IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2753 of 2011

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Babban Singh S/O Late Ramadhar Singh Resident Of Village- Mohania , Near Railway Station At And P.S. Mohania , District- Kaimur.

.... Petitioner/s

Versus

1. The Chairman-Cum Managing Director , National Project Construction Corporation Ltd., Plot No.67 - 68 , Sector- 25, Faridabad , Haryana.
2. The Chairman Managing Director-Cum-Disciplinary Authority + National Project Construction Corporation Ltd., Plot No. 67 - 68 , Sector - 25 , Faridabad- 121004.
3. The General Manager, National Project Construction Corporation Ltd., North Eastern Sector Office, Kunjban Colony , West Tripura , District- Agartala-799005.
4. The Chief Manager, (Hr), National Project Construction Corporation Ltd., C.O.-Faridabad.
5. The Zonal Manager, National Project Construction Corporation Ltd., Ne- Liaison Office . 31, Hrish Thakur Road, Agartala - 799001.
6. The Zonal Manager, National Project Construction Corporation Ltd.Bihar Zone, Sri Krishna Nagar , Patna.
7. The Unit Officer, National Project Construction Corporation Ltd., Hathiari P/H Unit, Vikash Nagar , District- Dehradu , Uttaranchal.
8. The Project Manager, National Project Construction Corporation Ltd., Pmgsy Rohtas Works, 650 , Panchsheel Colony , Sasaram, District - Rohtas -821115.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Adv with Mr. Brisketu Sharan Pandey, Adv
For the N.P.C.C	:	Mr. Shailendra Kumar, Adv & Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

6 08-07-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:-

> *"For issuance of a writ in the nature of certiorari of any other appropriate writ order or direction quashing the letter no. 5150220/Vig/III/93/26/522 dated 23.11.2010*

(Annexure-8) issued under the signature of respondent no. 2 rejecting the representation filed by the petitioner in compliance of order dated 23.07.2010 passed by Hon'ble Mr. Justice V.N. Singh in C.W.J.C No. 11546 of 2010.

For issuance of a writ in the nature of certiorari quashing the part of the order dated 10.07.2009 passed by the respondent no. 1 whereby a sum of Rs. 4598/- has been ordered to be recovered from h is dues/pay and allowances in three installments and withholding his full salaries for intervening period from 25.08.1998 until the period he has been reinstated.

For quashing the letter dated 10.05.2010 and its Annexure issued by the respondent no. 7 for recovery of a sum of Rs. 2,57,519.30 contrary to the aforesaid order contained in Annexures-1 and 1/1.

For quashing the letter dated 25.05.2007 by which recovery of a sum of Rs. 76,833/- is being made (Annexure-3).

For directing the respondent concerned to pay one day salary of 16.06.1992 so that his service may not be deemed to be discontinued.

For further directing the respondents concerned to promote the petitioner on the post of Store-Keeper/next higher post in the terms of the order passed by the aforesaid Hon'ble Court and also in the terms of the impugned order."

Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the petitioner while assailing the impugned order dated 23.11.2010 (Annexure-8) passed by the Chairman cum Managing Director of the National Project Construction Corporation Ltd. (hereinafter referred to as the 'Corporation') has basically concentrated on the following two aspects:-

(i) When the authorities Corporation did not initiate any proceeding for recovery of a sum of Rs. 76,883/- and Rs. 2,57,519.30/-and yet had passed orders on 25.05.2007 and 10.05.2010, for making such recovery without initiating any proceeding, the two orders of recovery could not have been sustained much less approved by the Managing Director of the Corporation.

(ii) The petitioner in fact having already retired from service on 30.09.2014, still stands deprived of all the retirement benefits only on the ground of aforesaid two orders of recovery passed against him even when there was a direction by the competent authority to make payment of salary for the period from 25.08.1998 till 18.11.2006 .

