

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2809/2002**

KEWAL K. DUGGAL Petitioner
Through: Mr. Amrit Pal Singh Gambhir,
Adv.

versus

THE UP EXPORT CORPORATION LTD. Respondent
Through: Mr. Rajesh Chhetri, Mr. Pawan
Upadhyaya and Ms. Meenakshi
Rawat, Advs.

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

J U D G M E N T
10.02.2020

%

1. During the pendency of this writ petition, the first respondent Corporation has been renamed as “Uttar Pradesh Handicrafts Development and Marketing Corporation Limited”, *vide* fresh certificate of Incorporation dated 23rd September, 2008, issued by the Deputy Registrar of Companies, Uttar Pradesh and Uttaranchal. The cause title of the present writ petition, shall, therefore, reflect the name of the first respondent as “Uttar Pradesh Handicrafts Development and Marketing Corporation Limited”. Amended memo of parties shall be filed, by the Petitioner, on or before 25th February, 2020.

The Challenge

2. This writ petition impugns

- (i) Office Order No. FIN/VAR/5405, dated 8th November, 2000, issued by the Managing Director of the Respondent no. 1 corporation, whereby an earlier order, dated 23rd August, 2000, was cancelled, and deduction of ₹ 4,350/-, per month, from the salary of the petitioner, was directed to be continued “till such time the loss suffered by the Corporation is not recouped”,
- (ii) Show Cause Notice No. SEC/K-02/6472, dated 20th August, 2001, whereby the petitioner was alleged to have violated Suspension Order No. 5407, dated 8th November, 2000, which directed the petitioner to be present in the Export Division, Bhadohi, everyday, and not to leave the station without the permission of the Managing Director (MD) of the Respondent No.1 – Corporation (hereinafter referred to as ‘first respondent’),
- (iii) Charge-sheet No. SEC/K-02/6474 (hereinafter referred to as “charge-sheet No. 6474”), dated 20th January, 2001, issued to the petitioner by the MD, of first respondent, alleging “slackness”, by the petitioner, in the realisation of ₹ 30,40,350.06, from four companies in the US,
- (iv) Charge-sheet No. SEC/K-02/6475 (hereinafter referred to as “charge-sheet No. 6475”), dated 20th January, 2001, whereby the petitioner was charged with having concealed, from the first respondent, information regarding the allotment, to the petitioner, of government accommodation at E-328/A, Sector-

27, Noida, which resulted in disbursal, to the petitioner, of House Rent Allowance (HRA), to which the petitioner was allegedly not entitled,

(v) Charge-sheet No. SEC/K-02/6942 (hereinafter referred to as “charge-sheet No. 6942”), dated 16th February, 2001, issued to the petitioner by the MD, of the first respondent, whereby the petitioner was alleged to have

(a) supplied goods, of the first respondent, to foreign buyers, after expiry of the Letter of Credit (L/C) executed in that regard, and after expiry of the date of delivery, as a result of which receipt of payment, from certain specified firms, totalling ₹ 1,17,502/-, was substantially delayed, and

(b) supplied M/s Aid and Trade International, USA, goods worth ₹ 3,02,199.25 on documents against acceptance at 60 days sight, against which payment had not been made by the concerned buyer,

(vi) Memo No. 7071, dated 3rd March, 2001, issued to the petitioner by the MD of the first respondent, alleging

(a) delayed submission, by the petitioner, of TA Bills, relating to international journeys undertaken by the petitioner during various periods of time, between 26th November, 1994 and 8th April, 1997, and

(b) making of foreign trips, by the petitioner, without due permission from the Government, and

(vii) Order No. MD/Surplus/2447, dated 15th September, 2001, issued to the petitioner, by the MD of the first respondent,

informing the petitioner that several posts in the first respondent-Corporation, including the post of Regional Manager, on which the petitioner was posted, had been declared surplus and abolished and, consequently, terminating the services of the petitioner against payment, to the petitioner, of three months' salary in lieu of notice.

3. Apart from the above, the writ petition also prays for quashing of order, dated 2nd November, 2000, whereby the petitioner was transferred from Delhi to Bhadohi, and relieved for the said purpose. However, this prayer has been rendered infructuous by efflux of time, as has already been noticed by this Court, in its order dated 6th March, 2017, in the present proceedings.

Order dated 6th March, 2017 and its sequelae

4. During the course of these proceedings, the following order was passed, by this Court, on 6th March, 2017:

“1. There are a total of nine prayers in this writ petition. Five prayers are for challenging five chargesheets with three chargesheets being of the same date i.e. 20.1.2001 and two other chargesheets being 16.2.2001 and 3.3.2001.

2. Obviously, a chargesheet research on disciplinary proceedings and unfortunately none of the counsels for the parties is able to inform this Court as to whether proceedings took place pursuant to the five chargesheets and whether after holding departmental proceedings any orders were passed by the disciplinary authority, and if so what are those orders. *Challenge to the chargesheets will fall into insignificance once chargesheets result in orders of the disciplinary authority. If there are orders of the disciplinary authority of the five chargesheets, then petitioner had to challenge*

the orders passed by the disciplinary authority on the five chargesheets.

3. As stated above, unfortunately none of the counsels are able to inform me whether the chargesheets were carried forward and resulted in any order of the disciplinary authority. I may note that there were no interim orders passed in favour of the petitioner in this writ petition staying operation of the aforesaid five chargesheets.

4. There are two other prayers being prayers (i) and (ii) with respect to challenge the petitioner to this post being declared surplus and petitioner challenging his transfer order, however, it is seen that so far as challenge to the transfer order is concerned the same would be infructuous at this stage after roughly 16 years of passing of the same and which transfer order since was not state was acted upon by the petitioner by joining his place of posting. So far as the issue of petitioner being deployed as surplus is concerned, that issue will have to be examined along with the issue if orders are passed by the disciplinary authority on the five chargesheets against the petitioner, in any penalty order or orders which have been imposed upon the petitioner.

5. Let parties file the affidavits within two weeks from today setting out the factual position as to whether or not disciplinary proceedings or departmental proceedings were conducted pursuant to the five chargesheets, and if orders were thereafter passed by the departmental authorities against the petitioner. If orders are passed against the petitioner on the five chargesheets by the departmental authorities such orders will also be filed by the parties along with their affidavits.

6. List on 24th April, 2017.” (Emphasis supplied)

5. In compliance with the directions issued in the afore-extracted order dated 6th March, 2017, an affidavit, verified on 8th May, 2017, was filed, before this Court, on 9th May, 2017, by the first respondent. Orders, dated 3rd April, 2002, adjudicating the charge-sheets No. 6474 and 6475, dated 20th January, 2001, and Order dated 3rd April, 2002,

adjudicating charge-sheet No. 6942 dated 16th February, 2001, have been filed with the said affidavit.

