

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2918/2015

This the 2nd day of March, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

M. Srinivasa Rao S/o late Appa Rao,
R/o 2B, VK Sorento Apartments,
13/16, P.S.S. Street, T. Nagar,
Chennai-600017.

... Applicant

(By Advocate: Mr. S. K. Gupta)

Versus

1. Union of India through its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
2. Secretary (Personnel),
Government of India,
North Block, New Delhi.
3. Chairman, Central Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi.
4. S. S. Khan, Member CBDT (Retd),
C/o Chairman, CBDT,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

... Respondents

(By Advocates: Mr. Hanu Bhaskar)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was promoted as Commissioner of Income Tax (CIT) in the year 2008 with effect from July, 2007. In May, 2009 he

was transferred and posted as CIT (Appeals), Tirupathi where he joined on 04.06.2009. He was also given additional charge of CIT (Appeals), Hyderabad. He was conveyed ACR for the period 2009-2010 vide Board's letter No.A-32011/05/2013 dated 19.12.2013, and letter No.D.O.Conf.528(3)/2013-14/Gaz dated 24.12.2013. The said ACR revealed that the reporting officers had graded him 'Very Good', however, the reviewing officer downgraded the grading from 'Very Good' to 'Good'. The applicant filed a representation dated 07.01.2014 against the ACR for the period 2008-2009 and the downgrading of the ACR for the year 2009-2010 (up to 31.12.2009) from 'Very Good' to 'Good' by the reviewing officer. The competent authority declared the period 2008-2009 as 'no ACR period' and rejected the representation in respect to downgrading of the ACR for the period 2009-2010 (up to 31.12.2009) from 'Very Good' to 'Good'. Aggrieved of the rejection of his request for upgradation, the applicant submitted a memorial to the Hon'ble President vide his representation dated 09.04.2014 followed by a reminder dated 12.05.2014, and another representation dated 16.07.2014. The applicant was communicated vide letter dated September, 2014 (Annexure A-3) that there is no provision for any further representation/appeal/memorial after a decision has already been taken by the competent authority in the matter represented upon. Aggrieved of the decision of the respondent No.3 and of the

President disposing of his memorial, the applicant has filed this OA seeking following reliefs:

- “(i) quash and set aside the ACR of the applicant for the year 2009-10 (upto 31.12.2009) to the extent reviewed by respondent no.4 and also quash and set aside the impugned communication dated 10/03/2014 (Annexure-A-2) to the extent rejecting the representation of the applicant for upgradation of the ACR for the period June 2009 to Dec, 2009 and also quash and set aside the communication issued in the month of September, 2014 (Annexure-A-3);
- (ii) Direct the respondents to treat the ratings recorded by Reporting Officer as “Very Good” for all purposes, and award all consequential benefits.
- (iii) May also pass any further order(s), direction(s as be deemed just and proper to meet the ends of justice.”

2. The challenge to the impugned ACR for the period 2009-2010 (up to 31.12.2009) as also the impugned rejection of representation vide order dated 10.03.2014, and communication dated September, 2014 is two-fold – (i) that the respondent No.4 had no authority to review the ACR of the applicant on account of his impending retirement on 31.01.2010; and (ii) the respondent No.4 did not consider the relevant factors, and his opinion is contrary to facts, besides being vague.

3. Insofar as the challenge to the order dated 10.03.2014 rejecting the representation of the applicant for upgradation of his

ACR for the year 2009-2010 is concerned, it is argued that the respondent No.3 did not consider the issues/facts raised in the representation and the relevant material has been ignored, which has vitiated the decision as communicated vide order dated 10.03.2014.

4. Regarding the refusal of the President to examine the memorial/representation, it is stated that under similar circumstances, one D. Sudhakar Rao, another officer who was also posted as CIT (Appeals) submitted a similar memorial, which was not only considered but his ACRs were also upgraded by the President, but similar treatment has been denied to the applicant.

