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

Decided on: 26.10.2018

+ **W.P.(C) 267/2002**

DHARAM SINGH RANA

..... Petitioner

Through: Ms. Palak Rohmetra, Advocate

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Naushad Ahmed Khan, ASC,
GNCTD with Mr. Zahid, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. This Writ Petition is directed against an order dated 30.07.2001 by the Central Administrative Tribunal [hereinafter referred to as "the Tribunal"] in the petitioner's application against a disciplinary order of the respondents inflicting the punishment of removal from service upon him.
2. The petitioner joined the service of the respondents as a Lower Division Clerk in 1976, and was promoted as an Upper Division Clerk in 1998. By a memo dated 27.07.1990 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965, which was served upon him on 03.09.1990, two charges were framed against him. They related to the period 07.04.1981 to 23.10.1982, when the petitioner was posted as LDC/Cashier RCC Kingsway Camp. The charges read as under:

“ARTICLE-I

that Sh. Dharma Singh Rana, LDC while working as cashier RCC Kingsway Camp, Delhi w.e.f. 7.4.81 to 23.10.82 embezzled Rs. 6856.18P. by removing cash from the cash chest, not entering the jama talashi of beggars amount received from cash-workers in the cash book and committing mistakes in totaling of the amount in the cash-book maintained at R.C.C. Kingsway Camp. He deposited back this amount after pointed out by the audit party.

ARTICLE-II

That Sh. D.S.Rana, LDC/Cashier Committed irregularities by violating the provisions of rule-77 of the Central Treasury rules issued vide section-151 of the Govt. of India Act. 1935.”

3. Three specific irregularities were alleged against the petitioner:

- (a) He was accused of misappropriating the sum of Rs. 4174.68, which was found short by an audit team upon physical verification of cash, as against the cash book maintained for the period upto 23.10.1982.
- (b) It was alleged that he had not made entries in the cash book of a sum of Rs. 2539 received as *jama talashi* from beggars.
- (c) He was also accused of misappropriation of the sum of Rs. 142.20 by showing the same as short in the cash book on various dates.

It was also stated therein that he had deposited the entire amount after the audit party's observations had come to light.

4. In his response to the above, the petitioner advanced the following defences:

- (a) He claimed to have informed his superior officer in writing on 04.06.1981 about the deficiency of Rs. 4100 in cash, which was also communicated to the bank and the Director, Social Welfare. He also stated that some notes were not counted by the audit party as they were soiled.

(b) With regard to the amount received by way of *jama talashi* of beggars, he contended that he had not received the money, and that several of the vouchers in question had not been supplied to him.

(c) With regard to the sum of Rs. 142.40, he admitted the possibility of having made some arithmetical errors and stated that he had taken the signature of his superior officer on the cash book.

He further stated that he had taken charge of cash for the first time at the time of the alleged incidents, and that no audit objection had been raised in respect of his work for the subsequent period of time, i.e. from 1983 to 1990.

5. Ultimately an Enquiry Officer was appointed, who conducted common proceedings against the petitioner and four other officials. After examination of witnesses in support of the charge and the charged officers, the Enquiry Officer submitted a report dated 28.05.1997. The petitioner filed a representation against the said report, alleging *inter alia* that the enquiry had been vitiated by breach of the principles of natural justice. However, the petitioner was visited with an order of the Disciplinary Authority (Chief Secretary, Delhi Administration) dated 20.01.1999 removing him from service. The petitioner's appeal against this order was rejected by the Lieutenant Governor of Delhi by an order dated 08.06.2000. This led to the institution of proceedings before the Tribunal, which have culminated in the impugned order dated 30.07.2001.

6. The operative portion of the order of the Disciplinary Authority dated 20.01.1999 reads as follows:

“AND whereas the undersigned has gone through the I.O. s report, representation of Shri D.S. Rana on the findings of

I.O. and all other relevant cash record and observes that the contention of the CO that he had not embezzled /misappropriated an amount of Rs. 4174.68 since audit has not pointed out this shortage is found incorrect as on physical verification of cash of Jama Talashi by the audit on 5.3.83 cash of Rs. 4,174.68 was found short for which Shri D.S. Rana could not give any satisfactory explanation and not reported the matter to the Police either directly or through his seniors as per record. Further he had received cash of Rs. 2539/- from case-workers as Jama Talashi of Beggars against three vouchers but did not enter this amount in the cash book and misappropriated the same. Also he misappropriated an amount of Rs. 142.20 by showing the same as short in cash book after making cuttings/corrections. As such the findings of the IO hold good in his case. Therefore, I feel that continuation of such a person having malafide intentions and dishonest motives in handling Govt. money would not be in the interest of the Government and he deserves to be penalized severely. I feel ends of justice would be met if a penalty of removal from service is imposed with immediate effect.”

7. The Appellate Authority has recorded the following reasons in support of its order upholding the findings and punishment imposed on the petitioner:

“3. I have considered the appeal of Shri Rana. He has contended that the allegations made against him were of general nature and not specific besides being contrary to the facts on record. The appellant was not a cashier and was not getting any cash allowance which a cashier is entitled to. The findings of inquiry were not based on evidence on record. The disciplinary authority did not consider his defence properly and passed the impugned order in a routine manner. The penalty imposed by the disciplinary authority is disproportionate to the charges and excessive in nature.

