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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09th March, 2018
Pronounced on: 25th October, 2018

\+ W.P. (C) 183/2004

HARI SHANKAR CHATURVEDI ..... Petitioner
Through: Mr. Vidya Sagar, Advocate.

versus

THE NATIONAL TEXTILE CORPN. LTD. ... Respondent
Through: Mr. Preet Pal Singh and Ms. Priyam Mehta, Advs. With Mr. Rajesh Bhambri, Deputy Manager, NTC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **JUDGMENT**

1. The petitioner Hari Shankar Chaturvedi was appointed as Cashier-cum-Accounts Clerk, in the office of the respondent, on 20th October, 1975. He was, thereafter, promoted as Assistant Manager, Grade-III with effect from 25th May, 1988.

2. On 29th January, 2002, the petitioner was visited with a charge-sheet, proposing holding of an inquiry, against him, under Rule 25 of the National Textile Corporation (Discipline & Appeal) Rules, 1975 (hereinafter referred to as "the Rules").

3. The charge-sheet contained a single Article of Charge, which read thus:

> " Shri Hari Shankar while working as Assistant Manager (Showroom Incharge) in NTC (DP&R) Ltd., Showroom at Greater Kailash failed to safeguard the stocks of the Showroom entrusted to him and after tampering the records, misappropriated the stocks worth Rs. 53,093.85 for his personal gains in conspiracy with Shri H.C. Suri, Sr. S/Man, Shri Vinod Kumar, Salesman, Shri Rakesh Sethi, Sr. S/Man and Smt. K. Vijaya Reddy, Salesgirl as is revealed by comparing the rates of major varieties of cloth as mentioned in the Stock Register with rates taken in the short Excess Statement prepared on the basis of the physical verification of stocks conducted on 16.03.2000.
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> Thus, Shri Hari Shankar, Assistant Manager (Showroom Incharge) by his above acts failed to maintain absolute integrity and acted in a manner unbecoming of an employee of the Corporation and has violated the provisions of Rule 4(i), 5(i), & 5(v) of the Conduct, Discipline and Appeal Rules, 1975."

4. The statement of imputation of misconduct, constituting Annexure-II to the charge-sheet, read thus:

> " **Statement of misappropriation and misconduct in respect of article of charges framed against Shri Hari Shankar, Assistant Manager (Showroom Incharge)**
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> A physical stock taking of stocks was conducted in the showroom on 16-03-2000 by Shri Hari Shankar , Assistant Manager (Showroom Incharge) and Shri Vinod Kumar, Salesman, Shri Rakesh Sethi, Sr. Salesman, Sh. H.C. Suri, Sr. Salesman and Smt. Vijay Reddy, Salesgirl. The short excess statement was prepared on the basis of this stock taking revealed that three varieties of cloth in hand had been deliberately valued at a higher rate than the rates at which these three varieties of cloth had been actually received from CDD and sold in the showroom. There was three varieties of cloth which were shown in the stock register as in excess quantity. It was done to offest the shortage in other varieties of cloth. The details are as under:-

Sl. No.	Page no. of stock Register	Quality	Excess qty. shown in the stock register to have been sold	Selling Rate	Rate at which taken in S/Excess Statement	Difference in rate	Value difference
1	06	31765 Suiting	344.85 Mtrs.	104/-	166/-	62/-	21380.70
2.	231	53905 Five star	1655.25 Mtrs.	29-50	37-50	8/-	13242.00
3	458	85785 Poplin	2052.35	30/-	39/-	9-	18471.15
							53093.85

Shri Hari Shankar had manipulated the stock figures in short/excess statement for the period ending 16-3-2000 by fraudulent acts in conspiracy with Shri H.C. Suri, Sr. Salesman, Sh. Vinod Kumar, Sr. Salesman, Shri Rakesh Sethi, Sr. Salesman and rates of major varieties of cloth as mentioned in the stock register with rates taken in the short/excess statement prepared on the basis of physical verification of stocks conducted on 16-03-2000.

Thus, by the above act, Shri Hari Shankar, Assistant Manager (Showroom Incharge) failed in maintain absolute integrity and acted in a manner unbecoming of a public servant and violated the provisions of Rule 4(ii), 5(i), & 5(v) of NTC (DP&R) Ltd. Employees Conduct, Discipline and Appeal Rules, 1975."

5. The disciplinary inquiry culminated in the submission, by the Inquiry Officer (hereinafter referred to as "the IO"), as inquiry report, dated 27th March, 2003.