Learned counsel for the respondents on the other hand has defended the impugned action and orders of the competent authority of the Corporation. According to him, it is the petitioner, who had been creating unnecessary confusion both before this Court and before the C.M.D. of the Corporation which ultimately got resolved by the impugned order. He would in this regard further explain that it was the case of the petitioner himself that since the order of punishment dated 10.07.2009, had been confined to only recovery of Rs. 4598/-, the authorities were not entitled to make any further recovery in the name of giving effect to that order and the C.M.D of the Corporation in that regard has come to the finding that such order of recovery of Rs. 4598/- had nothing to do and in fact no connection with the order dated 25.05.2007 and 10.05.2010.

It is in this background that this Court now has to go into the question that as whether such orders were passed on 25.05.2007 and 10.05.2010 had any co-relaton to the order dated 10.07.2009. As a matter of fact, non conducting of the proceeding before passing of the order dated 25.05.2007/10.05.2010, was neither raised by the petitioner before this Court in the earlier writ petition nor in the consequential representation filed by him before the C.M.D., of the Corporation.

In the considered opinion of this Court, the order passed by the authority is not a old wine which becomes better and better due to lapse of time only their repeatedly being assailed by the petitioner. The petitioner initially had approached this Court while filing C.W.J.C No. 11576 of 2010 assailing two orders of recovery dated 25.05.2007/10.05.2010 and one of his submission before this Court was that the order of recovery of sum of Rs.2,57,519.30/- as per the order dated 10.05.2010 or the earlier order of recovery of Rs. 76,883/- dated 25.05.2007 were bad because they were contrary to the punishment imposed on the petitioner by the C.M.D in his order dated 10.07.2009, whereby and whereunder sum of Rs. 4598/- only was directed to be recovered by way of penalty on the petitioner.

In this regard paragraph no. 1, 2 and 3 of the earlier inter pare order of this Court dated 23.07.2010 passed in C.W.J.C No. 11576 of 2010, becomes relevant and is quoted hereinbelow:-

> *"Heard learned counsel for the petitioner and the counsel for the National Project Construction Corporation Limited (hereinafter referred to as the "Corporation").*
>
> *2. Petitioner who is serving on the post of Junior Assistant-1 in the Corporation at Mohania, is aggrieved by the order dated 10.5.2010 passed by the Project Manager of the Corporation, Annexure-1/1, whereunder the Project Manager has directed to recover a sum of Rs. 2,57,519.30/- from the salary of the petitioner in instalments from the month of May, 2010. He is also aggrieved by the order of the Assistant Accounts Officer dated 25.5.2007, Annexure-3, whereunder direction has been issued to recover a sum of Rs. 76,883/- from his salary.*
>
> *3. It is submitted on behalf of the petitioner that aforesaid direction to recover the sum of Rs. 2,57,519.30/- contained in the order of the Project Manager, Annexure-1/1 as also the direction of the Assistant Accounts Officer to recover Rs. 76,883/- Annexure-3 is contrary to the punishment imposed on the petitioner by the Chairman and Managing Director-cum-disciplinary authority under order dated 10th July, 2009, Annexure-1, whereunder only a sum of Rs. 4,598/- was directed to be recovered by way of penalty imposed on the petitioner.*
>
> (underling for emphasis)

It was in this background of submission of petitioner before this Court that when the case of the Corporation was also noted in the same order, before giving a direction to C.M.D. to consider the grievance of the petitioner as would also became clear from paragraph no. 4 and 5 of the same order, which reads as follows:-

> *"4. Counsel for the Corporation has opposed the submission. He states that under the punishment order dated 10th July, 2009, Annexure-1 punishment of recovery has been imposed and the directions contained in order dated 10.5.2010 of the Project Manager (Annexure-1/1) and 25.5.2007 of the Assistant Accounts Officer (Annexure-3) is to recover the cost of the materials issued to the petitioner through indent and the amount of penalty has nothing to do with the recovery which is said to be made of the value of the materials issued to the petitioner through indents.*
>
> *5. Instead of myself going into the rival contention it is desirable to relegate the petitioner to the Chairman-cum-Managing Director of the Corporation to whom the petitioner should submit his representation highlighting the points which have been noted in this order and the Chairman-cum-Managing Director should consider and dispose of the same as early as possible, in any case within a period of three months from the date of its receipt."*

