

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 29.03.2017

CWP No.1324 of 2017

Gulshan Kumar Sharma

...Petitioner

Vs.

The National Textile Corporation & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr. G.K.S.Taank, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

By office order dated 07.05.1991 (Annex P-4), the petitioner was transferred from National Textile Corporation (NTC) showroom, Patiala to National Textile Corporation (NTC) showroom, The Mall Solan (H.P.) with immediate effect. The NTC showroom in Shimla was treated as an independent NTC showroom for all purposes. Vide letter dated 31.05.1993 (Annex P-5), the petitioner was informed that he would be looking after the sales and other activities at the Shimla showroom independently. While posted in Shimla, he was charged with embezzlement which had allegedly taken place in sale counter of NTC showroom, The Mall, Shimla with co-accused Umesh Kumar Chobey, a salesman. An FIR bearing No.208 was registered at P.S.Sadar, Shimla on 07.07.1995 under Sections 406, 408 & 420 IPC. The challan was presented before the Chief Judicial Magistrate, Court No.1, Shimla. The defalcation was exposed during physical stock taking in 1994. The trial has led to acquittal with the Magistrate concluding that the prosecution has failed to prove its case beyond reasonable doubt.

The prosecution had failed to examine the complainant, who led the criminal

machinery into motion and also to probe the audit reports on the basis of which, the accused had faced trial. Even Auditors had not been examined as witnesses in the trial Court. This is how the trial failed and the petitioner acquitted of the charges levelled against him. The trial Court judgment was announced in open Court on 30.03.2015.

Parallel to the criminal trial, the petitioner was subjected to departmental proceedings by service of charge-sheet dated 21.07.1995. The charge-sheet was issued in Shimla. The petitioner, who was a Showroom Manager, was placed under suspension in Shimla.

The petitioner has approached this Court in the wake of acquittal by the criminal Court in 2015 for incidents which occurred in 1994.

On the basis of the inquiry report in which the charges of embezzlement were proven on evidence, the petitioner was removed from service by order dated 22.06.1998 passed by the Chairman -cum- Managing Director, NTC in relation to misconduct committed in Shimla. The order of removal was passed at New Delhi exercising jurisdiction over Delhi, Punjab & Rajasthan regions. However, the major penalty of removal from service imposed on the petitioner contained in order dated 22.06.1998 was served at the Chandigarh address of the petitioner i.e. House No.2013, Section 21-C, Chandigarh. In the past, the petitioner had served the organization in Patiala. However, the petitioner was transferred from Patiala to Shimla with the incident happening in Shimla and this chain of events lead to the conclusion that the situs of the dispute is beyond the territorial jurisdiction of this Court with all material facts taking place in Shimla or New Delhi. Mere posting of the order of removal conveyed to the petitioner at Chandigarh would not give territorial jurisdiction to this Court. The order of removal from service was passed in New Delhi for misconduct committed in Shimla.

There should clearly be some nexus between the dispute and the territory of the State. The dispute in this case arose in Shimla. It may be that NTC has an office in Chandigarh, but the petitioner was employed in Shimla at the time of incident. The cause of action substantially arose within the State of Himachal Pradesh. The criminal trial was held in Shimla. Neither the cause of action wholly or in part arose within the jurisdiction of this Court.

In Lalbai Tricumlal Mills Ltd. Vs. Dhanubhai Motilal Vin., AIR 1955 Bombay 463, M.C.Chagla, C.J., formulated the test that territorial jurisdiction arises in a case of termination where “the subject-matter of the dispute substantially arises”. The fact that the order of removal was served to the petitioner by post in Chandigarh appears to be too slender a ground to hold that this Court has jurisdiction over the subject-matter. The test of residence at the time of removal is hardly material in the present circumstances. The petitioner was not employed in an establishment at the material time within the province of this Court. It is no doubt true that an order of removal or dismissal would not be effective unless it is published and communicated to the officer concerned. An order of removal and dismissal would take effect when the subject comes to know of it and that is only possible by communication as explained in State of Punjab Vs. Amar Singh Harika, AIR 1966 SC 1313. The date when the order of removal takes effect at a place of residence is one thing, but would that act alone confer jurisdiction on this Court under Article 226 of the Constitution. No doubt that the order was passed in New Delhi and communicated at the residence of the petitioner at Chandigarh where he happened to be in private residence and not in official accommodation, but that does not constitute substantial cause of action to empower this Court with judicial review which

has to be sited in some other forum beyond the boundaries of this Court. The declaration of innocence comes from Shimla, which constitutes the main cause of action built by the petitioner as his spring board in this case happening after 20 years. Even otherwise, the petitioner may have no case been removed from service in 1998 by a lawful order not challenged in a Court of law. The petitioner would have to approach some other Court beyond the boundaries of this Court to vindicate his grievance, if advised.

Consequently, the instant petition is dismissed for want of territorial jurisdiction, with liberty to the petitioner to approach the proper forum. However, this order will not influence the proper forum on the merits of the claim in case it is approached.

29.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>