

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 194/93

T.O. NO.

DATE OF DECISION 19.8.1994

Shri Gelabhai Bhaichandbhai Prajapati **Petitioner**

Mr. K.C. Bhatt

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel

Vice Chairman

The Hon'ble Mr. V. Radhakrishnan

: 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

: 2 :

Shri Gelabhai Bhaichandbhai Prajapati
Ex.E.D.B.P.M.
Sujnipur (Patan) 384 265.

: Applicant

(Advocate: Mr.K.C.Bhatt)

Versus

1. Union of India

Through:
The Director-General
Department of Posts
Ministry of Communication
New Delhi-110 001.

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

3. The Supdt.of Post Offices,
Patan Division,
Patan-384 265.

: Respondents

(Advocate: Mr.Akil Kureshi)

ORAL ORDER

in

O.A.194/93

Date: 19.8.1994

Per: Hon'ble Mr.N.B.Patel

: Vice Chairman

The applicant was working as Extra Departmental Branch Postmaster for village Sujnipur in Patan Division of Mehsana district since 31.1.1978. On 14.12.1988, one Shri Vaghjibhai Valabhai Chaudhary lodged a written complaint (Annexure A-6) before the Superintendent of Post Office, Patan Division alleging that, on 8.4.1988, he had handed over an amount of Rs.250/- to the applicant in the latter's capacity as Extra Departmental Branch Postmaster as he wanted to deposit the said money for 5

..3..

years and, for the said amount paid by him, the applicant had issued to him a receipt mentioning that the amount will mature into Rs.500/- on 8.4.1993. In the said complaint, Shri Vaghjibhai Valabhai Chaudhary also stated that he had not been issued any "pass book" for a long time and hence he had made inquiries at the Head Post Office at Patan and came to know that no such amount was credited into his account with the Branch Post Office at Sujnipur. Shri Vaghjibhai Valabhai Chaudhary urged that inquiry may be made into the matter and it may be ensured that he got quick justice. One Shri A.N.Trivedi, Sub-Divisional Inspector, Patan Postal Sub-Division, was entrusted with the work of holding a preliminary inquiry and, in the course of that preliminary inquiry, Shri Trivedi recorded the statement of complainant Shri Vaghjibhai Valabhai Chaudhary. He also recorded a statement of the applicant on the same day. Pursuant to the report which he submitted at the conclusion of the preliminary inquiry, the applicant was served with a chargesheet dated 23.2.1989 (Annexure A-1) charging him with having collected an amount of Rs.250/- from Shri Vaghjibhai Valabhai for sale of Indira Vikas Patra to him but having not credited the amount into the Government coffers and having also not issued I.V.Patra to the complainant and having misappropriated the amount of Rs.250/-. The charge-sheet was based on documents including receipt alleged to have been passed by the applicant to Shri Vaghjibhai Valabhai as also the statement of Shri Vaghjibhai Valabhai recorded in the course of preliminary inquiry and the written confession said to have been made by the applicant before Shri Trivedi.

Copies of these documents were furnished to the applicant. Thereafter, inquiry was taken up. Repeated attempts were made to secure the presence of complainant Shri Vaghjibhai Valabhai for recording his evidence in the course of the inquiry, but these efforts failed. Thus, the inquiry authority was left only with the statement of Shri Vaghjibhai Valabhai recorded by Shri Trivedi in the course of the preliminary inquiry. Before the Inquiry Authority, the applicant examined Shri A.N.Trivedi as his defence-witness. As already mentioned, the confession of the applicant, coupled with crediting of the amount of Rs.250/- by the applicant, were the other circumstances before the Inquiry Authority. However, the Inquiry Authority submitted report dated 20.4.1990 (Annexure A-10) holding that the charge against the applicant was not proved. The Disciplinary Authority did not agree with the finding of the Inquiry Authority and issued notice to the applicant. The applicant was then given hearing and the Disciplinary Authority found that there was sufficient evidence on record to hold the charge of mis-appropriation against the applicant proved. Consequently, he awarded the punishment of removal from service by his order (Annexure A-2) dated 14.6.1990. The applicant filed appeal before the Respondent No.2 who rejected the said appeal by order (Annexure A-4) dated 8.5.1991. The applicant took the matter further before the Respondent No.1 by way of revision or review petition and the Respondent No.1 has also rejected the said petition by his speaking order (Annexure A-5) dated 31.3.1992.