(underlining for emphasis)

It thus becomes clear that the case of the petitioner before this Court and consequently before the C.M.D was and/or could have that the orders dated 25.5.2007 and 10.05.2010 were unsustainable because in the order of punishment dated 10.07.2009 based on departmental proceeding and recovery was confined only to Rs. 4598/-. It is this aspect of the matter raised before the

C.M.D., which has been answered by holding as follows:-

> *"Hence, in compliance with the directions passed on 23.07.10 in C.W.J.C No. 11576 of 2010, the petiotner's representation dated 17.08.10 received on 24.08.10 of the petitioner is being decided within the confines as directed by Hon'ble High Court, as follows:-*
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> *On merits, it is found that petitioner has made false averments in the matter therefrom that there were two recoveries i.e. Rs. 257519.30 and 76,883/-. Further, it has been alleged that the said recoveries have been settled by the Disciplinary Authority of the Corporation in the order No. 500220/Disc./Misc./2009/1366 passed on 10.07.2009 thereby a sum of Rs. 4598/- has been imposed as a penalty against the said two recoveries i.e. Rs. 257519.30 and Rs. 76883/-.*
>
> *In fact, the issues of shortage of store materials amounting to Rs. 257519.30 and Rs. 76883/- were never subject matter of the charge sheet, therefore, the question of imposing penalty amounting to Rs. 4598/-* by *the Disciplinary Authority of the Corporation in the order passed on 10.07.10 does not arise.*
>
> *Further, it is revealed from the records that the said recovery of Rs. 4598/- was due to the shortage of the materials on account of tempering of store records whereas the said other two recoveries were against the shortage of materials relating to Hathiari unit & Manu Barrage unit of the Corporation.*
>
> *From the perusal of the records pertaining to the alleged recoveries of Rs. 257519.30 and Rs. 76,883/-, it is, in fact, revealed that the total recovery was Rs. 286117.30 against the shortage of material pertaining to Hathiari Unit & Manu Barrage Unit including the said penalty of Rs. 4598/- and Rs. 100/- against outstanding LTC advance. Out of the said recovery, a sum of Rs. 28598/- has been recovered from his salary which also includes Rs. 4598/- and the balance amount is Rs. 2,57,519.30/- to be recovered from the petitioner.*
>
> *It is also found that the entire amount of penalty of Rs. 4598/- has been recovered in three installment as per the direction passed in the order dated 10.7.2009 by the Disciplinary Authority of the Corporation. In the light of the above facts, it is unequivocally clear that there are no two separate recoveries such as Rs. 257519.30 and Rs. 76883/- as enumerated and recorded in para 2 of the order dated 23.7.10 passed by the Hon'ble High Court in*

C.W.J.C No. 11576 of 2010.

Moreover, from the above fact, it becomes abundant clear that the recoveries for shortage of store materials amounting to Rs. 2,04,598.30 relating to Hathiari Unit and Rs. 76,883/- relating to Manu Barrage was never subject matter of Charge Sheet as decided by the disciplinary authority in the order passed Vide order no. 500220/Disc./Misc/2009/1366 dt. 10.7.2009.

In the light of the above facts, there is nothing available in the records which envisaged or demonstrate and even indicate that the said pending recoveries amounting to Rs. 257519.30 in respect of shortage of materials pertaining to Hathiari and Manu Barrage Unit was never a subject matter of the order of the disciplinary authority passed on 10.7.2009 thereby a sum of Rs. 4598/- was imposed as penalty.

Hence the representation dated 17.8.2010 received on 24.8.2010 from the petitioner has been considered keeping in view the directions of the Hon'ble High Court and records of the matter therefore, however, I have not found any merit thereon on the contentions/averments and pleadings placed by the petitioner therein in respect of the issues as directed in Para 5r of the order of the Hon'ble High Court dated 23.07.2010.