6. Additionally, a communication dated 20th October, 2009, passed by the MD of the first respondent purportedly with respect to the Memo No. 7071, dated 3rd March, 2001 (as per the averment in the affidavit of the first respondent) has also been filed. This aspect would be discussed, in greater detail, hereinafter.

7. The Order, dated 3rd April, 2002, adjudicating charge-sheet No. 6474, dated 20th January, 2001, finds the charges, against the petitioner, in the said charge-sheet, to be proved, and the petitioner, consequently, “entitled for punishment”. Similarly, the Order, dated 3rd April, 2002, which adjudicates charge-sheet No. 6475, also finds the petitioner guilty of the charge, against him, in the said charge-sheet, and “eligible for hefty punishment”, which the said Order goes on to visualise as dismissal from service. The third Order, dated 3rd April, 2002, similarly finds the petitioner guilty of the charges contained in the charge-sheet No. 6942, dated 16th February, 2001 and liable, therefore, to be removed from service.

8. Having so observed, however, the aforesaid three orders, dated 3rd April, 2002, do not impose any punishment, on the petitioner, as his services already stood “finished” on 15 September, 2001, the order, dated 1st September, 2001 *supra*, whereby consequent to its being declared surplus, the post of Regional Manager, held by the Petitioner, was abolished. At the same time, certain recoveries, from

the petitioner, of losses found to have resulted, to the first respondent, as a result of the acts of the petitioner, had been directed.

9. The aforesaid three Orders, dated 3rd April, 2002, whereby the charge-sheets, No. 6474 and 6475, dated 20th April, 2001 and charge-sheet No. 6942, dated 16th February, 2001, have been adjudicated, has, apparently, not been challenged by the petitioner, even by amending the writ petition. Though the said Orders do not specifically impose any specified “punishment” on the petitioner, consequent on the charges, against the petitioner, having been found to be proved, they do contain findings, of the petitioner being guilty of the charges against him, and also direct recovery of amounts, from the petitioner, consequent thereupon. Similarly, the decision communicated, to the petitioner, on 20th October, 2009, with respect to Memo No. 7071 dated 3rd March, 2001, has never been challenged by the petitioner before any forum.

10. No decision, on the Show Cause Notice No. 6468, dated 20th January, 2001 – which is also impugned in the writ petition – is, however, forthcoming on the record.

11. With this prefatory introduction, intended principally at delineating the precise scope of the controversy before me, I proceed to the facts.

Facts

12. The petitioner joined the first respondent-Corporation, on 1st February, 1978, as Export Officer. The post was, subsequently, re-designated as Senior Manager (Export). The petitioner was promoted, in 1993, as Regional Manager (Export) and was posted in New Delhi w.e.f. 1994.

13. While he was thus posted as Regional Manager (Export), of the first respondent, *vide* order dated 25/28th October, 2000, removed the petitioner from service with effect from 30th October, 2000, purportedly by way of acceptance of an application, of the petitioner, for voluntary retirement.

14. The petitioner challenged the said order, before this Court, by way of CW 6503/2000. *Vide* order dated 30th October, 2000, this Court stayed the operation of the aforesaid decision, dated 25/28th October, 2000, removing the petitioner from service. Subsequently, the said CW 6503/2000 was permitted to be withdrawn, by the petitioner, by this Court *vide* order dated 30th January, 2002, with liberty, to the petitioner, to file a fresh writ petition, ventilating all his grievances.

15. The present writ petition purports to have been filed consequent on the liberty thus granted.

16. Three days after the passing of the order dated 30th October, 2000 *supra*, by this Court, in CW 6503/2000, the petitioner was transferred to the Carpet Branch of the first respondent at Bhadohi, and was relieved for taking charge, at his new place of posting, *vide* two separate orders, dated 2nd November, 2000. The petitioner avers that the said transfer was vindictive in nature, and was effected because of the order of stay, passed by this Court, on 30th October, 2000 in CW 6503/2000.

17. *Vide* order dated 8th November, 2000, issued by the MD of the first respondent, the petitioner was suspended from service, on the ground that disciplinary proceedings were contemplated against him.

18. It was alleged, in the said order, that four firms, located in the US, to whom goods had been supplied by the first respondent during the period 1987-1988, had effected payments, thereagainst, only in 1997. It was further alleged that the financial loss, suffered by the first respondent, as a result of delay in the said payments had been referred, for investigation, to the Economic Offences Wing (EOW) of the Government of U.P., which recommended initiation of disciplinary proceedings against the delinquent officer. Alleging that the petitioner was guilty for the aforesaid delay in payment, by the aforesaid four firms, located in the US, the petitioner was suspended from service. The petitioner was also directed, during the period of his suspension, to mark his attendance, everyday, at the Carpet Division at Bhadohi.

19. The petitioner avers, in the writ petition, that the aforesaid allegations, on the basis of which he was suspended from the service, were completely bereft of substance. It is pointed out that the petitioner was neither Regional Manager (Export) nor posted at Delhi, during the period 1987-1988, and was not associated, in any manner, with ensuring recoveries/payments for supplies effected during the said period. It is further pointed out that the petitioner was promoted as Regional Manager only in 1993 and was posted in Delhi only in 1994. In fact, contends the petitioner, the aforesaid recoveries were made only because of the petitioner's efforts.

20. On 17th August, 2000, an order was issued, by the first respondent, directing recovery, from the petitioner's salary, of an amount of ₹ 4,350/- per month. The petitioner represented, against the said order, on 19th August, 2000 and, *vide* order dated 23rd August, 2000, the order of recovery, dated 17th August, 2000, was postponed ("*sthagit*" being the expression used, in vernacular, in the order).

21. Subsequently, without prelude or preface, *vide* order dated 8th November, 2000, the aforesaid order dated 23rd August, 2000, whereby the recovery order dated 17th August, 2000 had been postponed, was "cancelled" and the direction to recover, from the petitioner's salary, an amount of Rs.4350/- per month, was revived.

22. The petitioner impugns the said order dated 8th November, 2000, pointing out that it was not preceded by any show cause notice, and was completely unreasoned in nature. The petitioner's submission

is that there is nothing forthcoming, from the record, to explain why the first respondent backtracked on its earlier decision, dated 23rd August, 2000, and revived the order dated 17th August, 2000.

23. On 20th January, 2001, four communications were addressed, by the MD of the First Respondent to the petitioner, the particulars whereof may be provided, thus:

(i) On 20th January, 2001, the Managing Director of the first respondent wrote to the petitioner, seeking the explanation, of the petitioner, for his having undertaken foreign trips without prior approval of the Government of U.P. and having drawn the expenses, for the said trips, from the funds of the of the first respondent. The petitioner was directed, by the said letter, to return the amounts so drawn and was also directed to explain why greater punishment be not imposed on him. The petitioner submitted an interim reply, dated 27th January, 2001, to the said communication, dated 20th January, 2001, whereby further time, to respond thereto, was sought.

(ii) The second communication, dated 20th January, 2001, from the MD of the first respondent, to the petitioner, required the petitioner to show cause as to why he had not complied with the direction, contained in the order, dated 8th November, 2000, requiring him to report everyday at Bhadohi, as also as to why he had left Bhadohi without the permission of the MD.

(iii) Apart from the aforesaid two communications, the petitioner was issued two charge-sheets, on 20th January, 2001.

(iv) The first Charge-sheet, viz. Charge-sheet No. 6474, was premised on the same allegation which found place in the order, dated 8th November, 2000 *supra*, whereby the petitioner was suspended from service, i.e., that the petitioner was remiss in failing to ensure timely payment, from the firms located, in the US against the goods supplied to them in 1987-1988.

(v) The second Charge-sheet, also dated 20th January, 2001, alleged that the petitioner had suppressed, from the first respondent, the fact that he had been allotted a government quarter at E-328/A, Sector-27, Noida, and had, thereby, illegally availed HRA, which would, otherwise, have been deducted from his monthly salary @ 10%.

24. A third Charge-sheet was issued, to the petitioner, on 16th February, 2001, alleging that the petitioner had supplied goods, of the first respondent, to overseas companies/firms after the date of expiry of the Letters of Credit(L/Cs) opened by the said companies/firms, and, in certain cases, after the due date of delivery. It was alleged, secondly, in the said charge-sheet, that the petitioner was remiss in ensuring payments from foreign buyers, of goods supplied to them.

25. On 22nd February, 2001, the petitioner addressed three communications, to the MD of the first respondent, with respect to the aforesaid charge-sheets issued to him, denying the allegations against

him and seeking certain documents. The respondent replied, *vide* communication dated 14th February, 2001, informing the petitioner that all documents were available at the Head Office of the first respondent, and that he could visit the Head Office and inspect the documents at his convenience. The petitioner was, accordingly, directed to inform the proposed date of his visit, and the nature of the documents that he required.

26. On 3rd March, 2001, yet another communication, also impugned in the present writ petition, was issued, to the petitioner, by the MD of the first respondent, alleging that the petitioner was remiss in (a) submitting TA bills after considerable delay, and (b) undertaking foreign trips without government permission.

27. The petitioner responded, to the above communication dated 3rd March, 2001, *vide* letter dated 9th March, 2001, addressed to the MD of the first respondent, asserting that the trips, abroad, undertaken by him, had been approved by the MD of the first respondent (who held office at that time) as well as the Board of Directors of the first respondent, and that there was no reason to assume that the approval, of the Government of Uttar Pradesh had not been obtained, for the said trips, by the first respondent. He also maintained that the expenses, incurred on the trips, had the prior approval of the MD of the first respondent.

28. On 9th March, 2001 itself, the petitioner addressed a second representation, to the MD of the first respondent, by way of response

to the impugned charge-sheet No. 6474, dated 20th January, 2001, defending himself against the charges contained therein.

29. On 11th September, 2001, the MD of the first respondent, issued an Order, *vide* which, even while observing that the conduct of the petitioner was against the service Rules of the first respondent-Corporation, the suspension of the petitioner was revoked “on humanitarian grounds”, as it had continued for over 10 months. It was further stated, in the said Order, that the petitioner would continue to be posted at Bhadohi.

30. Consequent to the issuance of the said Order, dated 11th September, 2001, and, directed therein, the petitioner rejoined duties, at Bhadohi, on 13th September, 2001.

31. Two days thereafter, on 15th September, 2001, an Order – also impugned by the petitioner – came to be issued by the first respondent, whereby the petitioner was intimated that, as his post has, among others, the abolished, having been declared surplus, his services were being terminated, and three months’ salary, of ₹ 46,767/- was being disbursed to him. A Demand Draft for the said amount, was enclosed with the letter. The letter concludes with a tabular statement, setting out the posts which had been abolished, as having become surplus, as well as the number of employees employed on the said posts, vis-à-vis the number of employees required and, consequently, the number of employees who had been rendered surplus. The petitioner has pointed out that 33 posts had been serialised in the said table, and had been

assigned Serial Numbers 1 to 33. The post of Regional Manager, it is pointed out, is not one of the said 33 posts. Rather, the petitioner points out, the post of Regional Manager has been inserted, without any accompanying Serial Number assigned thereto, above Serial Number 1, which is “Senior Manager”. This, according to the petitioner, indicates that the said insertion of the post of Regional Manager was by way of an afterthought, solely with the intention of laying off the petitioner.

32. A representation, preferred by the petitioner against the aforesaid order, dated 15th September, 2001, was also dismissed, by the MD of the first respondent, *vide* Order dated 10th May, 2004.

Pleadings and proceedings in the writ petition

33. It is in the above circumstances that the petitioner has approached this Court, ventilating the grievances, as set out in the prayers in the writ petition, which already stand noted hereinabove.

34. The writ petition contends, *inter alia*, that the decision, to terminate the services of the petitioner, as having been rendered surplus, was illegal as well as *mala fide*, as the post of “Regional Manager” was inserted, by way of interpolation, above S. No. 1 in the tabular statement of the posts which had been abolished, as contained at the conclusion of the Report of the six-member committee, wherein the said recommendation was made. This, according to the petitioner, indicates that the post of Regional Manager was, in fact, not one of the

posts which were actually intended to be abolished as having become surplus, but that the said post had been inserted in the list of posts, as set out in the aforesaid report, only so as to dislodge the petitioner. The petitioner also contends, in the writ petition, that the termination of the petitioner, even on the ground that he had become surplus, overreached the stay order, dated 31st October, 2000, passed by this Court, and was additionally unsustainable even on that ground. The petitioner has also questioned the propriety of the decision to treat the post of Regional Manager surplus on merits, contending that the Export Division of the first respondent was, in fact, probably the only division which was not running in losses. The said decision has also been questioned on the ground that it violates the principles of natural justice, not having been preceded by the issuance, to the petitioner, of any prior Show Cause Notice.

35. In its counter-affidavit, filed by way of response to the petitioner, the first respondent has contended that all actions, taken by it, were *bona fide* and that, in fact, the charges, against the petitioner, as contained in the impugned charge-sheets, had been enquired into, and all charges had been found to be proved, by the Enquiry Officer appointed in that regard. The decision to abolish the post of Regional Manager, as having been rendered surplus, too, it is submitted, was *bona fide*, and taken in view of the financial stringency in the first respondent-Corporation, which had necessitated discontinuance of several schemes being administered by it. It is further asserted that the recommendations, of the six-member Committee, for abolishing of various posts, as having become surplus, was forwarded, by way of a

proposal, dated 19th May, 2001, to the Department Of Small Scale and Export Promotion, which was the administrative Department controlling the First Respondent and, thereafter, to the Department of Public Enterprises and Department of Finance. Consequent to obtaining the approval, of these Departments, to the decision to abolish the aforesaid posts, the counter-affidavit asserts that permission, to do so, was obtained from the Hon'ble Governor of the state of Uttar Pradesh, and communicated to the First Respondent.

36. *Vide* order dated 6th March, 2017 – which stands reproduced in para 4 *ibid* – this Court noticed the fact that the record did not disclose the fate of the impugned charge-sheets, issued to the petitioner, and also opined, tentatively, that, if the charge-sheets had culminated in any orders, passed by the disciplinary authority, it would be necessary for the petitioner to impugn the said orders. The challenge to the order, dated 15th September, 2001, terminating the services of the petitioner, consequent to abolition of the post held by him, too, it was observed, would have to be examined in the backdrop of the orders, if any, passed by the disciplinary authority, on the charge-sheets issued to the petitioner, and any penalties/punishments imposed on the petitioner thereby. Affidavits, setting out the factual position in this regard, were, therefore, directed to be filed.

37. In compliance with the above directions, affidavits have been filed by the petitioner as well as by the first respondent. The first respondent has annexed, with its affidavit, three Orders, dated 3rd April, 2002, adjudicating the charge-sheets No. 6474 and 6475, dated 20th January, 2001, and the charge-sheet No. 6942, dated 16th

February, 2001, issued to the petitioner. No decision, on the charge-sheet No. 6468, dated 20th January, 2001 has, apparently, been taken. The affidavit of the first respondent also encloses a decision, dated 20th October, 2009, purportedly taken on the allegations contained in the Show Cause Notice No. 7071, dated 3rd March, 2001, whereby the petitioner is found to have availed TA in excess of his entitlement, and the differential amount, availed by the petitioner, has been directed to be recovered.

38. Despite the observations contained in the order dated 6th March, 2017 *supra*, passed by this Court in these proceedings, the petitioner has not chosen to challenge the aforesaid orders, dated 3rd April 2002, or the decision dated 20th October, 2009.

39. The petitioner has, however, filed an affidavit, dated 9th May, 2017. In the said affidavit, the petitioner has asserted that, despite repeated entreaties by him, no opportunity of personal hearing was extended, to the petitioner, on any of the charge-sheets issued to him, and that he had not received a single communication, from the concerned Enquiry Officers, granting him an opportunity to present his case. He has drawn reference to as many as nine communications, by him, to the first respondent, copies of which were endorsed to the concerned Enquiry Officers. The only communication, received from any Enquiry Officer, it is asserted, was dated 26th September, 2001, which was posted on 20th October, 2001 and received, by the petitioner, on 25th October, 2001, more than a month after he had been terminated from service, by declaring his post as surplus. The said communication, dated 26th September, 2001 sought the response, of

the petitioner, to the charge-sheets has issued to him. The petitioner's response, dated 31st October, 2001, draw the attention, of the Enquiry Officer, to the aforesaid 11 letters, stated to have been sent by the petitioner, seeking documents, in order to enable him to defend the charges against him. The affidavit of the petitioner also questions the merits of the decision, contained in the communication dated 20th October, 2009 *supra*, wherein it was held that the petitioner had availed TA in excess of his entitlement, to the extent of ₹ 4,73,336.26. The petitioner asserts that he had, indeed, undertaken the trips, against which the aforesaid TA was claimed by him, and that there was no excess TA claim.

40. I have heard learned counsel, Mr. Amrit Pal Singh Gambhir, counsel for the petitioner and Mr. Rajesh Chhetri, counsel for the respondent, at length, who have ventilated their respective stances in accordance with the pleadings.

Analysis

Impugned 'Order'/communication dated 15th September, 2001

41. Adverting, first, to the order, dated 15th September, 2001, whereby the petitioner was informed, by the first respondent, that, following the decision to reduce the number of posts in the first respondent, the post of Regional Manager, held by the petitioner, had become surplus and had accordingly been abolished, the petitioner has sought to submit that, in the report of the six-member committee,

which are recommended abolition of 142 posts, the post of Regional Manager has been inserted by way of interpolation, above S. No. 1 in the said list, which is “Senior Manager”. In order to appreciate this contention, it is necessary to reproduce the said tabular statement of abolished posts, as contained in the said report of the six-member committee, along with the immediately preceding paragraph, thus:

“Because of contained losses and closure of loss making scheme/projects/craft Dev. Centre & showroom and the Lucknow Divisional Office, after this the present activities of the Corp. and work - employee ratio, the Committee after review has found that of the present employed 273 officer/workers, following, posts of officer/workers are required and for the balance surplus workers the Corp. has neither the work nor the source of any income or resources from where the salary to them is possible to be paid.

In references to the above, post-wise details are given below:

S. No.	Name of Post	<u>No. of Workers</u>		
		On Duty	Requirements	Surplus
	Regional Manager	01	0	01
1.	Senior Manager	07	04	03
2.	Co-Secretary	01	01	-
3.	Executive	03	01	02
4.	Dy. Executive	10	06	04
5.	Asstt. Executive	09	04	05
6.	Inspector	01	01	-
7.	Sr. Salesman	04	04	-
8.	A.C. Operator Cum Salesman	01	01	-
9.	Export Asstt.	02	01	01
10.	Personal Asstt.	01	01	-

11.	Typist	04	04	-
12.	Salesman	26	17	09
13.	Asstt. Accountant	09	07	02
14.	Account Asstt.	06	03	03
15.	Office Asstt-I	06	06	-
16.	Office Asstt-II	25	12	13
17.	Helper	89	42	14
18.	Driver	04	04	-
19.	A.C. Operator	01	01	-
20.	Sweeper	04	02	02
21.	Electrician	02	02	-
22.	Clean Operator	01	01	-
23.	Jamadar	02	02	-
24.	Boilerman	01	01	-
25.	Chowkidar	01	01	-
26.	Computer Operator	01	01	-
27.	Field Asstt.	01	01	-
28.	Centre Incharge	27	0	27
29.	Lady Supervisor	09	0	09
30.	Ruffgar	01	-	01
31.	Receptionist	01	-	01
32.	Senior Cashier	11	11	-
33.	Senior Auditor	01	01	01
Total		273	142	131"

