

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.NO./481/92

T.A.NO.

DATE OF DECISION 9/7/99

Shri. Kantilal Chhotabhai Patel _____ **Petitioner (s)**

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

VERSUS

Union of India & Ors _____ **Respondent (s)**

Mr. B.N. Doctor _____ **Advocate for the Respondent(s)**

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THE HON'BLE MR. V.RAMAKRISHNAN : VICE CHAIRMAN

THE HON'BLE MR P.C. KANNAN : MEMBER [J]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the judgment? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO

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Kantilal Chhotabhai Patel
Ex. Postal Assistant,
Uma Nivas, Patel Estate,
Opp. Rly., Station,
Thasra - 388 250.

---Applicant

(Advocate : Mr. K.C. Bhatt)

V/s.

1. Union of India through,
The Director-General
Department of Posts
Ministry of Communication
Dak Bhavan, Sansad Marg,
New Delhi : 110 001.

2. The Post-Master General,
Vadodar Region, Vadodara-390 002.

3. The Supdt., of Post Offices,
Anand Divn., Anand - 388 001.

---Respondents

(Advocate : Mr.B.N. Doctor)

JUDGEMENT

O.A 481 OF 1992

Date : 9/7/99

Per Hon'ble Shri. P.C. Kannan : Member (J).

The applicant has filed the O.A under sec.19 of the Administrative Tribunals Act, 1985 and prayed for the following reliefs :-

- (i) The Chargesheet issued under Memo No. B2/14-30/90 dated 24.10.90 by Supdt., of Post Offices Anand Dn. Anand (Annexure A-1) be quashed and punishment set aside.
- (ii) The impunged punishment order issued under Memo No.B2/14-30/90 dated 18.06.92 by the Supdt., of Post Offices, Anand Dn., Anand be quashed and punishment set aside.

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- (iii) The Appellate order under memo N. STA/3-40/92 dated 12.10.92 issued by the Director Postal Service O/O P.M.G. Vadodara Region, be quashed and set-aside.
- (iv) The respondent authority be directed to reinstate the applicant in service treating him as continued in service w.e.f. 20.06.92 F/N the date from which he is relived on compulsory retirement with all consequential benefits.

2. The case of the applicant is as follows. The applicant was working as Postal Assistant w.e.f. 15.01.81 under the respondents. He was working as Treasurer at Post Office, Thasra during the period 07.05.88 to 06.05.90. While working as Treasurer during the period 16.04.90 to 06.05.90, he was issued charge sheet vide memo dated 24.10.90 under Rule-14 of CCS (CCA) Rules, 1965 (Annexure A-1). The charges reads as follows :-

Article - I

"That said Shri K.C. Patel PA Borsad (now under suspension) while working as Treasurer Thasra S.O. during the period from 16.04.90 to 06.05.90 made false entry of Rs.8400/- on 16.04.90 in the morning spell as an advance to SB/NSC PA under his own initial in column-9 of the treasurer's cash book though the said advance was not given by him to SB PA nor was it requisitioned by the later. Thus, Shri. K.C. Patel tried to hide the shortage of cash of Rs.8400/- in the morning spell on 16.04.90.

It is therefore, alleged that Shri.K.C. Patel by acting in the manner aforesaid failed to maintain absolute integrity and devotion to duty as required by rule 3(1) (I) and (ii) of CCS (Conduct) Rules 1964.

Article - II

That the said Shri. K.C. Patel PA Borsad (now under suspension) while working as treasurer Thasra SO during the period from 16.04.90 to 06.05.90 took away one blank KVP No.06 C C 186648 from stock of KVPs from the treasury of Thasra S.O. between 16.04.90 to 20.04.90. The said KVP was seized from Shri.K.C. Patel by the Police Officer Thasra during the course of investigation.

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It is therefore, alleged that Shri. K.C Patel by acting in aforesaid manner failed to maintain absolute integrity and acted in a manner unbecoming of a Govt., servant and thereby failed to observe rule 3(1) (I) & (ii) of CCS (Conduct) Rules, 1964."

