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

\+ W.P.(C) 7877/2005

L.N. TIKKU ..... Petitioner

Through: Mr. Nishant Anand, Advocate

versus

UOI & ORS. ..... Respondents

Through: Mr. Vikas Mahajan, CGSC & Mr. S.S. Rai & Mr. Amit Mehra, Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% **17.03.2016**

1. The petitioner, who was working on the post of an Executive Engineer (Civil) with the Border Road Development Board and was posted as the Officer Commanding at 68 RCC in the year 1994, was issued a Memorandum of Charge dated 20th March, 1998, in respect of some mismatch of funds collected as offerings in the month of November, 1994, in respect of two temples in the area, inasmuch as against a sum of Rs.51,816.25 collected as offerings, only a sum of Rs.37,855 was reflected in the Regimental Cash Account Book.

2. The Memorandum of Charge dated 20th March, 1998 had enclosed therewith three Articles of Charge. However, we propose to confine ourselves to Article-I only, as the remaining two charges were not proved in the course of the departmental inquiry held against the petitioner.

3. Article-I of the Statement of Articles of Charge is reproduced hereinbelow for ready reference:-

" ARTICLE-I

That the said Shri L.N. Tiku, EE (C) [now SE(C) SG] while functioning as Officer Commanding, 68 Road Construction Coy during Dec. 94 was required to account for a sum of Rs.51,816.25 in the Regimental Cash Accounts Book of unit on account of Offerings for the month of Nov. 94 in respect of Rs.37,855/- only was taken on charge by Shri K. Sadanandan, 2nd in Command of said unit, which was countersigned 'as correct by Shri L.N.Tiku, EE (C) [now SE(C) SG]. Thus Shri L.N. Tiku EE (C) [now SE(C) SG] while holding a Supervisory post failed to ensure proper accounting and also failed to maintain absolute devotion to duty in terms of Rule 3(1) (ii) of CCS (Conduct) Rules, 1964."

4. The petitioner was called upon to submit a reply to the aforesaid Memorandum of Charge dated 20th March, 1998. A reply dated 27th April, 1998 was submitted by him wherein he had responded to the charge levelled against him in respect of Article-I, in the following manner:-

"Annexure I

(a) Article I of Annexure I. As per Charter of duties of Second-in Command of the RCC, all the offerings collected in respect of Tiranda Mandir and Srimati Dhang Mandir were being accounted for by AE (C) K Sadanandan through a Board of Officers which was detailed by him after consultation with OC unit. The undersigned was working as OC unit and to have smooth functioning of the unit, it is imperative to have the full

and complete trust on the Second-in-Command of the unit. I was having this trust on Shri K Sadanandan, AE (C) and there was no untoward incident in the past. However, following procedure was followed for collection of offerings/ donations at the Tiranda and Srimati Dhang Mandirs:-

All the offerings used to be collected in sealed boxes which were further collected by Board of Officers from the above said Mandirs and brought to HQ RCC location. These boxed are opened in the presence of BOO and subsequently money is counted and deposited with the Second-in-Command RCC. He caters the amount, thus collected, in appropriate account and then deposits it in the Bank. It is only the Board Proceedings which OC RCC is used to sign on the advise of Second-in-Command, RCC, the account holder of all the accounts maintained at RCC level.

I have no knowledge about posting of less amount in the cash box than what was collected through the Board of Officers for the month of Nov 94. In case there has been some concealment of the amount from the collection of Mandir offerings through Board of officers, the same was not brought to my notice. At that time, I had never thought of that there could be any variation between the posted amount and the amount actually collected by BOO since it had never happened previously and I had full faith in my 2IC Shri K Sadanandan, who was sincere and meticulous in his job. I do not recollect the happening then and if it had happened, it is purely the breach of faith and Shri K Sadanandan seems to have taken full advantage of it."

5. It is the case of the respondents that going by the charter of duties referred to by the petitioner in his reply to the Memorandum and the fact

that he had himself constituted a three member Board of Officers to monitor the offerings collected in the two temples, which were required to be opened in their presence, the money counted and deposited with Sh. K. Sadanandan, the Second-in-Command, who was required to maintain the books of accounts in respect of the amounts received and then deposit it in the bank, the stand taken by the petitioner that he had no knowledge about posting of a less amount in the cash book than what was collected by the Board in November, 1994, was not found to be satisfactory and resultantly, an inquiry was conducted in respect of the three charges levelled against the petitioner. The respondent's counsel informs us that the inquiry was conducted not only against the petitioner but separate inquiries were also conducted against Sh. K. Sadanandan, the Second-in-Command and two other member of Board of Officers.

6. Five witnesses were produced by the respondents during the inquiry proceedings. The petitioner produced two defence witnesses and also made a statement before the Inquiry Officer. On the conclusion of the inquiry, the Inquiry Officer had submitted his report dated 4th August, 1999, with respect to the three Articles of Charge levelled against the petitioner, wherein he had concluded that Charge –I levelled against the petitioner stood proved, however, Charges - II & III were not proved. The observations made by the Inquiry Officer in respect of Charge-I is reproduced herein below for ready reference:-

" ***<u>FINDINGS OF EACH ARTICLE OF CHARGE</u>***

Finding are as under on each article of charge I,II, III (as given in Annexure 1 to Sectt. BRDB Memorandum No.F.75 (91/Vig/BRDB/95-Estt dated 20 March 98) against Shri L N

Tiku, EE (C) now SE (C) SG (who was functioning as Officer Commanding of 68 RCC during Dec. 94), keeping in view the 'Preponderance of Probability and Not Proof Beyond Reasonable Doubt' and the evidence (documentary evidence and oral evidence) as adduced before Inquiry Officer in Departmental Enquiry.

(a) ***Article of Charge-I***

"…….. Shri. L.N. Tiku, EE (C) now SE (C) SG was required to account a sum of Rs.54,816.25 in Regimental Cash account cash book of unit on account of offerings for the month of Nov.94 in respect of 2 temples. Where as a sum of Rs.37,855/- only was taken on charge by Shri. K. Sadanandan, 2 IC of unit, which was countersigned as correct by Shri. L.N. Tiku. Shri L.N.Tiku while holding supervisory post failed to ensure proper accounting……"

Conclusion:- *Shri L.N. Tiku had countersigned the cash account for Dec. 94 in Regimental Fund Cash book, without obtaining the copy of Board Proceedings and without ascertaining accuracy of account (Refer Para 54,55)."*

7. A copy of the inquiry report dated 4th August, 1999 was furnished to the petitioner to enable him to make a representation. The petitioner had submitted his representation dated 6th October, 1999 to the respondents. Vide order dated 29th March, 2001, the petitioner was inflicted with the punishment of withholding one increment that was to fall due on 1st May, 2002, for a period of one year, without cumulative effect.

8. Aggrieved by the aforesaid order, the petitioner had preferred an

appeal dated 15th October, 2001, which was rejected vide order dated 28th November, 2001 on the ground that no appeal lies against the order made by the President. The petitioner preferred another appeal dated 21st January, 2002, before the President of India, which was rejected vide order dated 23rd June, 2002 and on 25th June, 2002, the respondents fixed the pay of the petitioner in terms of the penalty inflicted upon him. Aggrieved by the aforesaid order, the petitioner had filed the present petition in the year 2005.

9. Mr. Nishant Anand, learned counsel for the petitioner, submits that while passing the impugned order, the respondents did not take into consideration the fact that as per the procedure laid down for collection of the offerings at the two temples in question, it was the Board of Officers of the Mandir who were expected to open the box and count the money and thereafter the same was to be deposited with Sh. K. Sadanandan, the Second-in-Command, whose duty it was to prepare the books of accounts. The petitioner was only expected to counter sign the books of accounts and having faith in the aforesaid Officer, he had counter signed the said books of accounts. As the books of account did not reveal that there was any mismatch of the funds actually received and deposited, the petitioner had affixed his signatures in the books of accounts.

10. Learned counsel for the petitioner states that the petitioner was kept in the dark about the actual collection of funds, which would be borne out from a perusal of the evidence recorded in the department proceedings. He submits that the lapse on the part of the Second-in-Command, cannot be passed on the petitioner. Lastly, it is submitted that the punishment imposed on the petitioner is excessive, unwarranted and disproportionate

to the misconduct alleged against him.

11. Learned counsel for the respondents has produced the records of the departmental proceedings, which we have carefully perused, particularly, the statement of Sh. K. Sadanandan, SW-1. The said Officer, during his examination on 20th April, 1999, had stated that he was deputed as the Presiding Officer for counting and depositing the mandir collection in the month of November, 1994. The counting of cash for the month of November, 1994 was carried out by the Board of Officers along with other unit personnel and though he was not physically present throughout the counting, he would check the position off and on. Sh. K. Sadanandan, SW-1 further stated in his examination that the counting of cash was completed in the evening of 8th December, 1994 and he had left the office complex by 5:00 p.m.. When he had left, the counting was almost over and the personnel were putting the cash in the cash box. On the next day, i.e. on 9th December, 2014, when Sh. K. Sadanandan (SW-1), had reached his office at 8:30 a.m., he was informed that the cash collection was short and he had immediately informed the petitioner about the said position. He stated that out of the total collection of Rs.51,816.25, Rs.37,855/- was in currency notes and Rs. 13961.25/- was in coins. He further stated in his examination that the amount of Rs. 37,855/- was in the cash box and the amount of Rs.13961.25/- collected in the form of coins was not there and only then did it transpire that the said amount had been stolen. The GREF personnel, along with the local police had approached him with a proposal to collect the missing funds and deposit it with the unit. The said proposal was placed before the petitioner, who agreed to the same. Accordingly, a sum of Rs.13961.25/-

was added to the sum of Rs. 37,855/, by making a collection from the unit personnel and it was deposited with the staff police. However, for the consumption of the local police, they were informed that the said money totaling to a sum of Rs.37,855/-, was found lying in the jungle and was deposited with them.

12. Learned counsel for the respondents rightly submits that as the Commanding Officer, it was the duty of the petitioner to keep a track of the funds and when he had himself constituted the Board of Officers for the purpose of checking and counting the money offered at the two temples, then his blindfold reliance on K. Sadanandan, SW-1 would not exonerate him for the reason that it remained his duty to obtain a report from the Board of Officers with regard to the extent of collection for the month of November, 1994, before counter signing the books of account.

13. On the last date of hearing, i.e. on 29th February, 2016, counsel for the respondents had sought time to obtain instructions as to whether any departmental proceedings were initiated against the Second-Officer in Command, Sh. K. Sadanandan or he was left scot free. He informs us today that in respect of the incident in question, an inquiry was conducted not only against the petitioner but also against the other officers, including Second-in-Command, Sh. K. Sadanandan and in so far as the latter is concerned, he was inflicted with the punishment of reduction in salary by one stage i.e. from Rs.10,300/- (as on 1-4-2001) to Rs.10,100/- in the time scale of pay for a period of two years w.e.f. 1st December, 2001. It was also directed that Sh. K. Sadanandan, Second-in-Command will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing

his future increments of pay.

14. After having satisfied ourselves that the petitioner alone was not targeted and the respondents had taken appropriate action against the other delinquent officers as well, we are of the opinion that the punishment inflicted upon the petitioner, of withholding of one increment for one year without cumulative effect, cannot be termed as disproportionate to the misconduct alleged against him. Further, the misconduct on the part of the petitioner is borne out from the fact that he had admittedly counter signed the Regimental Cash Account Book in the month of December, 1994 without obtaining a copy of the Board of Officer's proceedings and without comparing the collection of the amounts. For the aforesaid reasons, we are of the opinion that the impugned order does not suffer from any illegality, arbitrariness and perversity and nor is the punishment inflicted on the petitioner disproportionate to the misconduct established against him.

15. The petition is accordingly dismissed as devoid of merits, while leaving the parties to bear their own costs.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 17, 2016

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