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

\+ **Date of Decision: 28.05.2019**

% **W.P.(C.) No. 6045/2019**

RAKESH MEHRA ..... Petitioner

Through: Mr. Shankar Raju, Mr. Nilansh Gaur and Ms. Himantika Saini Gaur, Advocates.

versus

UOI & ANR .....Respondents

Through: Mr. Vishal Mittal, Sr. Panel Counsel alongwith Santosh Kumar Pandey GP, for R-1 (UOI)

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition to assail the order dated 20.3.2019 passed by the Central Administrative Tribunal, Principal Bench in OA No. 2733/2013. The said original application of the petitioner has been rejected by the Tribunal, wherein he had assailed the disciplinary proceedings initiated against him by the respondents; the punishment order dated 9.3.2013 passed by the Disciplinary Authority removing the petitioner from services; as well as the order dated 20.07.2013 passed by the Appellate Authority dismissing his departmental appeal.

2. The petitioner was proceeded against on a charge which substantially

was that he, in collusion with others, had embezzled funds to the tune of ₹1,75,000/- and ₹3,16,354/-. This had been done in collusion with Sh. Rajesh Rastogi, Ex-LDC of Pension Cell by manipulating the case of payment of pensionary benefits in respect of one late Sh. Om Prakash, Lab Technician, C.N.Centre. The allegation against the petitioner was that he had received the said amount in his own name by two cheques and he had deposited the same in his account. He had, thereafter dealt with the said amount. The statement of imputation of misconduct and misbehavior against the petitioner was that the payment was made by preparing duplicate pensionary benefits papers i.e death gratuity payment papers/bills in respect of late Sh. Om Prakash, Lab Technician, to the extent of ₹9,82,709/- comprising of two bills of the amounts of ₹6,32,709/- and ₹3,50,000/-. The modus operandi was to pay the amount in the accounts of the other similarly named persons, who were also employees of the respondent-institute, namely, Sh. Rajesh Kumar, UDC and the petitioner Sh. Rakesh Mehra, Hospital Attendant. Pertinently, late Sh. Om Prakash Lab Technician had two sons namely Sh. Rajesh Kumar Tanwar and Sh. Rakesh Kumar Tanwar.

3. The detailed enquiry followed, wherein the departmental witnesses were examined. The petitioner/delinquent official did not lead any evidence in his defence. The defence of the petitioner was that he had been made victim in the whole episode, and the main culprits have been allowed to go scot-free. He alleged that the concerned official changed the name of the actual beneficiary Mr. Rakesh Tanwar to Mr. Rakesh Kumar and then to Mr. Rakesh Mehra in the pension bills/cheques. Pertinently, the petitioner did not dispute the fact that the amounts were, in fact, deposited by him in his

account and the same were also withdrawn from the said account. In this back ground the findings returned by the Enquiry Officer, inter alia, were as follows:-

> *27. Ex.S-1 shows that Form-18, original, in respect of Shri Om Prakash, who expired on 08.12.2007 was sent by the Establishment Section to Pension Cell. Death of Shri Om Prakash-V, who was working as Technician (OT) in Manifold Room, C.N. Centre was notified vide Memorandum dated 02.01.2008 to all concerned with copies to Estt. Section-1 and Accounts Section. Col.21 of Form-18 shows names of Rajesh Kumar Tanwar and Rakesh Kumar Tanwar, who are sons of Shri Om Prakash-V to whom DC&RG would be payable, in equal proportion (50% each) . Names and addresses of the Banks, along with Accounts Numbers of both the beneficiaries where payment of DC&RG was desired has been given in Col 25 Date given on Form-18 is 19-1-08. Form-12 and Form-14 have been filled properly in the names of real beneficiaries with their identification and specimen signatures. Thus there was no iota of doubt about the identity of deceased employee, beneficiaries of death gratuity and where and in whose names the amounts were to be drawn and deposited.*
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> *28. Ex.S-3 which is FA's note dated 29.10.2010 states that first payment was released to the right/real beneficiaries, namely, Shri Rajesh Kumar Tanwar and Rakesh Kumar Tanwar against Office Note dated 29.2.2008 vide PPO No. 2407/2007-08 and PB Nos. 282 and 283/2007-08 for Rs.3,50,000/- and Rs.1,75,000/- respectively. These two PBs (Original) have been kept in Ex.S-2. These two PBs have been signed by Shri R.C. Katoch, AO (Pension)- an officer other than officers who have mishandled the case in question. PBs have been prepared correctly though PPO No. which is required to be mentioned in the PBs has not been written. AO (P) has taken signatures of the beneficiaries on the Certificate given at the bottom of the PBs. He has also taken signatures of beneficiaries on revenues stamps in token of receipt of cheques whose numbers and dates (encircled) have also been written on the body of PBs. Identification of beneficiaries was confirmed tough Election Commission's identity Cards, kept in file. Original PPO*

No.2407/207-08 dated 29.2.2008 is kept in Ex.S-1. Thus SW1 to SW-4 who mishandled the case cannot take alibi that correct procedure was not obtained in Pension Cell of AIIMS and they were not aware of this procedure.

