such disregard of the orders of the superior officer.

5. In this case the respondents had been directed to produce the records relating to ACR of the applicant for the year 1993-94 and the same has been made available to us and has been seen in detail.



6. We have heard the learned counsel for the parties and perused the written submissions on either side and the detailed documents annexed alongwith written statements.

7. The learned counsel for the applicant cited following cases, (1996) 8 SCC 762, State Bank of India v. Kashinath Kher; 1996 (5) SCC 103, Sukhdeo v. Commissioner Amaravati Division; (1996) 2 SCC 363, UP Jal Nigam v. Prabhat Chandra Jain; (1996) 10 SCC 369, M.A.Rajsekhar v. State of Karnataka; (1993) 25 ATC 125 (CAT-Lucknow Bench), Keshava Datta v. Director, Industrial Toxicology Research Centre, Lucknow and ors.; (1994) 26 ATC 418 (CAT-Chandigarh), S.C.Jain v. State of Punjab and Anr.; (1999) 1 SCC 529, State of Gujarat and Anr. v. Suryakant Chunilal Shah; (1988) 6 ATC 18, S.R.Julka v. Union of India and ors.; (1994) 27 ATC 578, State of M.P. and ors. v. Vishnu Dutta (VS) Dubey and ors. and contended that it has been held in these decisions that the purpose of ACR is to help the individual to recognise the areas of deficiency and make efforts to overcome his disabilities. The remarks in the ACR have direct bearing on the growth of the career of an individual and these are required to be recorded with great care and without any prejudice. Instead of giving vague and general remarks, the reporting officer while making adverse entries must indicate specific instances where the officer reported upon, in the assessment of the reporting officer, has been found wanting. The learned counsel for the applicant had taken a plea that at no stage during the year the applicant was warned about deficiency in his performance and suddenly adverse entries have been accorded in his ACR. Thus, he contended that it was against the principles enunciated by Hon'ble the Supreme Court and also in a number of judgments by the Central Administrative Tribunal. The learned counsel also took exception to the action of the reporting officer in obtaining remarks from 3 other Deputy Commissioners, in view of the provisions of the

rules which provide that entries in the Confidential Reports be made by the reporting officer and the reviewing officer and other authorities are not permitted to make entries in the ACRs. The learned counsel also stated that on representation made by the applicant against the adverse remarks, the appellate authority has only given a cryptic reply without giving reasons or comments on the remarks specifically raised by the applicant in his representation. The representation has been disposed of by merely stating that CCIT has held that there is no reason to expunge the adverse remarks relating to his performance as recorded in Col. 14, 15, 18(1) and 21 of the ACR. The learned counsel contended that this was a mechanical disposal of his representation without proper examination and application of mind.

8. The learned counsel for the respondents argued that there was no illegality or infirmity in making adverse entries and these have been based on the applicant's performance relating to specific tasks which he was expected to perform. He has been found lacking in specific areas which have been mentioned in the adverse entries. On the plea of the applicant that during the year he was not given any warning or caution, the learned counsel stated that there is a system of getting periodical performance report and that itself indicates the quality of performance of the officer. He also referred to the communication from the reporting officer to the applicant saying that he was not submitting reports in time. The learned counsel asserted that there was no bias on the part of the reporting officer and also mentioned that the applicant has not impleaded any officer by name against whom malafide is alleged.

9. We have studied in detail the file relating to ACR of the year 1993-94. We find that the representation of the applicant has

been dealt with extensively and every issue raised by him has been commented upon. The disciplinary authority i.e. CCIT obtained remarks from the reporting officer and also comments of the reviewing officer. These are available on record. We find that every plea raised by the applicant has been covered with detailed response. Based on the material brought before the CCIT, he has observed in his order that the applicant has failed miserably to achieve the targets set out by the CIT for the year 1993-94. He has also observed that in respect of demands not recoverable, the calculations made by the applicant are not in accordance with prevailing instructions. While expunging the remarks in Col. 18(2) and 18(3) and a portion of Col. 21, the CCIT specifically commented that these are not based on any substantive evidence and these are expunged. We are satisfied that the representation of the applicant has been dealt with extensively covering all the issues in detail and the applicant should not have any grievance on that score.

