

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA-61/2014

New Delhi this the 14th day of August, 2018

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

Sh. Pavan Ved, S/o Shri Ratanlalji Ved
Resident of C-39 Hyderabad Estate,
Napean Sea Road, Mumbai 400-006
Presently posted as Commissioner
Income Tax (Audit)-I,
Aayakar Bhavan, Marine Lines,
Mumbai

...Applicant

(By Advocate : Ms. Yashika Christi Jain for Sh. Avneesh Garg.)

Versus

1. Union of India, Through
The Secretary,
Department of Revenue,
Government of India,
Ministry of Finance,
North Block, New Delhi.
2. The Union Public Service Commissioner,
Through its Chairman, having its office
located at Dholpur House,
Shahjahan Road, New Delhi.
3. Chairman, Central Board of Direct Taxes,
Government of India, Ministry of Finance,
Department of Revenue,
North Block New Delhi. ...Respondents

(By Advocate :Sh. Rajnish Prasad)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant was working as Commissioner of Income Tax in 2008-09.
In his APAR for that period, the Reporting Officer i.e. Chief Commissioner of
Income Tax rated him as "Very Good". However, the Reviewing Officer,

i.e., Sh. S S Khan downgraded the assessment of the applicant, and rated him as "Average". The remarks were communicated to the applicant. He made a representation to the Competent Authority, who in turn, passed an order dated 26.04.2010 refusing to interfere with the assessment made by the reviewing officer. Thereafter, the applicant submitted a Memorial to the Hon'ble Finance Minister, Govt. of India on 13.08.2013, feeling aggrieved by the order dated 26.04.2010. The applicant contended that the assessment of his APAR during the entire service was "Very Good" and in the year in question also i.e. 2008-09, reporting officer assessed him "Very Good" and reviewing officer downgraded the assessment as "Average", without any basis.

2. On 26.04.2010, the memorial was rejected stating that there is no provision for filing the same against the order passed by the competent authority. This O.A. is filed challenging the same. The applicant contents that remarks and gradation made by the reviewing authority is without any legal or factual basis.

3. The respondents filed counter affidavit it is stated that the OA is barred by limitation. On merits also, it is stated that assessment or ratings made by the reporting/reviewing authorities are on the basis of performance of the applicant, for the period in question and it is not permissible to interfere with the same in the exercise of judicial review.

4. We heard Ms. Yashika Sharma Christi Jain, learned counsel for the applicant, and Sh. Rajnish Prasad, learned counsel for the respondents.

5. We are aware of the limitation in the context of interference with the assessment made by the reporting or reviewing officers in the APAR. The interference is mostly on procedural grounds and when

requirements of law are not fulfilled. Guidelines have been issued by the DOP&T from time to time, for reporting/reviewing authorities in the context of making assessment of the employees working under them. Their conclusions must be supported by cogent reasons, and that it cannot be on the whims and fancies of the reporting/reviewing authorities.

6. On his part the reporting authority graded the applicant as "Very Good" with the following observation:-

"on the basis of criterion laid down vide this office letter No. F.No. CC CHN/Tec 33/2008-09 dated 1.7.08, the officer's performance is rated as "Very Good"

7. Though the exact reasons, for rating the performance of the applicant as "Very Good" are not spelt out with reference to particular acts, it shows that the reporting officer bestowed his attention to various aspects. The assessment of the applicant was "Very Good" on 9 counts and "Good" on 5 counts. If the reviewing officer to held a different view about the applicant, it was open to him to spell out the reasons while downgrading the assessment. However, the observations made by the reviewing officer are as under:-

"The officer has very good knowledge of law, over all performance during the year has been average."

Beyond this, he had did not spell out anything.

8. It is well known that the assessment made in APAR plays an important role in the progression of the career of an officer. Obviously for that reason, DOP&T issued instructions from time to time to ensure objectivity in the process. In this case, the reviewing officer, however, did not spell out any reason, while downgrading the assessment. The law does not permit this type of exercise of power and we are not

inclined to accept the same. The assessment made by the reviewing officer in the year 2008-09 cannot be sustained in law. It deserves to be set aside.

9. Now, the department has to take decision as to how the overall assessment of the APAR of the applicant for the year 2008-09 must be taken and to grant of consequential benefits, depending upon that.

10. The OA is accordingly allowed. The evaluation made by the reviewing officer is set aside. In case, the applicant has been found unfit by the DPC on account of the APAR for the year 2008-09, the same shall be re-considered, and depending on the outcome thereof, consequential benefits be extended to the applicant. This exercise shall be completed within four months from the date of receipt of this order.

11. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman