

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 312/92
T.A. NO.

DATE OF DECISION 29th June, 1994

Shri Harikant C Shah **Petitioner**

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

Versus

Union of India and Others **Respondent**

Shri Akil Kureshi **Advocate for the Respondent (s)**

CORAM

The Hon'ble Mr. K. Ramamoorthy **Member (A)**

The Hon'ble 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 ?

No

Harikant Chamanlal Shah
 Sobha Devshi Sheri
 Kutch- Mandvi 370 465

Applicant

Advocate Mr. K.C. Bhatt

Versus

1. Union of India through
 The Directro General
 Department of Posts
 Ministry of Communication
 Dak Bhavan Sansad Marg,
 New Delhi
2. The Postmaster General
 Rajkot Region, Rajkot.
3. The Supdt. of Post Offices,
 Kutch Division, Bhuj (Kutch)

Respondents

Advocate Mr. Akil Kureshi

JUDGMENT

In

Date: 29.6.1994

O.A. 312 of 1992

Per Hon'ble Dr. R.K. Saxena

Member (J)

The applicant has challenged the order of punishment dated 20-5-1991, Annexure A-3, passed by the Superintendent of Post Offices Kutch- Division Bhuj, against the applicant who was found negligent in showing devotion to duty. The orders passed in Appeal and Petition by the Director, Postal Services, Ahmedabad on 12-11-1991 and by the Member (P), Postal Service Board on 29-5-1992 have also been challenged. The facts of the case are that the applicant Shri Harikant Chamanlal Shah

was working as Head Post Master Kutch-Mandvi. The inspection by the Assistant Superintendent of Post Offices (Inspector)/Complaint Inspector, was made on 21-1-1991 of Mandvi Post Office and it was found that he did not examine the attendance Register of the employees of the Post Office since 3-12-1990; and also failed to report late attendance of the staff or availing of excess recess by them. It was also discovered that Shri D.G. Desai whose duty hours were from 9 hrs to 17 hrs had been shown as 11 hrs to 19 hrs on 20-12-1990 and the entry in the attendance Register of Telegraph Branch was made by Shri A.T. Thakker who was Head Signaller in the said Branch. Besides Shri D.G. Desai had not signed the attendance Register since 3-12-1990. On the basis of this inspection report, the explanation of the applicant was called for on 30-1-1991 and the same was submitted by him on 1-2-1991 in which the late attendance of the staff was admitted. On the basis of this explanation, the applicant was asked to submit documentary evidence in support of the same. The applicant had mentioned in the explanation that the staff was attending office late and it was of no use to tell them daily to be punctual. As regards non-signing of attendance Register, it was submitted by the applicant that he did check the attendance of the staff but due to several factors such as female staff being habitually late, the male staff ^{quite} also followed them and they could not be discriminated against because there could be no different yard sticks for arrival time in the office of the female and male members of the staff. It was also pointed out that the pressure of the union of the staff could not be ignored and for these reasons punctuality could not be imposed. The statement of imputation of mis-conduct disclosed violation of Rule 4 (A) of Vol. VI part I, Rule 623 of Volume II of Post and Telegraph Manual and violation of Rule 3 (1) (ii) and 3 (2) (i)

of Central Civil Service (Conduct) Rules 1964.

2. The explanation of the applicant did not satisfy the Superintendent of Post Offices, Kutch Mandvi because he had taken contradictory stands about the non-attendance of the staff in time and also un-parliamentary language ~~being~~ used. Therefore, the applicant was served with statement of imputations of mis-conduct or mis-behaviour along with a letter of explaining the same and to submit the reply within 10 days about the proposed action against him under Rule 16 of Central Civil Service (Classification, Control and Appeal) Rules 1965, marked Annexure A-1. The applicant gave explanation Annexure A-2 on 6-3-1991 in which it was reiterated that the attendance Register was checked daily by him but the staff did not put the arrival time in the attendance Register as is required and thus their late arrival in the office could not be proved by documentary evidence. It was further mentioned that several members of the staff attended their duties at 7.30 hrs in place of 7.00 hrs hence a surprise check was required. The explanation further goes to show that the report which was submitted by him on 1-2-1991 in compliance with the communication issued to him on the basis of the inspection report, he had used parliamentary language but it was otherwise construed by the office of the Superintendent of Post Offices. He further contended that no dis-courtsey or dis-respect was shown by him. The contravention of Rule 623 of Post and Telegraph Manual Volume VI which held that correspondence addressed to the PM ~~xx~~ to be opened by him alone, was denied. The change in the

