

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 20/91
T.A. NO.

DATE OF DECISION 01-2-95

Mr. R.B. Chauhan **Petitioner**

Mr. K.C. Bhatt **Advocate for the Petitioner (s)**

Versus

Union of India and Others **Respondent**

Mr. Akil Kureshi **Advocate for the Respondent (s)**

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The Hon'ble Mr. V. Radhakrishnan **Member (A)**

The Hon'ble Mr. Dr. R.K. Saxena **Member (J)**

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

} Yes -

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Shri Ramabhai Bavabhai Chauhan
 Ex. E.D.B.P.M.
 Zinzwa B.O.
 (Sonasan) 383 210

Applicant.

Advocate Mr. K.C. Bhatt

Versus

1. Union of India
 through
 The Director General
 Department of Posts
 Ministry of Communication
 New Delhi
2. The Chief Postmaster General
 Gujarat Circle, Ahmedabad.
3. The Supdt. Of Post Offices
 Sabarkantha Division
 Himatnagar.

Respondents.

Advocate Mr. Akil Kureshi

JUDGMENT

In

Date: 01-2-95

O.A. 20/ 1991

Per Hon'ble Dr. R.K. Saxena

Member (J)

The applicant had challenged the order of dismissal Annexure A-1 and the order Annexure A-11 passed in appeal by the authorities concerned.

2. The facts of the case are that the applicant Shri Ramabhai B. Chauhan was posted as Extra-Departmental Branch Post-Master in village Zinziva — a small village.

One Smt. Chanchalben Babaji Chauhan was holder of Savings Bank Account No. 2237057. There was an amount of Rs. 1817.60/- as balance in her pass book on 15-7-1989. The case of the applicant is that her son Dhulaji Babaji Chauhan approached the applicant on 15-7-1989 with withdrawal form for withdrawing Rs. 500/- from the account of Smt. Chanchalben because she was in need of money. Shri Dhulaji Babaji Chauhan pretended that the pass-book was not traceable and therefore he could not bring the said pass-book. Since the thumb impression on the application for withdrawal of Rs. 500/- was attested by Shri Natvarlal Madhabhai Patel and the applicant knew the depositor, her son Shri Dhulaji B. Chauhan and the attesting witness Shri Natvarlal M. Patel from before, he allowed withdrawal of Rs. 500/- and the said amount was given to Shri Dhulaji Babaji Chauhan — son of the depositor. The payment of the amount was witnessed by Ramanbhai Arakhabhai Vankar.

3. It is stated that Shri N.S. Joshi, sub-Divisional Inspector Himatnagar, inspected the Post office of the village, and on verification of the record he found that the entry of withdrawal of Rs. 500/- on 15-7-1989 was not made in the Pass-Book of S.B. Account No. 2237057. He, therefore, placed the applicant under put-off duty and a charge sheet, Annexure A-4 was issued to the applicant. The

charge was that during the period from 21-7-1986 to 15-7-1989 while functioning as Extra-Departmental Branch Post-Master, Zinzva, the applicant failed to observe Rule 133 (1) and 134 (2) (4) of B.O. Rules, by not obtaining application for withdrawal from the real depositor, by not obtaining receipt for payment on warrant of payment from depositor (SB-7), not making entry of the withdrawal in the pass-book; and by not paying the amount withdrawn to real depositor. It was, therefore, alleged that the applicant had failed to maintain absolute integrity as required under Rule 17 of the Extra Departmental Agents (Service and Conduct) Rules 1964 by preparing fake application for withdrawal & warrant of payment and also by taking payment himself from S.B. accounts. This charge-sheet was accompanied with Annexure A-2, which was with the statement of imputation of mis-behaviour or mis-conduct, Annexure A-3, was a list of documents which were required to be relied upon; and Annexure A-4 was a list of the witnesses. This charge-sheet was served on the applicant on 16-5-1990 and he was required to submit his explanation thereof. Shri M.D. Ninama was appointed inquiry officer. The statement of witnesses from both the sides were recorded and ultimately the inquiry officer submitted his report dated 17-9-1990, to the Disciplinary Authority holding the view that the charge was established. According to the averment of the applicant, the Disciplinary Authority passed the order of dismissal from service on 8-10-1990 without appreciating the evidence and without applying its mind. According to his averment, the order of punishment was illegal. The inquiry officer and the presenting officer proceeded with the case under Rule 14 of Central Civil Services (Classification)

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Control and Appeal) Rules, 1965, while these C.C.S. (C.C.A.) Rules were not applicable to the Extra-Departmental-Employees such as the applicant. The charge-sheet was also framed without application of mind and on irrelevant Rules. It is also the contention of the applicant that there was no evidence in support of the alleged charge and yet the finding of removal from service was recorded by the Disciplinary Authority. It is also pointed out that there was no complaint about the withdrawal of the money but the case was concocted with malafide intention by the Inspector of the Department.