Accordingly, the representation dated 17.08.2010 of the petitioner is disposed off."

(underlining for emphasis)

The question therefore, would arise that if the issue was neither raised before this Court and nor before the authority, can the petitioner now be allowed to challenge the order on different grounds. It is here that the petitioner will be bound by the principles of res judicata and constructive res judicata. The issue which was raised by the petitioner as with regard to the same order being confined at particular aspect having been answered by the authority, its correctness has to be tested only on that ground and not on any other ground.

In this background when this Court finds that the earlier order dated 25.05.2007 was communicated to the petitioner as with regard to subject matter of recovery of cost of the store materials in the light of a report of the committee dated 05.06.1999 under the heading of recoverable indents. The petitioner was informed that on receipt of recoverable indents from stores and sum of Rs. 76,883/- in relation to 24 indents. The petitioner being author of indents no. 665/1 to 24, a sum of Rs. 76,883/- was found recoverable and for that sum of Rs. 1000/- per month was being already deducted from his salary from May 2007. The petitioner in fact after receipt of this order dated 25.05.2007, did not assail this order before any other authority. It is also an admitted position that this amount of Rs. 1000/- per month being deducted from salary was to compensate the loss in lieu of some store materials being handed over to him in his charge in capacity of junior store keeper. The petitioner having thus acquiesced to the aforesaid order and allowed recovery to be made in view of the order dated 25.05.2007, he cannot now challenge the same order on the ground that the same was passed without conducting any proceeding.

This Court must clarify that in case of an amount sought to be compensated/recovered from an employee on admitted facts and never denied by the employee being the custodian, a departmental proceeding or a proceeding will not be necessary. A cashier or store keeper having been entrusted with particular amount or material which at the end of the day or tenure is not accounted for and which were admittedly entrusted to him, he is liable to refund that amount and/or liable to return the price of same. This Court therefore does not find any any error in the order dated 25.05.2007, which for the sake of clarity and convenience is quoted hereinbelow:-

"NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITED
(A GOVT. OF INDIA ENTERPRISE)
NORTH DISTRICT WORK UNIT : P.O. KANCHANCHARRA: TRIPURA(DHALAI)

Ref. No. 514301/25 Dated:/25/05/07/
To,
Shri Babban Singh,
Jr. Store Keeper,
N.P.C.C. Limited
N.P.P. Unit
Sub: Recovery of cost of the stores materials-Reg.
Ref: Committee's Report dt. 5-6-99
Recoverable Indents.
Dear Sir,
We are in receipt of recoverable Indent from Stores on 6-5-07 as per the Committee's report against your name. As details given below:

Indent No.	*Amount*
665/1 to 24	*Rs.76,883/-*

In this regard We are deducting Rs. 1,000/-(Rupees one thousand) per month from your 5/07salary.
This is four your kind information please.
Thanking You
Yours faithfully
Asstt. Accounts Officer"

In the similar manner, this Court does not find any reason to interfere with the order dated 10.05.2010. Let it be noted that the order dated 10.05.2010 also is as with regard to recovery of materials issued through indent at Manu Barrage Store, where the petitioner was posted. The aforesaid order dated 10.05.2010 reads as follows :-

"Ref. No. PMCSY/SSM/86 Date :- 10.05.2010

To,

Sh. Babban Singh,
Jr. Asstt. I (P&A)
NPCC Ltd.
PMGSY Kaimur Unit
Mohania

Sub :- Recovery of materials issued through indent at Manu Barrage Store.

Ref: Manu Barrage ATD No. 417313/90 dated 02.04.2010

Dear Sir

With reference to above said subject we have received A.T.D. amounting to Rs. 2,57,519.30 (Rupees two lacs fifty seven thousand five hundred nineteen & paisa thirty) on account of debit balance of your personal a/c, (Photo copy of ATD is enclosed). As per above mentioned ATD we are going to be recovered from your salary from the month of May 2010 onwards as per norms of the Corporation on the base of calculation of balance services on your superannuation.

