

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No. 2474/2013

This the 3rd day of December, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

R. L. Gupta, Age 59 years
S/o Hari Ram Gupta,
R/o 850, Prem Gali,
3-C, Gandhi Nagar,
Delhi-110031.

... Applicant

(By Mr. S. K. Gupta, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Commerce, Udyog Bhawan,
New Delhi.
2. Chairman-cum-Managing Director,
India Trade Promotion Organization
(A Government 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,
Commissioner of Departmental Inquiry (CVC)
C/o CMD, ITPO, Pragati Bhawan,
Pragati Maidan,
New Delhi.

... Respondents

(By Mr. Adarsh Priyadarshi and Mr. Sujeet Keshari, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant is working as Manager in the India Trade Promotion Organisation (ITPO). The ITPO intended to hold India Trade Exhibition (ITE) at Moscow in the year 2003. Place was identified for that and various agencies were invited to put up their stalls during the Exhibition.

2. A charge memorandum was issued to the applicant on 05.10.2005, which contained five articles of charge. It was alleged that the applicant submitted a note for approval of the CMD for reducing the space rent to Rs.10,500/- per sq. mtr., as against the amount of Rs.11,500/- per sq. mtr., fixed by the, Deputy General Manager, Shri D. S. Chadha. The second article was about the entrustment of the work of ITE-03 to M/s R. E. Rogers. In the third article, it was alleged that while recommending the space rent at the rate of Rs.10,500/- per sq. mtr., the applicant did not mention certain relevant facts. In the fourth article, it was alleged that the applicant did not give file numbers while dealing with the file for award of the work related to ITE-03. Lastly, it was alleged that the applicant did not maintain financial discipline, and the estimated deficit was

shown as Rs.33.56 lakhs, as against the actual loss of Rs.91 lakhs.

3. The applicant submitted his explanation denying the allegations made against him. He mentioned that above him, there were three higher officers, namely, Shri D. S. Chadha, a Director, and the CMD, and that he did not take a final decision at any stage. Not satisfied with the explanation offered by the applicant, the disciplinary authority ordered an inquiry. The inquiry officer submitted his report, holding that charges 1, 2, 3 and 4 are proved, and charge No.5 as not proved. After calling for the comments of the applicant on the inquiry report, the disciplinary authority passed an order dated 21.12.2011, imposing major penalty of reduction to lower stage in the time scale of pay by reversing two increments for a period of two years, and further stoppage of increments for two years with cumulative effect. The appeal preferred by him was dismissed on 17.06.2013 by the CMD & Appellate Authority. Hence, this OA.

4. The applicant contends that in the entire hierarchy, he figured at the lowest, and except that he mooted certain proposals, he did not take any decision, and the charges framed against him are without any basis. He further contends that

similar charges were framed against Shri D. S. Chadha, his superior officer, and in his case, the inquiry officer held some charges as not proved, and others as partly proved, and the only punishment imposed against him was that of 'censure', whereas in his case, a discriminatory treatment was meted out.

5. The respondents filed a counter affidavit opposing the OA. It is stated that the lapses on the part of the applicant have given rise to losses in the Exhibition, and accordingly charges were framed and inquiry was conducted. It is stated that the allegations against the applicants are totally different from those made against Shri D. S. Chadha, and that there cannot be any comparison.

6. We heard Shri S. K. Gupta, learned counsel for the applicant, and Shri Adarsh Priyadarshi and Shri Sujeet Keshari, learned counsel for the respondents.

7. The applicant functioned as Manager in the ITPO, and he was part of the team that organised ITE-03 at Moscow. Two years after the event was conducted, a charge memorandum was issued to him, alleging certain lapses on his part. The charges read as under:

“Article-I

Shri R. L. Gupta, Manager, FFD had submitted a note on 28.9.2002 for reducing the duly approved space rent from Rs.12,000/- to Rs.10,500/- on the false ground that the trade & industry had already been informed that the space rent for ITE'03 Moscow will be charged @ Rs.10,000/- per sq. mtr., which resulted in financial loss of more than Rs.39.65 lakhs to ITPO. No circular letter was issued to Trade & Industry with the approval of the competent authority. His own DGM (Sh. D. S. Chadha) had issued a large number of circular letters to trade & industry in which it was clearly mentioned that highly subsidized space rent will be charged @ Rs.11,500/- per sq. mtr.