While it is true that, in the afore-extracted tabular statement, figuring in the report of the 6-member Committee which deliberated on abolition of posts in the first respondent corporation, the post of Senior Manager figures at S. No. 1, and no Serial Number is to be

found against the post of Regional Manager, which is entered above the post of Senior Manager, no benefit, in my opinion, can accrue, to the petitioner as a result thereof, in view of the following subsequent developments:

(i) The Report of the six-member Committee was put up to the Board of Directors of the first respondent which, in Resolution No. 6, taken in its meeting held on 17th May, 2001, resolved “authorising the Managing Director to send a proposal to Government of U.P. to fix the staff strength of U. P. Export Corporation Ltd *at 12 officers and 130 employees and to surrender all the remaining sanctioned posts.*”

(ii) The first respondent, accordingly, wrote, on 19th May, 2001, to the Department of Small Scale and Export Promotion, Government of U. P., forwarding the proposal for re-fixation of the permanent staff strength of the first respondent. It is stated, therein, that “the Board also passed a resolution *fixing the staff strength of 12 officers and 130 employees* (for the post of Assistant Executive and below) *the details of which is given below:*

“

1.	Company Secretary	1
2.	Senior Manager (Finance & Account)	2
3.	Senior Manager (Commercial)	2
4.	Executive	1
5.	Dy. Executive(Commercial)	3
6.	Dy. Executive(Accounts)	3
7.	Inspector	1
8.	Assistant Executive (Accounts)	2

9.	Assistant Executive (Legal)	1
10.	Assistant Executive (Commercial)	1
11.	Senior Salesman	4
12.	Office Assistant Grade I	6
13.	Field Assistant	1
14.	Computer Operator	1
15.	Personal Assistant	1
16.	Stenographer	4
17.	Salesman	17
18.	Office Assistant	12
19.	Export Assistant	1
20.	A.C.Operator Cum Salesman	1
21.	Assistant Accountant	7
22.	Accounts Assistant	3
23.	Helper/Assistant	42
24.	Drivers	4
25.	A.C.Operator	1
26.	Sweeper	2
27.	Electrician	2
28.	Klin Operator	1
29.	Boilerman	1
30.	Jamadr	2
31.	Chowkidar	1
32.	Senior Cashier Grade I	1
33.	Senior Cashier Grade II	3
34.	Cashier	4
35.	Ledger Clerk	3
Total:		142

(iii) The Government of U. P. responded, to the first respondent, on 30th May, 2001, intimating the first respondent that *the proposal for fixation of Staff Strength, along with the recommendation*, had been forwarded to the Department of Public Enterprises.

(iv) On 1st September, 2001, the Government of U. P. communicated, to the first respondent, the approval, accorded

by the Hon'ble Governor of U. P., to the reduction of the permanent staff strength of the first respondent "*from the present strength of 273 to 142*". The letter also stated that it had the approval of the Department of Public Enterprises. The first respondent was requested to take necessary action accordingly.

42. Clearly, therefore, the decision to reduce the number of posts, in the first respondent, from 273 to 142, was approved up to the level of the Hon'ble Governor of U. P. The break-up of the said 142 posts is clearly set out in the letter, dated 19th May, 2001 *supra*, from the first respondent-Corporation to the Department of Small Scale and Export Promotion, Government of U. P. The post of Regional Manager does not figure in the said list, thereby indicating that the post of Regional Manager was not one of the posts which was intended to be retained in the first respondent corporation. The mere fact that, no Serial Number has been assigned to the post of "Regional Manager", in the Report of the 6-member Committee, cannot, therefore, lead, in the facts of this case, to any legitimate inference that the post of Regional Manager was not one of the posts, intended to be abolished.

43. The reliance, by the petitioner, on the alleged "interpolation", of the post of Regional Manager, in the Report of the six-member Committee – which, though undated, is annexed as Annexure P-28 to the writ petition – has, therefore, necessarily to be regarded as misconceived.

44. The petitioner has also sought to call, into question, the merits and justifiability, of the decision, of the first respondent, to abolish the post of Regional Manager.

45. Abolition of posts, whether on the ground that the posts had become surplus, or for any other reason, is essentially a matter of executive and administrative discretion, and does not readily lend itself to interference, in judicial review, save and except in cases where the decision is found to be tainted with *mala fides*, or is readily discernible as an oblique attempt to do away with the services of a particular “inconvenient” employee. H. Eliot Kaplan, in his book The Law of Civil Service (cited, with approval, by the Supreme Court in *K. Rajendran v. State of Tamil Nadu*¹), went to the extent of authorizing that “where there is any reasonable justification for eliminating positions in the public service, even where such abolition of positions may be subject to judicial review, *the inclination of the courts is not to interfere, avoiding substitution of judicial wisdom or judgement for that of the administrator*”.

46. The following passages, from *K. Rajendran*¹, are relevant in this regard:

“12. *The power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject, of course, to the constitutional provisions, to reorganise a department to provide efficiency and to bring about economy. It can abolish an office or post in good faith. The action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. We have the*

¹ (1982) 2 SCC 273

following statement of the law in *American Jurisprudence 2d*, Vol. 63 at p. 648-49:

“37. *Manner, sufficiency, validity, and effect.*—It is not always easy to determine whether a public office has been abolished. It is not sufficient merely to declare that a particular office is abolished, if in fact it is not abolished, and the duties thereof are continued. An office is abolished when the act creating it is repealed. But the repeal of the statute creating an office, accompanied by the re-enactment of the substance of it, does not abolish the office. Abolition of an office may also be brought about by a constitutional provision, or by a new constitution or a constitutional amendment. A non-constitutional office may be indirectly abolished as by legislating away the duties and emoluments of the office.

The legislature may not evade constitutional provisions by a sham or pretended abolition of an office, as where there is a mere colorable abolition of the office for the purpose of getting rid of its incumbent. This may happen where an office is abolished in terms and promptly re-created under the same or a different name, provided the legislature does not attach duties and burdens to the new office of a character such as to make it in reality a different office.

Where an office is duly abolished by the legislature or the people, it ceases to exist and the incumbent is no longer entitled to exercise the functions thereof, or to claim compensation for so doing, unless he is under contract with the state so as to come within the protection of the constitutional inhibition against impairment of the obligation of contract. Since a de jure office is generally essential to the existence of a de facto officer, persons cannot act as de facto officers of an office which has been abolished.”