10. We also do not find anything illegal or irregular on the part of the reporting officer in inviting comments on the working of the applicant from the other DCITs', for whose ranges also the applicant was functioning as the TRO. This, in fact, would only prove that the reporting officer did not confine the ACR purely on his own subjective assessment, but also took into account the assessment made by the officers of his own rank about the working of the applicant. This also is indicative of the unbiased approach adopted by the reporting officer. The rules, of course, do not permit that more than one officer will make entries in the ACR as the reporting officer and in this case the entries have actually been made only by one reporting officer and thus, there has been no infringement of the procedural norms.



11. Now coming to the next ground that at no stage during the year under review, the applicant was cautioned about slackness in his working or his attention was ever drawn as to the areas where his performance was found wanting and he had been asked to improve or his explanation was ever called. We do not find substance in this plea of the applicant. In response to this plea of the applicant, the reporting officer has merely stated that the applicant was advised in writing that he was not sending the monthly D.O. letters reporting the progress of various terms of work relating to his charge. From the file relating to the ACR in question, which has been placed before us for perusal, we find that the reviewing officer i.e. the CIT has refuted this ground taken by the applicant in his appeal to the CCIT against the adverse remarks, by stating that in every monthly D.O. written to TRO, the reporting officer appears to have reminded to send monthly reports in all cases of demands above Rs. 50,000/- as also is attachment of immovable properties. CIT's contention that officer concerned was being watched and there was no necessity for calling for a separate explanation in as much as the officer was being apprised regularly in this regard.

12. In State Bank of India v. Kashi Nath Kher, (1996) 8 SCC 762, Hon'ble the Supreme Court observed as under :-

"The object of writing the confidential report is two fold i.e. to give opportunity to the officer to remove deficiencies, and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The officer should show objectively, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the



individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service, they should be written by a superior officer of high rank."

13. In Sukhdeo v. Commissioner Amaravati Division, (1996) 5 SCC 103, the following law is laid down:-

"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. It should also be mentioned that he was given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record".

14. In U.P. Jal Nigam v. Prabhat Chandra Jain, (1996) 2 SCC 363 their Lordships held that for down grading the ACR, the authority has to record reasons and inform the applicant in the form of advice.

15. In M.A.Rajasekhar v. State of Karnataka, (1996) 10 SCC 369 their Lordship stated that the superior authority is obliged to guide the subordinate by pointing out his deficiencies and since this exercise has not been done, the said adverse remark was stated to be not consistent with law.

We have quoted these observations/directions of the Hon'ble the Supreme Court as found in 1993 (3) SLJ 227 (CAT) in the case of Kishan Lal Manhas v. Union of India and ors.

16. Thus, the law is well settled that if during the year for which ACR is written, the superior officer is obliged to guide the subordinate by pointing out his deficiencies and if that has not been done then the adverse remarks are not sustainable in law. In the case before us, it is admitted by the respondents that during the year no such exercise was undertaken and on no occasion any explanation of the applicant was called, but then in respondents' view this aspect had been taken care of when the reporting officer was monitoring the working of the applicant through monthly D.Os. and when the reporting officer advised the applicant on occasions that the monthly reports were not been sent by him regularly and timely. This, in our considered view, does not mean that the reporting officer actually advised the applicant about the areas where his performance was found inadequate. There is nothing on record to show that prior to making these adverse entries, the applicant was asked to explain about any deficiencies/shortfalls in his performance. It is only at the time of writing his performance appraisal report for the year 1993-94, the reporting officer had made entries against some of the items which are in the nature of adverse remarks. Reporting officer's assessment of the applicant has also been endorsed by the reviewing officer. On appeal, the CCIT has expunged remarks against item 18(2), 18(3) and partly against item No. 21, while retaining other adverse remarks. In view of the law established by pronouncements of the Apex Court in a catena of cases, the adverse remarks in the instant case, are not sustainable and same deserve to be ignored.

17. In the light of discussions aforementioned, we direct the respondents to treat the entries recorded in Column Nos. 14, 15, 18(1) and 21 of the ACR of the applicant for the year 1993-94 as honest. The respondents are directed to expunge these remarks and not

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to treat them as adverse against the applicant for any purpose. In the facts and circumstances of the case, there is no order as to costs.

*Champ*  
(A.P.NAGRATH)

Adm. Member

*S.K. Agarwal*  
(S.K.AGARWAL)

Judl. Member