

**Central Administrative Tribunal
Principal Bench**

OA No.2397/2017

Order Reserved on:13.07.2018

Pronounced on:26.07.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Mr. K.N. Shrivastava, Member (A)

Shri H.L. Chaudhary,
S/o Mohar Singh, aged 58 years,
Posted as Chairman and Managing Director,
National Project Construction Corporation Limited,
Ministry of Water Resources,
R/o B-203, Jaibhawani CGHS, Plot No. 5B,
Sector-22, Dwarka, Delhi-110075

-Applicant

(By Advocates: Shri Gopal Jain, Sr. Advocate with
Ms. Sakshi Kakkar and Shri Shakti Singh)

Versus

1. Union of India, The Secretary to the Government of India,
Ministry of Water Resources, RD & GR, Shram Shakti
Bhawan, Rafi Marg, New Delhi
2. NPCC Limited through Company Secretary,
Raja House, 30-31,
Nehru Place, New Delhi-110019
3. Group General Manager (HR), NPCC,
Corporate Office: Plot No. 148 Sector-44,
Gurugram, Haryana -122003

-Respondents

(By Advocate: Ms. Pinky Anand, ASG with Shri Rajesh Ranjan,
Ms. Snidha Mehra, Shri A.K. Singh, Shri Naresh Kaushik and
Shri Devik Singh)

ORDER**Mr. K.N. Shrivastava, Member (A):**

Through the medium of this Original Application (OA) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

“8.1 Set aside the impugned decision of termination dated 14.07.2017 bearing No.9/1/2012-PSU.Vol.II (pt) passed by the respondents; and

8.2 Set aside impugned office order dated 17.07.2017 bearing Ref No. 5841970/798 issued by group general Manager (HR) NPCC.”

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant is a Civil Engineer. He initially worked in the department of Railways and RITES and through Public Enterprises Selection Board (PESB) process, he was selected for the post of Chairman-cum-Managing Director (CMD), National Project Construction Corporation (NPCC). Vide Annexure A-5 letter dated 17.10.2013, the respondent no.1, under whose administrative control NPCC comes, appointed him to the post of CMD, NPCC. This was a contractual appointment for a period of five years. The relevant portion of the appointment letter is reproduced below:

“I am directed to say that in pursuance of Article 81(b) of the Articles of Association of National Projects Construction Corporation (NPCC) Ltd., the President is pleased to appoint Shri Hundi La Chaudhary GGM RITES as Chairman & Managing

Director, in NPCC Ltd. in the scale of pay of Rs. 75,000-90,000/- for a period of five years with effect from the date of assumption of charge of the post or till the date of his superannuation, or until further orders, whichever is the earliest, subject to the outcome of the decision of the Delhi High Court in the matter of CWP No. 151 of 2011 filed by Shri Arbind Kumar.”

2.2 Respondent no.1, vide Annexure A-6 letter dated 4.03.2014 notified the terms of the contractual appointment to the post of CMD, NPCC. The relevant portion of the Annexure A-6 letter dealing with the period of his appointment is extracted below:

“1.1 Period: The period of his appointment will be for a period of five years with effect from 24.10.2013(A.N.) or till the date of his superannuation, or until further orders, whichever is the earliest in accordance with the provisions of the Companies Act, 1956 as amended from time to time. The appointment may, however, be terminated ever during this period by either side on three months notice or on payment of three months salary in lieu thereof.

1.2 After the expiry of the first year, the performance of Shri H.L. Chaudhary will be reviewed to enable the Government to take a view regarding continuance or otherwise for the balance period of tenure.”

2.3 Respondent no.1 vide its impugned Annexure A-1 communication dated 14.07.2017 informed the Company Secretary, NPCC, i.e., respondent no.2 that it has been decided to terminate the tenure of the applicant as CMD, NPCC, by paying him three months' salary in lieu of the three months' notice period, in terms of para-1.1 of the Annexure A-6 letter dated 04.03.2017 whereby the terms and conditions of the appointment of the applicant were notified. This letter also indicates that the decision to pre-maturely terminating the tenure of the applicant has been taken with the approval of the Appointments Committee of Cabinet (ACC) and that Shri Sanjay Kundu, Joint Secretary in the Ministry of Water

Resources has been placed in additional charge of the post of CMD, NPCC for a period of six months. On receipt of Annexure A-1 letter from respondent no.1, respondent no.3 issued the impugned Annexure A-2 office order dated 17.07.2017, which reads as under:

“In compliance to Ministry of Water Resources, River Development Ganga Rejuvenation letter no.9/1/2012-PSU Vol.II (pt.)/821 dated 14.07.2017 conveying the approval of Appointments Committee of the Cabinet (ACC) for premature termination of tenure of Shri H.L. Chaudhary, CMD, National Projects Construction Corporation Limited (NPCC). Shri H.L. Chaudhary, is hereby relieved from the services of National Projects Construction Corporation Limited with effect from 14.07.2017 (AN) by payment of 3 months’ salary in lieu of three months’ notice in terms of para 1.1. of Ministry’s communication no.9/1/2012-PSU dated 4th March, 2014”.

