

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/3017/2017

New Delhi, this the 23rd day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Thanghminglian Tonsing Prasad
Wife of Shri Gunjan Prasad
Presently, Principal Commissioner of Income-Tax
Kolkata

Also At

House No. 212 A, Block E
Palam Vihar, Gurugram
Haryana-122017

... Applicant

(Through Shri N.S. Dalal, Advocate)

Versus

1. Union of India
Through Secretary (Department of Revenue)
North Block,
New Delhi

2. The Chairman
C.B.D.T,
North Block,
New Delhi

... Respondents

(Through Shri Rajnish Prasad, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant is an officer of Indian Revenue Service of 1986 batch. During the year 2014, she was functioning as Commissioner, Income Tax (Appeals) and as part of her duty,

she was required to hear and dispose of appeals. It is stated that throughout her career, her APARs were rated as "Very Good" and above. For the period between 1.04.2014 and 31.10.2014, the Reporting Officer awarded 8.1 marks out of 10 and rated applicant's performance as 'Outstanding'. However, the Reviewing Officer reduced the evaluation to 5.8, which is equivalent to 'Good'.

2. On receiving the communication as regards assessment made by the Reviewing Officer, for the said period, the applicant made a representation on 23.04.2015 to the competent authority. The latter passed an order dated 3.08.2016 refusing to modify the evaluation. It is stated that the applicant received the communication only in August, 2016. This O.A. is filed challenging the evaluation made by Reviewing Authority as accepted by the Competent Authority.

3. The applicant contends that the only basis to downgrade the evaluation of applicant's performance was an alleged shortfall in disposal of appeals and on a close scrutiny of relevant facts and figures, becomes evident that there was no shortfall at all. He further contends that though the relevant facts were furnished to the Competent Authority, the same were not considered objectively and the representation was rejected in a mechanical manner.

4. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant herself mentioned in the self-appraisal that as against 193 high demand appeals, she has

disposed of only 24 during the relevant period and while considering the relevant factors, the Reviewing Authority has given his own evaluation. It is stated that the Competent Authority examined the issue objectively and passed the order under challenge.

5. We heard Shri N.S. Dalal, for the applicant and Shri Rajnish Prasad, for the respondents.

6. It is a matter of record that the APARs of the applicant for several years, ever since her appointment, are rated either "Very Good" or above that. It is only for the period between 1.04.2014 and 31.10.2014 that the Reviewing Officer awarded her 5.8 as against 8.1 marks by the Reporting Officer. We are aware of our limitations in the matter of interference with the gradations made in the APARs by the Reporting or Reviewing Authority. It is only in rare cases, that the Courts can interfere and even in such cases, it cannot sit in appeal as an Appellate Authority. One such case would be where the facts borne out from the record lead to a different conclusion altogether. The situation ultimately is covered by the *Wednesbury* principle.

7. The remarks of the Reporting Officer for the period in question read as under:

- " - The officer reported is well conversant with the latest judgment pronouncements in respect of issues for her consideration.
- She has also been strengthening the orders of the AOs in the interest on revenue.
- Her attitude towards subordinates and colleagues from SC, ST, other weaker sections and women is very good."

The overall gradation given by him is 8.1, which is equivalent to 'Outstanding'. The Reviewing Officer, however, made the following remarks:

"The officer's output was inadequate. She has disposed off 24 high demand appeals only against pending of 193. Her performance has fallen short of target by wide margin. The two cases quoted as outstanding work are not of any great quality. The officer is capable of much better work qualitatively and quantitatively but her actual performance was below average."

Even for writing this, with pen, the concerned officer had to make more than half a dozen corrections. In terms of marks, he awarded 5.8.

8. On being communicated this evaluation, the applicant made a detailed representation on 23.04.2015. Since the reduction in terms of marks and evaluation by the Reviewing Authority was in the context of disposal of appeals, it becomes relevant to note what the applicant had stated in her representation. In para 5 and 6, she stated as under:

"5. I may clarify that the Central Action Plan Target for disposal of appeals by CIT(A) for F.Y. 2014-15 was communicated vide F.No. CC/Chd/SB-25/2014-15/2703 dated 25/28.07.2014, which was received in this office on 01.8.2014. A copy is enclosed for kind reference. It will be evident from the same that two targets for disposal (B-1 and B-2 respectively) were fixed for the year. The quarterly disposal target upto 30.9.2014 (1st and 2nd quarters) of B-1 i.e. High Demand Appeals was 66. In other words the Reviewing Officer has erred in considering the figure of 193 as pendency, which is the target fixed for the whole year. Hence to say that as on 31.10.2014, I was way below the disposal target of 193 fixed for the entire year is therefore grossly incorrect. He has also not appreciated the fact that against the other target of B-2 of 109 upto the second quarter, I had disposed 150 cases as on 31.10.2005, thereby I had exceeded the target by 41.

