**(2019) 02 CAT CK 0102**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 3562 Of 2017

Shri Santosh Kumar — APPELLANT

Vs

Union Of India — RESPONDENT

**Date of Decision :** 13-02-2019

**Acts Referred:**

**Citation :** (2019) 02 CAT CK 0102

**Hon'ble Judges :** V. Ajay Kumar, J;A.K. Bishnoi, J

**Bench :** Division Bench

**Advocate :** S.K. Gupta, Rajeev Kumar

**Final Decision :** Dismissed

# Judgement

V. Ajay Kumar, J

1. The applicant, a Commissioner of Income Tax, filed the OA seeking quashing of the order dated 17.09.2015 whereunder his representation made against the adverse remarks in his APAR for the financial year 2012-13 was rejected on the ground of delay of one year. Letters dated 14.03.2017 & 22.03.2017 states that his representation against APAR of 2012-13, was already rejected on 17.09.2015.

2. The respondents vide the Annexure A-1 letter dated 15.01.2014 forwarded the copy of the APAR of the applicant for the period 2012-13 while indicating that the remarks made in Section IV (A&B) are treated as adverse by the Board, and the grading is below Bench Mark, directed him to submit his representation, if any, within 15 days of the receipt of the same. The applicant vide his letter Annexure A-4 dated 31.01.2014 submitted that some factual information including the Appellate Orders mentioned in the APAR are required to be obtained from the Office of the Commissioner of Income Tax (Appeal), Varanasi and accordingly sought extension of time for at least 60 more days to submit his representation against the adverse remarks communicated to him on 15.01.2014. The respondents vide the letter dated Nil February, 2014, informed the applicant the period of 15 days for submitting the representation expires on 31.01.2014 and

that there is no mention in the OM referred to regarding grant of extension of time. The applicant thereafter neither submitted any representation nor challenged the action of the respondents in denying extension of time to submit representation.

3. However, the respondents vide their letter dated 27.03.2015 forwarded the very same copy of the APAR of the applicant for the period 2012-13 once again and directed him to submit his representation, if any, within 15 days. The applicant then submitted a representation against the adverse remarks made in his APAR for the year 2012-13, vide his representation Annexure A- 7 dated 07.05.2015. However, the competent authority vide the impugned order dated 17.09.2015 rejected the said representation of the applicant on the ground that the adverse remarks were originally communicated to him on 16.01.2014, but the applicant has not made any representation against the same within the permissible period of time and in terms of DOP&T OM No.21011/1/2005-Estt.(A) dated 14.05.2009, there is no provision for extension of time and if representation is not received within 15 days, the APAR, as communicated, will be treated as final, and as the applicant failed to make any representation within the said time from 16.01.2014, i.e., the date on which his APAR for 2012-13 was received by him, his APAR for 2012-13 becomes final.

4. Heard Shri S.K. Gupta, the learned counsel for the applicant and Shri Rajeev Kumar, the learned counsel for the respondents and perused the pleadings on record.

5. Shri S.K. Gupta, the learned counsel appearing for the applicant while not disputing the fact that the applicant has neither made any representation against the adverse remarks made in his APAR for the period 2012-13 and communicated and received by him on 16.01.2014, within the permissible time, nor challenged the action of not granting any extension of time for submission of representation, however, submits that since the respondents themselves communicated the very same adverse remarks and the APAR for the year 2012-13 vide letter dated 27.03.2015 and called for his representation thereto, rejecting the same on the ground of delay is illegal. The learned counsel advanced various arguments, on merits, supporting his submission for expunging of the adverse remarks.

6. Once it is admitted that the applicant neither submitted any representation against the adverse remarks communicated in his APAR for the year 2012-13, within the permissible time and also kept quiet even without challenging the action of the respondents in not extending time, if according to the applicant, there was any valid reason for extension of time, cannot have any objection for the action of the respondents when his belated representation was rejected on the ground of delay.

7. The purpose and object of communication of ACR/APARs to the employees is to sensitise them about their attributes, so that they can improve their

 

performance and point out, if any, wrong observations and adverse remarks are made against them. The applicant, in spite of communication of adverse remarks and below Bench Mark grading, failed to submit his representation and allowed the APAR for 2012-13 to attain finality. It is not forthcoming that, why and under what circumstances, the same ACR was again communicated to him for second time, and after retirement of certain officers who were part of the said APAR, and without there being any warranting circumstances.

8. In the circumstances and for the aforesaid reasons, the OA is dismissed being devoid of any merit. No costs.

 