2.4 Aggrieved by the impugned Annexure A-1 order dated 14.07.2017 and Annexure A-2 order dated 17.07.2017, the applicant has approached this Tribunal in the instant OA, praying for the reliefs as indicated in para-1 supra.

2.5 When the case came up for consideration of the Tribunal on 21.07.2017, the Tribunal passed an interim order, staying the operation of the impugned Annexure A-1 order dated 14.07.2017 and Annexure A-2 order dated 17.02.2017. This interim order further stated that till the next date of hearing, the applicant shall not claim any salary.

2.6 Respondent no.1 challenged the interim order of the Tribunal dated 21.07.2017 in W.P. (C) No.6999/2017 and CM Application No.29077/2017 before the Hon’ble High Court of Delhi, who granted stay against the interim order dated 17.08.2017. The

applicant challenged the order of the Hon'ble High Court of Delhi dated 17.08.2017 in an SLP before the Hon'ble Supreme Court, who dismissed it, with the following observations:

"We are not inclined to entertain this petition. The special leave petition is, accordingly, dismissed.

Considering the fact that the application for interim relief is already listed before the Central Administrative Tribunal on 07.09.2017, we request the Tribunal to dispose of the interim application, if possible, on 07.09.2017 or in any case soon thereafter without being influenced by the orders passed by the High Court."

3. The applicant, in support of the reliefs claimed, has pleaded the following important grounds:

3.1 The respondents have not adhered to the terms and conditions of the applicant's appointment. Neither any notice nor any payment in lieu of the notice period has been given to the applicant. This was in violation of the ratio of law laid down by the Hon'ble Apex Court in the case of **Prabhudayal Birari v. M.P. Rajya Nagrik Aapurti Nigam Ltd.**, [(2000) 7 SCC 502].

3.2 The principles of natural justice have been grossly violated, as no Show Cause Notice (SCN) was issued to the applicant before passing the termination order nor any opportunity of being heard was provided to him.

3.3 The Hon'ble Apex Court in the case of **D.T.C. v. D.T.C. Mazdoor Congress**, [(1991) Supp. 1 SCC 600], has held as under:

“It is well-settled that even if there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.”

3.4 The decision of terminating the services of the applicant as well as the decision to relieve him from the post of CMD, NPCC have not been communicated by the competent authority. The termination order dated 14.07.2017 has been signed and issued by Deputy Secretary of the Government of India and not by the President of India, who is the appointing authority of the applicant.

3.5 In terms of clause-11 of the NPCC (Classification, Control and Appeal) Rules, 2006, an opportunity of filing a written statement has to be provided to the concerned incumbent.

3.6 The respondents have not followed even the DPE OM No.15(1)/2010-DPE-(GM) dated 11.03.2010 as well as DPE OM No.15(1)/2070-DPE(GM) dated 11.05.2011, wherein it is clearly stated that if any complaints are received against Chief Executives, Functional Directors, CMDs of Public Sector Enterprises, such complaints are required to be enquired by a Committee of Secretaries, headed by Secretary (Coordination) in the Cabinet Secretariat. In the case of the applicant this process has not been followed.

3.7 The appointment letter of the applicant would reveal that his appointment has been made under the provisions of the Companies Act and as such is governed by it and subsequent amendments. In terms of Section 169 of the Companies Act, the Board Directors have to be afforded with the opportunity of being heard before the removal.

4. Pursuant to the notices issued, the respondents entered appearance. Respondent No.1 separately and respondents No.2&3 jointly filed their reply.

5. The respondent no.1 in its reply has broadly stated as under:

5.1 The applicant was appointed to the post of CMD, NPCC with the approval of the ACC and pre-mature termination of his services has also been done with the approval of the ACC. The OA is liable to be dismissed on the ground that it neither challenges the provisions on the basis of which the order by the competent authority has been issued nor does it challenge the order of the competent authority, i.e. ACC.

5.2 As per the terms and conditions of his contractual appointment, his appointment was liable to be terminated by giving three months' notice or paying him three months' salary in lieu of that. This process has been followed.