2. By filing the present application, the applicant challenges the order of the Respondent No.3 removing him from service as confirmed in the appeal and the review/revision petition.

3. There was no contention urged before us to show that sufficient opportunity was not given to the applicant to defend himself against the charge.

4. The first contention raised by Shri Bhatt was that the charge-sheet was illegal and was based on mere suspicion. He elaborated this contention by mentioning that, though the complaint was submitted by one Shri Vaghjibhai Valabhai Chowdhary, the statement which was recorded was of one Shri Vaghjibhai Vaghabhai Chowdhary and that there were two different persons bearing these two names in village Sujnipur. We find no substance whatsoever in this contention, because the complaint which is filed bears the signature reading Chowdhary Vaghjibhai Valabhai and the statement which was recorded by Shri Trivedi is also of a person who has given his name as Shri Vaghjibhai Valabhai Chowdhary. It was only in the confessional statement of the applicant recorded by Shri Trivedi that there appears to be a slip of pen, inasmuch as the complainant is referred to as Shri Vaghjibhai Vaghabhai Chowdhary. This mistake has occurred, it may be emphasised, in the confession which the applicant had made before Shri Trivedi. The name of the witness cited in the charge-sheet is also Shri Vaghjibhai Valabhai. Thus, there is absolutely no substance in this contention raised by Shri Bhatt that Shri Trivedi had recorded the statement of an entirely different person in the course of preliminary inquiry. Once this statement is taken into account coupled with the confession said to have been made by the applicant

himself and the crediting of Rs.250/- by the applicant, there is no basis for upholding the contention that there was no sufficient material to frame a charge against the applicant or that the charge was based on unfounded suspicion.

5. The second point made by Shri Bhatt was that the complainant Shri Vaghjibhai Valabhai was not at all examined in the course of regular inquiry with the result that the applicant did not have the opportunity to cross examine the said witness. It is true that Shri Vaghjibhai Valabhai was not examined in the course of the inquiry and there can also be no doubt about the fact that Shri Vaghjibhai Valabhai was a very important witness. However, the record clearly shows that repeated attempts were made to secure the presence of Shri Vaghjibhai Valabhai before the Inquiry Authority but those attempts had failed. We find that the conclusion of the Respondent No.1, that the possibility of the applicant having himself kept Shri Vaghjibhai Valabhai out of way ~~cannot be said to be~~ ^{cannot be said to be} ~~is totally~~ unfounded. This is a case where vigorous and genuine attempts to secure the presence of the complainant were made but those attempts had failed and, therefore, there was nothing wrong on the part of the Disciplinary Authority and Higher Authorities to take into consideration the preliminary-inquiry-statement of Shri Vaghjibhai Valabhai, albeit with some caution bearing in mind that Shri Vaghjibhai Valabhai was not available for cross-examination by the complainant. However, we find that the Disciplinary Authority and the Higher Authorities

have exercised necessary caution while acting upon the statement of Shri Vaghjibhai Valabhai. It is also seen from the record that the statement of Shri Vaghjibhai Valabhai is corroborated by the very important fact of a clear confession made by the applicant before Shri Trivedi and the further fact that the applicant had credited back the amount of Rs.250/- which he is said to have collected from Shri Vaghjibhai Valabhai for issuing I.V.Patra to him.

