

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 16817 of 2011

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TANWIR AHMAD Son Of Late Afzal Uddin A Resident Of Village
Abedullah Chak, P.S.- Parsa Bazar, Distt. Patna And Presently Residing At
Haroon Nagar, P.S. Phulwari Sharif, Dist. Patna At Present Posted As Senior
Sales Man, National Textiles Corporation Show Room Nariyal Bazar,
Madhubani

... .. Petitioner/s

Versus

1. NATIONAL TEXTILE CORPORTION (Government of India undertaking)
through its Divisional Manager Retail Marketing Division, S P Verma Road,
Patna, PS – Kotwali, District - Patna
2. Zonal Manager National Textile Corporation Ltd. Having Its Registered
Office At 7 Jawahar Lal Nehru Road, Calcutta

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arshad Jameel Hashmi
For the Respondent/s : Mr.K.N.Gupta

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the petitioner and the
respondents.

2 An amount of Rs 71,101.55 P has been recovered
from the petitioner being the proportionate component on account
of the total shortage discovered at the show room of the
respondent-Corporation where the petitioner was posted as
salesman in Bihar Sharif. The same is not preceded by any enquiry
or proceeding and merely by issuing a show cause, recovery has



been made without fixing responsibility for the shortage upon any individual.

3 From the records, it is apparent that the respondents have divided the total shortage among the staff in the show room and the proportion of Rs 71,101.55 P has been fastened upon the petitioner and recovery has been made in such a manner.

4 It is trite law that civil consequences could not have been imposed by way of recovery without proceedings in accordance with natural justice and by providing due opportunity.

5 Learned counsel for the petitioner, relying upon decision in the case of another similarly situated employee of the Corporation, namely, Arjun Bind in CWJC No 6611 of 2010 as well as the order passed by the Division Bench in LPA No 1305 of 2010 affirming the said judgment, submits that the recovery, as made by the respondents, is wholly unjustified.

6 On going through the orders passed in the writ proceedings as well as Letters Patent Appeal, this Court would observe that the submissions of the petitioner's counsel are correct. In the case of Arjun Bind (supra), this Court has already held that recoveries, as has been sought to be done from the petitioner without any proceeding in accordance with law as per the



Discipline Rules of the Corporation, is not sustainable in the eyes of law.

7 None appears on behalf of the respondent-Corporation though counter affidavit has been filed.

8 The Corporation seems to have placed reliance on a Circular dated 07.08.1987 authorizing such recovery.

9 Such a Circular could only be valid if the Discipline and Appeal Rules of the Corporation permitted such a recovery without any enquiry. Recovery, as has been made from the petitioner, is nothing short of a punishment. By no stretch of imagination, even the Service Rules could have authorized such a punishment without complying with the principles of natural justice and without establishing the guilt in a duly constituted proceedings where the petitioner's proportionate liability out of the total loss was ascertained after due opportunity and in accordance with natural justice. Records show that no such proceeding has been conducted.

10 The order of recovery dated 29.07.2011 is quashed since the same is held to be unsustainable in law.

11 Since the recovery has been effected on account of such illegal order, this Court would direct that if the petitioner produces a copy of this order before respondent No 1 within six



weeks, respondent-Authorities would refund the amounts recovered from the petitioner within a period of eight weeks thereafter.

12 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2019
Transmission Date	NA

