

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) NO.4896/2001**

% **Date of Decision: 15.12.2009**

DTC. OF SOCIAL WELFARE Petitioner
Through : Mr. Prakash Gautam, Advocate.

versus

SHRI TARA CHAND & ORS. Respondents
Through : Mr. M.C. Dhingra, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

% **JUDGMENT (Oral)**

ANIL KUMAR, J.

1. The petitioner, Department of Social Welfare, Govt. of NCT of Delhi has filed the present writ petition under Article 226 of the Constitution of India to impugn the order dated 24.05.2001 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1461/2000 preferred by the Respondent, Shri Tarachand. The Tribunal quashed the order of removal dated 20.01.1999 passed against the respondent and also the order dated 29.02.2000, whereby his departmental appeal was dismissed by the Lt. Governor of NCT of

Delhi. The petitioner was also directed to reinstate the respondent immediately in service. It was held that the respondent would be entitled to all consequential benefits in accordance with law. Liberty was granted to the petitioner to proceed in the matter in accordance with law by keeping in view the observations made by the Tribunal. The respondent was also awarded costs of Rs.10,000/-.

2. The respondent was appointed as LDC/Cashier in the Social Welfare Department in the year 1978. On 27.02.1982, he was promoted to the post of UDC and transferred to the office of the Superintendant, Central Jail. The respondent was issued a charge memo under Rule 16 of the CCS CCA Rules, on the allegation that while he was working as cashier in Reception-cum-Classification Centre, Kingsway Camp, Delhi, he had misappropriated a sum of Rs.10,000/- by making overwriting in the Government cash book. The disciplinary authority, i.e. the Inspector General of Prisons conducted an enquiry under Rule 16. The respondent deposited the amount of Rs.10,000/- in two equal installments of Rs.5,000/- each. Taking into consideration the aforesaid aspect and the enquiry report, the respondent was issued a warning vide order dated 21.04.1989.

3. Subsequently, the petitioner discovered that the amount misappropriated was not Rs.10,000/- but was Rs.18,263.08 between the period 14.07.1978 to 30.04.1981, while the respondent was working as Cashier in Reception-cum-Classification Centre, Kingsway Camp, Delhi. The respondent deposited Rs.17,936/- after being so

pointed out by the officers and the Auditing party, including the amount of Rs.10,000/- as aforesaid.

4. The petitioner issued a fresh memorandum of charge sheet dated 27.07.1990 under Rule 14 of the CCS (CCA) Rules, 1965, charging the respondent with misappropriation of Rs.18,263.08, i.e. the entire amount which the respondent had allegedly misappropriated. It appears that the petitioner, however, realized the error in issuing the charge sheet for the entire amount, as the amount of Rs.10,000/- had already been paid back and in respect of the misappropriation of Rs.10,000/-, the respondent had already been proceeded with under Rule 16 and issued a warning. Consequently, the petitioner issued a corrigendum dated 16.07.1991, whereby the amount allegedly misappropriated by the respondent was stated to be Rs.8,263.08. An enquiry was conducted and the enquiry officer found the charges leveled against the respondent as proved. The Chief Secretary, Govt. of NCT of Delhi, as the disciplinary authority, passed the order dated 20.01.1999 removing the respondent from service with immediate effect. As aforesaid, the departmental appeal was rejected by the Lt. Governor on 29.02.2000.

5. The Tribunal passed the impugned order on finding that even though the charge memo had been amended vide corrigendum dated 16.07.1991, the Disciplinary Authority passed his order by reference to the original charge sheet which alleged misappropriation of an amount of Rs.18,263.08 and not Rs.8,263.08. Similarly, the

Appellate Authority failed to notice the aforesaid glaring omission made by the Disciplinary Authority despite it being brought to its notice in the respondent's appeal. In fact, the Appellate Authority had taken into consideration the facts pertaining to the earlier minor penalty charge (pertaining to misappropriation of Rs.10,000/-) while passing the impugned order. The Tribunal held that the impugned orders had been passed without any application of mind.