Article-II

Shri R. L. Gupta, Manager, did not invite quotations for awarding the handling/clearing work of ITE'03 to M/s. R. E. Rogers. He also did not ascertain from M/s. Expo-Westrans whether M/s. R.E. Rogers were their associates. He also did not ascertain whether M/s. Siddhartha Logistics (P) Ltd. were not competent to undertake handling/clearing work of ITE'03 in India. M/s. Siddhartha Logistics were the ITPO approved official handling/clearing agents.

Article-III

Shri R. L. Gupta, Manager, had submitted a note on 28.9.2002 for CMD's approval for revising the space rent from Rs.12,000/- to Rs.10,500/- on the ground that Trade & Industry has already been informed that the space rent will be charged @ Rs.10,000/- per sq. mtr. However, his own DGM, Shri D. S. Chadha had issued large number of circular letters to Trade & Industry in which it was clearly mentioned that the space rent will be charged @ Rs.11,500/- per sq. mtr. for ITE'03. He concealed this fact in his note dated 28.9.2002 even though required to do so in the interest of ITPO. In his note, he was required to mention that the space rent charged from the participants, with or without shipment,

the total area booked and the subsidy granted by the Ministry of Commerce & Industry in the earlier ITE'97 and Consumex'96, Moscow, in the interest of fair play.

Article-IV

Shri R. L. Gupta, Manager was dealing with the file relating to award of handling/clearing work for ITE'03, did not give file number on it. He also did not keep record of this file.

Article-V

Shri R. L. Gupta, Manager in collusion with other officers, had manipulated/revised the budget estimates for ITE'03, Moscow time and again, without any justification and also did not maintain the financial dispute. The estimated deficit was shown as Rs.33.56 lakhs, while the actual deficit was more than Rs.91 lakhs. Some of the essential items were deliberately left out while preparing the budget estimates."

8. Articles I and III are inter-related, and they are about the recommendation of the applicant for reducing the space rent from Rs.12,000/- to Rs.10,500/- per sq. mtr. The second charge is about awarding of the handling/clearing work to M/s R.E. Rogers, without inviting quotations. In the fourth charge, it was alleged that the applicant did not give number to the file. In the fifth charge, the allegation was that the estimated deficit was not properly indicated. The inquiry officer held that charge as not proved.

9. The Tribunal cannot sit as an appellate authority over the findings recorded by the inquiry officer, or the view

taken by the disciplinary authority. The grievance of the applicant, however, is that on the same charges made against Shri D. S. Chadha, his superior, different findings were given, and the only punishment awarded against him was that of censure. It is more a case of drawing the similarity or comparison. Even on this aspect, we were a bit hesitant. However, on finding that the charges on certain aspects were verbatim against both the officers, we proceeded further to find out how those charges were dealt with by the respective inquiry officers. On a direction issued by us, the applicant has made available a comparative chart of the articles of charge made against him on the one hand, and Shri D. S. Chadha, on the other hand, and the findings thereon.

10. Article-I framed against the applicant is comparable to Article-II framed against Shri D. S. Chadha. The allegation is that as against the rent fixed @ Rs.11,500/- per sq. mtr., space was allotted @ Rs.10,500/- per sq. mtr. The only difference is that the applicant is said to have submitted proposal for approval, whereas Shri Chadha is said to have accorded approval. For the sake of convenience they are reproduced hereunder:

Shri D. S. Chadha	Applicant
<p><u>Article-II</u> Shri D.S. Chadha, while working as DGM (Foreign Fairs Division) during the years 2002-03 had submitted a note seeking CMD's approval to reduce the duly approved space rent from Rs.12,000/- to Rs.10,500/- on the false ground that trade & industry had already been informed that the space rent for ITE'03 will be charged @ 10,000/- per sq. mtr. He concealed the fact that he himself had issued a large number of circular letters to trade & industry. He had clearly mentioned that the highly subsidized space rent for ITE'03 will be charged from the participants @ Rs.11,500/- per sq. mtr.</p>	<p><u>Article-I</u> Shri R. L. Gupta, Manager, FFD had submitted a note on 28.9.2002 for reducing the duly approved space rent from Rs.12,000/- to Rs.10,500/- on the false ground that the trade & industry had already been informed that the space rent for ITE'03 Moscow will be charged @ Rs.10,000/- per sq. mtr., which resulted in financial loss of more than Rs.39.65 lakhs to ITPO. No circular letter was issued to Trade & Industry with the approval of the competent authority. His own DGM (Sh. D. S. Chadha) had issued a large number of circular letters to trade & industry in which it was clearly mentioned that highly subsidized space rent will be charged @ Rs.11,500/- per sq. mtr.</p>
<p><u>Finding</u> Not proved.</p> <p>The evidence produced by the prosecution and defence have been examined. It is seen from Ex.P-1 that Shri H. S. Madan, GM who was nominated as the leader of the team had issued circular letter dated 13.9.2002 wherein the space rent to be charged from the participants was indicated as Rs.10,000/- per sq. mtr. For participation in Indian Trade Exhibition, 2003 Moscow (ITE'03). From the pages1-6/n of Ex. P-1. It is evidenced that a note was initiated through CO to take the approval of the competent authority, for fixation of space rent to be charged from the participants at Rs.12,000/- per sq. meter. CMD approved the space rent to be charged from the participants @ Rs.12,000/- per sq. mtr vide note dated 26.9.2002 (page 13/n of Ex.P-1). On receipt of CMD's approval dated 26.9.2002, another note dated 28.9.2002 pages 14-15/n of Ex.P-1) was initiated by Shri R. L. Gupta,</p>	<p><u>Finding</u> Proved.</p> <p>PO has submitted common brief for Article-I & III. Moreover, allegation in both the Articles of charges are interrelated as both the Articles deal with the reduction/revision of space rent from Rs.12,000/- to Rs.10,500/-. Both the Articles has been discussed together.</p> <p>The allegation in the Article I is on the role of the CO while processing proposal for reduction of space rent from Rs.12,000/- per sq. mtr. to Rs.10,500/- per sq. mtr. According to Ex.P-2 (the budget file) the CO had recorded a note for proposing reduction of the space rent as alleged. The CO has defended that he prepared a note based on the directions of the higher authorities, which can also be inferred from the note indicating discussion with CMD. The CO has further argued that CMD had finally approved the space rent.</p> <p>Basically, the allegation against the CO is that he submitted a note based on false grounds that the</p>

<p>Manager & the CO preparing the space rent to be charged @ 10,500 per sq. mtr. On the ground that a large number of circular letters had already been issued to the trade and industry, stating therein that the space rent for ITE'03, Moscow will be charged @ Rs.10,000/- per sq. mtr. It is seen from note dated 2.10.2002 (page 14/N of Ex.P-1) CMD while approving the rentals at Rs.10,500/- had noted as under:-</p> <p>“I have gone through the notings on the file for fixation of rentals for Indian Trade Exhibition, Moscow to be held in February, 2003. I have also noticed that we have issued letters to intending participants including State Governments, indicating initial rental of Rs.10,000/- per SQM approximately and confirming the same by Rs.10,500/- per sq. mtr. in the latest letters. Keeping in view the fact that the Department of Commerce is providing the subsidy of Rs.40.00 lakhs and no event of this scale has been put up by ITPO in the past 8 years, it will be in fitness of things to keep the rentals @ Rs.10,500/- as already communicated to Trade & Industry. However, efforts should be made to economise the expenditure wherever possible.”</p> <p>The above shows that circular issued by Sh. HS Madan, GM, indicating the rentals to be charged at the rate of Rs.10,000/- per sq. mtr. (approximately) has been brought in the notice of</p>	<p>trade and industry had already been informed about space rent of Rs.10,500/-. According to the allegation no such circular was issued to trade and industry as Shri D.S. Chadha had issued a circular (Ex.P-5) wherein the space rent was mentioned as Rs.11,500/- per sq. mtr. It has further been observed that from the budget file that the budgeting was not done with the space rent of Rs.10,500/-. Even for the same of argument, if it is accepted that the CO was directed to submit such note, the CO was duty bound to bring all the facts on record as alleged particularly when such proposal amounted to a financial loss to the organisation.</p>
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<p>competent authority by CO. Thus by not mentioning the issue of circulars to the trade and industry for charging rent of Rs.10,000/- per sq. mtr. in the earlier note, which was approved by the CMD on 26.9.2002 for charging the space rent @ Rs.12,000/- per sq. mtr. (page 12/n of Ex.P-1) inquiry does not consider it as a serious lapse as while according approval for charging space rent of Rs.10,500/- per sq. mtr., CMD had taken into consideration all these circulars.</p> <p>In view of the above discussion it is held that Article of Charge II against CO is not proved.</p>	
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The difference as to findings is clearly visible. The inquiry officer in the case of Shri D. S. Chadha took note of the approval of the CMD, and in fact extracted the same. However, the inquiry officer in the case of the applicant took a totally different and hyper technical view. Here itself, it needs to be noted that the applicant has simply submitted a proposal, whereas Shri D. S. Chadha recommended the proposal, which, in turn, was approval by the CMD. If Shri Chadha cannot be said to have committed any illegality in the matter, it is just understandable as to how the applicant can be found fault with, on the same allegation.