5.3 In terms of the DoPT OM No.2/33/2014-EO(ACC) dated 17.02.2017, all cases of premature termination of board level appointments in CPSEs made with the approval of the ACC (including non-extension of tenure in case the executive has not attained the age of superannuation) would require approval of the ACC. In the instant case, approval of ACC was taken in prematurely terminating the services of the applicant.

5.4 The applicant's services have been terminated on the ground of poor performance. He has tried to misrepresent and mislead by saying that his termination is punitive in nature.

5.5 The performance of the NPCC had declined substantially during his tenure. The annual profits from Rs.42.18 crores in the year 2011-12, Rs.50.97 crores in the year 2012-13 and Rs.47.06 crores in 2013-14 came down to as low as Rs.13.58 crores in 2014-15 and Rs.10.81 crores in 2015-16.

5.6 The applicant was regularly advised by the DPE and respondent no.1 to improve the performance of the company. As there was no improvement, the Government was left with no option except to prematurely terminate his tenure.

5.7 The NPCC (Classification, Control and Appeal) Rules do not apply in applicant's case, as his appointment was contractual in nature and under the prescribed terms and conditions. No prior notice was required to be given to him.

5.8 Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **GRIDCO Ltd. & Anr. V. Sadananda Doloi & Ors.**, [(2011) 15 SCC 16], wherein it has been held as under:

“It is quite evident that reference to the superannuation of the respondent in this appointment letter was only in the nature of providing an outer limit to which the employment on contract could have been extended. It did not suggest that there was any specific or implied condition of employment that the respondent would continue to serve till he attains the age of superannuation. Even after the amendment of clause (2) of the appointment letter, the condition that the contract of employment could be terminated at any time during the period of three years on three months' notice or payment of three months' salary in lieu thereof by either side continued to be operative between the parties.”

5.9 The applicant's contention that neither three months' notice was given to him nor was he paid three months' salary in lieu of that is completely denied. As a matter of fact, the applicant vide his Annexure A-11 letter dated 16.07.2017 had declined to accept the three months' salary. The contents of this letter would read as under:

“I am in receipt of your letter dated 14.07.2017 referred above intimating termination of tenure of the undersigned with immediate effect by payment of 3 months' salary. I do not agree with it and totally deny it being illogical, illegal and devoid of any merit.

I also do not accept and agree with the payment of 3 months' salary as mentioned in your letter dated 14.07.2017. You are requested not to remit 3 months' salary to the undersigned as mentioned in your letter dated 14.07.2017, if remitted same will be refunded to you.

I also request you to withdraw your letter dated 14.07.2017 immediately restoring my tenure/services of 5 years as per my appointment letter No.9/1/2012-PSU/1113 dated 17.10.2013.

I reserve my right to seek appropriate legal remedy as per law”.

5.10 No prior notice or SCN was required to be issued to the applicant before pre-maturely terminating his contractual tenure in view of the fact that his appointment to the post was on contract basis.

5.11 No major penalty has been imposed on the applicant and the contention of the applicant to this effect is far from truth. Reliance in this regard is placed on the judgment of the Hon'ble Apex Court in **Chaitanya Prakash v. Omkarappa**, [Civil Appeal No.2786 of 2007, decided on 12.01.2010].

6. Respondents no.2&3 in their reply have broadly averred as under:

6.1 The applicant had accepted the terms of his appointment (Annexure A-6) and hence he is estopped from assailing the order of premature termination which has been done in terms of clause 1.1 of Annexure A-6.

6.2 The contention of the applicant that order of pre-mature termination is punitive in nature is false and misleading in terms of the ratio of law laid down by the Hon'ble Apex Court in **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Anr.**, [(2002) 1 SCC 520], **GRIDCO Ltd.** (supra) and **Jaiveer Srivastava v. Union of India and Ors.**, [MANU/DE/3140/2016].

6.3 The applicant has wrongly contended that the termination of his appointment has not been done by the competent authority. As

a matter of fact, the applicant was appointed with the approval of the ACC and his services have been prematurely terminated with the approval of the ACC only. The Deputy Secretary of Ministry of Water Resources has only communicated the decision of the competent authority.

6.4 The OA is liable for dismissal on the ground of non-joinder of necessary parties. It is stated that Shri Sanjay Kundu, Joint Secretary (PP), Ministry of Water Resources, RD&GR assumed the charge of CMD, NPCC on 17.07.2017 itself but he has not been impleaded as a party-respondent in this OA.

7. The applicant has also filed rejoinders to the replies filed on behalf of respondents in which more or less he has reiterated his averments made in the OA.

