IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2153 of 2022

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Anand Krishna Son of Late Gopal Krishna, resident of mohalla - Lal Darwaza, Munger, P.S. Kotwali (Munger), Town and District - Munger.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Textile, New Delhi.
2. The National Textile Corporation, Core- IV, Scope Complex, 7-Dodhi Road, New Delhi- 110 003 through its Managing Director.
3. The Director (Human Resources), National Textile Corporation, Core- IV, Scope Complex, 7-Dodhi Road, New Delhi- 110003.
4. The Chief General Manager, National Textile Corporation, Western Regional Office, 15 NM-Marg Billard Estate, Mumbai - 400001.
5. The D.G.M Marketing NTC, Western Regional Office, 15 NM-Marg, Billard State, Mumbai - 400001.
6. The Senior Manager (Marketing), National Textile Corporation, 7-Jawahar Lal Nehru Road, Kolkotta, 700013.
7. The General Manager (Marketing) WRO and Disciplinary Authority, National Textile Corporation Limited, Western Region Office, N.T.C. House, 15- N.M. Marg, Billiard Estate, Mumbai - 400001.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Prasad, Advocate
For the Respondent/s : Dr. Krishna Nandan Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

7 12-09-2024 The petitioner was the Assistant Manager, Marketing, National Textile Corporation Ltd. He was Incharge of the Divisional Office of NTC in Patna since 03.11.2016. He retired from service on superannuation on 28.02.2017.

2. On 23.02.2017, the employees Union of the National Textiles Corporation, Patna Branch lodged a complaint against the petitioner, alleging financial irregularities and

misappropriation in the Prime Minister's Office. The said complaint was inquired into by the Higher Authorities of the Corporation and it was reported to the General Manager (Vig./HR/IR/Admn.) NTC Ltd. Western Zone that the complaint against the petitioner in respect of unsold private purchases fresh stock of Rs.56.59 lacs without any confirmed order and private purchase worth of Rs.36.51 lacs were tried to be disposed of as just 10% of the price, declaring those articles as damages and old, causing huge loss to NTC Ltd.

3. In case of unsold stock purchased without confirmed order, showroom-wise and quality-wise detailed stock of material purchased and lying on 31.03.2017 was stated in the said letter dated 24.06.2017. As per the certified audit, the petitioner took over charge of Divisional Manager of the office of NTC Patna in July, 2012. At the time of taking over charge of Divisional Manager by the petitioner overall NTC Patna was carrying physical stock worth of Rs.2,88,59,208/-. The said total stock valued at Rs.2,88,59,208/- as on 31.03.2012 was inclusive of non NTC Purchase stock. The stock bifurcation of NTC and non NTC products was not available because at that time, no such stock bifurcation was done while stock taking. Hence, it is not possible to report that how much non NTC stock was lying

on 31.03.2012 but out of the present stock on 31.03.2017, non NTC stock worth Rs.11031908/- includes some of the stock prior to March 2012. It was also stated in the said report that the petitioner did not take any attempt to dispose of non NTC products by auction at just 10% of declaring price and the said allegation was found to be baseless.

4. On 17.04.2017, the petitioner requested the corporation for release of retiral dues. Since, the said retiral dues was not released, the petitioner filed CWJC No.12558 of 2017 praying for release of retiral benefits. The said writ petition was disposed of on 08.04.2019 directing the NTC and its authorized officer to disbursed retiral benefits to the petitioner. The NTC filed an appeal against the said order, which was registered as LPA No.567 of 2019. The said appeal was allowed with the following direction :-

> "For the reasons as stated above, the judgment and order dated 08.04.2019 passed in C.W.J.C. No.12558 of 2017 is neither sustainable in law nor on fact and is, accordingly, set aside. However, Corporation is liable to pay the gratuity amount with statutory interest, if petitioner/ respondent is exonerated in departmental proceeding which is directed to be concluded within six months from the date of receipt/production of a copy of order passed by this Court."

5. The learned Senior Advocate on behalf of the respondents refers to the notice dated 03.04.2019 which runs thus :-

> "1) It has come to the notice of the management during reconciliation of accounts of Retail Marketing Division, Patna that during your tenure at Retail Marketing Division, Patna since 18.04.2012 till your retirement, a substantial amount of outsourced product about Rs.6,79,77,243.65 was procured without written approval of your competent authority in most of the cases. There was a clear guideline in "Standard Operating Procedure for Retail Marketing Division" (in short SOP) in this respect which was circulated by our Head Office.
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> 2) It was also been observed that most invoices are not supported by indent and purchase orders and even requisitions for purchase issued by respective showroom are not available in that Division. It is also observed that indent was not placed for all the purchases made by you. All such activities supersedes the guidelines mentioned in SOP.
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> 3) It is needless to mention here that the payment procedure to the supplier as stipulated in the said SOP is that "Payment will be made to respective supplier after receipt of sales proceeds from the respective buyer and after deducting NTC's margin". But it has observed with grave concern that you did not bother the said principle as mentioned above and

released full payment to the supplier violating the principle of NTC Ltd.