6. Before the IO, the petitioner submitted a written brief, dated 20th March, 2003. It was emphasized, by the petitioner, in his written brief that as Showroom Manager, he neither handled cash nor delivered the commodity. He expressed surprise, therefore, at the allegations, in the charge-sheet, that his acts had caused wrongful loss to the respondent, and that his integrity was doubtful.

7. The IO analyzed the evidence before him, and reasoned as under, in support of his final findings:

(i) PW-1 S.K. Chaturvedi, Salesman, had deposed that the stock ledger, in the showroom, was maintained by the showroom incharge i.e. the petitioner. He also deposed that the actual rate of Casinova suiting was Rs. 104 per mt., whereas in the stock ledger, it was mentioned as Rs.166/- per mt.

(ii) Rakesh Sethi, Vinod Kumar, H.C. Suri and Vijaya Reddy, other witnesses deposing in favour of the respondent, stated that, whereas the original price of three varities of cloths 41765 suiting, Five Star Poplin 53905 and Poplin 85875 were Rs. 104 per mt., Rs. 29.50 per mt. and Rs. 30.00 per mt., the petitioner, as Showroom incharge, in his own handwriting, changed the sale rate in the stock ledger as Rs. 166.00 per mt., Rs. 37.50 per mt. and Rs. 39.00 per mt. respectively. They also deposed that they had asked the petitioner to sign on the Short/ Excess Statement, but, that he had refused to do so.

(iii) PW-2 K. Vishwanathan, Deputy Manager, deposed that he had called the petitioner to his chamber, to make inquiries from him, but the petitioner did not respond, which convinced him that the petitioner had deliberately inflated the actual rates of the aforementioned three varieties of cloth, to cover up the shortage of other varieties, by an amount of Rs.53,098/-. The fact of entry, tampering and inflation of the rates of the aforementioned three varieties of cloth, in the stock ledger, by the petitioner, was also vouchsafed by PW-3 Vinod Kumar, Salesman.

(iv) To the same effect was the evidence of PW-4 Ms. Vijaya Reddy. The fact of tampering with the rates, as entered in the stock ledger, by the petitioner, was also deposed by PW-5 Rakesh Sethi and PW-6 H.C. Suri.

8. The IO held that, on a complete evaluation of the aforementioned evidence, the charges against the petitioner stood proved. His findings, as contained in paras 7 and 8 of the Inquiry Report, read thus:

> "7(i) On the basis of documents related to the said enquiry proceedings, it is proved that Sh. Hari Shankar (CO), has worked in the post of Asstt. Manager (Showroom Incharge) during the financial year 1999-2000 from 1.4.1999 to 17.03.2000 without proper care and maintenance of Showroom records (stock ledger, short excess statement as on 16.03.2000 and other records). The actual selling rates or three varieties of cloth at page No. 6,231,458 of the stock ledger of showroom (Prosecution Document No.S-2) which are filled in the ledger on receipt of cloth in the showroom were tampered with. Shri Hari Shankar appended his signature against each entry of Receipt and Issue in the initials column of stock ledger but ignored the tempering in selling price whereas he himself used to write stock ledger.
>
> 7(ii) The charge of show room (consequent upon transfer of Shri Hari Shankar from Greater Kailash Showroom to Faridabad Showroom vide NTC's Order No. NTC/DDO/Per/R.1(12)/80 dated 15.03.2002 was not fully handed over to Sh. Rakesh Sethi, (Sr. Salesman) officiating

Incharge because physical stock checking was done in the showroom and the short excess statement as on 16.03.2000 prepared by the staff working in the show room was signed by all of them but Sh. Hari Shankar did not sign it. (Prosecution Document No. S-4)

7(iii) The actual selling prices of three varieties relating to the charge were not shown in the Short Excess Statement and the rates tampered in the stock ledger were filled in the Short Excess Statement. It was done to offset the shortage in other varieties of cloth.

On page no.6, 231, 458 of the stock ledger (Document No.S-2) related to the charge, Sh. Hari Shankar in his own handwriting himself filled in all the columns of Receipts and Issues and against each entry he has also put his signature. Besides this, in the stock ledger, Excess Qty. shown in the Stock Register to have sold.

8. Hence, while working as Showroom Manager/Incharge, Sh. Hari Shankar deliberately ignored his duties and responsibilities i.e. to maintain uptodate and in proper form of all financial and stock records of the showroom caused wrongful loss of Rs. 53093.85 (Rs. Fifty three thousand ninety three and paise eighty five) to the Corporation. This irregularity has been committed by him for his ill motivation in violation of rules, procedures and failed to safeguard the property (including stock and cash) of the corporation.

