

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 47 of 1992

~~**O.A. NO.**~~

DATE OF DECISION 31-7-1995

Ambalal Maganlal Garo **Petitioner**

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

Versus

Union of India & Others **Respondent**

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

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

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

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

Shri Ambalal Maganlal Garo,
Ex. E.D.B.P.M.,
Bhempoda,
Via Gabat-383 335,
Sabarkantha.

..... Applicant

(Advocate : Mr.K.C. Bhatt)

Versus

1. Union of India through
The Director General,
Department of Posts,
Ministry of Communication,
Parliament Street,
New Delhi.

....

2. The Chief Postmaster General,
Gujarat Circle,
Ahmedabad - 380 001.

3. The Supdt. of Post Offices,
Sabarkantha Division,
Himmatnagar-383 001.

..... Respondents

(Advocate : Mr. Akil Kureshi)

J U D G M E N T

O.A. No. 47 of 1992

Date : 31-7-1995

Per : Hon'ble Mr.K. Ramamoorthy, Member (A)

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The present application is filed against the order of dismissal passed against the applicant after a due inquiry. This order was passed on 31-12-89 and the order of punishment was issued by the appellate authority on 4-1-1990. The order of dismissal was passed on the ground that the charge was "proved beyond reasonable doubt" that he has failed to observe provision of Rule 17 of E.D.A. (Conduct and Service) Rules, 1964. The applicant had filed an appeal in time but this appeal was also disposed of by order dated 18-6-1990 whereby the appellate authority found "no reason to intervene on behalf of the appellant".

2. The main argument of the applicant is that the inquiry suffered from a number of infirmities right from the beginning and the applicant had been punished in a case where there was no evidence. The disciplinary proceedings also suffered from the vice of non-application of mind and the final punishment also was disproportionate since there was no question of any criminal intent as, at best, the offence could be termed as one of negligence only. The respondents, on the other hand, have contended that the applicant was invested with certain authority and trust and by his behaviour he had shown a distinct lack of integrity in his conduct which required the punishment as ordered to ensure that the trust of the people in the department and in the office remains in tact.

3. The short facts of the case are as under:

The applicant was working as Extra Departmental Branch Postmaster at Village Bhempoda in Sabarkantha Division with effect from 6-2-1978 having rendered more than nine years of service. However, during a surprise inspection by the Inspector of Post Offices on 4-4-87 it was discovered that there were about 75 Pass Books lying in the cupboard. On further verification it was discovered that in some Pass Books, the credit entries had not been made and therefore there was a suspected case of misappropriation of money entrusted to the Postmaster for crediting into Government Account. On this discovery, the applicant was relieved from the charge of the Branch Office and vide order dated 8-4-87 the applicant was put off duty with retrospective effect from 4-4-87 itself.

Immediately thereafter an inquiry was held and the present applicant was dismissed vide order No.B2/11/31/87-88 dated 19-9-88. However, this particular order was reversed on appeal and Supdt. of Post Offices was directed to undertake a de novo trial of the case vide order No.STA/373/88 dated 11-5-1989. Thereafter the S.P.O. Himmatnagar issued a fresh charge-sheet vide letter No.B2/11/31/87 dated 4-7-89. The statement of articles of charge read as under:

"A N N E X U R E - I

That the said Shri A.M. Garo while functioning as EDBPM Bhampoda B.O. during 6/2/78 A/N to 3-4-87 took Pass Books from depositors without granting receipts to the depositors in violation of rule 132 A of B.O. Rules added under D.G.P & T No.34-31/78-SB dated 6-8-1982.

A N N E X U R E - II

That the said Shri A.M. Garo while functioning as EDBPM Bhempoda B.O. during 6-2-78 A/N to 3-4-87 failed to observe (I) Rule 131 read with rule 143(3) and 144 by not obtaining pay in slips from depositors, by not passing entries of deposits in Pass Books and by not affixing date stamps of B.O. on the date of deposit.

It is alleged that there by the said Shri A.M. Garo in addition to violation of above rules failed to maintain absolute integrity and devotion to duty as required of him under rule 17 of EDA (Service and Conduct) Rules 1964".