4) Due to your such unprecedented activities huge amount of unsold stock which procured by you to the tune of approximately Rs.62,04,148.05 has been accumulated in different showrooms and godowns of Patna R.M. Division since 2012 and onwards. After your retirement the management has no other alternative but to release payment to the said supplier to avoid claim of interest. Most of the said unsold stock has been severely damaged and as identified non-moving items thus NTC Ltd. has become frustrated upon you undisciplined activities and has to declare a loss to the tune of Rs.62,04,148.05/-

5) For such unprecedented accumulation of said unsold stock of Rs.62,04,148.05 as per audit procedure, NTC Ltd. has calculated 18% deemed interest on the above amount and has arrived interest at Rs.37,05,727.80 till 31.03.2017 which is a loss for blockage of working capital.

6) It was also reported that the Leave Register with other valuable documents which were under lock and key and under your custody was opened after your submission of keys well sometimes after your retirement. Your leave account was verified from the said register and was found that you have totally maintained the said register in your hand itself. It has been unfortunately observed that you made a wrong calculation of your due leave position

intentionally violating the encashment. Rules of the Corporation. It was observed that the leave which would be non-encashable as per the rules of the Corporation was shown encashable one intentionally, even you got the document signed by your sanctioning authority and thus an excess payment of Rs.76,358.00 by making fool to your sanctioning authority as well as NTC Ltd. By violation of the Leave Encashment Rule prevailing at the time of withdrawal of wrongful payment. Your above activities constitute gross misconduct on your part as per Rule 23.1.9 of NTC Ltd. Conduct, Discipline and Appeal Rules, 2009.

7) Your above mentioned fraudulent activities as above constitute gross misconduct on your part as per Rule 23.1.26 of NTC Ltd. Conduct, Discipline and Appeal Rules, 2009.

8) In view of the above observations you are hereby asked to show cause in writing within 10(ten) days of receipt of this letter as to why your Gratuity, balance Leave Encashment, if any, will not be forfeited by the Management and also inform us the exact date of return of loss have to incurred by the NTC Ltd. (as mentioned in Para 4 & 5) for your above mentioned unlawful activities.

9) Should you fail to submit your written explanation as desired above within the above mentioned stipulated time, it will be presumed that you have admitted the charges levelled against you and that you do not have any explanation to offer in

your defence."

6. The said letter dated 03.04.2019 is practically a notice to show cause as to why the departmental proceeding shall not be initiated on the basis of charges contained in the said letter. It is also stated that if the petitioner failed to submit his written explanation within the stipulated period of time, it would be presumed that the petitioner have admitted the charge levelled against him and he did not have any explanation to offer in his defence.

7. The learned Senior counsel for the respondents next takes me to the Standard Operating Process for procurement from approved empanelment societies for NTC showrooms. The procurement policy is having 20 (Twenty) guideline, out of which, Guideline Nos.7, 18 and 19 are relevant for our purpose and noted below :-

> "**Procurement from approved empanelled societies for NTC showrooms**
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> ……..7. If the mill is not able to supply the desired product with the rate mentioned, quality, quantity and timeline, the Divisional Manager initiates the process to procure through approved empanelled societies.
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> 18. The products selling less than 70% within six months shall be returned to the supplier

after six months. If it is 70% or more, the balance supply will be kept in out showrooms itself and become stock of NTC.

19. Payment will be made to respective supplier after the sale from the showrooms after deducting NTC's margin."

8. It is contended on behalf of the respondents that the above-mentioned guidelines were not followed, rather blatantly disregarded by the petitioner.

9. Learned Advocate on behalf of the petitioner has based his argument on the following issues :-

"According to him the letter dated 24.06.2017 is the first enquiry report which has been vehemently objected by the learned Senior Counsel on behalf of the respondents and at the risk of repetition I am inclined to record that the said letter dated 24.06.2017 is an internal communication to the General Manager (Vig/HR/IR/Admn) NTC Ltd. Western Range by the Sr. Manager Marketing/RMD, Sub Office, Kolkata.

10. It is further contended by the learned Advocate on behalf of the petitioner that on the allegation of defalcation of fund, a criminal case was registered by the CBI under Section

420/120(B) of the I.P.C. read with Section 7(13)(1)(D) of the Prevention of Corruption Act. In the said case, the CBI submitted final report. The said final report was accepted and the petitioner was discharged. Therefore, this has reached its finality that the petitioner was not involved in any criminal offence.