3. The applicant denied the charges leveled against him vide his letter dated 12.11.90 and thereafter, an inquiry officer was appointed vide memo dated 27.11.90 to inquire into the charges. Subsequently due to administrative reasons, the Inquiry officer was changed vide memo dated 07.05.91. The applicant filed O.A 173 of 1991 in this Tribunal and challenged the issue of charge-sheet. This Tribunal, vide order dated 12.07.91, stayed the departmental proceedings in respect of Article-II of the charge-sheet till the delivery of Court verdict in criminal case no. 520 of 1990 pending in the Court of JMFC, Thasra against the applicant. Consequent to the said order of this Tribunal, the Competent authority ordered that the inquiry in respect of Article-I dated 24.10.90 should be made and the Competent authority reserved its right to further proceed on Article-II of the charges after the delivery of Court verdict. The Inquiry Officer duly conducted the inquiry and after hearing the witnesses, submitted his report on 06.04.92. A copy of the said report was furnished to the applicant vide letter dated 16.04.92 and the applicant submitted his representation

on 12.05.92. After considering the Inquiry report and the representation of the applicant, the disciplinary authority imposed the punishment of compulsory retirement of the applicant with immediate effect (Annexure A-2). The applicant thereafter, preferred an appeal dated 09.07.92 before the Appellate authority viz., the Director of Postal Service. The appellate authority by his order dated 12.10.92 rejected the appeal (Annexure A-4). The applicant thereafter filed the present O.A.

4. The applicant has submitted that there was no loss to the Govt., or any fraud committed. There was also no violation of any departmental rules. It was also contended that the charge was vague and there was no positive evidence to support the charge on record. Merely on the basis of conjectures or on suspicion, the charge was made regarding entry of Rs.8400/- as shown in the cash book in the morning spell while the cash was transferred to Shri Parmar in the evening. It was also contended that there could be no missing amount in the morning of 16.04.90, as the cash was counted in the previous day evening and in any case, only the Sub-Post Master is personally responsible for cash and stamps. On 16.04.90, when the Post Office was opened, Shri.

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Khristie, S.P.M. were present along with the applicant and both opened the treasury. In the circumstances, the applicant cannot be held responsible for any loss of cash.

5. The respondents in their reply stated that the applicant was posted as Treasurer, Thasra, P.O. during 07.05.88 to 06.05.90 with a special pay of Rs.80/- p.m. The applicant was holding a tenure post. The respondents denied any disputes with the applicant. The respondents stated that on 16.04.90 cash balance was verified by inspecting officer of Anand Divn., At that time, they found the incorrect entry of Rs.8400/- in the cash book of the applicant in the morning spell as advance cash given by him to the Postal Assistant, Shri R.M. Parmar. It was found that this was done by the applicant in order to hide the shortage of cash of Rs.8400/-. There was also a shortage of one blank KVP No., 06 CC 186648 of denomination of Rs.10,000/-. However, the charge-sheet was confined to the charge regarding entry of Rs.8400/- in the cash book. In the light of the report of the inspecting officer, the inquiry was conducted and the inquiry officer after due inquiry, found the applicant guilty of the charge. The disciplinary authority found the applicant guilty of the charge and ordered compulsory retirement of the applicant with

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immediate effect. An appeal preferred by the applicant against the punishment ordered was also considered and rejected by the competent authority (annexure A-4). It has been stated that all the relevant documents were given to the applicant during the course of inquiry and all the rules of procedures and principles of natural justice were observed. The respondents therefore submitted that the O.A is liable to be rejected.

6. We have heard Shri. K.C. Bhatt, counsel for the applicant and Shri. B.N. Doctor, counsel for the respondents. At our direction, the respondents produced the relevant file containing the inquiry proceedings. Shri. K.C. Bhatt, counsel for the applicant stated that in terms of rules of Postal Manual, it is the duty of the Sub-Post-Master to count the cash balance every evening and satisfy himself that the amount is as per the balance shown in the records. He stated that the role of treasurer is limited. In this connection, he referred to the Post Office Accounts Manual, paras-30 and 31. He stated that under rule 30 (e), where there is a reserve safe, the maintenance of cash balance is the joint responsibility of the Post Master and the Treasurer. In the light of the above rules, Shri. Bhatt contended that the treasurer is not responsible for any cash loss.

He said that in terms of the practice followed by the Post Office, the applicant gave advance of Rs.8400/- to Shri R.M. Parmar SE PA. He further submitted that there is no loss to the Govt., or any fraud committed or there was any violation of any departmental rules. He further submitted there was no evidence in support of the charge. He contended that the applicant was found guilty on the basis of conjectures or on suspicion. He therefore, submitted that the charge-sheet is liable to be quashed. Mr. Bhatt also referred to the deposition of the Defence witness Smt. Vimlaben R. Patel in support of his contentions. He also referred to the following cases.

