

**Central Administrative Tribunal
Principal Bench**

OA No.661/2014

New Delhi, this the 18th day of July, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Sh. R. L. Gupta
aged 59 years
S/o Shri Hari Ram Gupta
R/o 850, Prem Gali,
3-C, Gandhi Nagar,
Delhi 110 031. Applicant.

(By Advocate : Shri S. K. Gupta)

Vs.

Union of India through its

1. Secretary
Ministry of Commerce
Udyog Bhawan,
New Delhi.
2. Chairman-cum-Managing Director
India Trade Promotion Organization
(a Govt. of India Enterprise)
Pragati Bhawan, Pragati Maidan,
New Delhi.
3. The Board of Directors
through Chairman-cum-Managing Director
India Trade Promotion Organization
Pragati Bhawan, Pragati Maidan,
New Delhi.
4. Inquiry Officer
C/o CMD, ITPO,
Pragati Bhawan, Pragati Maidan,
New Delhi. Respondents.

(By Advocate : Shri L. N. Anchal)

: O R D E R (ORAL) :**Justice Permod Kohli, Chairman:**

A major penalty charge sheet was issued to the applicant vide impugned memo dated 26.07.2005 along-with article of charge. After seeking response of the applicant, the Disciplinary Authority ordered holding of inquiry against him. The Inquiry Officer submitted his report dated 06.02.2007 holding the charges to be proved. The report of the Inquiry Officer was served upon the applicant on 13.02.2007 for his representation. The applicant submitted his representation to the inquiry report vide letter dated 26.02.2007. The Disciplinary Authority passed the impugned order dated 28.11.2008 imposing minor penalty of withholding of promotion for a period of five years with immediate effect. An appeal preferred against this order also came to be rejected vide order dated 08.04.2009.

2. The applicant challenged the aforesaid penalty order in TA Nos.94/2010 and 95/2010 before this Tribunal. The penalty order was set aside by this Tribunal vide order dated 16.07.2011 with the following observations:-

“6. We are conscious that the Disciplinary and Appellate Authorities may not record orders as may be recorded by the Tribunals and the Courts giving elaborate facts, dealing each of the contentions raised by the learned counsel for the parties and giving their own opinion supported by the rules, regulations and judicial precedents. Nonetheless the orders have to be speaking and must contain reason for rejecting the defence projected by the employee. The impugned orders lack

the vey essentials of a quasi judicial order adversely affecting an employee. Even the administrative orders adversely affecting the rights of a citizen as per settled position of law by now, have to give some reasons inasmuch as the impugned orders lack the very pre-requisite of legal and valid order, the same are set aside, with liberty to the Disciplinary Authority to pass fresh orders in accordance with law and if the various pleas raised by the applicant as mentioned above are sought to be rejected, give specific reasons for such a rejection. If aggrieved, the applicant may file an appeal and we direct the Appellate Authority to record the reasons, even though in brevity, for rejecting the same if no merit is found in the contentions raised before it. The enquiry was started against the applicant way back in the year 2005. Nothing more is to be done but to pass a fresh order and we, therefore, direct the Disciplinary Authority to pass fresh order as expeditiously as possible and preferably within a period of six weeks from the date of receipt of certified copy of this order. With these directions, both the TAs are disposed of."

The Disciplinary Authority thereafter passed the impugned order dated 02.11.2011 (Annexure A-2) imposing minor penalty of withholding of promotion for a period of two years. The applicant preferred an appeal before the Board of Directors, i.e., the Appellate Authority, on 02.12.2011. The Appellate Authority, however, rejected the said appeal vide its order dated 18.08.2012 (Annexure A-3). A review petition against the order of the appellate authority was also preferred by the applicant on 15.05.2012 which remained pending. A reminder dated 02.01.2013 was also sent to the respondents, but evoked no response. The applicant thereafter filed OA No.1731/2013 before this Tribunal which was disposed of vide order dated 10.09.2013 directing the respondents to pass orders on the review petition. The Reviewing Authority declined to interfere in the order

of the Disciplinary Authority vide its order dated 17.12.2013. It is under these circumstances, the applicant has filed this OA seeking following reliefs:-

- “(i) quash and set aside inquiry report dated 06.02.2007 (Annexure A-1), order dated 02.11.2011 (Annexure A-2), order dated 18.04.2012 (Annexure A-3) and order dated 17.12.2013 (Annexure A-4) with all consequential benefits;
- (ii) May also pass any further order(s), direction (s) as be deemed just and proper to meet the ends of justice.”