Now against this 2nd quarterly target for B-1 of 66, I had disposed of 24 as on 31.10.2014, submitting that the hearings of these high demand appeals were underway and that the target for the year would be achieved positively. I may reiterate here that the Central Action Plan target was received in this office on 1st of August 2014 only, and prior to that I was bound by the Interim Central Action Plan for the first quarter of the Year 2014-15 i.e. up to 30th June 2014 (copy enclosed) whereby the target was Disposal of minimum of 80 units against which I disposed 86 Units. Be that as it may, it is evident from the Central Action Plan 2014-15 that the 1st quarterly targets of both B-1 and B-2 were met and in the 2nd quarter it was only in respect of B-1 that there has been a shortfall. So, to assess me on basis of only one of the targets is highly irrational and that too erroneously against the whole year's target, when in respect of the other target, I had exceeded the same.

6. I also take the opportunity to place below the Statistical report for the year 2014-15 (copy of report dated 07.4.2015 is enclosed for kind reference) from which it will be evident that whatever was the shortfall in the quarterly targets were made good by the end of the year.

	<u>Target for the year</u>	<u>Disposal</u>
Basket-1	193	190
Basket-2	164	165
Basket-3	-	24*
Basket-4	-	-
Total	357	379

*low demand cases of B-1 Disposed being part of the Group cases or part of six/Seven assessment years of the assessee

The shortfall in the High demand appeals is by 03 only but the total disposal stands at 379 as against 357. This achievement is despite functioning with only one regular staff i.e. one stenographer and two DEOs engaged on daily basis. However the Reviewing Officer as on 31.10.2014 chose to write me off by making a sweeping and an incorrect assumption of the facts."

9. From a perusal of this, it becomes clear that the target for disposal of high demand appeals for the year was 193 and as against that, the applicant has disposed 24 appeals during the period in question i.e. 1.04.2014 to 31.10.2014. Across the Bar,

it is stated that the applicant was on leave for one month and she had been provided with only one Stenographer. The interruptions on account of summer vacation or the festival such as Dussehra cannot be ignored. All the same, the disposal of appeals of that category by the applicant herein was 190 for the entire year.

10. It is fairly well known and well established that the disposal of appeals that too income tax appeals where complicated questions of fact and law are involved, cannot be expected to be disposed of on mechanical lines nor a piece rate work can be applied. If the appeals are not so complicated, there may be a possibility to dispose many of them in a week or a month. On the other hand, if complicated questions of fact and law are involved and if the stakes are heavy, it may take weeks together for an appeal to be disposed of.

11. While recording APARs, one has to see whether the target fixed was achieved by and large or there was a shortfall due to negligence or inefficiency. Unfortunately, the Reviewing Officer, while assessing the applicant both qualitatively and quantitatively, has failed to take note of these facts into account. On the other hand, he mistook the target for the entire year as though it is for the period in question and downgraded the evaluation. This non-application of mind was not taken into account by the Competent Authority and, in a way, the evaluation made by the Reviewing Officer was confirmed.

12. In the process of passing the order in question, the Competent Authority referred the matter to the Reporting Officer. He reiterated his version. The Reviewing Officer was not available since he retired from service. In fact, the Competent Authority ought to have made objective assessment of the entire issue, instead of mechanically approving the evaluation made by the Reviewing Authority.

13. The error committed by the Reviewing Authority that resulted in downgrading the performance of the applicant cannot be permitted to affect the career of the applicant, which is otherwise 'Outstanding' throughout.

14. We, therefore, allow the O.A. and set aside the evaluation made by the Reviewing Officer for the period 1.04.2014 to 31.10.2014. We hold that the evaluation made by the Reporting Officer shall be treated as final by the Accepting Authority for all intents and purposes. In other words, the APAR for the period in question shall be treated as 8.1 for all purposes. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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