8. On completion of the pleadings, the case was taken up for hearing on 13.07.2018. Arguments of Shri Gopal Jain, learned senior counsel with Ms. Sakshi Kakkar and Shri Shakti Singh, learned counsel for the applicant and Ms. Pinky Anand, learned ASG with Shri Rajesh Ranjan, Ms. Snidha Mehra, Shri A.K. Singh, Shri Naresh Kaushik and Shri Devik Singh, learned counsel for the respondents were heard.

9. Shri Gopal Jain, learned senior counsel for the applicant submitted that at the time of terminating the services of the applicant vide impugned Annexure A-1 order dated 14.07.2017

three months' salary in lieu of the notice period was not given. It was, however, offered on 24.07.2017, i.e., after the interim order dated 21.07.2017 was passed by this Hon'ble Tribunal. He further stated that provisions of Section 169 of the Companies Act have been violated in prematurely terminating the appointment of the applicant. He also stated that the Annexure A-2 order is dated 17.07.2017 but it states that the applicant has been relieved of his charge on 14.07.2017 itself and hence there is an inherent contradiction. The applicant has been having excellent performance record, as could be seen from the recordings of the reporting officer, i.e., Secretary, Ministry of Water Resources in the APARs of the applicant for the period from 24.10.2013 to 31.03.2014 and 01.04.2014 to 31.03.2015, which would read as below:

"Shri Chaudhary is putting in a lot of effort to turn around the fortunes of NPCC. Well done. Keep it up".

"Shri H.L. Chaudhury is a very hard working and competent officer. He has a lot of initiative which he has effectively employed to make valuable contribution to the Corporation. He has a very positive approach and pleasing demeanour".

9.1 The assessments of the reporting officer *qua* the applicant have been endorsed by the reviewing officer, i.e., Minister of Water Resources. The DoPT guidelines have also been violated in passing the impugned orders.

9.2 Shri Jain further stated that in an RTI reply, the respondents have informed that the applicant has indulged in certain financial irregularities and hence the impugned orders would appear to be

punitive and stigmatic in nature and as such they could not have been passed without following the due process of law, as laid down by this Tribunal in its judgment in OA No.2208/2017 (**Babu Lal Agrawal v. Union of India & Anr.**, dated 05.04.2018).

9.3 Concluding his arguments, Shri Jain submitted that the applicant has never been advised by the DPE nor by the Ministry of Water Resources, at any point of time, in regard to his performance.

10. *Per contra*, Ms. Pinki Anand, learned ASG stated that the impugned Annexure A-1 order of pre-mature termination of the applicant is an order simpliciter. No stigma has been attached to the applicant by virtue of this order. She stated that in terms of the DoPT OM dated 15.10.1996 (Annexure R-2), all board level appointments, including that of CMDs of PSUs are to be made with the approval of the ACC. The ACC is appointing authority for the applicant and is a delegatee of President of India. The Annexure A-5 appointment letter dated 17.10.2013 appointing the applicant to the post of CMD/NPCC has been issued on behalf of the President of India. She further submitted that as per terms and conditions of the appointment, the applicant's services were liable to be terminated after giving him three months' notice or paying him salary for three months in lieu thereof. Accordingly, three months' salary was credited to his account but the applicant has refused to accept it. Elaborating further, she submitted that the Ministry of

Water Resources wrote a letter to the DoPT with a request to seek approval of ACC for pre-mature termination of the applicant's appointment. The approval of ACC was received from DoP&T on 13.03.2017. Accordingly, impugned Annexure A-1 and A-2 orders have been issued. The applicant was in fact given three months' salary in lieu of the notice period on 16.07.2017 itself but he returned the payment on 26.07.2017.

10.1 Ms. Anand further argued that judgment of the Hon'ble Apex Court in **Prabhudayal Birari** (supra) has no application to this case, as in that case payment towards notice period was not made whereas in the present case applicant has refused to accept the payment for the notice period. Ms. Anand stated that the action of respondents gets endorsed by the judgment of the Hon'ble Apex Court in **Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**, [(2015) 15 SCC 151], wherein it has been held as under:

"26. In the facts of Palak Modi case, [SBI v. Palak Modi case, (2013) 3 SCC 607], the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination

simpliciter, the employer has punished the employee for an act of misconduct.”

10.2 Ms. Anand further argued that similar view has been taken by the Hon’ble High Court of Delhi in the case of **Jaiveer Srivastava v. Union of India and Ors.**, [LPA No.653/2016, judgment dated 22.11.2016], which has been duly upheld by the Hon’ble Apex Court in the sense that the SLP No.5922/2017 filed against it was withdrawn by the petitioner. The action of the respondents is also supported by the judgment of the Hon’ble Apex Court in **Pavanendra Narayan Verma** (supra).

