

(2020) 02 DEL CK 0106

In the Delhi High Court

Case No : Civil Writ Petition No. 2809 Of 2002

Kewal K. Duggal

APPELLANT

Vs

UP Export Corporation Ltd.

RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 310, 311, 311(2)

Citation : (2020) 02 DEL CK 0106

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Amrit Pal Singh Gambhir, Rajesh Chhetri, Pawan Upadhyaya,
Meenakshi Rawat

Final Decision : Disposed Of

Judgement

,,,,

C. Hari Shankar, J",,,,,

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 Rs. 4,350/-, per month, from the salary of the petitioner, was directed to be",,,,

continued â??till such time the loss suffered by the Corporation is not recoupedâ??"",,,,

(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 â?" Corporation (hereinafter referred to as â??first respondentâ??"",,,,

(iii) Charge-sheet No. SEC/K-02/6474 (hereinafter referred to as â??charge-sheet No. 6474â?), dated 20th January, 2001, issued to the petitioner by",,,,

the MD, of first respondent, alleging â??slacknessâ?", by the petitioner, in the realisation of Rs. 30,40,350.06, from four companies in the US,"",,,,

(iv) Charge-sheet No. SEC/K-02/6475 (hereinafter referred to as â??charge-sheet No. 6475â?), 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 â??charge-sheet No. 6942â?), 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 Rs. 1,17,502/-, was substantially delayed, and",,,,

(b) supplied M/s Aid and Trade International, USA, goods worth Rs. 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 monthsâ? 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:" ,,,,

â??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 filed 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.â??",,,,

(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, â??entitled for punishmentâ?. 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 â??eligible for hefty" ,,,

punishmentâ?, 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 â??finishedâ? 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 â??punishmentâ? 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

â?" which is also impugned in the writ petition â?" 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 Rs. 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 (â??sthaagitâ?? 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 â??cancelledâ? 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" , , , ,

oversees 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 â??on humanitarian groundsâ? 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 â?" also impugned by the petitioner â?" 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 monthsâ? salary, of Rs. 46,767/â?" 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-Ã -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 â??Senior Managerâ?. 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 â??Regional Managerâ? 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 Honâble Governor of the state of Uttar Pradesh, and communicated to the" , , , ,

First Respondent. , , , ,

36. Vide order dated 6th March, 2017 â?" which stands reproduced in para 4 ibid â?" 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 Rs. 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.,,,,

S. No.,Name of Post,On Duty,No. of Workers,

,,,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,273,142,131â??
 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:,142â??,,

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",,,,

off employees.â??",,,,

*****",,,,

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] [Fertilizer Corporation Kamgar Union v",,,,

U.O.I.] 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.â? It is said that the "act of removing a person from a chair is different from the act of removal of the chair itselfâ?",,,,

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:",,,,

â??... 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, of misconduct, negligence,",,,

inefficiency or any other disqualification....â??,,,

(emphasis supplied),,,,

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

â??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)....â??,,,

(emphasis supplied),,,,

24. It may be mentioned here that the words ?subject to certain safeguardsâ? found in the earlier extract are not used with reference to abolition of,,,

posts in the above extract. â?|,,,

***** ,,,,

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:,,,,,
â??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.â??,,,,,
(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.â??,,,,,
(Italics supplied; underscored words emphasised in original),,,,,,

47. Paras 50 and 59 of *Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers
Assn* (2006) 4 SCC 132 say much the same thing, thus:",,,,,,

â??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,,,,,

S. No., Travel Period, Travel details, Amount (Rs.),
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",

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 Rs. 4,350/â?" , 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 petitionerâ?s salary, Rs. 4350/â?" 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 petitionerâ?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.,,,,