4. On the basis of these points, the applicant had also preferred an Appeal to the Director, Postal Services, who without application of mind, rejected the same on 4-12-1990. It is for these reasons that the applicant approached the Tribunal for quashment of both the orders of Disciplinary Authority as well as of Appellate Authority.

5. The respondents contested the case on the grounds that the applicant himself had withdrawn the amount of Rs.500/- from the S.B. Account No. 2237057 of Smt. Chanchalben and had utilised the amount himself. According to the respondents, the applicant had disclosed in writing before Shri N.S. Joshi—SDI (P), South Sub. Division, Himatnagar, on 27-11-1989. It was also admitted that the applicant had himself prepared the application for withdrawal putting his own thumb impression as that of the depositor and obtained the money without the



knowledge of the depositor. The amount could not be shown in the pass-book because the amount so withdrawn was spent on personal expenditure. It is also contended by the respondents that the applicant had credited to the Government voluntarily on 28-11-1989. The case of the respondents is also to the effect that Smt. Chanchalben Chauhan had preferred claim on 21-12-89 through Sub-Divisional Inspector, Post Offices, Himatnagar for Rs. 500/- which was withdrawn from her account. Her claim was, however, settled on 20-3-1990 and the payment was effected on 28-3-1990 by way of restoration to her account. It was for these reasons that the applicant was put off duty by the Sub-Divisional Inspector.

6. The respondents denied the averment made by the applicant that the amount was withdrawn by Shri D.B. Chauhan on behalf of the depositor. According to the respondents, this story was fabricated by the applicant to save his skin and was an after-thought. It is reiterated that the ^{proper} procedure was adopted and the evidence^s which was adduced established that Smt. Chanchalben was neither in need of money nor was the amount of Rs. 500/- paid to her, which was withdrawn from her account.

7. It is also the case of the respondents that the Extra-Departmental-Agents were declared by the Supreme Court in a case on 22-4-1977 as holder of Civil post and therefore,

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the department had issued order vide Memo No. 151/4/77-Disc-II dated 23-5-1977 that all cases of removal/dismissal of Extra-Departmental-Employees in terms of Rule 8 of the Extra Departmental Agents (Conduct and Service) Rules, 1964, should be dealt with so as to conform to the provisions of Article 311 (2) of the Constitution and procedure outlined in C.C.S. (CCA) Rules 1965. For these reasons, objection raised by the applicant about ^{in the Charge sheet} mention of Rule 14 of C.C.S. (CCA) has been challenged. It is also the contention of the respondents that proper procedure was adopted and the evidence which was recorded during the inquiry was properly appreciated and thereafter the order of punishment was recorded. Thus there is no illegality in the order of punishment passed by the Disciplinary Authority and the order passed by the Appellate Authority while disposing of the appeal.

8. The applicant submitted rejoinder reiterating those were grounds which were mentioned in the O.A. itself.

9. We have heard the learned counsel for the applicant and the respondents and have perused the record. The learned counsel for the applicant has also brought written arguments on record.

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10. The learned counsel for the applicant raised objection that the applicant was working as Extra-Departmental Branch Post-Master and was governed by Extra-Departmental-Agents (Conduct and Service) Rules, 1964 but he was also charged under Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, 1972. It may be pointed out that Central Civil Services (Classification Control and Appeal) Rules were framed in 1965 whereas the year is shown as 1972 in the impugned order, Annexure A-1. It appears to be a typing mistake and cannot be made a basis of attack. It was mentioned in written statement filed on behalf of the respondents that the Supreme Court had held in a case of which judgment was delivered on 22-4-1977 (the full citation of the case is not given) that Extra-Departmental-Agents held civil posts and therefore the department had issued order vide Memo 151/4/77-Disc-II dated 23-5-1977 that cases of removal of the Extra-Departmental-Employees should be dealt with in a manner so as to conform to the provisions of Article 311 (2) of the Constitution and procedure outlined in Central Civil Services Rules, 1965 along with Rule 8 of Extra Departmental Agents (Conduct and Service) Rules 1964. The learned counsel for the applicant could not challenge this position either through rejoinder or through arguments advanced in the matter. The perusal of the charge-sheet makes it clear that the imputation against the applicant was that he had not maintained absolute integrity as was required of him under Rule 17 of Extra Departmental Agents (Conduct and Service) Rules. The violation thereof was pointed

