

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**O.A. No. 499 of 1992**

**Date of decision : 19.09.2000**

Mr. Khushalbhai M. Gohil : Petitioner [s]

Mr. P. H. Pathak : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondent [s]

Mr. B.N. Doctor : Advocate for the Respondent [s]

**CORAM :**

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

**THE HON'BLE MR. A.S. SANGHAVI** : **MEMBER (J)**

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the judgment? 45
2. To be referred to the Reporter or not? 45
3. Whether their Lordships wish to see the fair copy of the judgment? 45
4. Whether it needs to be circulated to other Benches of the Tribunal? 45

Khushalbhai Madhavbhai Gohil  
Near Gujarati School,  
Nawa Diwa,  
Post : Ankleshwar,  
Pin : 393 001.

= Applicant =

**Advocate : Mr. P. H. Pathak**

Versus

1. Union of India,  
Notice to be served through,  
The Postmaster General,  
Vadodara Region,  
Vadodara - 390 002.
2. Superintendent of Post Offices,  
Bharuch Division,  
Bharuch - 392 001.

= Respondents =

**Advocate : Mr. B. N. Doctor**

**JUDGMENT**  
**O.A 499 of 1992**

**Date : 19/09/2000**

Per.Hon'ble Shri. A. S. Sanghavi : Member (J).

The applicant who was serving as a Postal Assistant at Jambusar was served with a charge sheet on dated 02.02.90 with the charges that he had not deposited Rs.1000/- in the NSS account No. 1000007 of Chimanbhai Patel and also that he did not produce hand to hand receipt book showing the particulars of the amount he received. After holding the inquiry into the charges, the inquiry officer submitted his report and pursuant to the findings given by the inquiry officer, holding that the charges

levelled against the applicant were proved, the disciplinary authority after giving an opportunity of being heard to the applicant, passed the penalty of removal from service on the applicant on dated 8.1.92. The applicant had preferred an appeal against the order but the appeal also has come to be rejected by the appellate authority on dated 14.7.92 and hence, this O.A is moved by the applicant challenging the order of the disciplinary authority as well as the appellate authority imposing the penalty of removal from service on him. The applicant has contended inter alia that even though he had made demands of the necessary documents, the same were not supplied to him and that the inquiry was conducted in flagrant violation of the principles of natural justice. It is also contended by the applicant that the necessary documents asked for by him showing the withdrawal of Rs.1000/- in another transaction on the same day are not supplied to him nor the inquiry officer has considered the same during the course of the inquiry. According to the applicant, the findings of the inquiry officer are based on no evidence against him and therefore, the findings are vitiated. He has also contended that the hand to hand book which is required to be maintained and wherein the entry regarding the deposit of Rs.1000/- must have been posted is deliberately not produced by the respondents. The hand to hand book was in the custody of the respondents when he handed over the charge of the P.A, Jambusar and therefore, the charge leveled against him that he had misplaced the hand to hand book was without any basis or foundation. It is also contended that his colleague Rohit who had

received the amount of Rs.1000/-from Chimanbhai Patel had not handed over the amount to him and had not posted the entries in the relevant registers and account books. However, only to escape their liability, Rohit and the Sub Postmaster have framed the whole case on him as they had committed fraud by misappropriating the amount of Rs.1000/-. He has also contended that there is no evidence to point out that he had misappropriated the money but on the contrary, record shows that intentionally Rohit and SPM had tried to frame up the case on him and even when he had asked for the production of the voucher by which Rs.1000/- was paid to another account holder by Mr. Rohit on the same day, the same has not been produced nor examined in the inquiry proceedings. On these grounds, the applicant has prayed for quashing of the penalty imposed on him by the disciplinary authority and confirmed by the appellate authority and has prayed for direction of reinstatement in the service with full back wages and continuity of the service.

