

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.562/2006

This the 6th day of March 2013

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Mr. D.C. Lakha, Member (A)

Manoj Kumar Awasthi, aged about 46 years, S/o late Sri Damodar Prasad Awasthi R/o Villate-Semari, Pargana & Tehsil-Dhaurahra, District-Kheri.

...Applicant.

By Advocate: Sri Praveen Kumar holding brief for Sri Jitendra Kumar Tiwari.

Versus.

1. Union of India through the Director of Postal Services, Bareilly Division Bareilly.
2. The Superintendent Post Office-Kheri Mandal, Kheri.
3. The Sub Divisional Inspector Post Office-Purvi Mandal, Kheri.

.... Respondents.

By Advocate: Sri Dharmendra Awasthi holding brief for Sri K.K. Shukla.

(Reserved on 20.02.2013)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

“to quash the punishment order dated 26.07.2004 (Annexure-1) and Appellate order dated 26.07.2006 (Annexure-2).”

2. Briefly stated that the facts of the case are that the applicant was serving as EDDPM while he was given a

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charge sheet dated 30.10.2003 which was further amended on 22.01.2004 and 19.04.2004. After conclusion of the inquiry, he was removed from service vide order dated 26.7.2004 and his statutory appeal was also rejected.

3. From the side of the official respondents a detailed Counter Affidavit has been filed saying that from 02.06.2003 to 23.06.2003 the applicant detained excess cash without liability against permissible maximum amount which is detailed as under:-

<u>Date</u>	<u>Detained Cash</u>	<u>Liability</u>
2.6.03	9230.10	
3.6.03	9330.10	
4.6.03	9411.60	
5.6.03	9411.60	
6.6.03	9411.60	
7.6.03	9411.60	
9.6.03	9911.60	
10.6.03	9911.60	
11.6.03	9914.60	
12.6.03	9914.60	
13.6.03	10021.60	
14.6.03	10021.60	
16.6.03	10021.60	
17.6.03	10021.60	
18.6.03	10021.60	
19.6.03	10284.10	
20.6.03	10384.10	
21.6.03	10384.60	
23.6.03	10307.60	

4. He was therefore, cautioned to remit the excess cash balance vide B.O. slips dated 03.06.03, 4.6.03, 5.6.03, 6.6.03, 7.6.03, 9.6.03, 10.6.03, 11.6.03, 12.6.03, 14.6.03, 16.6.03, 19.6.03 and 20.6.03. But, he did not pay any heed. Similarly, a letter of S.P.O., Kheri was sent to him. But, after expiry of eight days, he intimated about alleged receipt of blank paper in it with malafide intention. He also refused to give statement to Sri C.P.

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Bajpai, Ex. SDI (E), Post Office, Kheri on 09.06.2003. On account of all this he was put off duty vide Memo dated 01.07.2003 and Memo of Charges for major penalties was served upon him. However, he was taken back on duty on 11.11.2003 pending disciplinary proceedings against him. After conclusion of the inquiry, he was removed from service by means of a speaking and reasoned order. Similarly, an appeal filed by the applicant was also dealt with in a proper way.

5. A Rejoinder Affidavit has also been filed reiterating the averments made in the O.A.
6. A Supplementary Counter Reply has also been filed but nothing new has been said.
7. We have heard the learned counsel for the parties and thoroughly perused the entire material on record.
8. At the outset, the learned brief holder, who argued the case on behalf of the applicant confined his submissions only to the point of Quantum of punishment. Therefore, we are not advertng to any other grounds.
9. It has been emphasized on behalf of the applicant that he was appointed as EDDPM on 01.02.1985 and served the respondents with dedicated devotion for about 18 years without any complaint until he was put off duty and given charge sheet in the year 2003. He is a poor Extra departmental (E.D.) employee getting lowest

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emoluments. He is now out of job for the last eight years. He has neither committed any embezzlement nor any permanent misappropriation. The only allegation is that in the month of June, he detained for some time some cash amount, which was not required to be detained and he was also not entitled to detain any amount exceeding the limit of Rs.800/- and he also failed to put any remarks in this regard in the daily diary. As mentioned in the punishment order, the defence of the delinquent is that his wife was lying seriously ill from April, 2003 on account of which he remained very busy and his financial condition had also deteriorated causing mental imbalance. On account of these reasons, he has committed the above lapse. The attention of this Tribunal has also been drawn towards para-1 on page 3 where it has been mentioned by the punishing authority himself that on the ground of illness of his wife the act of detaining the amount exceeding the prescribed upper limit, is a beginning of embezzlement. Therefore, it was not an actual embezzlement, it has been emphasized. Similar explanation given by the applicant in respect of the opening of an envelope, has also not accepted by the disciplinary authority. But, it is also noteworthy that in the entire order of punishment the illness of wife has not been denied. As mentioned in the order in question, according to the applicant, finally no loss was caused to the department and he has not embezzled any amount and it was his first mistake to have detained some amount exceeding the prescribed limit. This contention of the applicant has also not been controverted either in the impugned order or in the counter affidavit. From the

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record, it transpires that subsequently the applicant also deposited the amount in question. We find substance in the aforesaid submissions and therefore the punishment of removal from service, appears to us, to be harsh and some what disproportionate to the charges particularly keeping in view that he has served the department for a long period of about 18 years without giving any occasion for any complaint against him and also the fact that no monetary loss has been caused to the department. Moreover, while deciding the quantum of punishment the following six points ought to have been considered which has not been done in this case:-

- i) Gravity of misconduct.
- ii) Past conduct.
- iii) Nature of duties.
- iv) Position in organization.
- v) Previous penalty, if any.
- vi) Kind of discipline required to be maintained.

10. In the matters where the punishment appears to be disproportionate, we would like to quote herein below one paragraph of the judgment rendered by the Larger Bench of the Hon'ble Apex Court comprising three Hon'ble Judges in the case of **B.C. Chaturvedi vs Union Of India And Ors:-** reported in AIR 1996 Supreme Court Cases 484 providing the guidelines:-

"Ramaswamy, J for himself and B.P. Jeevan Reddy, J--Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the

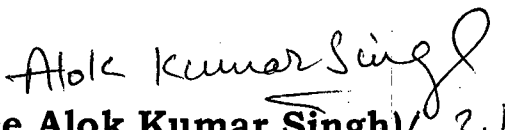
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High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

11. Finally therefore, in our view the punishment order deserves to be quashed only on the point of quantum of punishment and accordingly it is so ordered. It is however made clear that the findings in respect of the charges are not being disturbed. The matter deserves to be remitted back to the respondents/ authorities concerned to pass appropriate order afresh in respect of quantum of punishment after taking into consideration the aforesaid six points and also other facts and circumstances as discussed hereinbefore and accordingly it is so ordered. As the applicant is out of job for the last about eight years, it would be appropriate if the entire exercise in this regard is concluded expeditiously say within 2 months from the date of this order.

12. With these observations, O.A. is partly allowed. No order as to costs.


(D.C. Lakha)
Member (A)


(Justice Alok Kumar Singh) 6.3.13
Member (J)

Amit/-