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out in the last paragraph of the charge-sheet. As a matter of fact what is the mis-conduct under Extra-Departmental-Agents (Conduct and Service) Rules, is described in Rules starting from Rule 17 to Rule 25. It is, therefore, clear that the argument advanced by the learned counsel for the applicant does not hold good. He has definitely failed to point out any prejudice being caused to the applicant. No doubt, the respondents had not given citation of the case which was referred to by them in their reply but the case of Superintendent of Post Offices Vs. P.K. Rajamma, AIR 1977 SC 1677, is known to all that in this judgment the Hon'ble Supreme Court had held that Extra-Departmental Agents were holders of civil post within the meaning of Article 311 of the Constitution and were entitled to due protection. In view of this fact, even if the Disciplinary Authority in its order, Annexure A-1, referred to Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, the applicant was in no way prejudiced and neither the charge-sheet nor the impugned order is made illegal only on this ground. The contention of the applicant so far as illegality of charge-sheet is concerned, is rejected.

11. The next technical objection raised on behalf of the applicant is that the inquiry officer and the presenting officer were appointed under Rules which were not applicable to him. If the appointment of inquiry officer and the presenting officer is made under C.C.S. (CCA) Rules, it is not going to cause any prejudice to the applicant. It is a part of the principles of natural justice that there should be fair play and opportunity should be given to the parties before arriving

at any conclusion. In that process and to achieve the result as enshrined in the principles of natural justice, the appointment of Inquiry Officer and the Presenting Officer becomes necessary. We are therefore, unable to make out anything of this objection. We, therefore, reject this argument also.

12. The third technical objection raised by the learned counsel for the applicant is that a reference of non-compliance of Rules 133 (1) and 134 (2) (4) of Branch Office Rules has been made whereas these Rules actually deal with the preparation of the Branch Office Accounts. Rule 133 (3) deals with the cash which was disbursed during day by way of money orders, Postal Orders, Saving-Bank Withdrawals. In the present case, the allegation against the applicant is that proper procedure of withdrawal was not adopted. It also means that the applicant had failed to prepare Branch Office Accounts properly. In this way, we do not find any illegality in showing the non-observance of Rule 133 and 134 of Branch Office Rules.

13. The learned counsel for the applicant argued that there was no evidence to establish any charge against him yet the Disciplinary Authority and the Appellate Authority held that the charge was established and he was removed from service. The learned counsel for the respondents, on the other hand, came with the argument that there is sufficient evidence to establish the charge against the applicant and he was, therefore, rightly punished. It is well settled law that the Tribunal is not

required to go through the evidence because appreciation of evidence is not covered by any judicial review. At the same time, there is one exception to this Rule that if the punishment is awarded on no evidence or there is perversity in the finding, the Tribunal may look into this aspect to judge as to whether the contention of no evidence or perversity in the finding is correct or not. Since in this case the point has been specifically raised by the learned counsel for the applicant that it is a case of no evidence, we are left with no alternative but to look into the evidence which has been adduced before the Inquiry Officer.

14. The report of the Inquiry Officer may ~~be~~ for convenience sake be divided into two parts. The first part relates to the inculpatory statement of the applicant which ~~was~~ made during preliminary inquiry and was brought before the inquiry officer through the statement of Shri N.S. Joshi. The presenting officer had examined Shri N.S. Joshi during inquiry. He is sub-Divisional-Inspector, Post Offices, Himatnagar. He had conducted preliminary inquiry and it was during this preliminary inquiry that the applicant had made a statement to the effect that the application of withdrawal of the amount of Rs. 500/- from the account of Smt. Chanchalben was prepared by him, and the amount was withdrawn from the said account of Smt. Chanchalben himself, and was spent on his personal expenses.