2. The respondents on the other hand in their reply contended that the inquiry has been conducted according to the rules and the applicant had been given every opportunity to examine all the documents and to put forth his defence. All the relevant documents relied upon by the respondents were shown to the applicant and the copies of those documents were also given to the applicant. They have maintained that the hand to hand book was in the custody of the applicant and he has not produced the same during the course of inquiry with a view to frustrate the

inquiry. They have maintained that on dated 7.3.89, when the alleged incident of misappropriation of Rs.1000/- took place, the applicant had come late to the office and since the depositor Chimambhai Patel wanted to deposit the amount of Rs.1000/- in his NSS account, the SPM had asked another clerk Mr. Rohit to accept the amount and give receipt of the same. Rohit had accepted the amount from depositor and had given necessary receipt. In the meantime, the applicant had arrived and Rohit had given that amount of Rs.1000/- to the applicant. However, the applicant had not deposited that amount in the NSS account of Chimambhai Patel. The applicant was transferred from Jambusar w.e.f. 5.4.89 and the fact of the non deposit of the amount in the NSS account had become known to the authorities thereafter. He was therefore, given a charge sheet on dated 2.2.90 and the inquiry was conducted in the charges leveled against him. They have denied the allegation that the applicant was not furnished the copies of the documents relied upon by the inquiry officer and have also denied that there was no evidence against the applicant showing that he had misappropriated the amount of Rs.1000/-. They have contended that the inquiry officer had rejected the demand of applicant for the production of additional documents as those documents were not relevant for the purpose of inquiry. According to the respondents the evidence recorded disclosed that the amount of Rs.1000/- was accepted by Mr. Rohit but on arrival of the applicant the amount was transferred to him and the applicant himself had date stamped the pass book as well as the counter foil for the

depositors copy but he had not accounted for the amount of Rs.1000/- as well as not entered the same in the book and the list of transaction. He was therefore, found guilty of the charges leveled against him and considering the grave nature of the charges, he has been imposed with the penalty of removal from service. They have justified the penalty imposed on the applicant and have prayed that the O.A being devoid of any merit may be rejected with costs.

3. Mr. P. H. Pathak, learned advocate appearing for the applicant had submitted that the date on which the incident is alleged to have occurred i.e. 7.3.89, there were two transactions of Rs.1000/-. According to Mr. Pathak, the charge leveled against him was that though he had received the amount of Rs.1000/- from another clerk Mr. Rohit, he had not deposited the same in the NSS account No. 1000007 of Mr. Chimambhai Patel and since the amount was not credited in the said account, he is alleged to have misappropriated the same. Mr. Pathak has however submitted that there was another transaction of Rs.1000/- on the same day and this was regarding the withdrawal of amount of Rs.1000/- and that the applicant had right from the beginning of the inquiry asked for the production of the documents with regard to withdrawal of Rs.1000/-. Entry of withdrawal of Rs.1000/- was never produced in the inquiry and the applicant was not given any chance to explain about the two transactions. His main thrust of argument was that the hand to hand book wherein entry regarding the receipt of Rs.1000/- must have been

made is not produced by the department and it was alleged that the applicant had misplaced the same. According to Mr. Pathak, transaction on the receipt of the amount are generally immediately entered in the hand to hand receipt book by the concerned clerk who receives the amount and therefore, this hand to hand book would have definitely shown as to who had received the amount of Rs.1000/- and in whose hand writing the entry regarding Rs.1000/- was made. He has also submitted that this hand to hand book was in the custody of the department as even after the transfer of the applicant from Jambusar the same was used by the department till 25.4.89. According to Mr. Pathak, this hand to hand book was used for 20 days even after the transfer of the applicant and therefore, to allege that the applicant had misplaced the hand to hand book with a view to frustrate the inquiry is not only baseless but suggests that the case is framed up against the applicant. He has further submitted that the inquiry officer as well as disciplinary authority has surprisingly not only found the applicant guilty of the charge of misappropriation but also for the second charge of misplacement of the hand to hand book. According to Mr. Pathak, there was absolutely no evidence against the applicant to show that he has misplaced the hand to hand book. He has not been responsible for the loss of that hand to hand book, on the contrary it was the department who was in custody of the hand to hand book and the department has deliberately not produced the hand to hand book. He has asked that adverse inference should be drawn against the respondents for not producing the hand to

hand book during the inquiry or subsequent thereto. So far the inquiry is concerned, Mr. Pathak has forcefully submitted that the same was vitiated on account of non supply of the relevant documents to the applicant and on account of the non production of the hand to hand book. According to Mr. Pathak, if the entry regarding the withdrawal of Rs.1000/- on the same day had been produced before the inquiry officer, then it would have been shown that Rohit had made the payment of Rs.1000/- to another account holder and this amount of Rs.1000/- might have been given by Rohit to that account holder. Alternatively according to him, Rohit might not have even handed over Rs.1000/- to the applicant and might not have made the entry in the accounts. If that would have been the case then Rohit would be the person liable to account for the missing amount and to save his own skin he might not be saying the truth regarding the receipt of this amount. He has therefore, submitted that all these questions having not been answered by the inquiry officer and due to the lack of the opportunity having been given the applicant also could not adduce sufficient evidence on the record to show that he was not guilty of the charges leveled against him, prejudice is caused to the applicant and hence penalty order requires to be quashed.

