

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 102/2017

Reserved on : 14.12.2018
Pronounced on: 20.12.2018

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Shri Abhimanyu Singh Yadav,
Aged about 35 years,
S/o Shri Nirmal Singh Yadav,
R/o 53B, Neemuch Mata, Udaipur.
(Presently working as Dy.Commissioner of Income Tax, TDS
Udaipur).

...Applicant.

(By Advocate: Shri S.K.Gupta with Shri Satish Pachori)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
3. Pr.Chief Commissioner of Income Tax (CCA),
Central Revenue Building,
Bhagwan Das Road,
Rajasthan, Japur.

...Respondents.

(By Advocate: Shri Gaurav Jain)

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ORDER**Per: A.Mukhopadhyaya, Member (A):**

This Original Application, (OA), arises from the overall rating of the applicant being reduced from 6.11 as given by his Reporting Officer to 5.46 by his Reviewing Officer in his APAR for the year 2015-16; (06.07.2015 to 31.03.2016). The applicant contends that the Reviewing Officer, disagreeing with the Reporting Officer's assessment, stated as follows:

"Many a times I have communicated with Shri Abhimanyu Singh Yadav, I find that he is not ready to listen others or having a different point of view. He had limited work to complete during the year even that work he could not manage as per the time schedule given. I have seen his correspondence with CIT(A) and noted that his writing skills need improvement. For some time he was holding charge of DDO and that time he had some problems with his seniors. It shows his attitude towards seniors and colleagues. He was supposed to submit his APAR by 30.4.2016, he did not care to submit it in time which also reflects his attitude to work in a timely manner. "

2. The applicant thereupon represented against the downgrading in question vide letter No. DCIT(TDS)/UDR/2016-17 dated 26.07.2016, (Annexure A/4), and sought the expunging of the Reviewing Officer's adverse remarks on the following grounds:

- i) That the Reviewing Officer did not point out any material or specific instance which warranted downgrading the applicant from a "**Very Good**"

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rating of 6.11 to a "**Good**" rating of 5.46 and while she stated that her directions were not followed by the applicant, there was never any written communication in this regard.

- ii) As regards the assertion that he could not manage his work as per the time schedule given, the applicant contends that there was no assessment pending in his charge and all given tasks had been completed by him within the stipulated timeframe as shown in the periodical statistical reports and that he had accordingly been assessed as "**Outstanding**" in time management by his Reporting Officer. The applicant contends that the Reviewing Officer's adverse comments in this regard were therefore unfounded in fact.
- iii) As regards his purported lack of writing skills, the applicant contends that in his 8 years of service till the period in question, apart from a few suggestions for minor modifications during the initial years, his writing skills had never been commented on adversely by any of his earlier superior officers.
- iv) With regard to the comments on his performance as DDO, the applicant pointed out that he served

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as DDO only for a period of two months and there was no instance during the period in which he had been required to explain himself on any issue.

v) As regards the late submission of his APAR, the applicant gave a chronology of events explaining how the APAR came to be submitted by around 30.05.2016 instead of 30.04.2016; (Annexure A/4 refers).

3. Despite his representation as aforesaid the respondents vide order No.Pr.CC/JPR/APAR/2016-17/653 dated 16.12.2916, (Annexure-A/2), rejected his explanation and clarifications on the following grounds:

“5.....The poor grading of 5.46 has been given to Shri Abhimanyu Singh Yadav, DCIT mainly on account of non-achievement of Action Plan Targets, Poor knowledge of Income tax law and procedure and poor drafting.

4. Thus the applicant contends that while he represented against the Reviewing Officer's adverse remarks as detailed above, his representation was rejected firstly on grounds which had not been specifically raised by the Reviewing Officer and secondly on grounds where his Reporting Officer had rated his performance between “**Very Good**” and “**Outstanding**”. The applicant also contends that before downgrading his rating the Reviewing Officer should also

have given him an opportunity to be heard as a basic requirement enjoined by the principles of natural justice. Aggrieved by the actions of the respondents, he has approached this Tribunal seeking the following relief:-

Relief

- i) Quashing and setting aside the action of the Reviewing Officer in downgrading the overall grading of the applicant for the year 2015-16; (06.07.2015 to 31.03.2016);
- ii) Quashing and setting aside the impugned order dated 16.12.2016; (Annexure A-2).
- iii) A direction to the respondents to treat the applicant's APAR for the year 2015-16 as 'Very Good' with an overall grading of 6.11 for all purposes and consider the same for the purposes of promotion of the applicant to the next level of Joint Commissioner of Income Tax etc;
- iv) Any further order(s) or direction(s) as deemed just and proper to meet the ends of justice.

