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

Date of Decision: October 07, 2015

\+ W.P. (C) No. 4984/2001

LOK NATH ..... Petitioner
Through: Mr. Aashish Dogra, Advocate

versus

GOVT. OF NCT OF DLEHI & ANR. .... Respondents
Through: Ms. Anju Bhattacharya & Mr. Elgin Matt John, Advocate for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% (ORAL)

Penalty of *removal from service* has been inflicted upon petitioner after it stood proved in the inquiry conducted that petitioner while working as Helper in the mobile unit in *Ghazipur* during the period April, 1991 to June, 1992 had misappropriated the sale proceeds to the tune of ₹74,139.27.

A bare perusal of the Inquiry Report *(Annexure P-9)* reveals that in the inquiry proceedings, deposition of *Mr. B. K. Tyagi,* Accounts Assistant; *Mr. Virender Singh,* AG-II; *Mr. Amar Singh*, Accounts Manager, Ghazipur godown and *Mr. C.L. Aggarwal*, Senior Accounts Assistant was recorded. Petitioner had not stepped into the witness box in his defence but had got examined *Mr. Amir Singh,* Assistant Manager (Vigilance and Establishment). The brief narration of deposition of the witnesses already stands noted in the Inquiry Report *(Annexure P-9)* and needs no reproduction.

According to the Inquiry Officer, from the deposition of *Mr. B.K. Tyagi*, Accounts Assistant, it stood proved that Statement of Account of the relevant year showed short deposit of ₹77, 562.06 and the Statement of Account of April, 1992 up to June, 1992 showed a short deposit of ₹17640.21 whereas as per Annexure-III to the Memorandum of 3rd November, 2005 *(Annexure P-6)*, recovery of ₹21,063/- was made from the salary of petitioner during the year 1994-95 to reclaim the short deposits by petitioner.

The defence witness got examined by petitioner discloses that the indents of 15th February, 1992 and 14th March, 1992 were not included in the list of documents, as the same had been sent to the Vigilance Cell. While relying upon the unrebutted evidence led by respondent, Inquiry Officer concluded that the total short deposit was of ₹38,540.27 and this excluded the short deposit of afore-noted two indents, as the same were not on record. Subsequently, inquiry was conducted in respect of these two indents after they were received from the Vigilance Cell and as per Supplementary Inquiry Report *(Annexure P-10)*, short deposit of ₹19,200/- and ₹16, 3999/- respectively stood proved. From the Inquiry Report *(Annexure P-10)* it is evident that petitioner i.e. the charged employee had chosen not to cross-examine the witnesses got examined by respondent. It is also noted in the Inquiry Report *(Annexure P-10)* that the petitioner had admitted that he had received all the documents relied upon in the inquiry. The Disciplinary Authority, vide impugned order of 28th December, 1999 *(Annexure P-11)* has relied upon both the Inquiry Reports *(Annexures P-9 & 10)* to conclude that the short deposit was of ₹74,139.27 and had imposed penalty of *removal from service.* The Appellate Authority in the impugned order of 16th May, 2001 *(Annexure P-13)* has affirmed petitioner's *removal from service.*

At the hearing, learned counsel for petitioner strongly relied upon respondent's Office Order of 16th July, 1997 *(Annexure P-5)* to contend that only Incharge of the unit will be solely responsible in any cash shortage and in no circumstance, the cash shall be handled by an official of Group-D level. While relying upon afore-noted Office Order of 16th July, 1997 *(Annexure P-5)*, it was submitted that if any shortage is detected, then the Incharge shall be made responsible to make good 50% of the value of the stock and the remaining 50% shall be made good by other officials posted in the said unit/ shop/L-2 vend. It was submitted by learned counsel for petitioner that the signatures on the indents in question are forged one, as petitioner had not signed the indents in question. It was submitted that deduction of ₹21,000/- odd was made from the salary of petitioner without any notice to him and in any case, petitioner being the Helper, cannot be held responsible for any short deposit and so, the impugned order deserves to be set aside.

Learned counsel for contesting second respondent submits that there is no violation of principles of natural justice and the inquiry was conducted in a fair manner and all the documents had been supplied to petitioner. It was submitted that petitioner was Incharge of the mobile van in question and the order of 16th July, 1997 *(Annexure P-5)* relied upon by petitioner is of no avail because this order cannot be made to operate retrospectively, as the period in question relates to the year April, 1991 up to June, 1992. It is submitted that the penalty imposed is quite appropriate one.

Upon consideration of the submissions advanced by both the sides and on perusal of the impugned order, Inquiry Reports *(Annexures P-9 & 10)* as well as material on record, I find that in the Inquiry Report *(Annexure P-9)*, short deposit by petitioner is of ₹38,540.27 and in the supplementary Inquiry Report *(Annexure P-10)*, short deposit found is of ₹19,200/- and ₹16,399/- respectively. This Court is constrained to note that petitioner had chosen not to cross-examine the witnesses of the respondents and for reasons best known, had not stepped into the witness box. However, petitioner had got examined one witness in his defence, who had merely deposed about absence of two indents of 15th February, 1992 and 14th March, 1992 and the Inquiry Officer in the Inquiry Report *(Annexure P-9)* has excluded the short fall of these two indents but in the supplementary Inquiry Report *(Annexure P-10)*, short fall in respect of these two indents also stands proved. Petitioner's reliance upon respondent's Office Order of 16th July, 1997 *(Annexure P-5)* will not be of any help for the reason that petitioner was Incharge of the mobile van in question and the Office Order *(Annexure P-5)* cannot be made to operate retrospectively.

Considering that instant case is not of misappropriation but of short fall, deduction of ₹21,000/- odd was made from petitioner's salary, to which petitioner had raised no objection. The misconduct committed by petitioner in respect of short fall in question stand duly proved from the evidence on record. It cannot be said that the findings returned by Inquiry Officer are perverse or that it is a case of no evidence. There is no violation of principles of natural justice in the instant case. The penalty imposed is commensurate with the misconduct committed. No procedural irregularity has been brought to the notice of this Court to justify invocation of jurisdiction under Article 227 of the Constitution of India.

Consequentially, finding no substance in this petition, it is dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 07, 2015
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