4. On the other hand, Mr. B.N. Doctor, learned advocate for the respondents has countered that all the opportunities were given to the applicant to meet with the case of the department and that all the relevant documents relied upon by the inquiry officer were supplied to the applicant or the inspection of the same was given

to the applicant. According to Mr. Doctor when it was found that hand to hand receipt book was missing the applicant has tried to take advantage of this missing book and had made much ado about the same. He has further submitted that the hand to hand book was only a corroborative piece of evidence but there was other evidence also on record which establish the guilt of the applicant beyond doubt. The inquiry officer has examined independent witnesses whose evidence has gone to establish that amount of Rs.1000/- was received by Rohit for deposit in the NSS account No. 1000007 and that Rohit had handed over this amount of Rs.1000/- to the applicant. There is also evidence to show that the applicant even after the receipt of that amount had not credited the same in the aforesaid account and had also not made the relevant entries in the other registers and account books. Since this amount was not deposited in the NSS account No. 1000007 and no entry of this amount was made in any other register, the SPM at the end of the day while cross checking the entries also could not find out that the amount was not deposited in the NSS account No. 1000007 and that the applicant had misappropriated the same. According to him, in the inquiry, it was revealed that Mr. Chimanbhai Patel had actually deposited Rs.1000/- and as the applicant was late in arriving the post office on that day, SPM had asked Mr. Rohit to accept the amount from Mr. Shah, the agent of Chimanbhai Patel and Mr. Rohit had accepted that amount from Mr. Shah. However, in the meantime, the applicant had arrived and Mr. Rohit had handed over that amount of Rs.1000/- to the applicant and the applicant had not

only received the amount but had also date stamped the pass book of the investor and returned the same pass book to the investor. The evidence of the pass book as well as evidence of Shah and Chimanbhai Patel and other witnesses clearly establish that amount of Rs.1000/- was received by the applicant and since he had failed to credit this amount in the account of the investor, the charges leveled against him were clearly established. Mr. Doctor has further submitted that there is no justification in asking for drawing adverse inference against the case of prosecution on account of the non production of the hand to hand book as hand to hand book was only the corroborative piece of evidence and there was other material evidence on record to establish the guilt of the applicant. According to him, the hand to hand book would have only shown as to who had made the entry of receipt of Rs.1000/-. It would not have absolved the applicant from the liability to explain non credit of amount of Rs.1000/- in the account of the depositor. Mr. Doctor has also taken us through the evidence of the witnesses recorded by the inquiry officer to point out that there was ample evidence on record to establish the guilt of the applicant and has forcefully submitted that the disciplinary authority as well as the appellate authority were quite justified in imposing the penalty of the removal from the service on the applicant. According to Mr. Doctor, considering the grave nature of the charges leveled against the applicant there was no other alternative but to pass the major penalty of removal from service on the applicant.

5. Before advertng to the rival contentions, we would like to refer to the existing position of the law with regard to the departmental inquiries. It is settled position now that the jurisdiction of this Tribunal to interfere with the disciplinary matters or punishment cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority when those findings are not arbitrary or utterly perverse. If there has been an inquiry consisten~~ce~~ with the rules and in accordance with the princip~~als~~ of natural justice, what punishment would meet the ends of justice is also the matter exclusively within the jurisdiction of the competent authority and the Tribunal has no power to substitute its own discretion to that of the authorities. In the case of R.S. Saini V/s. State of Punjab reported in 1999 (2) SC SLJ 212, the Supreme Court has while dealing with the jurisdiction of the Tribunal to interfere with the findings of the inquiry officer has laid down as under :-

*"16. Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind. We will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is in<sup>~</sup>sufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.*