Interim Relief:-

"Since the reasons for downgrading the overall grading of the applicant from 6.11 to 5.46 as recorded by Reviewing Officer are not apt in law and further, the representation of the applicant has been decided by the respondent no.3 illegally and the aforesaid APAR of the applicant will come in the way of the applicant when he is being considered for promotion which is ex-facie illegal and hence, pending final disposal of the OA, the respondents be directed that while considering the case of the applicant for promotion to the post of Joint Commissioner of Income Tax either on ad-hoc basis or regular basis, the aforesaid APAR may not be considered."

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5. In reply, the respondents state that the Reviewing Officer, while downgrading the overall rating of the applicant from 6.11 to 5.46, had given specific reasons for disagreeing with the Reporting Officer's assessment. They further state that where such adverse remarks are made and confirmed by an officer below the rank CCITs/DGITS, they are examined and decided in line with the DoP&T's existing instructions by the CCIT, (CCA), who is designated as "**Competent Authority**" for the purpose, (Annexure R/1), and that this procedure was adhered to in the present case.

6. The respondents aver that there is no provision available for affording an opportunity of hearing by the Reviewing Officer in the procedure prescribed for drawing up and finalising APARs such as the one in the case of the applicant. They state that departmental and DoP&T OMs dated 14.05.2009 and 13.04.2010 (Annexures R/1 and R/2), support their contentions in this regard and point out that due opportunity is afforded in the procedure prescribed vide these OMs and that the officers' representations against any adverse remarks in their APAR is duly considered. Thus since the applicant's representation against the adverse remarks of the Reviewing Officer has been duly considered by the competent authority, there has been no violation of the principles of natural justice.

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7. Learned counsels for the parties were heard and the material available on record was perused. At the very outset, a plain comparison of the remarks of the Reporting Officer and the Reviewing Officer vis-à-vis remarks made by the competent authority, (Annexures A/1 and A/2 respectively), indicates that the focus in these remarks is somewhat different. Thus, while the pen picture of the applicant, as given by his Reporting Officer, advises him to make sincere efforts to pass quality scrutiny assessment orders and achieve the budget collection target and other targets and follow the directions of higher authority issued with regard to collection of outstanding demand, the phraseology used clearly suggests that this is advisory and not adverse in nature; (Item 9(a) Annexure A/1 refers). There is also no dispute regarding the overall rating of the applicant by his Reporting Officer, which has been shown as being 6.11. Per contra, the Reviewing Officer's comments focus on the applicant's time management and correspondence skills and his attitude towards his seniors, (Item 4(b) of Annexure A/1), while, at the same time, assessing his functional competency to be worthy of a rating of 6; (Item 4(a) of Annexure A/1 refers). It also appears that while the applicant understandably tried to respond to the adverse remarks made by the Reviewing Officer in his representation at Annexure A/4, the competent authority's ruling on his application nevertheless assigned his downgrading to less than "**Very Good**" rating to less than satisfactory performance in

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functional areas such as achievement of action plan targets, knowledge of Income Tax law and procedure and poor drafting, i.e. substantively those areas in which the Reviewing Officer had given him a "**Very Good**" rating of 6. Thus, the contention of the applicant that he was never given an opportunity to address the question of his alleged less than the satisfactory performance in these functional areas appears to be confirmed by the record available. As such, the rejection of the applicant's representation on grounds other than the issues pertaining to which the representation had been made in the first place makes the case one where it cannot be said that the principles of natural justice have been substantively adhered to.

8. Consequently, this OA succeeds and the action of the Reviewing Officer downgrading the overall grading/rating of the applicant from 6.11 to 5.46 in his APAR for the year 2015-16, (06.07.2015 to 31.03.2016) is set aside as is the order of the Principal Chief Commissioner of Income Tax No. Pr.CC/JPR/APAR/2016-17/653 dated 16.12.2016; (Annexure A/2). The applicant's APAR for the year 2015-16 may therefore be considered for all purposes as giving the applicant an overall grading/rating of 6.11.

9. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

/kdr/

(Suresh Kumar Monga)
Member (J)