An inquiry was conducted into the above charge and, based on the Inquiry Officer's report dated 16-12-89, punishment order was passed on the applicant vide order dated 31-12-1989.

4. The applicant has challenged the above proceedings on the following grounds:

- 1) The inquiry findings were based on no evidence whatsoever. There were no complaints which had

been received and the depositors who have been cited in the charge-sheet have clearly claimed no knowledge of any actual entrustment of funds to the applicant.

- ii) The charge-sheet of 4-7-1989 has been issued without cancellation of the first charge-sheet which had been issued on 21-10-87 and thus this charge-sheet itself was also void.
- iii) The inquiry report itself was void as it contained no number or date and in the inquiry report Defence Assistant of appellant's choice was not permitted. A number of documents which were demanded at the inquiry had also been refused.
- iv) The inquiry proceedings also suffered from another infirmity in as much as the Presenting Officer in this inquiry was the earlier Inquiry Officer during the first proceedings.
- v) Incorrect rules had also been cited in the charge-sheet.
- vi) Finally, the total amount involved in this case even going by the charge-sheet did not exceed Rs.3,000/- in all and on an overall perspective, the case could not be stated to be one of wilful misappropriation and therefore did not warrant the punishment of dismissal.

5. It is the case of the respondents that immediately after inspection and during the preliminary inquiry itself, the applicant himself had admitted the fact of his having not credited the amounts paid to him in time in their various accounts. The statements recorded by

the applicant in his own handwriting as produced at R/1 on 4-4-87 and R/2 on 10-4-87 are more or less an admission of the substance of the charges contained in the charge-sheet and the Inquiry Officer has rightly come to the conclusion that the charge against the applicant could be taken as proved.

6. The Tribunal had gone into the question of the contention regarding no evidence. In the charge-sheet specific reference has been made to certain CTD and Recurring Deposit Accounts which related to four depositors. There is also reference to a refund claimed by three persons which claims were also settled on 26-8-88 and 5-9-88. The applicant has relied on the evidence tendered by these persons during the inquiry wherein depositors have claimed no knowledge about the deposits made on their behalf or into their accounts. Apart from the fact that no satisfactory explanation is still available regarding the specific act of claim of refund and the acceptance of the refund by these very persons, it is nevertheless on record that during the preliminary inquiry certain admission statements have also been recorded from the applicant himself.

The assessment of evidence recorded by the Inquiry Officer is beyond the pale of this Tribunal and if the Inquiry Officer and the disciplinary authority have chosen to give greater credence to a particular piece of evidence, that itself cannot be a matter of evaluation at the Tribunal level. It has to be mentioned here that the admission statement as recorded at R/1 and R/7 were not retracted till the evidence

was tendered at the inquiry level nor has the applicant chosen to question the two Officers who have recorded the confession as recorded in R/1 and R/7. In any case, in the face of the recorded evidence, this cannot be stated to be a case of no evidence as to call for the quashing of the inquiry proceedings.

7. The contention regarding the inquiry report being void because it was not assigned a particular number or date on the report itself cannot be accepted as a basic feature so as to render the whole report as void. As regards defence assistant, the defence assistant allowed-though his second choice-was also a choice of the applicant himself. If the defence assistant of the first choice was not available due to administrative reasons, the Inquiry Officer was well within his rights to offer a second choice. No specific prejudice has also been shown to have been caused to the applicant because defence assistant was his second choice. We do not also see any illegality in the fact of an Inquiry Officer of one proceeding, being a Presenting Officer in a second proceeding. In any case, the specific prejudice caused to the applicant by this factor is as not brought out by the applicant.

8. In view of the above reasoning, the Tribunal does not find itself in a position to seriously question the inquiry proceedings as have been carried out in his case. The findings are not also such as can be termed to be perverse in the face of the evidence adduced before the Inquiry Officer and the disciplinary authority. The appellate authority has also duly

duly applied its mind. Since the matter is one which involves a case of entrustment of funds in the department, the department is well within its rights to treat any lapse in this behalf seriously and therefore, the Tribunal is not in a position to record any adverse findings regarding disproportionality in respect of the punishment either.

9. The application, therefore, is ordered to be rejected. No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

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