Thus, the above act of Shri Hari Shankar, Asstt. Manager (Showroom Incharge) is not honest and bonafide because he has committed the same without due care, attention and responsibilities. As such, it is not reasonable being a Showroom Manager/Incharge of the showroom.

Findings: The charge No.1 mentioned in the charge sheet no. NTC/DPR/SRS/Vig.01/01/543 dated 29.1.02 is proved."

9. Consequently, the Inquiry Report held the charge, against the petitioner, to be proved.

10. The aforementioned inquiry report was communicated, to the petitioner, by the respondent, under a cover of letter dated 2nd April, 2003, seeking his response thereto.

11. The petitioner represented against the aforementioned Inquiry Report, *vide* communication, dated 3rd May, 2003, addressed to the General Manager (Showroom) in the office of the respondent.

12. The petitioner emphasized the fact that the charge, against him, was itself of having acted in conspiracy with H.C. Suri and Vijaya Reddy, and that it was not permissible for the respondent to cite the said co-accused, as witnesses against the petitioner.

13. The petitioner asserted that the depositions of the said witnesses, could not be accepted at face value, in the absence of corroboration.

14. *Vide* order dated 12th May, 2003, the General Manager (R & D) in the office of the respondent, as Disciplinary Authority of the petitioner, held that the charge against the petitioner had been found proved in the Inquiry Report of the IO, and that the submissions of the petitioner, in opposition thereto, were unsubstantiated. In the said circumstances, it was opined that the petitioner was not a fit person to be retained in the services of the respondent and he was, therefore, awarded the penalty of removal from service.

15. The petitioner appealed against the said penalty, *vide* Appeal dated 13th June, 2003 addressed to the Board of Directors of the respondent. While reiterating the submissions advanced by him before the IO and the Disciplinary Authority, the petitioner also challenged the order of punishment, of the Disciplinary Authority, on the ground that it was non-speaking and unreasoned.

16. The Board of Directors of the respondent responded *vide* communication dated 17th September, 2003, conveying its resolution to uphold the penalty of removal from service, against the petitioner.

17. The petitioner is, therefore, before this Court, by means of the present writ petition, seeking quashing of the charge-sheet, dated 29th January, 2002, Inquiry Report dated 27th March, 2003, punishment order dated 12th May, 2003 and appellate order dated 17th September, 2003.

18. I have heard detailed submissions, advanced by Mr. Vidya Sagar, learned counsel for the petitioner and Mr. Preet Pal Singh, learned counsel for the respondent.

19. A synopsis of submissions has also been filed by the petitioner.

20. Learned counsel for the petitioner advanced the following submissions, to oppose the proceedings against his client, as well as the imposition of the penalty consequent thereupon:

(i) Sh. H.C. Suri and Ms. K. Vijaya Reddy, who were PW-6 and PW-4, cited as witnesses by the respondent, against the petitioner, were alleged to have conspired with the petitioner. As such, their evidence could not be relied upon by the respondent, to hold against the petitioner.

(ii) This was underscored by the fact that no proceedings had been initiated against either of the said two witnesses, which went against the basic allegation of the petitioner having conspired with them in defalcating the stocks of the respondent. Reliance has been placed, in this regard, on the judgment of the Supreme Court in ***Man Singh v. State of Haryana, (2008) 12 SCC 331.***

(iii) The Inquiry Report did not discuss any of the submissions advanced by the petitioner in his written brief and, instead, believed the statements of the witnesses cited by the respondent. This, too, vitiated the findings of the IO, for which purpose reliance has been placed on the judgment of the High Court of Himachal Pradesh in ***Yashpal Singh v. NTCL, (1999) 1 SLR 680.***

(iv) Even if all the findings of the Inquiry Report were to be accepted at face value, all that they indicated was a possible improper maintenance of accounts. The findings of the IO, as contained in the Inquiry Report, did not make out any case of misappropriation or conspiracy on the part of the petitioner.

(v) The orders of the Disciplinary Authority and the Appellate Authority, too, did not address the submissions advanced by the petitioner, and were cryptic and non-speaking in nature. Various judgments, of the Supreme Court and of this Court, have been cited in this regard.