*17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from*

*the records, show that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a responsible manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the inquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard."*

6. Thereafter, recently in the case of High Court of Judicature at Bombay Vs. Shashikant S. Patil and Another reported in 2000 (1) SCC 416, the Supreme Court has said that if there is some legal evidence on which findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court under article 226 of the Constitution. The Supreme Court has further elaborated that judicial review or interference is permissible if there is violation of principles of natural justice or statutory regulations. The decision of the disciplinary authority is also vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority on the very face of it is wholly arbitrary or capricious that no responsible person could have arrived at such a conclusion, or other similar grounds. It has however, concluded that it cannot however be overlooked that disciplinary authority is the sole judge of the facts if the inquiry has been properly conducted.

7. Now considering the rival contentions in the light of the above observations of the Supreme Court, we find that though the

allegation of the non supply of the relevant documents is made, the same has no substance at all. The inquiry officer has observed that fullest opportunity was given to the applicant to defend his case and that all the documents relied upon in the inquiry were supplied to the applicant. He has also noted the insistence of the applicant for the production of original specimen book to check the specimen signature of the depositor of the SB Account No. 3709522 but as the documents called for was not necessary or irrelevant for the purpose of inquiry, his request was denied. It is pertinent to note that in this O.A also the applicant, except alleging that the entry of the withdrawal of Rs.1000/- was not got produced by the inquiry officer, has not given any details regarding what documents which were relied upon by the prosecution were not supplied to him. It was tried to submit that the hand to hand book used by the applicant on that day was not produced and this has adversely affected the case of the applicant. This submission however, has no merit as one of the charges leveled against the applicant was that he has misplaced the hand to hand book or had not produced the hand to hand book when asked for by the authorities. It is quite obvious from the charge itself that the applicant knows about the non availability of the hand to hand book and therefore, contending that since the hand to hand book was not produced before the inquiry officer by the department, and thereby the principles of natural justice is violated is clearly a baseless contention.

8. We have carefully gone through the entire inquiry proceedings and we find that the inquiry was conducted by the inquiry officer as per the rules and regulations and all necessary

opportunity was given to the applicant to defend the charges leveled against him. The applicant had participated in the inquiry and has crossed examined the witnesses. Hence, there is no question of no opportunity having been given to the applicant to defend the charges leveled against him. The argument of the violation of principles of natural justice loses the credence in view of the inquiry proceedings having been conducted in a proper and legal manner. Though it was not necessary for us to examine the evidence recorded by the inquiry officer, to satisfy ourselves that the findings of the inquiry officer was not based on no evidence, we have carefully gone through the evidence recorded by the inquiry officer. We find from the evidence laid before the inquiry officer that independent witnesses like Chimanbhai Patel and Y.J. Shah and witnesses like Rohit and Magnadis and Mr. Masani, DSPM Jambuar, had supported the prosecution case and in unequivocal terms given evidence pointing to the guilt of the applicant. Chimanbhai Patel had stated about being the holder of the NSS account no. 1000007 and also having given Rs.1000/- to his authorised agent Mr. Y.J. Shah for depositing in his account on 7.3.89. Mr. Y.J. Shah has confirmed having received this amount from Chimanbhai Patel and having tendered this amount to Mr. Rohit. He has also stated that when he entered the post office there was no clerk on SB counter and the Postmaster inquired with him as to what work he had, so he had told the postmaster that he had come to deposit the amount in the NSS pass book. According to him, he was in a hurry to go to his shop and therefore, the postmaster had asked him to give the amount to Rohit and he had given the amount to Mr. Rohit and also the NSS pass book and voucher

to him. He has also stated that he had waited for the date stamp impression in the pass book and at that time the applicant had come and attended the SB counter. He has also stated that applicant date stamped the pass book and the voucher and returned the pass book to him. It is significant that in the cross examination of these witnesses he had not been even suggested that date stamp was not affixed by the applicant and that the applicant had not come while he was there. The evidence of Rohit suggests that he had handed over the amount of Rs.1000/- to the applicant and the applicant had date stamped the pass book as well as the deposit voucher. It is also in the evidence that entry regarding the receipt of this amount of Rs.1000/- was made by the applicant in the hand to hand book.