6. Learned counsel for the petitioner submits that the conduct of the respondent in depositing the total amount of Rs.17,936/- itself demonstrates the fact that he had misappropriated the said amount and he coughed out the amount only when he was caught. If it would have been a mere inadvertent lapse on his part, the respondent would have refunded the entire amount of Rs.18,263.08 on his own without waiting for the same to be discovered by the petitioner and its auditors. Even when the respondent was caught in the first instance in relation to misappropriation of the amount of Rs.10,000/-, he did not on his own disclose that the amount misappropriated was Rs.18,263.08 and not Rs.10,000/-. He merely deposited the amount of Rs.10,000/- at that stage to save himself from any strict action that could have been taken against him by the Disciplinary Authority.

7. On the other hand, learned counsel for the respondent has submitted that the respondent did not wish to get involved in any proceedings, and without any admission of guilt, he paid the amount

of Rs.17,936/- so as to get rid of the departmental proceedings. The respondent has also appeared before us along with his counsel.

8. Having heard the learned counsel for the parties, we are of the view that the finding of the Tribunal that the order of penalty dated 20.01.1999 and the Appellate order dated 29.02.2000 had been passed without application of mind, are justified and the non-application of mind by the Disciplinary Authority and the Appellate Authority is writ large from the fact that the disciplinary authority has failed to notice the amended charge as per the corrigendum dated 16.07.1991, whereby the amount allegedly misappropriated was reduced from Rs.18,263.08 to Rs.8,263.08. Similarly, the Appellate Authority has taken into consideration the facts pertaining to the misappropriation of Rs.10,000/-, which was the subject matter of different charge issued under Rule 16 of the CCS CCA Rules.

9. Considering the fact that the charge against the respondent pertains to the period 1978-81 as also the fact that the respondent has retired and appears to be rather frail and living in penury, we are not inclined to permit the petitioner to restart the enquiry against the respondent at this late stage. Pertinently, there was no stay granted by this Court of the impugned order, which permitted the restart of the enquiry. The petitioner could have, without prejudice to its rights, restarted the enquiry in compliance of the impugned order. However, that was not done. Nearly eight years have passed since the passing

of the impugned order. We, therefore, close the right of the petitioner to restart the enquiry against the respondent.

10. At the same time, the respondent cannot be permitted to make undue profit out of the situation which has emerged as a result of the quashing of the order of penalty and the Appellate order. The grant of all consequential benefits by the Tribunal, while directing the respondents' reinstatement, in our view, is not entirely justified as the respondent has never served the petitioner from the date of his removal, and he has, in the meantime, reached the age of superannuation. In our view, this is a fit case of invocation of Rule 17 of the Fundamental Rules as the inability of the respondent to work was a result of his own conduct. The penalty order has been quashed by the Tribunal only on a technical ground, and we cannot lose sight of the fact that the respondent had indeed refunded an amount of Rs.17,936/- out of the amount of Rs.18,263.08, which he had allegedly misappropriated.

11. In view of the aforesaid position, we are not inclined to grant arrears of salary and other allowances to the respondent from the date of removal till the date of passing of the impugned order by the Tribunal, whereby the respondent's punishment of removal from service was set aside. We may refer to the judgment reported as ***Krishnakant Raghunath Bibhavnekar v. State of Maharashtra*** (1997) 3 SCC 636. Learned counsel for the respondent Mr. M.C. Dhingra, on instructions from the respondent who is also present,

concedes that the respondent would not be entitled to payment of arrears of salary for the said period.

12. In view of the aforesaid, while upholding the order of the Tribunal setting aside the removal of the respondent, we modify the direction issued by the Tribunal to grant arrears of pay, allowances and pensionary benefits etc. to the respondent, and direct that the arrears of pay and allowances shall not be payable for the period 20.01.1999 (the date of the order of removal) till 24.05.2001 (the date when the order of the reinstatement of respondent was passed by the Tribunal). The amount due to the respondent be paid within eight weeks. We further direct that the petitioner shall not be entitled to restart enquiry against the respondent and the same shall stand closed. The costs awarded by the Tribunal against the petitioner and in favour of the respondent are also set aside. Parties are left to bear their respective costs.

13. Copy of this order be given Dasti.

ANIL KUMAR, J.

VIPIN SANGHI, J.

DECEMBER 15, 2009
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