- (i) SLJ 1992 (2) P.67 CAT Madras, S.D. Sundaram V/s. H.O.
- (ii) ATC 1987 (2) P.413. C.A.T. Cuttack, Padmanav Arukh V/s. Union of India.
- (iii) A.T.C. 1987 (2) P. 813 CAT Cuttack, Sachidanand pariya V/s. U.O.I.,

Mr. B.N. Doctor, counsel for the respondents denied that the charge was vague and submitted that there was positive evidence to support the charge. He referred to the inquiry proceedings and the records to show that the applicant had made entries in his own hand on 16.04.90 in the morning spell that he made the advance of Rs.8400/- to Shri.R.M. Parmar, Postal Assistant without obtaining the signature of Shri. Parmar or making any payment. He also referred to the

evidence given by Shri. R.M. Parmar (SW-I) before the Inquiry officer in which Shri. Parmar has clearly denied that he had put his signature in the cash book. He also says that the inquiry officer after careful consideration of the entire evidence and the records came to the conclusion that the applicant was guilty of the charge. While accepting the findings of the inquiry officer, the disciplinary authority held that the charge leveled against the applicant as proved. In this connection, the relevant observations of the disciplinary authority reads as follows :-

"8. From the deposition of S.W.I. (Shri. R.M. Parmar SBCC PA Thasra) it is evident that the signature in acquittance of cash advance of Rs.8400/- in EX-6 (Treasurer's cash Book) column-9 was of Shri. K.C. Patel (C.O.) and not of S.W.I. (Shri. R.M. Parmar SNCC PA). Moreover SW-1 (Shri. R.M. Parmar SBCC PA) was forced by C.O. (Shri. K.C. Patel) to take advance of Rs. 8400/- in the afternoon spell of his duty though he (SW Shri. R.M. Parmar SBCC PA) did not require such amount and the said material fact is not at all refuted throughout the inquiry proceedings. The plea of Shri. K.C. Patel (Treasurer) that, there was no procedure or tradition for obtaining acquittance of concerned ^{person} ~~person~~ for the advances paid to them is totally not only illegal, irregular but untenable and violative of rules on the subject. It is non observance of rules and non devotion to duty and cannot absolve from the liability consequent to breach of said rules nor it can be excused for the lapses committed by the official. Moreover, SW-1 (Shri. R.M. Parmar SBCC PA) denied in to have received any such cash advance of Rs.8400/- on 16.04.90 in the morning spell of his duty from the charged official Shri. K.C. Patel Treasurer, Thasra. This has also clearly been established with the documents i.e. EX-4 (Hand to Hand Receipt Book of SBCC PA Thasra) EX-25 (SB-7 warrant of payment SB A/c. Bo. 12243114) ; EX-26 (Appln. For purchase of 6 NSC Rs.5000/- dated 16.04.90) EX-32 (Appln. For discharge of 6 NSC Rs.500/- dated 16.04.90) EX-34 (Appln. For discharge of NSC Rs.1000/- dated 16.04.90), EX-36 (SB-7 warrant of payment SB A/c. No. 980007).

As such it is proved that SW-1 (Shri. R.M. Parmar SBCC PA) did not require any cash advance of Rs.8400/- in the morning spell of his duty on 16.04.90 from Shri. K.C. Patel (C.O.), Treasurer. The imaginary account put forth by the charged official Shri. K.C. Patel on boss No.3

and 4 of his written brief dated 19.02.92 and his representation dated 12.05.92 is anticipation of sequence of transactions being forgotten by SW-1 SBCC PA. Shri. R.M. Parmar to transfer the cash collection is nothing but his belief and imagination and cannot be accepted to, in view of the facts of actual account of transactions supported by the concrete documentary evidence adduced during the inquiry as stated above."

From the inquiry proceedings and depositions of witnesses it clearly proves that Shri. K.C. Patel made entry of cash advance of Rs.8400/- in the morning spell on 16.04.90 without authentication and knowledge of SW-5 (Shri. I.K. Christie SPM) and he (Shri. K.C. Patel, Treasurer) also put his own acquittance against the entry of said advance as SW-1 (Shri. R.M. Parmar SBCC); though he was required to obtain acquittance of Shri. Parmar (SW-1) and though he (Shri. K.C. Patel) actually did not give cash advance of Rs.8400/- to SW-1 (Shri. R.M. Parmar SBCC P.A.) in the morning spell of 16.04.90."

On the scope of punishment, the disciplinary authority made the following comments :-

"Thus it is clearly proved that Shri. K.C. Patel is responsible for lapses on his part, the evidence adduced during the inquiry is against him and all the charges leveled against him stand proved and therefore he renders himself liable to be punished. Any one who deliberately takes the Govt., to sustain loss is worthy to be punished heavily. If such officials are left unpunished or punished lightly it would humilitate to others honest and dedicated Govt., servant. The post offices is an office where the employees and particularly treasurers have to deal with large accounts and perhaps this may prove happy hunting ground for dishonest officials like Shri. K.C. Patel, if were continued in service. There is no point in continuing him in service who is having destructive and derogatory ideas at the cost of other follow worker and supervising officers. His continuance in service would be severe blow on established standard of honesty that is required by Govt., servant. In view of foregoing discussions deterrent punishment is fully justified."