duty hours of the Signaller by the Head Signaller was justified because there was shortage of persons in the Telegraph Branch . Similarly the pressure of Union for which no proof was required, was also reiterated. He, however, assured strict punctuality in attendance of the office staff in future. In the end, it was also mentioned by the applicant that for reporting factual position to the superiors should not visit with Disciplinary actions.

3. The Superintendent of Post Offices was not satisfied with this explanation and he found that the applicant failed to have devotion to duty and also found him guilty of using un-parliamentary language which was ^{an} un-becoming of ^{an} officer. As regards Rule 623 of Post and Telegraph Manual Volume II, he found typographical error. In the end, he awarded punishment on 20-5-1991 withholding one increment for a period of 16 months without cumulative effect.

4. Being aggrieved by the punishment order, the applicant preferred ^{an} appeal to the Post Master General which was rejected on 11-11-1991 by the Director of Postal Services vide order Annexure A-5. The applicant, therefore, moved petition Annexure A-6 to the Member (P) Postal Service Board which was also rejected on 29-5-1992 vide order Annexure A-7. It is thereafter that this application has been moved with a prayer that the order of punishment as well as the orders in Appeal and on Petition to the Board may be quashed and set aside

because they were passed with malafide intention, without application of mind, and in violation of the Rules.

5. We have heard the learned Counsel Shri K.C. Bhatt for the applicant and Shri Akil Kureshi for the respondents.

6. There is no dispute that the inspection of Post Office Mandvi was done on 21-1-1990 and the attendance Register of the staff was not ^{initialled} found by the applicant. It is also not disputed that Shri D.G. Desai was attending the office from 11 hrs to 19 hrs in place of 9 hrs to 17 hrs. The applicant admitted that Shri A.T. Thakker, Head Signaller had changed the duty hours of Shri D.G. Desai but his explanation at one place was that Shri A.T. Thakker had done it on his own but at the time when charge-sheet was served on him, he took the stand by saying that the staff was short and, therefore, the duty hours of Shri D.G. Desai were changed. The applicant has also not raised any question about the illegality of the procedure which was adopted in the inquiry. The only contention of the learned counsel for the applicant is that the facts as are set out, do not constitute violation of any Rule under Central Civil Service (Conduct) Rules 1964. It was further urged that the order of punishment by the Disciplinary Authority was passed arbitrarily, with malafide intention and without application of mind. These points have been controverted by the learned Counsel for the respondents.



7. The jurisdiction of the Tribunal in such matters where there is no error in the procedure of the inquiry and no unfairness has been shown, has been discussed and found limited in various cases decided by the Hon'ble Supreme Court. The Constitutional Bench in State of Orrissa Vs. Bidya Bhushan Mohapatra, AIR 1963 SC 779 has categorically defined the jurisdiction by laying down that the ^{High} Court had no jurisdiction if the findings of the Inquiry Officer or the Tribunal *prima facie* make it a case of mis-demeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appeared that there had been violation of the Rules of Natural justice. The same view was reiterated in Railway Board, Delhi Vs. Niranjansingh AIR 1969 SC 966 and Union of India Vs. Farmananda AIR 1989 SC 1185. The same view was further reinforced in the State Bank of India Vs. Samarendra Kishore Endow and another, (1994) 27 Administrative Tribunals Cases 149 : 1994 (1) SIR 516. The view taken in Bhagat Ram Vs. State of H.P. AIR 1983 SC 454 that the High Court or the Tribunal had jurisdiction to impose any punishment to meet the ends of justice, was held to have ^{been} taken in the exercise of equitable jurisdiction under Article 136 by the Supreme Court. In this way, the legal position emerged that the High Court

