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

\+ W.P.(C) 10759/2018 & CM APPL. 41981/2018

RAMACHANDRAN V. ..... Petitioner

Through: Mr. Saqib, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD ..... Respondent

Through: Mr. Parvinder Chauhan, Standing Counsel, DUSIB along with Mr.Rahul Adhana, Advocate.

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 08.01.2020

By the instant petition, the petitioner, in effect, assails the office order no. D-883/DD (Vig.)/DUSIB/2017 dated 08.11.2017, whereby, the Disciplinary Authority imposed the penalty and the order no.D-335/DD (Vig.)/DUSIB/2018 dated 10.05.2018, whereby, the Appellate Authority upheld the imposition of penalty. Penalty imposed is of reduction in the time scale of pay by four stages till 31.07.2019 and not to earn increments of pay during the period of such reduction and on expiry of such period, the reduction to have the effect of postponing the future increment of pay.

2. The initial appointment of the petitioner was of LDC in February, 1984. On promotions, he came to be appointed as an Accountant in March, 1990; A.O. in June, 1998; and, on further promotion was appointed as Sr. A.O. in May, 2006.

3. Departmental inquiry was initiated against the petitioner and a few others sometimes in the year 2010. The Articles of Charges, though 15, the sum and the substance thereof is that one Sh. Purshottam Kumar, who was working as a Cashier / Assistant Director (Cash) had not remitted the amounts received in the Squatter scheme to the tune of Rs.14,74,13,861/- over a period of time and during the period from June, 2002 to July, 2007, the petitioner was the A.O. (HQ.)/DDO, but, failed to supervise the acts of Sh.Purshottam Kumar with due diligence and take corrective measures. On the conclusion of the inquiry proceedings, the petitioner was held guilty of few of the charges and the disciplinary authority proceeded to impose penalty with the observations, as follows:

> *"AND WHEREAS, during the personal hearing no new facts have been brought out and has more or less reiterated what has been discussed in his representation that he was holding the charge of AO/DDO (HQ) from June 2002 to 2007 with additional charge of AO (Internal Audit). The charge of DES, during December, 2008, was assigned as additional charge with post of FO to CE and remained with him up to September 2010. That non-reconciliation of bank accounts was within the knowledge of higher authorities. That the responsibility to supervise the cashier vests with the Acctt./AAO and that it is the duty and responsibility of cashier to collect the receipts of the department, its remittance to bank, to deal with the bank, to prepare the reconciliation statements, monthly accounts etc. and that he has discharged his duties as AO (HQ) diligently and in accordance with Rules and regulations, accounting procedures and practices and policies of the department prevailing at the time.*
>
> *AND WHEREAS from the perusal of the Inquiry report, the Inquiry officer has proved the charges on the ground that the amount received by Sh. Purshottam*

Kumar, working as Cashier/Asstt. Director (Cash) in AO (HQ) was not remitted in Bank accounts in the Squatter scheme to the tune of Rs.14,74,13,861/- (17.05.2000 to 09.09.2010), Rs.3,20,95,777/- (29.01.1997 to 21.09.2010) in Slum non-plan and Rs.6,09,174/- (19.09.2001 to 31.05.2010) in Yamuna Action Plan during the respective period. The tenure of CO as AO (HQ)/DDO was from June 2002 to July 2007 is covered under the relevant period as per the Special Audit Report. Similarly, as per the Inquiry officer, Cashier, Accountant/AAO and AO/DDO i.e. C.O. were privy to the entries made in the cash book. Therefore, they are accountable for the entries made in the cash book which had shown the said cash as remitted into the respective bank account but in fact not found remitted. Thus the C.O. failed to supervise Sh. Purshottam Kumar, AD (Cash) and other supervisory staff above the cashier posted under him. The preparation of bank reconciliation statement is an important aspect of cash management and control technique to check irregularities and DDOs are required to prepare bank reconciliation statements regularly. This was not done and facilitated the embezzlement of govt. funds. Inquiry Officer in his report has further discussed that during the tenure of CO in the internal audit section and Double Entry System, he has not made any effort or taken corrective measures.

AND WHEREAS in the light of observations and findings in the inquiry report about series of non-remittance of funds spread over a long period of time, no proper entries in cash books with respect to interest given by banks, non-preparation of Bank Reconciliation statement for the last several years, knowing it is mandatory which had facilitated embezzlement of funds, Charged Officer being the supervisory authority was to supervise Sh. Purshottam Kumar Cashier/ AD(Cash) and other officers of Accounts Wing under him at the relevant period. All these irregularities indicate supervisory lapses on the part of C.O. Had the C.O. taken some *preventive steps to ensure proper accounting procedure, Sh. Purshottam Kumar, Cashier could not have continued to tamper with accounts and the embezzlement could have been averted or detected early. Thus he had failed to discharge his duties effectively and also failed to exercise enough financial control to prevent irregularity during his tenure as AO (HQ)/ DDO for which he is guilty, although there appears no evidence of any connivance.*

AND WHEREAS, keeping in view the case in its entirety, the charge sheet issued to the charged officer, the report/records of the Inquiry Officer, the detailed comments of the charged officer on the report of the Inquiry Officer and the personal hearing granted to him, I am convinced that the charges have been established against him and as such, I feel justice would be met if a penalty of "reduction in the time scale of pay by four stages till 31.07.2019 is imposed on Sh.Ramachandran V., Sr. A.O./C.O. Further, he will not earn increments of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increment of his pay."