7. Against the order of punishment the disciplinary authority, the applicant submitted a detailed memorandum dated 09.07.92 to the Appellate authority namely, Director of Postal Service. The Director after careful consideration of the points made in the appeal passed a detailed order dated

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12.10.92 annexure A-4 and confirmed the punishment. In the light of the above proceedings, Mr. Doctor submitted that there is no procedural or technical lacunae in the process of inquiry and in the facts and circumstances, the O.A is liable to be rejected. He submitted that that as per the judgements of the Supreme Court, the role of this Tribunal is purely secondary and it cannot act as appellate authority.

8. We have carefully considered the submissions made by the counsel and also examined the relevant records. The charge against the applicant is that he made an entry of Rs.8400/- in the treasurer's cash book on 16.04.90 in the morning spell as advance to Shri. R.M. Parmar, Postal Assistant in the said Post Office and taken his signature in token of having received the said advance. However, no such advance was given to Shri. Parmar in the morning spell. The relevant records were produced before us which clearly indicate that there was an entry of Rs.8400/- in the treasurer's cash book on 16.04.90 and the evidence of Shri. Parmar indicate that he did not receive any advance in the morning spell. The relevant departmental rules clearly indicate that the treasurer is required to obtain the signature of the person concerned before he makes any advance

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to the staff concern^{ed}. In the circumstances, the entry made in the cash book on 16.04.90 in the morning spell appears to be in-correct. The contention of the applicant that there was no violation of any departmental rules in this regard cannot be accepted. It cannot also be stated that the charge was vague or that there was no loss to the Govt.,. We therefore reject the contention of the applicant in this regard. We have carefully considered the judgements relied upon by Mr. Bhatt in support of his contention. In the case of Sachidanand Harida V/s. U.O.I. ATC 1987 (2) 813 Cuttack, the Tribunal considered the charge regarding criminal mis-appropriation. The facts of that case has no relevance to the facts in the present case. Mr. Bhatt also referred to the judgement of the Supreme Court reported in AIR 1964 SC 364. In that case, the Supreme Court held that however grave the suspicion there may be, it cannot take the place of proof of mis-conduct, and the entire evidence should be co-gent, consistent. In our opinion, the facts of this case also has no relevance to the facts of this present O.A. *The other judgements referred to by the applicant also have are distinguishable. PLS*

9. The Hon'ble Supreme Court in the case of U.O.I. vs. Upendra Singh (1994 (3) SCC 357) have held that the Tribunal has no jurisdiction to go into the correctness or truth of the

charges. The apex court further observed that the Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority of the appellate authority as the case may be. In the light of the above ruling, we hold that we cannot go into the correctness or truth of the charges in this O.A. In the case of U.O.I. vs. G. Ganayudha (1997 () SLR 298), the Supreme Court held that the role of the Tribunal is purely secondary and the Court/Tribunal cannot interfere with the quantum of punishment imposed by the authorities and substitute its own conclusions. If the punishment imposed shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief. In the case of Indian Oil Corporation Ltd., vs. A.K. Arora (1997 (3) SCC 72), the Hon'ble Supreme Court has held that the jurisdiction of the High Court in such cases is very limited, for instances, where it is found that the domestic inquiry is vitiated because of non-observance of principles of natural

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justice and denial of reasonable opportunity; findings are based on no evidence or the punishment is wholly disproportionate to the proved mis-conduct of an employee. The relevant observations are contained in para-20 of the judgement which reads as follows :-

" In cases of departmental inquiries and the findings recorded therein, the High Court does not exercise the powers of appellate court / authority. The Jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic inquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence, or the punishment is totally disproportionate to the proved mis-conduct of an employee."

The disciplinary authority in this case has considered the entire evidence and also the gravity of the charge, and came to the conclusion that the applicant deserves punishment of compulsory retirement. The appellate authority also agreed with the disciplinary authority and up-held the punishment. Keeping in view the judgements of the apex court, the nature of the charge in this case and other factors, we hold that it cannot be said that the ^{findings} ~~functions~~ are based on no evidence or that ^{the punishment} ~~is~~ totally disproportionate or ~~can be~~ the punishment regarded as one which no sensible person who weighed the pros and cons would have arrived at or that the punishment is outrageous, and defiance of logic.

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9. In the light of the aforesaid, the O.A fails and accordingly dismissed. No costs.

P. C. Kannan

(P.C. Kannan)
Member (J)

V. Ramakrishnan
9/7/1978

(V. Ramakrishnan)
Vice Chairman

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