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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD

O.A. No.1155/ 2017

Date of CAV:04.12.2018. Date of Order : 05 .03.2019.

Between :

J.Siri Kumar, s/o J.Radha Krishna Murthy,
Aged about 54 yrs, Occ:Commissioner of Income Tax
(DR) (ITAT)-1, CGO Towers, 6th Floor,
Kavadiguda, Secunderabad-500 080. ...Applicant

And

1. The Union of India, rep., by the
Secretary, M/o Finance, Department of Revenue,
New Delhi.

2. The Chairman,
Central Board of Direct Taxes and Competent Authority,
Department of Revenue, New Delhi.

3. The Under Secretary to the Government of India,
Department of Revenue, M/o Finance, New Delhi. ... Respondents

Counsel for the Applicant ... Mr.K.Sudhaker Reddy

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)

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ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant Sri J.Siri Kumar filed the present OA challenging the order dated 08.02.2016 rejecting his representation dated 01.10.2015 for reconsideration of the grading given by the Reviewing Officer in his APAR for the period from 01.04.2014 to 31.10.2014. The applicant has prayed to quash and set aside the same as being illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and violative of extant rules.

2. **Brief facts of the case**:

The applicant belongs to the Indian Revenue Service (IRS) and joined as a probationary IRS Officer on 21.08.1989. On successful completion of his probationary period, he was posted as Assistant Commissioner of Income Tax on regular basis at Margao, Goa. The applicant has submitted that since then he had held various posts in different capacities. All along his career his performance was highly appreciated and he has had an excellent track record of service. The applicant's grading from 2000-2001 to 2006-2007 was 'Very Good'. His performance was rated as 'Outstanding' between 2007-2008 and 2008-2009 and again as 'Excellent' from 2009-2010 and 2011-2012. Even in 2014-15 for the full year, his grading was 7.61. However, for the period from 01.04.2014 to 31.10.2014, he has been graded 6.8 by the Reporting Officer, which was reduced to 5.1 by the Reviewing Officer.

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3. The applicant in his representation dated 01.10.2015 as well as in this OA has submitted that during 01.04.2014 to 31.10.2014, while functioning as Commissioner of Income Tax (Appeals), Central-1, Chennai, he had a workload of 257 Income Tax appeals. However, 99 appeals were disposed off during the period of 7 months i.e., from 01.04.2014 to 31.10.2014. However, the Action Plan Targets of 257 appeals was meant for the entire financial year. The reasons for shortfall in achieving the target as per the action plan target was non-receipt of remand reports from the concerned assessing officers, despite issuing frequent reminders, holding of additional charge of CIT (Appeal) (Central-II) in June and July 2014 in view of the regular officer being deputed for a mid-career training course.

4. The applicant has further submitted that the jurisdiction of CIT (A) (Central-I), Chennai is vested with the cases regarding Assessments completed as a consequence of Search and Seizure actions u/s 132 of the Income Tax Act, 1961. It was a normal practice that the assessment orders relating to search and seizure cases are high profile as the assessing officers do not have sufficient time to investigate the entire findings made in the appraisal reports. The CIT (A) is also entrusted with disposing of the appeals related to search and seizure assessments.

5. The applicant has further submitted that at the time he assumed charge of the post of CIT (A)-1, there were about 59 old cases pending as on 01.04.2014. Out of those 59, 29 cases belonged to some high profile politicians. Out of these, 25 high demand appeal cases could not be

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disposed of due to the pendency in various Courts. As regards the balance of 34 appeals concerned, 16 appeals were disposed of during the period April 2014 to October 2014 leaving the balance of 18. Out of these 18 appeals, in some cases further verification was warranted in view of the fact that some of the appellants had challenged the "addition" on technical grounds. In some cases remand reports were yet to be received. In some cases remand reports were received and forwarded to the appellant for their response before taking a final decision.