29. Ex.S-3 shows that Cheque No. 762109 dated 01.04.2008 for Rs.1,75,000/- in favour of Shri Rakesh Kumar (CO) was issued against PPO No. 2407/2007-08 dated 29.2.2008 and credit to account of CO on 03.04.2008.

30. Ex.S-3 further states that Cheque No. 006485 dated 18.5.2009 for Rs.3,16,354/- was issued to Shri Rakesh Kumar (CO) against sanction office note dated 08.05.2009 and PPO No.2548/2009-10 and this cheque was credited in account of CO.

31. ***Ex.S-4 is statement of A/C No. 10874698970 which belongs to Shri Rakesh Mehra obtained from the State Bank of India. This statement shows that Rs.1,75,000/- has been deposited on 03/04/08 through Cheque No. 762109. Rs.1,50,000/- has been shown as debit on 04.04.2008 against Cheque No. 947053. This fact has been admitted by CO himself vide his own letter dated 25.9.2010 at Ex. S-6*.

32. ***Ex.S-4 has another statement of A/C No. 10874698970 which belongs to Shri Rakesh Mehra obtained from the State Bank of India. This statement shows that Rs.3,16,354/- has been deposited on 21/05/09 as BT Rs.2,60,000/- has been shown as debit on 25/05/09 against Cheque No. 947034 (BT). This fact has been admitted by CO himself vide his own letter dated 25.09.2010 at Ex.S-6*.

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36. ***Facts relating to deposition and withdrawal of two cheques as mentioned in Ex.D-1 have also been proved as explained above. Submission of CO in Ex.D-1 that the transfers in question were made by Shri Rastogi in his Bank account without his consent cannot be accepted in view of the fact that CO himself has admitted that Shri Rastogi brought these two cheques to him. CO did not object to deposition and thus allowed his personal account for laundering money on the basis of cheques drawn in name of CO. PO could not adduce evidence as to who deposited cheques in the account of CO. Perusal of Ex.S-6 read with Ex.D-1 throws sufficient***

***evidence that CO allowed his personal account for deposition and withdrawal of two cheques in question**."*

(emphasis supplied)

4. After complying with the procedure, and granting opportunity to the petitioner to represent against the findings recorded by the Enquiry Officer, the Disciplinary Authority passed the order finding the petitioner guilty of misconduct, and ordered his removal from service on 9.3.2013. The said order, inter alia, records as follows:

> *"AND WHEREAS a copy of the inquiry report was sent to Shri Rakesh Mehra, Hospital Attendant Grade-III vide office memorandum dated 10.03.2012 and he was given an opportunity of making such submissions on the report of the inquiry as he desired. His submissions on the report of inquiry were received vide his letters dated 27.03.2012 and 13.04.2012. Shri Rakesh Mehra again denied the charge and represented against the findings of the Inquiry Officer. On careful consideration of the report of the Inquiry Officer and other relevant facts of the case in the light of the submissions made by Shri Rakesh Mehra, the Disciplinary Authority has come to the conclusion that the charge against Shri Rakesh Mehra, Hospital Attendant Grade-III in respect of fraudulent withdrawal of funds meant for pensionary benefits of ex-employees of the institute, by depositing the cheques in his accounts unauthorisedly, were duly proved in the enquiry. The representations dated 27.2.2012 & 13.4.2012, submitted subsequently by Shri Rakesh Mehra has no weightage to rebut the charges. The inquiry was found to be held properly in accordance with the prescribed rules and therefore, the competent authority decided to accept the findings of the Inquiry Officer.*
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> *NOW THEREFORE, after careful consideration of article of charge, findings of the Inquiry Officer, representations of Sh. Rakesh Mehra and other relevant material/facts and circumstances of the case, the Director being Disciplinary Authority in exercise of the powers conferred by Rule 15 of the CCS (CCA) rules, 1965 read with regulation 33 (2) of the AIIMS regulations (as amended), 1999, now for good and sufficient reasons has decided to impose the penalty of "Removal from*