5. We have heard the learned counsel for parties and perused the record on file.

6. The specific case of the applicant is that he joined as CIT (Appeals), Tirupathi on 04.06.2009. There were only 62 appeals pending before him. Considering the lesser number of cases, CCIT-III, Hyderabad and DGIT (Inv), Hyderabad transferred some more appeals to CIT (Appeals), Tirupathi by August, 2009. Files reached in the office in September, 2009 whereupon notices were issued to parties. It is further stated that in September-October, 2009 the applicant was deputed to election duty as Election Observer in Maharashtra Assembly elections. Fresh notices were issued in November, 2009. However, there was an agitation in the entire State

of Andhra Pradesh due to announcement of separate Telengana State on 09.12.2009. The entire work of the office was paralysed which prevented the applicant from disposing of adequate number of appeals as per action plan target by 31.12.2009. The applicant, however, made-up and achieved his target by quickening the pace of disposal from January, 2010 to March, 2010. The applicant was graded 'Very Good' for the period 2009-2010 (up to 31.12.2009) by the reporting officer. However, the reviewing officer, i.e., respondent No.4, who was retiring on 31.01.2010, downgraded the ACRs of the applicant from 'Very Good' to 'Good' with the following comments:

“Considering the low disposal of appeals rated as ‘Good’”.

7. In para 4.5 of the OA the applicant has specifically mentioned that with effect from 04.06.2009 up to 24.07.2009 when the applicant was holding the charge of CIT (Appeals), Tirupathi, Shri A. P. Pawar, CCIT-III, Hyderabad was his reporting officer, and for the period thereafter up to 31.12.2009, Smt. Radha Srivastava, CC-III (In-charge) was the reporting officer, whereas the respondent No.4 continued to be the reviewing officer. The reviewing officer was to retire on 31.01.2010.

8. The applicant has relied upon Government instructions dated 11.09.1981 which prescribe the guidelines for writing ACRs and review thereof by the reporting and reviewing officers who are

retiring or transferred. An extract of the instructions is placed on record as Annexure A-9. Relevant portion relied upon reads as under:

“Transfer of Reporting and/or Reviewing Officer in the middle of the reporting year. – If an officer is transferred during the middle of the reporting year, he should immediately write the CRs of his subordinates in respect of the year for the period up to the date of his transfer, provided that the period is at least six months, and the reports should be submitted to the reviewing authority who will retain them in his custody and record his remarks in the reviewing portions in the last of the reports for the year, taking into account the reports for the previous portions of the year also, submitted to him by the transferred officers, at the time of their transfer. If the reviewing authority is transferred not simultaneously with Reporting Officer, but after sometime, he will hand over such reports to his successor and the successor will review the reports if he happens to have three months’ experience. Otherwise, the previous reviewing authority will review the reports at the end of the year. If, however, a reviewing authority retires while there is no change in the Reporting Officer and the subsequent reviewing authority does not have three months’ experience of the work and conduct of the reportee, the reviewing portion will be left blank with a suitable note, recorded therein. This note can be recorded by the new reviewing authority who could not review the report because he did not have even three months’ experience, or by the Reporting Officer himself.”

9. Under the aforesaid instructions, where an officer is transferred during the middle of the reporting year, he is required to write the confidential reports of his subordinates in respect of the year for the period up to the date of his transfer, provided that the

period is at least six months, and the report should be submitted to the reviewing authority who will retain the same in his custody and record his remarks in the reviewing portions in the last of the reports for the period. It is further provided that if the reviewing authority is transferred not simultaneously with the reporting officer, but after some time, he will hand over such report to his successor, and the successor will review the same if he happens to have three months' experience. Otherwise, the previous reviewing authority will review the report at the end of the year. It is also stipulated that if the reviewing authority retires while there is no change in the reporting officer, and the subsequent reviewing authority does not have three months' experience of the work and conduct of the reportee, the reviewing portion will be left blank with a suitable note recorded therein, and this note can be recorded by the new reviewing authority who could not review the report for not having three months' experience, or by the reporting officer himself. From the ACR of the applicant for the period 01.04.2009 to 31.12.2009 (Annexure A-1), we find that the period for which the reviewing authority had reviewed was about seven months.