This is for your information please.

Thanking you,

Yours faithfully,

sd/-

Project Manager"

From the reading of this order dated 10.05.2010 as well it becomes clear that the petitioner had issued the indent of the materials which were found to be recoverable from him and for which he was intimated by order dated 10.05.2010 or Rs. 2,57,519.30/- was to be recovered from his salary because of debit balance in his personal account. The petitioner in fact has himself also enclosed the debit voucher dated 21.04.2010, which clearly goes to show that the amount was debited from the account of the petitioner on account of receipt issued by him from Manu Barrage Store. The aforesaid order dated 10.05.2010, thus was definitely passed after departmental proceeding which had already been conducted for a different charge of shortage of material on account of tampering the store records. Since the petitioner had denied such allegation of tempering the records a departmental proceeding was conducted and the resultant order of punishment was passed on 10.07.2009.

Thus this Court will have no difficulty in holding that the order dated 10.07.2009, has nothing to do with even the subsequent order dated 10.05.2010 alike the earlier order dated 25.5.2007. It is this aspect of the matter which has been clarified by the C.M.D. of the Corporation in the impugned order which has already been quoted above.

In view of aforesaid discussion and finding, this Court does not find any reason to interfere with either of the to orders dated 25.5.2007 and 10.05.2010. The petitioner infact had never disputed the fact that he being the custodian of materials entrusted to him in capacity of storekeeper at Manu Barrage and Hathiari Barrage had issued indents which were not accounted for by him and thus its price had become recoverable. The debit balance being thus in the name of the petitioner and the petitioner being the store keeper he was bound to pay the same.

Again here the conduct of the petitioner has to be noted after 10.05.2010. He infact had never questioned the same before the competent authority including the Project Manager. He as a matter of fact had again accepted the order and only later on came out to challenge by filing a writ petition in which the order of punishment dated 10.07.2009 was made the main sheet anchor by him and it was sought to be canvassed that two other orders dated 25.05.2007 and the other dated 10.05.2010, were part of it and in fact had flown from the order dated 10.07.2009. This was definitely done by the petitioner by creating a false impression that there was a proceeding in respect of shortage of material which led to the order of records by way of punishment only for sum of Rs. 4598/- the same could not have been extended to recovery of huge amount of Rs. 76,883/- as per the order dated 25.05.2007 or another amount of recovery of Rs. 2,57,519.30/- as per the order dated 10.05.2010. This part of myth created by the petitioner however stands now clarified in discussion made earlier in this judgment and this Court, therefore, is not inclined to interfere with either of the order of recovery dated 25.05.2007 and 10.05.2010.

Since, the petitioner has already retired from service of the Corporation on 30.09.2014, and would be entitled for payment of his retirement benefits, this Court would direct that payment of admissible amount of retirement benefit, after making necessary deduction as per the two orders dated 25.05.2007 and 10.05.2010 must be made to him within a maximum period of three months from the date of receipt of this order. In other words, if no further amount is recoverable from the petitioner beyond the two orders dated 25.05.2007 and 10.05.2010, the payment of admissible retirement benefit as per the rules of the Corporation must be made to the petitioner within a maximum period of three months from the date of receipt of this order.

As with regard to the grievance of payment of salary, this Court fails to understand that when there is already an order for payment of such salary to the petitioner for the period from 25.08.1998 to 18.11.2006, why was the petitioner deprived of the aforementioned amount. However since this aspect of the matter was never raised by the petitioner before the C.M.D. of Corporation all that can be said is that if the earlier order of the authority directing for making payment of admissible amount of salary to the petitioner for the period 25.10.1998 to 18.11.2006 is still in force and has not been subsequently recalled/rescinded its payment may be made to the petitioner within the same period of three months from the date of receipt of this order.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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