13. H. Eliot Kaplan writes in his book entitled The Law of Civil Service at p. 214-15 thus:

“8. ‘Good Faith’ in Abolition of Positions.—There, of course, is no vested right to employment in the public service. The notion, much too prevalent, that any one who has been appointed after a competitive examination is entitled to be retained in the service is erroneous. Where there is any reasonable justification for eliminating positions in the public service, even where such abolition of positions may be subject to judicial review, the inclination of the courts is not to interfere, avoiding substitution of judicial wisdom or judgment for that of the administrator.

A position is not lawfully abolished solely because it has been left vacant for a short period of time and subsequently filled by another appointee than the one laid off and entitled to re-employment.

Good faith of a head of department in abolishing a position on alleged grounds of economy has often been challenged. *Most courts have held that the issue of good faith on the part of an administrative official is one of law solely for the court to pass on, and not an issue of fact which may be submitted to a jury for determination.* The jury may determine the facts, which the court in turn may find as a matter of law constitute bad faith; but a verdict by a jury that a department head had acted in bad faith in abolishing a position was set aside as a conclusion of law, and not properly finding of fact. *What constitutes bad faith as a matter of law in abolishing positions must be determined by the precise facts in each case. As a general rule, where positions are purported to be eliminated and incumbents laid off, and thereafter identical or similar positions are re-established and the positions filled by others not entitled under the civil service law and rules to such employments, the courts will not hesitate to order re-employment of the laid-off employees.”*

19. We shall next examine the argument based on Article 311(2) of the Constitution. *We have already seen in the Fertilizer Corporation Kamgar Union case [(1981) 1*

SCC 568 : AIR 1981 SC 344 : (1981) 2 SCR 52 : (1981) 1 LLJ 193 : 1980 Lab 1C 1367]² the observation to the effect: “Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working.” It is said that the “act of removing a person from a chair is different from the act of removal of the chair itself” although the incumbent loses the chair in both the cases. Since it is strenuously urged before us that there is some amount of contradiction in some of the rulings of this Court, we shall review the legal position to the extent necessary before reaching our own conclusion on the question.

22. While the doctrine of pleasure incorporated in Article 310 cannot be controlled by any legislation, the exercise of that power by the President or the Governor, as the case may be, is however made subject to the other provisions of the Constitution, one of them being Article 311, which is not made subject to any other provision of the Constitution and is paramount in the field occupied by it. The contention urged before us is that every kind of termination of employment under Government would attract Article 311(2) of the Constitution and a termination on the abolition of the post cannot be an exception. While construing Article 311(2) of the Constitution, as it stood then, in **Parshotam Lal Dhingra v. Union of India** [AIR 1958 SC 36 : 1958 SCR 828, 841 : 1958 SCJ 217; (1958) 1 LLJ 544] Das, C.J. observed:

“... The Government cannot terminate his service unless it is entitled to do so (1) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by the contract or (2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or on the fulfilment of the conditions for compulsory retirement or, subject to certain safeguards, on the abolition of the post or on being found guilty, after a proper enquiry on notice to him,

² Fertilizer Corporation Kamgar Union v U.O.I.

of misconduct, negligence, inefficiency or any other disqualification....”

(emphasis supplied)

23. Again at SCR pp. 857-58 in the same judgment, the learned Chief Justice observed:

“The foregoing conclusion, however, does not solve the entire problem, for it has yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. It has already been said that *where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2)....”*

(emphasis supplied)

24. *It may be mentioned here that the words “subject to certain safeguards” found in the earlier extract are not used with reference to abolition of posts in the above extract. ...*

26. The majority judgment in this case, however, observed that a government servant on being appointed to a post permanently acquired a right to hold the post under the Rules until he attained the age of superannuation or was compulsorily retired or was found guilty of an act of misconduct in accordance with Article 311(2). It disapproved the statement found in *Parshotam Lal Dhingra case [AIR 1958 SC 36 : 1958 SCR 828, 841 : 1958 SCJ 217; (1958) 1 LLJ 544]* at SCR pp. 857-58 to the extent it recognised the removal of a permanent government servant under a contract express or implied or a service rule. After referring to one passage at SCR p. 841 and another at SCR p. 843 in *Parshotam Lal Dhingra case [AIR 1958 SC 36 : 1958 SCR 828, 841 : 1958 SCJ 217; (1958) 1 LLJ 544]*

Gajendragadkar, J. (as he then was), who delivered the majority judgment in *Moti Ram Deka case* [AIR 1964 SC 600 : (1964) 5 SCR 683 : (1964) 2 LLJ 467] observed at SCR p. 718-19 thus:

“Reading these two observations together, there can be no doubt that with the exception of appointments held under special contract, the Court took the view that wherever a civil servant was appointed to a permanent post substantively, he had a right to hold that post until he reached the age of superannuation or was compulsorily retired, or *the post was abolished*. In all other cases, if the services of the said servant were terminated, they would have to be in conformity with the provisions of Article 311(2), because termination in such cases amounts to removal. The two statements of the law to which we have just referred do not leave any room for doubt on this point.”

(emphasis supplied)

27. It may be noticed that *removal of a government servant from a post on its abolition is recognised in the above passage as a circumstance not attracting Article 311(2) of the Constitution.*”

(Italics supplied; underscored words emphasised in original)

47. Paras 50 and 59 of *Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers Assn*³ say much the same thing, thus:

“50. It is settled law that the power to abolish any civil post is inherent in every sovereign Government and such abolition will not entail any right on the person holding the abolished post the right to re-employment or to hold the same post. In the present case, the State Government was benevolent enough to float a scheme to absorb such employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by the counsel for the respondents with regard to unfairness meted out to the employees of the Avas Vikas Sansthan hold no water.

³ (2006) 4 SCC 132

Power to abolish posts as a measure of economy

59. *It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a government servant has got to be recognised. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a department which was abolished or abandoned wholly or partially for want of funds, the court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been dislodged.*

48. In the instant case, the exercise of absorption was not limited to the post held by the petitioner, but covered as many as 131 posts. A conscious decision, at every level, approved of till the Hon'ble Governor of U. P., was taken, to scale down the staff-strength of the first respondent, from the pre-existing 273, to 142. The possibility of being laid off, consequent on down scaling of the strength of an organisation, remains one of the inglorious uncertainties of employment, for which, in the absence of any taint, colouring the decision, there is, really, no judicial remedy.

49. *Ubi jus, no doubt, ibi remedium;* however, with the abolition of a post, the right to hold the said post, as vested in the holder thereof, ceases. The cessation of the right extinguishes, in its inevitable wake, the remedy as well.