and the Central Administrative Tribunal cannot interfere with the punishment recorded by the Disciplinary Authority unless the legality in the procedure has been established. The learned Counsel for the applicant, however, argued that the facts as set out in the application indicated the arbitrary manner in which the punishment was awarded. As is already pointed out, it is an admitted case that the applicant failed to initial the attendance Register right from 3-12-1990 and also failed to report the matter to the superior authorities for late coming of the staff. In this connection our attention has been drawn towards the distribution of work—the photostat copy of which is Annexure A-9—and according to which the work of Post Master (HSG) (II) is also shared by the Assistant Post Master (Mails) and other officials designated therein. Assuming that there are several Officers/Officials to help the Post Master in the discharge of his duties but it does not mean that if the members of the staff are coming late and they are writing their ~~incorrect~~ time or they are not writing their arrival time, such matters ought to have been reported to the higher authorities or the competent authority ^{could} ~~which~~ take action in the matter. The applicant has no explanation for it. It is, however, contended on his behalf that even when the applicant failed to take action for late coming of the members of the staff, even the Superintendent of Post Offices who was very much concerned about non-action on the part of the applicant for late arrival of the members of the staff, ~~he~~ himself was shy in taking any action against them

particularly when he was the competent authority therefore. The employees of the Post Office of Mandvi who did not put the arrival time below their signatures, needed no proof and the action could have been initiated. It is different matter that those who were coming late as is admitted by the applicant himself but the late arrival time was not mentioned in the Register, it might have proved difficult to proceed against them. It appears that the Superintendent of Post Offices made mountain of a mole in the matter. It is, however, clear from the facts that the applicant did not discharge his duties as was required under the Rules. Therefore, the conclusion of the Superintendent of Post Offices that he violated Rule 3 of Central Civil Services (Conduct) Rules cannot be said to be unfounded. The learned counsel for the applicant also drew our attention to the fact that punishment was awarded under Rule 3 (1) (iii) while the memo was issued for violation of Rule 3 (1) (ii) and 3 (2) (1). The relevant portion of Rule 3 reads:

^u
3. General

- (1) Every Government servant shall at all times -
 - (1) maintain absolute integrity;
 - (2) maintain devotion to duty; and
 - (3) do nothing which is unbecoming of a Government servant.
- (2) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under-

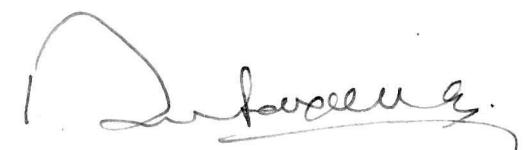
his control and authority; "
 x x + + +

The perusal of the aforesaid Rules indicates that Rule 3 deals with the maintenance and devotion to duty of self and if he is holding supervisory post, devotion to duty of all Government Servant working under his control and authority. The facts as disclosed even show that the applicant failed to check the attendance Register and report the matter to the higher authorities. Simultaneously he also failed to see that the punctuality of time is observed by the members of the staff working under his control and authority. If these facts are specifically mentioned in the statement of imputations of mis-conduct given to the applicant and also found established and observed as such in the punishment order, it becomes immaterial whether the sub-head of the Rule was quoted wrongly. Thus we are not persuaded by the arguments of the learned Counsel for the applicant for this kind of mistake which was inadvertently made, ^{if at} the order of punishment may be set aside.

8. It is also pointed out that the memo was given for the violation of Rule 623 of Post and Telegraph Manual Part II which was in no way related to any mis-conduct. This Rule 623, however, deals with officers-in-Charge of post, telegraph, telephone, radio and Railway Mail Service Offices ^{who} are personally responsible for the proper conduct of the correspondence. The Punishing Authority mentioned in its order that there was typographical error in quoting the Rule and on this count also the punishment order cannot be held illegal.

9. The sum and substance of the discussion made above is that no illegality has been pointed out in the procedure of the Inquiry which resulted in the impugned punishment order. Even we are to hold the view that excessive punishment has been awarded, we cannot interfere with the findings of the Disciplinary Authority, Appellate Authority, and the authority disposing of the Petition unless the case is covered by those exceptions which have been enumerated in the decision of the case State Bank of India and Others Vs. Samarendra Kishore Endow and another (Supra).

10. This application has got no merit and it is rejected.



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



(K. Ramamoorthy)
Member (A)

*AS.