6. Shri Bhatt then contended that the receipt for the amount of Rs.250/- alleged to have been passed by the applicant to Shri Vaghjibhai Valabhai does not bear any signature. It is true that the receipt does not bear any signature and it is also true that it is, in fact, a pay-in-slip and might be freely available in the Branch Postmaster's office and there may be possibility of some misuse of such receipts. However, in this case the authorities have relied upon certain circumstances and have found that the receipt was issued by the applicant himself. The applicant's version that he does not know English and he has studied only upto VII standard is not accepted by the domestic tribunal and, in the circumstances of this case, we are not prepared to brand even this conclusion of the authorities as perverse or unreasonable in view of the fact that the receipt requires only some blanks to be filled up and not any elaborate writing in English. Similarly, though possibility of somebody else using the seal, of which impression is put on the receipt, cannot be ruled out, since the

authorities have found that, in this case, such a possibility did not exist, we cannot interfere with such a finding of the authorities unless it is shown to be perverse. In this case, there was other corroborative evidence in the form of confession and conduct of the applicant in crediting the amount of Rs.250/- and the authorities have taken into consideration that evidence as corroborating the version of the complainant in his statement in the preliminary inquiry that the receipt was written and stamped in his presence by the applicant. We cannot interfere with such factual finding of the domestic tribunal when they are not shown to be perverse, or, not based on any evidence whatsoever.

7. The statement of the applicant recorded by Shri Trivedi on 16.12.1988 which is made available to us for our perusal leaves absolutely no doubt about the fact that the applicant had made a full and clear confession of the allegation that Shri Vaghjibhai Valabhai had handed over an amount of Rs.250/- to him for depositing in the post Office in such a way that the amount got doubled at the end of 5 years. The statement of the applicant also contains a clear confession about his authorship of the receipt which was issued to Shri Vaghjibhai Valabhai. Then, there is the fact that the applicant has credited the amount of Rs.250/- which he had allegedly misappropriated. Mr.Bhatt, for the applicant, tried to get out of this confessional statement on the ground that it was procured from the applicant by Shri Trivedi on a promise that, if the applicant made such a statement and credited the amount

of Rs.250/-, he will not face any harm. It is pertinent to note in this connection that the Inquiry Authority had confronted the applicant very pointedly with this confessional statement of his and the applicant had not even tried to retract from that confession on the ground that it was procured from him by Shri Trivedi by offering him some blandishment. It was for the first time, when the applicant was confronted with this confessional statement by the Inquiry Authority, that he repudiated it but only by vaguely saying that he was not admitting the contents of the statement. The original statement which is made available to us for perusal clearly shows that the entire statement is in the applicant's own handwriting and bears his signature. It is also material to note in this connection that Shri A.N.Trivedi was examined in the course of the inquiry and it was not even suggested to him that he had extorted the confessional statement from the applicant on a promise that the applicant will not be harmed if he made a confession.

8. We find no substance in the contention of Shri Bhatt that the ingredient of entrustment of money was not proved in the present case. Once the statement of Shri Vaghjibhai Valabhai in the course of the preliminary inquiry is accepted and once it is seen in conjunction with the receipt passed by the applicant as also his confession and crediting the amount of Rs.250/-, there should be absolutely no doubt about the fact that entrustment was clearly proved. It does not fall within our scope to reverse the finding of the domestic tribunal on any such ground as inadequacy

of evidence or lack of creditworthiness of the evidence. This is a case where there was evidence and it is accepted by the domestic tribunal.

9. We, therefore, find no merit whatsoever in the challenge to the impugned punishment order. In the circumstances of this case, where the applicant had misused a position of faith reposed in him, it is also not possible to say that the punishment is, in any way, harsh.

In the result, the application is dismissed without, however, any order as to costs.


(V. Radhakrishnan)

Member (A)


(N.B. Patel)

Vice Chairman

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ENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 8919463 of 19

Transfer Application No. _____ Old W. Pett. No

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 27.09.94

Countersigned :



see also
Signature of the Dealing
Assistant

Section Officer/Court officer

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE ca 1941a3

OF 19

NAME OF THE PARTIES MR G.B. Dejopch

VERSUS

U. S. I. S. 09.