NOW THEREFORE, undersigned in exercise of the powers conferred upon me, do hereby order to impose a penalty of "reduction in the time scale of pay by four stages till 31.07.2019 on Sh. Ramachandran V., Sr. A.O./C.O. Further, he will not earn increments of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of his pay."

4. The Appellate Authority concurred with the observations as also the imposition of the penalty vide impugned order dated 10.05.2018.

5. During the course of hearing, ld. counsel for the petitioner, on instructions, submits that the petitioner does not press challenge to the findings on the Articles of Charges. In his submissions, the petitioner

presses the petition restricted to the proportionality of the penalty imposed inasmuch as the negligence attributable to the petitioner, which is construed as a serious misconduct, is disproportionate, especially, when seen in context to the penalty imposed upon similarly placed another employee namely, Sh.Ashok Kumar Tyagi, who was none else but the Accountant and immediate superior of Sh.Purshottam Kumar. In his submissions, the foundation of the allegations for the petitioner and said Sh.Ashok Kumar Tyagi is not distinct or apart inasmuch as in the sequence of the business transactions of the office, the subject matter was dealt with by Sh.Ashok Kumar Tyagi being the Accountant in the first place, and, thereafter, the petitioner counter signed the foils and the other relevant documents which were put to him and certified by the said Accountant. In support of such submissions, Mr. Saqib, ld. counsel for the petitioner seeks advertence to the representation that came to be made by the petitioner to the Disciplinary Authority, which forms part of the paper book as Annexure P-8, wherein, the petitioner *inter alia* agitated such issue, as follows:

> "*(x) That all the cash book entries are supported with original documents like G-8 receipt counter foils duly certified by the Accountant on it, bank challans and advises, payment vouchers, Bank deposit counterfoils duly acknowledged by the Bank, Bank statements etc.*"

In doing so, Mr. Saqib, ld. counsel for the petitioner strenuously contends that when the said Accountant–Sh. Ashok Kumar Tyagi was the immediate superior officer to look into the conduct of the main accused and the various documents etc. his responsibility to certify the veracity of such documents or the figures, primarily, the responsibility of Sh.Ashok Kumar

Tyagi was higher than the petitioner, who was acting as the DDO. In his submissions, therefore, the penalty imposed upon the petitioner, which is far in excess to the penalty imposed upon Sh. Ashok Kumar Tyagi, is much disproportionate.

6. Mr. Chauhan, ld. counsel for the respondent on his part has submitted that the petitioner, who was the DDO, was required to be more diligent to oversee the affairs of his subordinates in the office. More so, according to him, the reconciliation of the accounts was the prime responsibility of the petitioner and none else. In addition thereto, adverting to the inquiry report, Mr. Chauhan submits that the term of the petitioner during the relevant period was of longer period than Sh.Ashok Kumar Tyagi inasmuch as the term of the petitioner was for more than 05 years, whereas, that of Sh.Ashok Kumar Tyagi was about 3½ years only. Then, it also comes to be submitted by Mr. Chauhan that the petitioner was faced with 15 Articles of Charges, whereas, Sh. Ashok Kumar Tyagi was charged with only 09 Articles of Charges. In his submissions therefore, the penalty imposed upon the petitioner even on the aspect of proportionality does not require any interference by the Court.

7. Having given due consideration to the diverse aspects agitated by the ld. counsel for the parties, the Court is of the considered view that the allegations against both the petitioner as also Sh. Ashok Kumar Tyagi are of negligence substantively. The sum and the substance of the allegations against both is the same but for the difference in roles attributable to them. Sh. Ashok Kumar Tyagi was the Assistant Accounts Officer / Accountant (HQ.) and the immediate superior officer to oversee the conduct and the work of the main accused Sh. Purshottam Kumar, Cashier / Assistant

Director (Cash) and thereby, he was expected to have more closer supervision but failed. There is no denying the fact that the petitioner being placed in a higher position was required to have more effective supervision over the affairs of the office not only viz-a-viz the Cashier Sh. Purshottam Kumar but also the Accountant namely, Sh.Ashok Kumar Tyagi. The fact however remains that the roles attributed to both of them are of negligence amounting to misconduct.

8. Then, though, it is true that the Disciplinary Authority in his discretion taking note of the diverse factors and the duties and the responsibilities of an officer or other employees can impose diverse penalties, nothing emerges from the record to show that the negligence attributable to the petitioner was of such magnitude that there can be much divergence in the imposition of the penalties on the two officers especially on the same set of facts. In observing so, the Court also notes that in imposing penalty upon the other officer–Sh. Ashok Kumar Tyagi, the Disciplinary Authority has proceeded to even treat his suspension period w.e.f. 29.09.2010 to 05.12.2012 as spent on duty and directed remittance of full pay and allowances to him, whereas, the petitioner has been denied consideration even on the representations made by him.

9. For the foregoing reasons, the writ petition is allowed partly and the impugned orders as regards imposition of penalty are quashed and the matter is remanded back to the Disciplinary Authority to consider the matter afresh as regards to the imposition of the penalty upon the petitioner, having afforded him an opportunity of hearing, as expeditiously as possible, preferably, within four months from today. It is however, made clear that in doing so, the Disciplinary Authority shall be at liberty to pass such order as

may be considered appropriate.

10. Writ petition stands disposed of in the foregoing terms along with the pending application(s). No orders as to costs.

A. K. CHAWLA, J.

JANUARY 08, 2020
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