50. Courts are required, as a matter of practice and propriety, to accord deference to the discretion, vested in the organisation

concerned, to reduce its staff-strength so as to maintain optimum efficiency and tide over financial stringencies. I am unable, in the facts of this case, to return any finding that the decision, to terminate the services of the petitioner, as a consequence to abolition of the post of Regional Manager, treating the said post as having become surplus, is vitiated, in any manner, either on account of want of good faith, or for any other reason. A conjoint reading of the various communications, starting from the report of the six-member Committee, and culminating in the conveying of the approval, accorded by the Honourable Governor of U. P., to downsizing of the staff-strength of the first respondent corporation to 142, clearly defeats any possibility of interference, therewith. It is not as though the petitioner's post, alone, was abolished, or that, having removed the petitioner, the post continued to exist, or that any further recruitments, to the said post, had been made. The petitioner has, no doubt, sought to establish, by reference to facts and figures, that there was no *necessity* to establish the post of Regional Manager in the Export Division of the first respondent. Reference has also been invited to communications, by two of the members of the six-member Committee, to the effect that no conscious decision, to abolish the post of Regional Manager, was taken. It is trite, however, that, though man may prevaricate, documents do not. In the face of the communications, referred to in para 41 *supra*, the decision to reduce the staff-strength of the first respondent-Corporation to 142, is unmistakable. Equally unmistakable is the fact that the post of Regional Manager, occupied by the petitioner, was not one of the said 142 posts. The sequitur is inevitable. The petitioner, being the holder

of a post which, for valid reasons, was abolished, cannot maintain any right to continue holding the post.

51. The termination of the petitioner's services, by the impugned Order dated 15th September, 2001, on the ground that the post of Regional Manager stood abolished does not, therefore, merit interference, by this Court, in exercise of the power of judicial review, vested in it by Article 226 of the Constitution of India. The challenge, by the petitioner, to the said order, dated 15th September, 2001 has, therefore, necessarily to fail.

Impugned charge-sheets No. 6474 and 6475 dated 20th January, 2001 and 6942 dated 16th February, 2001

52. Charge-sheets No. 6474 and 6475, dated 20th January, 2001 and 6942, dated 16th February, 2001 have culminated in the three orders, dated 3rd April, 2002, to which reference already stands made of in para 37 *ibid*. This Court had, in its order dated 6th March, 2017, specifically observed that, if the charge-sheets had culminated in orders, passed by the disciplinary authority, the challenge to the charge-sheets would not survive, and the petitioner would, if so advised, have to challenge the orders passed by the disciplinary authority. No challenge has, however, been ventilated, by the petitioner, to the three orders dated 3rd April, 2002. Though certain grievances, regarding the said orders, have been made, by the petitioner, in his affidavit, filed on 9th May, 2017, grievances in an affidavit cannot substitute a substantive challenge.

53. In any event, with the passing of the aforesaid three orders, dated 3rd April, 2002, the prayers, in the writ petition, to the extent they are directed against the charge-sheets No. 6474 dated 20th January, 2001, 6475 dated 20th January, 2001, 6942 dated 16th February, 2001, do not survive for adjudication. No orders are, therefore, required to be passed on the said prayers, which have been rendered infructuous.

Memos No. 6468, dated 20th January, 2001 and 7071, dated 3rd March, 2001

54. The Memo No. 6468, dated 20th January, 2001, required the petitioner to give his explanation “on the following” within seven days, “relating to unauthorised travel in the year 2000 for Gems and Jewellery Exhibition”:

“(1) Why did you undertake foreign travel without the prior approval of the U. P. Govt., and why did you draw the expenses on it from the Corporation.

(2) Please deposit back the advance drawn in this connection with Corporation.

(3) Please explain why greater punishment should not be given to you under the disciplinary action for violation of rules in travelling abroad without the approval of the Government.”

55. Memo No. 7071, dated 3rd March, 2001, referred to the following eight TA bills, submitted by the petitioner:

S. No.	Travel Period	Travel details	Amount (₹)
1	13-10-96 to 20-10-96	Delhi to Singapore	96,248
2	29-1-97 to 7-2-97	Delhi to Muscat	1,07,642
3	22-3-97 to 8-4-97	Delhi to Kuwait	1,80,189
4	26-11-94 to 1-12-94	Delhi to Doha to Dubai	41,935
5	26-3-95 to 7-4-95	Delhi/Doha/Dubai	1,00,200
6	26-4-95 to 5-5-95	Delhi/Berlin/London	1,00,472
7	15-1-96 to 25-1-96	Delhi/Muscat	1,18,222
8	13-2-96 to 28-2-96	Delhi, Doha, Dubai	1,35,944

With respect to these trips, undertaken by the petitioner, the Memo queried, of the petitioner, as to the delay in submission, by him, of the T. A. Bills, and sought his explanation for the following alleged irregularities, in the aforementioned foreign journeys:

- “1. Why were the illegal journeys performed by you in the absence of permission from the Government.
2. Why you are the expenses incurred on the journeys.
3. Why should the disciplinary action against you not be taken for the foreign travel undertaken by you without the permission of the Government.”

The Memo further purported to intimate the petitioner that, besides the above, the Chief Auditor General had raised objections for the daily allowance drawn, by the petitioner, allegedly in excess of the allowance due for Government Officers, for foreign journeys undertaken in the month of November, 1996, to the tune of ₹ 4,87,096/—.

56. In the affidavit, filed by the first respondent-Corporation, before this Court on 9th May, 2017, in compliance with the directions contained in the order, dated 6th March, 2017th *supra*, passed by this Court in the present proceedings, it has been averred that the Memo No. 7071, dated 3rd March, 2001, stood decided *vide* the communication dated 20th October, 2009 *supra*. A reading of the communication dated 20th October, 2009, however, reveals that the communication purports to be a response to an earlier letter, dated 3rd August, 2009, from the petitioner, for passing of the T. A. Bills, raised by the petitioner with respect to foreign tours undertaken by him, which were pending clearance. The communication states that the petitioner had provided photocopies of only nine foreign travel bills, which did not contain photocopies of the rear side of the said bills. Even so, it was averred, a three-member committee, of senior officers of the first respondent corporation, was constituted, to look into the said bills, and that, consequent to pre-audit of the bills, as directed by the said committee, the petitioner was found entitled to an amount of ₹ 4,26,058.50, as against the amount of ₹ 931,749.35 claimed by him. As ₹ 899,394.76 was, allegedly, recoverable from the petitioner, the communication, dated 20th October, 2009, directed recovery, from the petitioner, of the differential amount of ₹ 4,73,336.26.