6. The applicant has further submitted that the applicant was communicated the adverse entries, vide letter dated 13.8.2015 along with copy of APAR for the period from 01.04.2014 to 31.10.2014 indicating the grading by the Reviewing Officer as 5.1 (Good) and 'Very Good' i.e., 6.8 as assessed by the Reporting Officer. In response, the applicant submitted his representation dated 01.10.2015 explaining in detail the reasons of delay in disposal of the remaining (other than 99) cases. However, the same was rejected by the 1st respondent, vide impugned order dated 08.02.2016, which was communicated to the applicant vide letter dated 03.03.2016. The applicant contends that the impugned order dated 08.02.2016 does not contain any reasons for rejecting his representation. It is the applicant's contention that the Reviewing Officer did not provide any opportunity to the applicant nor sought any explanation before such downgrading, which, according to the applicant, is violative of the principles of natural justice.

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7. The respondents in their reply statement stated that the applicant is working as Commissioner of Income Tax at Hyderabad. During the period from 01.04.2014 to 31.10.2014, the applicant worked as Commissioner of Income Tax (Appeals), Central-I, Chennai. For the period under consideration, the Reporting Officer had given him a grading of 6.8 and the Reviewing Officer had reduced the grading to 5.1 holding that the output of the officer was grossly inadequate with reference to targets and the quality of work. It has also been recorded in APAR that inspite of specific instructions, the officer did not decide old appeals, which were pending for several years. The applicant made a representation dated 1.10.2015 to the Chairperson, Central Board of Direct Taxes, New Delhi, requesting him to reconsider the grading given by the reviewing officer and upgrade the grading at least to the level of grading given by the Reporting Officer. However, the competent authority, the 1st respondent herein, vide order dated 08.02.2016 disposed off the said representation stating that no case has been made out by the applicant to justify that the downgrading by Reviewing Officer is not in order and the grading given by the reviewing officer is therefore justified. Accordingly, the entry of the Reviewing Officer was sustained.

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8. During the arguments, the Counsel for the Applicant cited the Order of the Principal Bench of the Central Administrative Tribunal in O.A.No.100/3017/2017, dated 23.10.2018, which is also relating to an alleged shortfall in disposal of Income Tax Appeals. In the above case, it was held as follows:

> 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.*
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> 11. *While recording APARs. one has to seen 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.*
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> 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.*
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> 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."*

Therefore, the OA was allowed by setting aside the gradation given by the Reviewing Officer for the period 01.04.2014 to 31.10.2014. It was further

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held 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, the grading given by the Reporting Officer, for all purposes.*" The present case is similar to the abovementioned case.

9. In addition, the applicant's Counsel also cited the judgment of the Principal Bench of the Central AdministrativeTribunal in *Shri Gunjan Prasad v. Govt. of India*, through its Secretary, Department of Revenue, M/o Finance, New Delhi, in O.A.No.1233/2014, dated 13.11.2014, , wherein it was held that "*remanding the case back to the competent authority will be an exercise in futility, as the competent authority to whom the case is to be remanded would not have had the benefit of seeing the applicant functioning during this period*". Therefore, the OA was allowed in favour of the applicant to the extent that the said period was treated as "No APAR Period".

10. The Counsel for the Respondents reiterated their stand taken as in the reply statement justifying the downgrading of the officer on the basis of the grading given by the reviewing officer. It was reiterated that it is not mandatory for the Reviewing Officer to provide an opportunity to the officer reported upon.

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11. In view of the facts and circumstances of the case and in view of the judgment of the Principal Bench of the Central Administrative Tribunal in O.A.No.100/3017/2017, dated 23.10.2018, it is important that while recording APARs, one has to see whether the target fixed for the entire year have by and large been achieved and if not, whether the shortfall was due to negligence or inefficiency. The Reviewing Officer mistook the target for the entire year as though it was for the period in question.

12. In this case, the comments of the Reporting Officer as well as Reviewing Officer could not be obtained as both have already retired from service as can be seen from the order dated 08.02.2016. This has resulted in downgrading the performance of the applicant, who otherwise has had a Very Good and Outstanding career throughout.

13. In view of the above, we allow the OA to the extent of setting aside the evaluation made by the Reviewing Officer for the period from 01.04.2014 to 31.10.2014 and hold that the gradation made by the Reporting Officer shall be treated as final by the Accepting Authority for all purposes. No order as to costs.