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

+ **W.P.(C) 6705/2024**

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr. R. V. Sinha, Mr. A. S. Singh and
Mr. Amit Sinha, Advocates

versus

KUMARI MAMTA AGARWAL

..... Respondent

Through: Mr. Piyush Sharma with Mr. Shivam
Dubey and Mr. Anuj Sharma,
Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

10.05.2024

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CM APPL. 27949/2024 -Ex.

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 6705/2024 & CM APPL. 27948/2024 -Stay.

7. The present petition under Article 226 of the Constitution of India seeks to assail the order dated 18.09.2023 passed by the learned Central Administrative Tribunal (the learned Tribunal) in O.A. No. 266/2018. Vide the impugned order, the learned Tribunal has partly allowed the original application filed the respondent/ applicant by setting aside the penalty order as also the appellate order and has remanded the matter back to the Disciplinary Authority to re-assess the entire issue and pass a fresh order as per law. The learned Tribunal has, however, held that taking into account that the charge against the respondent was not of any embezzlement as such



but of carelessness and negligence, no order imposing the penalty of dismissal or removal or compulsory retirement, could be passed. Moreover, the learned Tribunal has also left it to the petitioners to arrive at a decision regarding the payment of consequential benefits, if any, to the respondent.

8. In support of his plea, learned counsel for the petitioner contends that once the learned Tribunal did not find any infirmity in the departmental proceedings, it was not open for the learned Tribunal to interfere with the orders passed by the Authorities and remand the same for re-consideration and that too, with the condition that termination order will not be passed. He, therefore, prays that the impugned order be set aside.

9. On the other hand, Mr. Piyush Sharma, who appears on behalf of the respondent on advance notice, supports the impugned order and contends that it was apparent from the record that the respondent was given the shockingly disproportionate penalty of removal from service, though the charge against her was of mere negligence in not protecting her user ID and Password. The respondent was working as a postal assistant and had no role to play in the embezzlement. He, thus, contends that the learned Tribunal was justified in directing the petitioners to re-consider the penalty imposed on her and therefore, prays that the writ petition be dismissed.

10. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extract of the impugned order passed by the learned Tribunal, which reads as under:-

“6. We are not inclined to go into the factual veracity of the situation. We find that this issue has been adequately thrashed out by the injury officer in his report and the said report has extensively dealt with her role as stated expressively earlier. We have absolutely no cause to



question the report of the inquiry officer. However, we note that although the charge against the applicant uses strong terms like grave misconduct, actually the allegation is only an act of omission on her part and certainly not-one of commission. The misconduct of embezzlement of huge amount of money, which actually is a serious criminal misconduct is attributed to one Mr. Sachin Aggarwal, who was also a system manager and thus in a position to tamper with the system and also gain access to the user id and password of the users of the system. At the most, the applicant is guilty of carelessness and/or negligence. In fact, the inquiry Officer also, in conclusion has recorded in his findings that the applicant i.e., the charged official is guilty of irregularity/carelessness. The order passed by the appellate authority also nowhere attributes the act of embezzlement to the applicant and has termed the misconduct of the applicant as "grave negligence of duty". The punishment awarded to the applicant is removal from service which undoubtedly is one of the harshest major penalties listed in the CCS(CCA) Rules, 1965.

*7. While we are conscious of the limits of our powers and are also aware of the fact that various Courts have consistently held that Courts and Tribunals should not ordinarily interfere in the findings of the enquiry officer nor substitute its own orders for the orders passed by the disciplinary authority, however, it has also been held that the order of penalty should be in consonance with the charge established in the inquiry. In the instant case, at worst, the applicant has been guilty of gross negligence. **The real misconduct, which took place, was embezzlement of public money; the applicant is decidedly not guilty of the same.** Accordingly, we know that the penalty of removal from service inflicted upon the applicant is highly disproportionate to her misconduct as established in the findings of the inquiry officer."*

(emphasis supplied)

11. From a bare perusal of the findings arrived at by the learned Tribunal,



it is clear that the learned Tribunal has not interfered with the findings of the Inquiry Officer, but has merely found that taking into account the allegations against the respondent, the penalty of removal from service was shockingly disproportionate. Before us also, since there is no change in the circumstances, the learned counsel for the petitioners has not been able to show that the respondent was guilty of any embezzlement or was involved in conspiring with the persons who are found to be guilty of the embezzlement.

12. In our considered opinion there is indeed a wide gap inter-se the misconduct committed by the respondent and the penalty imposed by the Disciplinary Authority, as the penalty imposed is far graver and indeed shockingly disproportionate as compared to the misconduct committed by her.

13. We, therefore, find no reason to interfere with the impugned order which only directs the petitioners to re-consider the penalty and pass appropriate order qua the consequential benefits.

14. Accordingly, the petition, alongwith the pending application, being meritless, is dismissed.

15. Needless to say, as this order has been passed in the peculiar facts and circumstances of the present case. As prayed for, the petitioners are granted eight weeks time to implement the impugned order.

REKHA PALLI, J

SAURABH BANERJEE, J

MAY 10, 2024/akr