10. The applicant made a detailed representation dated 07.01.2014 mentioning the following facts in para 6:

"6. I have taken charge as CIT(A), Tirupati on 04.06.2009 wherein the workload of appeals is very

low. The High Demand appeals were 23 and other appeals were at 62 and 2 cases of Search & Seizure Appeals. In view of the low pendency of work, I have also been assigned about 124 appeals from Hyderabad jurisdiction. Further 144 no. of Search & Seizure appeals were also notified from CIT(A)-I, Hyderabad. I have been directed to camp at Hyderabad also to dispose of the appeals from Hyderabad. Accordingly, I had camped at Hyderabad frequently on a fortnightly basis, also during this period. The no. of fresh appeals filed during the period 06/2009 to 31.03.2010 were only 31. Hence, total appeals available for disposal in the year 2009-10 were 384. Thus, the post of CIT(A), Tirupati is not having full workload to meet the Action Plan Targets. Despite this, I have fully justified the work and disposals to meet the targets."

The applicant has also quoted the norms for award of points for disposal. The norms are as under:

"Appeals involving demand upto Rs.1 crore - 1 point
Appeals involving demand above Rs.1 crore - 2 points
Appeals on search and seizure assessments - 5 points"

This representation has been rejected vide the impugned order dated 10.03.2014 giving the following reasons:

"WHEREAS, the Competent Authority has carefully considered the facts of the case and the submissions made by the applicant Officer. The Reviewing Officer has essentially downgraded his ACR on account of low disposal of appeals as on December, 2009. According to Action Plan for CIT (Appeals) during the relevant period, each CIT (Appeals) was expected to dispose off 60 disposal units per month. Accordingly, the applicant Officer's pro rata disposal target for the period June 2009 to December 2009 would work out to $60 \times 7 = 420$ disposal units. As against this, according to the monthly disposal reports of CIT (Appeals) as submitted by the

applicant Officer for the month of December, 2009 column 12(b), he had achieved 184 disposal units up to the end of December 2009 which was only 43% of the pro-rata target. Therefore, the Reviewing Officer's observations regarding low disposal is factually correct."

11. The aforementioned plea taken by the applicant in his representation in para 6 has been noticed by the respondent No.3 in the impugned order dated 10.03.2014, but while rejecting the plea the respondent No.3 adopted its own methodology without considering the specific averments made by the applicant. The respondent No.3 has taken the period of the applicant as seven months and the average points to be earned by the applicant have been mentioned as 60 per month, and multiplying 60 by 7 months, an opinion has been formulated that the applicant was required to earn 420 disposal units, whereas as against this, he had achieved only 184 disposal units, which is only 43% of the *pro rata* target.

12. After hearing the learned counsel for parties and perusing the record, we find that the total period for which the reviewing officer had to review the performance of the applicant was about seven months, i.e., w.e.f. 04.06.2009 to 31.12.2009. During this period of seven months, the applicant was on election duty for two months, i.e., September-October, 2009, which fact has not been disputed by the respondents in their counter affidavit. He has further mentioned that there was an agitation due to announcement of creation of the

State of Telengana during December, 2009 and the entire office work was paralysed. Even this fact has not been disputed in the reply. The applicant has also pleaded that he was given additional charge of CIT (Appeals) Hyderabad and he was required to shuttle between Tirupathi and Hyderabad, spending 15 days each at both the stations. Obviously, the shuttling affects the regular performance at a particular place. The applicant has also pleaded that some fresh cases were received by him from CCIT-III, Hyderabad and DGIT (Inv), Hyderabad in August, 2009 and files reached in September, 2009, whereupon notices were issued to the parties, and on account of his deputation during September-October, 2009 for election duty, fresh notices were issued in the month of November, 2009. These specific averments have not been considered or dealt with while rejecting the representation of the applicant. If two months of election duty and one month of Telengana agitation are excluded, the applicant is left with about three months to achieve the target, and even if 60 points are to be counted per month, the target comes to 180, whereas admittedly the applicant had achieved 184 disposal units. The order of respondent No.3 rejecting the representation is thus liable to be set aside on account of non-consideration of the relevant material/averments made in the representation. As far as the order passed on the memorial is concerned, no decision has been taken on merits.

13. Keeping in view the above circumstances, without going into the question whether the respondent No.4 was competent to review the ACR of the applicant or not, we set aside the impugned order dated 10.03.2014 rejecting the representation of the applicant for upgradation of his ACR for the period 04.06.2009 to 31.12.2009, and direct the respondent No.3 to re-examine the entire issue in view of the specific averments made in the representation and taking into consideration the relevant factors, as noticed by us hereinabove, a fresh order be passed on the representation within a period of three months.

14. The OA is accordingly allowed to the extent indicated hereinabove. No costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/