57. It appears, *ex facie*, that the aforesaid communication, dated 20th October, 2009, purported to decide the TA claims of the petitioner, regarding all earlier foreign trips undertaken by him. This impression is underscored by the representation, dated 12th November, 2009, addressed, by the petitioner, to the M. D., of the first

respondent-Corporation, by way of response to the aforesaid order dated 20th October, 2009. *Vide* the said representation, the petitioner asserted that the proposed demand, of ₹ 4,73,336.26, from him, was without justification. Accordingly, the petitioner reiterated his claims for adjustment of his earlier T. A. bills. The petitioner submits that, thereafter, *vide* letter dated 24th December, 2010, addressed, to him, by the Finance Controller, U. P. Handicrafts Development and Marketing Corporation Ltd (the first respondent-Corporation, rechristened), the petitioner was requested to attend a meeting, in the office of the Principal Secretary, Small Scale Industries and Export Promotion, Government of U. P., At Lucknow, with reference to the petitioner's aforesaid communication dated 12th November, 2009.

58. The record does not disclose that the matter proceeded, beyond this point. The petitioner, in his affidavit, avers that the meeting, in the office of the Principal Secretary, Small Scale Industries and Export Promotion, Government of U. P. did, indeed, take place on 20th December, 2010, whereafter the petitioner addressed yet another representation, dated 14th January, 2011, to settle his old TA Bills, but that nothing happened thereafter.

59. Though the first respondent filed his affidavit, in compliance with the directions contained in the order, dated 6th March, 2017, of this Court, on 9th May, 2017, the affidavit makes no reference to any proceeding, by the first respondent, against the petitioner, vis-à-vis the demand of ₹ 4,73,336.26, as raised by the communication dated 20th October, 2009 *supra*.

60. I am, in the circumstances, inclined to believe that the first respondent has accepted the representation, dated 12th November, 2009, submitted by the petitioner by way of response to the communication, dated 20th October, 2009. At this juncture in time, no useful purpose would be served, in my view, in allowing the first respondent to proceed to recover, from the petitioner, the amount of ₹ 4,73,336.26, as demanded *vide* the communication dated 20th October, 2009 *supra*.

61. The Show Cause Notice No. 6468, dated 20th January, 2001, and the Memo No. 7071, dated 3rd March, 2001 have, therefore, been rendered unenforceable, and are, therefore, quashed as such.

Re. impugned Office Order dated 8th November, 2000

62. The record reveals that, on 17th July, 2000, a copy of the Audit Report, relating to the period during which the petitioner was posted as In charge, Gangotri, New Delhi, which reported gross financial irregularities, resulting in financial loss suffered the first respondent, had been sent, to the petitioner, under cover of letter No. FIN/VAR/2831, dated 17th July, 2000. Following this, *vide* communication No FIN/VAR/3514/15, dated 17th August, 2000, addressed by the MD of the first respondent corporation, the petitioner was informed that, till the recouping of the aforesaid financial loss, a sum of ₹ 4350/- would be deducted from his salary.

63. The petitioner represented, against the said communication dated 17th August, 2000, *vide* his representation dated 19th August, 2000, addressed to the MD of the first respondent corporation. The petitioner specifically challenged the correctness of the findings of the internal audit team, on the basis whereof the communication dated 17th August, 2000, had been issued. Further, the petitioner submitted, no loss had ensued, to the first respondent corporation, as a result of any act committed by the petitioner. The propriety of the manner in which the audit team had acted was also specifically impugned.

64. Consequent on the submission, by the petitioner, of the said representation, dated 19th August, 2000, the implementation of the Office Order, dated 17th August 2000, was postponed (the vernacular expression used in the Office Order is “*sthagit*”), *vide* Office Order dated 23rd August, 2000. At the very least, this decision would give rise to a legitimate expectation, in the mind of the petitioner, that the first respondent had found some merit in his representation, dated 19th August, 2000.

65. Thereafter, by the impugned communication, dated 8th November, 2000, the Office Order, dated 23rd August, 2000, was cancelled, and the direction for recovery, from the petitioner salary, of ₹ 4,350/–, per month, was resumed.

66. It is not in dispute that, before issuance of the communication, dated 8th November, 2000, whereby the Office Order, dated 23rd August, 2000, which was, unquestionably, beneficial to the petitioner, was withdrawn, and recoveries, from the petitioner salary, were

resumed, no opportunity of hearing, or the courtesy of any prior written communication, was afforded to the petitioner. In my opinion, the Office Order, dated 23rd August, 2000, gave rise, at the very least, to a legitimate expectation, in the mind of the petitioner, that his representation, dated 19th August, 2000, had been found to be meritorious. If, therefore, the first respondent decided to cancel the Office Order dated 23rd August, 2000, and revive the decision to recover, from the petitioner's salary, ₹ 4350/- per month, the petitioner ought to have been heard prior thereto. The Office Order, dated 8th November, 2000, resulted in civil consequences to the petitioner, and it is axiomatic, in law, that a decision, which results in civil consequences to the citizen, has to be preceded by true and explicit compliance with the principles of natural justice and fair play.

67. In the circumstances, I am of the opinion that the Office Order No. 5405, dated 8th November, 2000, having been issued in violation of the principles of natural justice, cannot sustain. Any monies, recovered from the petitioner, consequent on the passing of the said Office Order would, therefore, necessarily have to be returned to the petitioner. Needless to say, however, this would not impede the first respondent from reviving the order for recovery, from the petitioner's salary, if permissible in law. Prior thereto, however, the petitioner would have to be issued due notice, and granted an adequate opportunity of hearing.

Conclusion

68. Resultantly, this writ petition is disposed of in the following terms:

(i) Order No. MD/Surplus/2447, dated 15th September, 2001, terminating the services of the petitioner, consequent on the abolition of the post of Regional Manager, occupied by him, is upheld.

(ii) The challenge, to the Orders, dated 2nd November, 2000, transferring the petitioner to Bhadohi, has been rendered infructuous, and the prayer, to that extent, in the writ petition is, therefore, disposed of as such.

(iii) Memo No. 6468, dated 20th January, 2001 and Memo No. 7071, dated 3rd March, 2001, are quashed and set aside.

(iv) Charge Sheets No. 6474 and 6475, dated 20th January, 2001 and 6942, dated 16th February, 2001, do not survive for adjudication. The prayers for quashing of these charges are, therefore, rendered infructuous and are disposed of as such.

(v) Office Order No FIN/VAR/5405, dated 8th November, 2000, is quashed and set aside. Subject to the liberty reserved in para 67 *supra*, any amounts, recovered from the petitioner consequent on the passing of the said Office Order shall be returned, to the petitioner, forthwith.

69. No costs.

C. HARI SHANKAR, J.

FEBRUARY 10, 2020

dsn/HJ