3. During the course of hearing, Shri S. K. Gupta, learned counsel for the applicant has taken us to the impugned penalty order as also the appellate order to canvass that both the orders are non-speaking and unreasoned. His contention is that earlier also, the Disciplinary Authority had passed a non-reasoned and non-speaking order which was set aside by this Tribunal, and now the Disciplinary Authority as also the Appellate Authority committed the same error of law which caused great prejudice to the applicant.

4. We have perused the impugned order dated 02.11.2011 passed by the Disciplinary Authority imposing the minor penalty of withholding of promotion for a period of five years. The Disciplinary Authority has considered the written submissions of the applicant only in respect to the allegations that the Inquiring Authority did not consider his defence brief. However, insofar as the written statement of the applicant to the findings of the Inquiry Officer are concerned,

the same has not been considered. The Disciplinary Authority imposed the punishment with the following observations:-

“Whereas, after giving due consideration to Shri Gupta’s written submission dated 26.02.2007 with annexures/enclosures; there is no doubt that the two charge sheets (i.e. dated 26.07.2005 and 5.10.2005) were essentially different in their content of misconduct. Hence, in passing the final orders in the inquiry on charge sheet dated 26.07.2005 proceeded within ITPO, the charge of misplacement of file relating to the award of handling/clearing work has been exclusively considered and not the overlapping elements (in Article-II of charge sheet dated 5.10.2005 conducted in Central Vigilance Commission).

And whereas, the undersigned, being the Disciplinary Authority, having carefully gone through the findings of the Inquiring Authority, facts on record and comments of the CO, is of the opinion that findings by Inquiring Authority have been arrived at after due process of law, examination of documents and witnesses and has come to the conclusion that the charge that Sh. R. L. Gupta is responsible for the misplacement of the file has been established. It is a fit case to impose a minor penalty on Shri R. L. Gupta under Rule 25 of ITPO Employees’ CDA Rules.

NOW, THEREFORE, the undersigned, in exercise of the powers conferred under the above said rule hereby imposes the minor penalty of withholding of promotion for a period of two years upon Shri R. L. Gupta, Manager.”

No reasons have been recorded by the Disciplinary Authority by taking into consideration representation of the applicant against the findings of the Inquiring Authority. The order is non-speaking. The Disciplinary Authority has committed the same mistake as was committed in the earlier order imposing the penalty.

5. The Appellate Authority also committed the same error and dismissed the appeal by an unreasoned and non-speaking order with the following observations:-

“The Board finds that the fresh speaking orders issued on November 2, 2011 by the Disciplinary Authority after application of mind are complete, comprehensive and justifies the penalty given therein. Board finds no merit in interfering with the order.”

6. Leaving apart other contentions raised in the OA, we set aside the impugned Disciplinary Authority order dated 02.11.2011 (Annexure A-2) and Appellate Order dated 18.04.2012 (Annexure A-3), the same being non-speaking and without reasons. The matter is accordingly remanded to the Disciplinary Authority to pass a fresh, reasoned and speaking order taking into consideration the pleas raised by the applicant in his representation to the Inquiry Report. All the pleas of the applicant should be dealt with by passing a reasoned and speaking order. Let the fresh order be passed within a period of three months from the date of receipt of certified copy of this order. In the event, the applicant is aggrieved by the fresh order to be passed by the Disciplinary Authority he shall have the liberty and right to file a fresh appeal before the competent Appellate Authority in accordance with law. In such an eventuality, the Appellate Authority also shall pass a reasoned and speaking order taking into consideration the grounds of appeal that may be raised by the applicant.

7. With the above directions, the Original Application stands disposed of.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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