9. This evidence as well as the other evidence recorded by the inquiry officer is believed by the disciplinary authority and we are unable to find any fault with the disciplinary authority in relying on this evidence. The evidence is sufficient to conclude that the applicant had received the amount of Rs.1000/- for crediting the same in the NSS account of Chimanbhai Patel and that he had not credited <sup>in the</sup> same in that account though he had entered the same in the pass book of Chimanbhai Patel. The documentary evidence in the nature of pass book of the NSS account of Chimanbhai Patel as well as paying slip bearing the date stamp of 7.3.89 for the deposit of the amount of Rs.1000/- clearly go to establish that the credit of amount of Rs.1000/- in the NSS account No.1000007 was made and that this amount of Rs.1000/- was not credited any where in the ledger or other

account books. There is no dispute that it was the responsibility of the applicant to deal with this deposit and therefore, he was responsible to account for the non entrance of this amount in the account books of that day. Hence, documentary evidence, and oral evidence of the witnesses clearly go to support the findings of the inquiry officer that the applicant was guilty of the first charge leveled against him. This evidence also clearly suggests that the inquiry authority has based his conclusion on the material available on record after considering the evidence put forth by the applicant and in our opinion, the findings recorded by the inquiry officer were in reasonable manner and objectively. The conclusion drawn by the inquiry authority cannot be <sup>said</sup> ~~drawn~~ to be perverse or not based on any material nor it is a case where there has been any non application of the mind on the part of the inquiry officer. The reliance placed by the disciplinary authority on the findings of the inquiry officer is also therefore, not perverse or without application of mind. Under the circumstances, there is absolutely no reason for us to interfere with the findings of the disciplinary authority as well as appellate authority who has subsequently upheld the finding of the disciplinary authority.


10. However, so far the charge no.2 leveled against the applicant regarding deliberate misplacement of the hand to hand book is concern, we find that the finding arrived at by the inquiry officer as well as the disciplinary authority are not in consonance with the evidence on record. The evidence suggests that after the transfer of the applicant, the hand to hand book was used by Rohit for 20 days and therefore, it goes without saying that the last custody of this book was with Rohit or with department and

not with the applicant. It is presumed by the disciplinary authority that since book was not traceable the same must have been misplaced by the applicant himself so as to defend the inquiry proceedings. There is no logic behind this conclusion as it is not shown that the applicant was at any time in a position to recover the hand to hand book and thereafter misplace the same so that it will not be available for inquiry purpose. The applicant was therefore, wrongly held guilty for the charge of misplacement of the hand to hand book.

11. This finding however, does not effect the punishment order passed by the disciplinary authority. The punishment of the removal from service is awarded by the disciplinary authority on the consideration of the applicant having misappropriated the amount of Rs.1000/-. This being a charge of a grave nature, the major punishment was imposed by the disciplinary authority on the applicant and therefore, even if it is held that the charge of misplacement of the hand to hand book is not sustainable then also the penalty imposed on the applicant cannot be interfered with. Mr. Pathak had tried to submit that the penalty imposed on the applicant was harsh and shocking but, considering the graveness of the charge leveled against the applicant, we are unable to agree with the submission of Mr. Pathak. We also do not find any violation of the principles of natural justice in the conduct of the inquiry proceedings against the applicant. The applicant had been provided with the copies of the necessary documents and he had been given all opportunities to examine the documents relied upon by the presenting officer. He has also been afforded the opportunity of cross examining the witnesses.

After the conclusion of the inquiry, a copy of the inquiry report was also given to the applicant and he was asked to give his submissions and he had given the written submissions on dated 18.9.91. We therefore, reject the contention of the applicant that the inquiry is vitiated on account of the violation of the principles of natural justice.

12. In view of the foregoing discussion, we have no hesitation in concluding that there was ample evidence before the disciplinary authority to base his findings of guilty of the 1<sup>st</sup> charge leveled against the applicant and the order of the disciplinary authority as well as the subsequent order of the appellate authority are not vitiated on account of the non application of mind or there being no evidence before them. There is therefore, no reason for our interference with the order passed by the disciplinary authority as well as the appellate authority. The O.A is devoid of any merit and in the conclusion, we reject the O.A with no order as to costs.

  
(A.S. Sanghavi)  
Member (J)

  
19/9/2000  
(V. Ramakrishnan)  
Vice Chairman

Mb