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He had also stated that the entry of withdrawal of the amount was made in the accounts of the ~~post office~~ ^{post office} pass book but it could not be entered in the pass book because it was not available; and he had the intention of making entry in the pass book as and when it was presented. Shri N.S. Joshi stated before the inquiry officer that the applicant had made statement on his own accord and no pressure or inducement or threat was exercised for the purpose. He brought the statement made by the applicant during preliminary inquiry on record and was marked as SD-5. Shri N.S. Joshi also deposed that the entries on the application of withdrawal of amount were in the handwriting of the applicant. He explained about knowing the handwriting of the applicant because in official correspondence he had been seeing the applicant writing the papers and also documents which were sent to him. The cross-examination which was made to Shri N.S. Joshi does not challenge this fact. In that question which was of some material importance was put whether any such instance in the last 10 years of the service of the applicant, came to the knowledge of Shri Joshi and he denied. There is not even a suggestion to the effect that the withdrawal form ~~was not~~ ^{cross-examination} been in the handwriting of the applicant or the statement allegedly made by the applicant during preliminary inquiry, was not made by him. It is also surprising that the applicant made no statement before the inquiry officer. No doubt he examined two witnesses in defence but he failed to appear himself and to explain the circumstance as to how and why Shri N.S. Joshi was making such a statement. The inquiry officer ~~dealt~~ ^{dealt} upon the statement of Shri N.S. Joshi while dealing with the charge and finding ~~given~~ ^{recorded} in support thereof. The surprising thing is also that the Disciplinary Authority

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no doubt made a reference of the inculpatory statement of the applicant while narrating the facts but a decision was not based on that evidence. The concluding part of the impugned order in which analysis of the evidence collected in support of the charge was made at page 2, ~~and~~ ^{four} points were formed on the basis of which he found the applicant responsible and charge established. Since the Disciplinary Authority has not based the order of punishment on the inculpatory statement of the applicant and the learned counsel for the respondents also argued that even if this inculpatory part is excluded, there is sufficient evidence to bring home the charge against the applicant ~~we also leave that part of evidence aside~~. In these circumstances we are also ignoring this part of the inquiry report which deals with the inculpatory statement as well as the supporting evidence of the said inculpatory statement.

15. Now we take up other evidence which has been recorded during inquiry and has been relied upon by both the inquiry officer as well as the Disciplinary Authority. Besides, Shri N.S. Joshi, the presenting officer had examined Smt. Chanchalben, Shri Natvarbhai Madhabhai Patel, and Shri Ramanbhai Arkhabhai Vankar. Of these witnesses Smt. Chanchalben is the depositor of SB Account No. 2237057. She denied to ^{have} sent her son with withdrawal form on 15-7-1989 for withdrawing an amount of Rs. 500/-. She also denied to have put her thumb impression on the withdrawal form. The learned counsel for the applicant argued that the

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whole of the statement of Smt. Chanchalben cannot be relied upon particularly in the light of the statement of Shri Dhulaji B. Chauhan DW-1 who is a son of the depositor and made a statement that on 15-7-1989 he had gone with withdrawal form to the post office to draw the said amount of Rs. 500/- because he himself was in need. The pass-book which was in the name of the mother was not given to him because the same was not traceable. In the cross-examination, Shri Dhulaji B. Chauhan admitted that the pass book was not given by his mother because she was afraid of him (Shri Dhulaji B. Chauhan) for the reason that he may withdraw the amount from her account. This admission in cross-examination also makes the statement of D.B. Chauhan not reliable. The supporting factor of this conclusion is that the name of Shri D.B. Chauhan was not recorded in the withdrawal form as messenger. If the depositor fails to appear in the Post office to withdraw the amount, it is necessary and for that column is also ^{made} in the withdrawal form that the name of messenger must be given, and he shall put his signatures which shall be attested by the depositor. When we look at the application for withdrawal of the amount, we do not find the name of Shri D.B. Chauhan as messenger therein. The other evidence which goes to say that this form was not at all prepared at the residence of Smt. Chanchalben is that the witness Shri Natvarbhai Madhabhai Patel admitted that he had attested the thumb impression in the Post office. Similarly Shri Ramabhai Arkhabhai Vankar was a

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witness of the fact that payment was made to the depositor in his presence and in the post office. It is not the case of the applicant that Smt. Chanchalben had ~~at all~~ gone to the Post Office. Thus the question of payment being made to Smt. Chanchalben in the post office, does not arise. What appears is that actually this form was prepared in the post office itself. In this connection, we may again refer to the statement of Shri N.S. Joshi, who deposed that the material entries (except those of attesting witnesses) were made by the applicant himself because the writing of material entries and of ^{his} signatures is one and the same and he was well conversant with the writings of the applicant. The ink of thumb impression allegedly of Smt. Chanchalben is black and the seal of the post office is also in the black ink. The contention of the learned counsel for the respondents is that as a matter of fact the thumb impression in the name of Smt. Chanchalben was made in the post office itself, cannot be discarded altogether.