11. While submitting the final report, the CBI observed as follows:-

> "…….(xvi). Thus investigation revealed that Sh. Anand Krishna purchased non NTC items worth Rs.2,04,27,833/- without approval of the competent authority. However, no undue advantage was given to M.P. Laghu Udyog Nigam Limited, New Delhi and North Bihar Hosiery Workers Co-operative Societies Limited, Hawrah. Out of the total purchases, items worth Rs.62,04,148/- is lying unsold in the showrooms/godown of NTC, RMD, Patna causing loss to the corporation. Further, Sh. Anand Krishna made payment of Rs.51,32,038/- to the non NTC supplier without sale realization in violation of the sales policy of the corporation. Thus, investigation has established that Sh. Anand Krishna, the then Divisional Incharge, NTC, RMD, Patna violated departmental rules and regulations in purchasing non-NTC items from M.P. Laghu Udyog Nigam Limited, New Delhi and North Bihar Hosiery Workers Co-operative Societies Limited, Howrah.

However, no criminal liability could be found against Sh. Anand Krishna during the investigation.

(xvii). The department has already completed the departmental action for major penalty against Sh. Anand Krishna and his retirement benefits have also been confiscated by the department. The CBI is also recommending departmental action for major penalty against the said Sh. Anand Krishna for violating the departmental rules and regulations. Further, there is no sufficient evidence to launch prosecution against the said Sh. Anand Krishna."

12. It is pertinent to mention at this juncture that a criminal proceeding and a departmental enquiry operate in two different facts and circumstances. Criminal liability accrues for commission of offence. However, without committing any criminal liability an employee may suffer the charge of gross misconduct, on his failure to follow the Standard Operating Procedure (SOP) in respect of purchase of materials for a corporation from a society that operates outside the corporation. It is well established that the petitioner violated paragraph Nos.7, 18 and 19 of the Procurement from approved empanelled societies for NTC showrooms. Therefore, he is liable for departmental enquiry.

13. In the departmental enquiry, the General Manager

Marketing, WRO and Disciplinary Authority passed the following order :-

"AND WHEREAS, as per principles of natural justice of providing reasonable opportunity, Show-Cause Notice No.HR/AK/2021/952 dated 12.11.2021 was thereafter issued by the undersigned to Shri Anand Krishna, advising him to submit written explanation within 07 days, as to why the said Departmental Inquiry against him should not be concluded ex-parte and why necessary action should not be taken as per the applicable provisions of NTC Ltd. Conduct Discipline and Appeal Rules, 2009.

AND WHEREAS, on behalf of Shri Anand Krishna, Shri Ajay Prasad Advocate Patna High Court vide letter dated 22.11.2021 has sent the written explanation and requested that opportunity of hearing may be given to Shri Anand Krishna. As a Principle of Natural Justice and to give a one more opportunity to Shri Anand Krishna to defend himself a personal hearing was given to him by Disciplinary Authority on 03.01.2022, such purported personal hearing took place on 03.01.2022 at NTC Ltd.-WRO, Mumbai between Shri Anand Krishna and the undersigned.

AND WHEREAS, at the said personal hearing on 03.01.2022, Shri Anand Krishna stated that he was not guilty of any of the charges brought against him; while the undersigned stated that as the Charged Officer-Shri Anand Krishna had not appeared before the duly appointed Inquiring Authority at the Preliminary Hearings to defend himself and /or to be heard in person. In spite of the opportunity given to him by the Inquiring Authority, to do so.

AND WHEREAS, the matter of the various serious alleged irregularities/misconducts committed by Shri Anand Krishna was referred to CBI and after investigation, CBI, vide report dated 21.12.2021, recommended departmental action for major penalty against Shri Anand Krishna for violating departmental rules and regulations.

AND WHEREAS, due to damage of unsold stock, loss caused to the Corporation to the tune of Rs.62,04,148/-. The interest at the rate of 18% on said amount of Rs.62,04,148/- work out to Rs.37,05,727/-. Due to manipulated quantum of en-cashable leave of Shri Anand Krishna by himself and en-cashed the excess leave for 45.5 days amounting to Rs.76,358/-. Thus, the total loss caused to the Corporation to the tune of Rs.99,86,233/-.

NOW THEREFORE, in view of the above-mentioned facts and circumstances, ex-parte Departmental inquiry proceedings and report of CBI dated 21.12.2021, I the undersigned as Disciplinary Authority, hereby impose Major Penalty Punishment under Rule 23.2.2 (f) of National Taxtile Corporation Ltd.- Conduct Discipline and Appeal Rules, 2009, read with Rule 25.13.2 of said Rules, upon Shri Anand Krishna, ex-Asstt. Manager (Marketing)/Head of RMD Patna as under :-

1. Total forfeiture of Gratuity amount.

2. Forfeiture of leave salary accumulated as on the date of retirement from service.

3. Forfeiture of any other benefits payable to Shri Anand Krishna on his retirement."

14. On careful perusal of the order, I do not find any irregularity or violation of the principles of natural justice and arbitrariness in the impugned order dated 04.01.2022. Therefore, the impugned order requires no interference by way of judicial review contemplated in Article 226 of the Constitution of India.

15. As a result, the instant writ petition is dismissed on contest.

(Bibek Chaudhuri, J)

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