(vi) The Disciplinary Authority i.e. General Manager (R&MD) was one of the directors on the Board of Directors, which constituted the Appellate Authority. This vitiated the findings of the Appellate Authority, for which reliance has been placed on ***Amar Nath Chowdhury v. Braithwaite & Co. Ltd., (2002), 2 SCC 290*** and ***A.K. Kraipak v. Union of India, (1969) 2 SCC 262.***

(vii) The proceedings against the petitioner, and his consequent removal from service, stood vitiated thereby. The petitioner had, however, crossed the age of superannuation in 2009. It would be contrary to the interests of justice, therefore, to subject the petitioner to fresh disciplinary proceedings, at this stage.

21. Mr. Preet Pal Singh, learned counsel for the respondent, arguing *per contra,* submits that the allegations against the petitioner were correctly held, by the IO, to be proved, by the evidence available on record. He draws my attention to the limited scope of interference by a Writ Court with findings returned consequent on disciplinary proceedings held in accordance with law. He also submits that the punishment imposed on the petitioner was proportionate to the misconduct committed by him, as the misconduct involved financial impropriety.

Analysis

22. That the scope of jurisdiction of a writ court, while examining findings consequent on disciplinary proceedings against an allegedly delinquent employee, is heavily circumscribed, and does not partake the character of an appeal, has been held in countless decisions of the Supreme Court. At the same time, the Writ Court would interfere, where the findings of the IO or Disciplinary Authority are perverse, or, on the facts, no misconduct could be said to have been made out, or where the punishment imposed on the allegedly delinquent employee is shockingly disproportionate to the allegations proved against him.

23. It is immediately apparent, that if the charge against the petitioner was correctly held to have been proved, there could be no question of the punishment disproportionate to the charge inasmuch as the charge was one, as Mr. Preet Pal Singh correctly points out, of financial impropriety and defalcating of stocks, which could legitimately invite evisceration from the service of the organisation.

24. It is also trite that the rigour of standard of proof, in disciplinary proceedings, is far less than that which attaches to criminal proceedings. The Disciplinary Authority is required to satisfy itself that, on preponderance of probability, keeping all the facts of the case, and evidence available, in perspective, the charges against the delinquent employee stand proved. While doing so, the Disciplinary Authority is required to examine all the evidence before him, and not to leave out any relevant evidence, or taking into account any irrelevant material. Default, in this regard, by the Disciplinary Authority, would result in the order being tainted by perversity, meriting interference by a Writ Court, in exercise of its power on judicial review.

25. Viewed thus, I am of the considered opinion that no case for interference with the order of the Disciplinary Authority, or the order of the Appellate Authority could be stated to made out in the available facts.

26. The case against the petitioner was that, by inflating the rate of certain varieties of fabrics in the stock ledger, he had compensated for other varieties of fabrics, which were found short. I am entirely in agreement, with learned counsel for the petitioner, that the evidence of Sh. H.C. Suri and Ms. K. Vijaya Reddy, being alleged conspirators with the petitioner, ought not to have been taken into account either by the IO or the Disciplinary Authority.

27. That, however, would not constitute a basis for setting aside the findings of the Disciplinary Authority, or the punishment imposed on the petitioner consequent thereupon, if, *de hors* the evidence of the said two witnesses, the charge against the petitioner could still be said to be proved.

28. The fact that the petitioner was maintaining the stock ledger of the showroom stood proved by the depositions of PW-1 Sh. S.K. Chaturvedi and PW-5 Sh. Rakesh Sethi and PW-3 Vinod Kumar.

29. PW- 5 Rakesh Sethi and PW-3 Vinod Kumar also confirmed that the rates for the three varieties of cloth, in the showroom, had been changed, by the petitioner, in his own handwriting. The fact that the rates were tampered, by the petitioner, also stood established by the evidence of PW-3 and PW-5. These facts could not be dislodged by the petitioner, despite the opportunity, extended to him, to examine the said witnesses.

30. PW-2 Sh. K. Vishwanathan also confirmed the fact of discrepancy in the stock ledger which was examined by him.

31. The case, therefore, is quite clearly not one of no evidence. As to whether the evidence against the petitioner was sufficient, or insufficient, to hold, conclusively, that the charges against him were proved, is not an aspect to which this Court can advert in exercise of its jurisdiction under Article 226 of the Constitution of India. The IO has, on a complete appreciation of the evidence before him, arrived at a conclusion that the charge against the petitioner stood proved. No case for castigating the said finding as being opposed to the weight of the evidence, or being *ex facie* perverse in nature, can be said to be made out in the present case.

32. In view thereof, I am of the opinion that the present case does not merit interference, by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India.

33. The writ petition is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

OCTOBER 25th, 2018
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