16. In this way, the scrutiny of the finding which was recorded before the inquiry officer and was relied upon by the Disciplinary Authority cannot be said to be without substance. In any case, the contention of the learned counsel for the applicant that it is a case of no evidence is completely without any substance. The learned counsel for the respondents argued that the Tribunal during this proceedings is required to look into the matter if there is even semblance of evidence and not to sit as Appellate Court to analyse ^{the} findings, and when analysed from this angle, according to Mr. Kureishi, there is sufficient evidence. We are quite conscious of the fact that we have not appreciated

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the findings in the manner in which the Appellate Court does. We are required to see only if it is a case of no evidence or not. Before making analysis of the finding, we have made it clear that we are doing that exercise only for the reason because the argument placed before us was that it was a case of no evidence. Anyway, on the scrutiny of the finding we come to the conclusion that there is sufficient evidence in support of the charge and therefore the contention of the learned counsel for the applicant that it was a case of no evidence, is not correct.

17. The third point raised on behalf of the applicant was that the finding of the Disciplinary Authority was perverse. ^{meaning} The doing of perversity is that the evidence goes in one direction and the conclusions are drawn in the opposite direction. During the analysis of the finding, it is established ^{evidence &} that the finding was lead by the presenting officer to the effect that Smt. Chanchalben had neither filled in application for withdrawal of the amount from her S.B. Account, nor was any amount withdrawn by her through her son. It is also established from the statement of the witness^{es} who had attested the thumb impression of Smt. Chanchalben that they wrote about attestation only on the asking of the applicant or the son of Smt. Chanchalben. They have categorically stated that Smt. Chanchalben was not present before them and her thumb impressions were also not taken in their presence. Looking

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to these findings if the Disciplinary Authority came to the conclusion that the charge was established it could hardly be suggested that the finding was perverse. We therefore, reject this argument also.

18. The learned counsel for the applicant also emphasized that the order of punishment was recorded by the Disciplinary Authority merely on suspicion. His contention is that mere suspicion however, grave it may be, cannot be the basis of punishment. In this connection, he relied upon the decisions in Bhaskar Chandra Palai Vs. Union of India and Others, (1987) 2 ATC 21 and Padmanav Arukh Vs. Union of India and Others (1987) 2 ATC 413. In these cases, it was held that suspicion however, grave it may be cannot be the basis to sustain the punishment. On the discussions made above about the nature of the finding, we are of the view that charge was established on substantial evidence and not on suspicion alone. The argument is therefore rejected.

19. One important thing which took place is the deposit of the amount of Rs. 500/- by the applicant himself on 28-11-1989. There is absolutely no explanation from the side of the applicant as to why the said amount was credited by him if he had not withdrawn the said amount. The argument could be that he was either induced or



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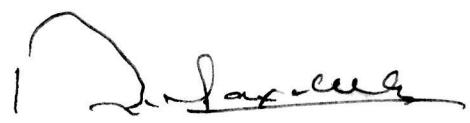
persuaded or threatened of penal consequences if the amount was not deposited. Again we will have to point out that there is no such statement or suggestion of the applicant before the inquiry officer or subsequent thereto. For these reasons, this circumstance also goes against the applicant.

20. From the perusal of the record before us, we are convinced that there was no illegality in the procedure which was adopted either by the inquiry officer or by the Disciplinary Authority. The applicant was given every opportunity and the principles of natural justice were adhered to. There was ample evidence in support of the charge. It is not correct to assert that the punishment was based merely on suspicion.

21. The learned counsel for the applicant also pressed the point that the punishment is too severe to be inflicted on the applicant. Looking to the facts of the case, we do not find that the person who is a trustee of the money of the depositors should be spared lightly. In our opinion, the punishment is not severe one. Besides, the severity of punishment does not become a matter of adjudication before the Tribunal. For this reason, even this plea does not hold good.

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22. On the consideration of the facts and circumstances of the case and discussion made above, we come to the conclusion that the application does not merit and it is hereby rejected. No order as to costs.



(Dr. R.K. Saxena)
Member (J)



(V. Radhakrishnan)
Member (A)

*AS.