3. I have examined the connected records of the case placed before me and find that none of the contentions of

the appellant has any force. The charges against him were specific and the inquiry was conducted in a fair and judicious manner. The appellant was given all opportunities to plead his defence during inquiry proceedings. It is on record that the appellant used to write cash book and by merely not getting the cash allowance, he cannot be absolved of the charge of handling of the cash book. On the basis of documentary evidence it stands clearly established in the inquiry that the appellant misappropriated government money with dishonest motive. Considering the gravity of misconduct committed by the appellant, I am of the view that a just and reasonable penalty has been imposed by the disciplinary authority. The appeal of Shri Dharam Singh Rana is, therefore, rejected and the impugned order passed by the disciplinary authority upheld. The appellant be informed.”

8. The impugned order of the Tribunal has upheld these orders on the ground that the petitioner had not disputed the shortage of Rs. 4174 in cash, and was “wholly responsible” for maintenance of the cash book. The petitioner’s contention that he had informed his superior officers about this shortage contemporaneously, and well before the audit, has been held to be insufficient to exonerate him of the charge. The Tribunal has further considered the deposit of the disputed amount by the petitioner to be an incriminating factor, recording as follows:

“6. It has also come out in the pleadings placed before us that the appellant eventually decided to deposit a sum of Rs. 4174/- as conceded by the applicant and an amount of Rs. 6856.18 p., as stated by the respondents. We have considered this aspect and find that the applicant would not have been willing to deposit the amount embezzled unless he knew that the charge of embezzlement would in any case be sustained against him on the basis of available evidence. He had clearly decided to approach this Tribunal to seek remedy and, therefore, not being guilty according to his

own version, he need not have deposited the embezzled amount before this Tribunal's decision became available."

The Tribunal has found the orders of the Disciplinary and Appellate Authorities to be reasoned and speaking orders, which have been passed after due application of mind, and has therefore dismissed the petitioner's application.

9. Learned counsel for the petitioner assailed these findings by reference to the orders of the Disciplinary and Appellate Authorities, which were, according to her, rather cryptic. She submitted that the Tribunal has erred in brushing aside the extenuating circumstance that the petitioner had informed his superior officers about the missing cash. According to her, this conduct would negate the charge of embezzlement against him. She further contended that the petitioner had deposited the disputed amount after the audit observations, under pressure from the Anti-Corruption Branch, and the Tribunal was unjustified in finding this to be evidence of his guilt. Finally, she submitted that the punishment of removal from service imposed on the petitioner was wholly disproportionate to the findings against him.

10. Learned counsel for the respondent, on the other hand, supported the order of the Tribunal on the basis of the reasons given in the orders of the Disciplinary and Appellate Authorities. He argued that their concurrent findings, upheld by the Tribunal, do not call for interference by this Court.

11. Having heard learned counsel for the parties, we agree with the respondent's submission regarding the findings of guilt recorded against the petitioner. It is not for this Court under Article 226 of the Constitution to re-examine the evidence and disturb the concurrent findings of the concerned authorities, unless they are shown to be perverse or irrational, in the sense

that no reasonable authority could have come to those conclusions on the evidence before it. We do not find the present case to meet that high threshold, so far as the finding of guilt is concerned.

12. However, we are of the view that the punishment of removal from service imposed on the petitioner is wholly disproportionate. We are conscious of the very limited scope of judicial review in such cases, but find the impugned orders unsustainable even in the light of those grounds. The Tribunal's order to the extent that it has disregarded the contemporaneous report made by the petitioner to his superior officers regarding the cash shortage, does not commend to us at all. Similarly, we are unable to accept the reasoning that the return of the deposited amount by the petitioner is a circumstance which necessarily shows that he was guilty of the charge. Despite the issue having been squarely taken before it, the Tribunal did not address the question of proportionality of the punishment imposed at all. It is settled law, undisputed by the learned counsel for the respondent, that in the rare case where the Court finds that the punishment imposed is so disproportionate that it defies logic, the Court may exercise its jurisdiction under Article 226 of the Constitution. Reference, in this connection, may be made to the judgments of the Supreme Court in *Coal India Ltd. vs Mukul Kumar Choudhuri* (2009) 15 SCC 620 and *Chandra Kumar Gupta vs. Union of India* (2012) 6 SCC 369.

13. In view of the totality of the circumstances aforesaid, and in order to obviate the necessity of further litigation we set aside the order of removal from service and direct the respondent to treat the petitioner as having compulsory retired from service, from the date he was inflicted with the penalty of removal i.e. 20.01.1999. Accordingly, the petitioner's terminal

benefits, entitlement to revised pension etc. shall be worked out by appropriate fitment orders. The benefit to the revision of pension, Dearness Allowance, all arrears of pension etc. and all consequential benefits shall be disbursed to him within three months.

14. The writ petition is allowed in the above terms.

PRATEEK JALAN, J

S. RAVINDRA BHAT, J

OCTOBER 26, 2018

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