11. Similarly, Article-III in the case of the applicant, on the one hand, and Shri D. S. Chadha, on the other, are of the same purport. There again, the same result ensued, i.e., the

charge was held not proved against Shri Chadha, whereas it was held proved against the applicant.

12. More interesting is the Article-II in case of the applicant, which is same as Article-IV in case of Shri Chadha. It is about assigning of the handling/clearing work to M/s R. E. Rogers. The applicant nowhere figured in the context of award of contract to that agency. The operative portion of the finding of the inquiry officer in case of Shri Chadha reads as under:

“It is seen from Expowestrans (EWT) telefax message in response to Regional Director (RD), Moscow’s letter dated 4.11.2003 (Ex.P.4) they informed RD, Moscow that EWT and M/s RE Rogers, International India have no written agreement of being representative of each other for clearing/forwarding work in India and Russia. However, they have also mentioned that EWT has very successful cooperation with RE Rogers in last five years and know each other for last ten years which shown that M/s RE was not the authorized agent of M/s Expowestrans for handling and clearing work in India.

The above shows that H/C work was awarded to M/s RE Rogers for ITE, 2003, who was not the approved agency for H/C work in India without inviting quotations, which has also been confirmed by PW.1 in his deposition. Further, it was not ascertained from M/s Expowestrans and M/s Siddhartha Logistics Pvt. Ltd., Mumbai that M/s Siddhartha Logistics was eligible to carry out the H/C work.

Since, the H/C work was awarded to M/s RE Rogers at the approved rates for other agencies based on the recommendations of RD, Moscow with the approval of the Competent Authority,

Inquiry, thus finds that there is a procedural lapse in awarding H/C work to M/s RE Rogers without inviting quotations and non consideration of nomination of M/s Siddhartha Logistics for H/C work on the part of ITPO officials including CO. However, there is no evidence to prove that ITPO has incurred financial loss by awarding H/C work to M/s RE Rogers. Thus, malafide on the part of the CO is not established.

In view of the above analysis, it is held that Article of Charge-IV is partly proved."

In contrast, the operative part of the finding against the applicant reads as under:

"From the evidence on record it is clear that the CO had initiated a note without inviting any formal quotations. The CO has tried to defend that he was neither competent to award the contract nor he was the approving authority. The CO has also defended that ED during his earlier visit to Moscow had already approved M/s RE Rogers as agent. The CO had cited ED as his defence witness but he did not present him despite two opportunities were given to CO. There is no direct evidence to show that the ED had approved such agent. From Ex.P-4 (page 144A), it could be only observed that some discussion took place, but no formal approval existed. Even in comments made on the letter of ITPO, Mumbai were not signed by ED. Even for the sake of argument that the firm was approved the procedure need to be followed which the CO has failed to do. From the defence documents (Ex.D-2) it has been observed that the firm was having two agents in India. Thus, selection of one firm on nomination basis is again questionable. The arguments of the CO are not acceptable. The charge accordingly gets substantiated. I, therefore, hold this charge as proved."

13. Article-IV against the applicant is equivalent to Article-VI against Shri D. S. Chadha. While in case of the applicant, the charge was held proved, the finding was in the negative in the case of Shri Chadha. The disciplinary authority of Shri Chadha passed an order dated 02.07.2010 imposing the minor penalty of censure.

14. It needs to be mentioned here that as many as nine articles of charge were framed against Shri Chadha, and articles 1, 4 and 8 were held partially proved against him. The disciplinary authority took note of that, and imposed the punishment of censure. In the case of the applicant, however, a serious view was taken, and a major penalty of very high order was imposed. The applicant did not figure at the level of decision-making. His role was confined only to that of submitting proposals. As many as three officers dealt with the file submitted by the applicant.

15. In the totality of the circumstances, the imposition of the penalty against the applicant cannot be sustained in law. The findings on the articles of charge are arbitrary and inconsistent, inasmuch as different results ensued against the two officers who faced same charges. We are sure that had the disciplinary authority of the applicant been aware of the

proceedings initiated against Shri D. S. Chadha, or the result of those proceedings, a totally different situation would have emerged.

16. We, therefore, allow this OA in part, and set aside the order of punishment passed against the applicant. In the place of the punishment imposed through the impugned orders, we direct that the punishment of 'censure', as was imposed against Shri D. S. Chadha, shall stand imposed against the applicant also. The respondents shall restore to the applicant, all the disadvantages which he was subjected to, on account of the major penalty, within a period of three months from the date of receipt of this order. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/