> *service which shall ordinarily not be a disqualification for future employment under the Government on Shri Rakesh Mehra, Hospital Attendant Grade-III. Accordingly, the penalty of "Removal from service which shall ordinarily not be a disqualification for future employment under the Government" is hereby imposed on Shri Rakesh Mehra, Hospital Attendant Grade-III with immediately effect."*

5. The petitioner's departmental appeal has been rejected by the Appellate Authority. This order records as follows:-

> "*AND WHEREAS Sh. Rakesh Mehra, Ex.Hosp. Attdt. Gd.-III made an appeal vide his letter dated 25.5.2013 and supplementary appeal dated nil against the imposition of the penalty of "Removal from service which shall ordinarily not be a disqualification for future employment under the Government" on him. The above appeals of Sh. Rakesh Mehra alongwith all relevant facts/circumstances of the case has been placed before the President, AIIMS being Appellant Authority for consideration.*
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> *NOW THEREFORE, the appeals of Sh. Rakesh Mehra, Ex. Hosp. Attdt. GD.III along with all relevant facts/circumstances of the case has been considered by the President, AIIMS being Appellate Authority. The President, AIIMS after having gone through all relevant facts of the case and all relevant documents on record has found that no new grounds/facts have been raised in the instant appeal and that the formal enquiry was duly conducted as per prescribed procedure of CCS (CCA) rules, 1965 and in view of this the President, AIIMS has decided to reject the appeal. Therefore, the appeal dated 25.3.2013 and supplementary appeal dated nil of Sh. Rakesh Mehra, Ex. Hosp. Attdt. Gd.III against the order dated 6.3.2013 stands rejected.*"

6. The submission of Mr. Shankar Raju, learned counsel for the petitioner, is that the Tribunal while passing the impugned order has undertaken no discussion whatsoever of the submissions advanced by the petitioner. There is no application of mind reflected in the impugned order passed by the Tribunal. It has merely rejected the original application after

noticing a few decisions of the Supreme Court on the aspect of scope of judicial review by the Tribunal in departmental enquiries, and observing that the petitioner had not brought to its notice violation of any procedural rule or principles of natural justice and that, therefore, there is no need to interfere with the departmental proceedings and the penalty imposed upon the petitioner.

7. Mr. Raju, submits that a perusal of the order passed by the Disciplinary Authority as well as the Appellate Authority would show that the same do not reflect upon application of mind by them. They are unreasoned and formal orders. There is no discussion of the evidence or any relevant aspect in these orders. There is no application of mind by the Disciplinary Authority, or the Appellate Authority, with regard to the appropriateness of the penalty to which the petitioner should be subjected to, even if the guilt is taken to have been established.

8. We have consciously set out hereinabove, in detail, the findings returned against the petitioner. The findings are clear and categorical and are based on recorded banking transactions. The submission of the petitioner that it was Mr. Rajesh Rastogi who was the master-mind and it was he who alone was liable, cannot be accepted. This is for the reason, that, undisputedly, the amounts of ₹1,75,000/- and ₹3,16,354/- were received by the petitioner in his account, and thereafter he proceeded to deal with the said money. The submission of Mr. Raju, that the petitioner was not aware that these amounts had been deposited in his account by Mr. Rajesh Rastogi, cannot be accepted for the reason that the petitioner actually had withdrawn the amount and even though the said transactions took place in April and May 2008, the petitioner kept quiet about it

and did not inform his department and he made no complaint against anyone, including Mr. Rajesh Rastogi, and it was only when he was chargesheeted he sought to take the defence that the fraud had been played by Mr. Rajesh Rastogi and he was not a part of it. This response was given by him only in September 2010. Thus, so far as the petitioner's involvement in embezzlement of large amounts of money is concerned, the same stands established to the hilt.

9. A perusal of the orders passed by the Disciplinary Authority as well as by Appellate Authority, no doubt, shows that they are not as elaborate, as they could be. However, the need for the Disciplinary Authority and the Appellate Authority to pass more detailed orders after marshalling the evidence would be greater, in cases where the aspect of preponderance of probabilities requires deeper consideration. In a case like the present, which is based on banking transactions and documentary evidence- which has been elaborately discussed, there was really no need to undertake the said exercise as it was a matter of record that the embezzled amount had been pocketed and appropriated by the petitioner. For the same reason we are not inclined to interfere with the impugned order as well.

10. We do not find any merit in the petition. Accordingly, we dismiss this petition.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

MAY 28, 2019
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