11. Shri Naresh Kaushik, learned counsel for respondents 2&3 submitted that the condition of pre-mature termination of his services by giving him three months notice, has been accepted by the applicant. He further submitted that the specific provisions of service, as provided in the Annexure A-6 order of the respondents, and which has been duly accepted by the applicant, would override the general conditions of service provided under the Companies Act.

12. Replying to the arguments of the learned counsel of the respondents, Shri Gopal Jain submitted that the 3 months salary was neither credited to the account of the applicant before issuing premature termination order nor credited prior to the issuance of the interim order by the Tribunal dated 21.07.2017 whereby the impugned Annexure A-1 and A-2 orders were stayed. Further, emphasizing on Section 169 of the Companies Act, Shri Jain

submitted that sufficient opportunity ought to have been given to the applicant to explain his position before passing the impugned orders. He said that tenure can be cut short only on justified grounds, as laid down by the Hon'ble Apex Court in **L.P. Agarwal v. Union of India & Others**, [AIR 1992 SC 1872] and **Anoop Jaiswal v. Govt. of India & Anr.**, [AIR 1984 SC 636].

13. We have considered the arguments of the learned counsel for the parties and have perused the pleadings as well as the documents annexed thereto. Indisputably, the applicant's appointment as CMD, NPCC was done on contract basis for a period of five years. Annexure A-6 order dated 04.03.2014 clearly spells out the terms and conditions of his appointment. One of the conditions (clause no.1.1) in Annexure A-6 is that the engagement of the applicant can be prematurely terminated by giving him three months advance notice or paying him salary for three months in lieu thereof. The respondents have exercised their right under this clause. From the records it would be evident that no charge of misconduct has been alleged by the respondents against the applicant. Their decision seems to have been motivated by the fact that under the leadership of the applicant, the performance of the company had started declining steeply as noticed hereinabove. The comments of the reporting officer, who was also Secretary of the Ministry of Water Resources recorded in the APARs of the applicant, would not conclusively testify as to the real performance of the

NPCC under the leadership of the applicant. The fact remains that the Company's financial performance has indeed declined sharply during the years 2014-15 and 2015-16. Obviously, the respondents would be quite concerned with it. In the review meetings at DPE and in the Ministry itself, naturally this aspect must have been reviewed and brought to the notice of the applicant. It would be too much to expect that for declining performance of the company, the respondents should have issued him formal letters of warning or caution. Can the applicant deny that the Company did not do well in the years 2014-15 & 2015-16?

14. We do not accept the contention of the applicant that termination of his services is in violation of the provisions of the Companies Act and that of NPCC (Classification, Control and Appeal) Rules. As we have noted, the termination is not triggered on account of any misconduct on the part of the applicant. The respondents have clarified that the declining financial performance of the company had indeed triggered his termination from service. The terms and conditions of his appointment have been clearly spelt out in Annexure A-6 order dated 04.03.2014 and hence any consequential action relating to his performance or otherwise, has to be taken strictly in terms of Annexure A-6. The general conditions of service as prescribed under the Companies Act would not get attracted in the presence of specific provisions in Annexure A-6. The provisions of NPCC (Classification, Control and Appeal)

Rules would also not apply to him, as he was not a regular employee of NPCC. He was only a contractual employee for which there are separate terms and conditions specifically provided.

15. The applicant can have a cause of complain only if there is any lacuna on the part of the respondents in not adhering to the terms of the contract and for such an act of the respondents, the applicant would be entitled for appropriate compensation strictly in terms of the contract. In this regard, it would be beneficial to quote the ratio of law laid down by the Hon'ble Apex Court in **Nandganj Sihori Sugar Co. Ltd. V. Badri Nath Dixit**, (1991) 3 SCC 54 as follows:

"11..... Even if there was a contract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts..."

16. We also notice from the impugned Annexure A-1 and A-2 orders that these orders are neither punitive nor stigmatic in nature. Further, the Committee of Secretaries, headed by Secretary (Coordination) in Cabinet Secretariat had no role to play as there was no complaint received against the conduct of the applicant.

17. In the conspectus, we hold that the impugned Annexure A-1 and A-2 orders have been passed strictly in accordance with the terms of the contractual appointment of the applicant to the post of CMD, NPCC and they are order simpliciter and not at all punitive or

stigmatic. We would also like to observe that salary in lieu of the notice period of three months was in fact given to the applicant by the respondents but he has refused to accept it and hence there is no violation of conditions laid down in clause 1.1 of Annexure A-6.

18. In view of the above, we do not find any merit in this OA. The OA is accordingly dismissed.

19. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Member (J)

‘San.’