

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/231/93

Date of Decision: 6/2/01

Mr. Manilal Veritwala : 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. A.S. SANGHAVI : **MEMBER (J)**

THE HON'BLE MR. G.C. SRIVASTAVA : **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

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Manilal Veritwala,
Postal Asstt.,
Ankleshwar.

Address for service of notice :

M.M. Veritwala,
Postal Asstt.,
Post Office,
Ankleshwar-393 001

(Advocate : Mr. K.C. Bhatt)

Versus

1. Union of India through
The Director General,
Department of Post,
Ministry of Communication,
Parliament Street,
New Delhi-110 001.
2. The Postmaster General,
Vadodara Region,
Vadodara-390 003.
3. The Supdt. of Post Offices,
Bharuch Division,
Bharuch-392 001.
4. Shri A.R. Chafekar,
The then Supdt. of Post Offices,
Now at Postal Store Depot,
Vadodara-390 002.

(Advocate : Mr. B.N. Doctor)

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JUDGMENT
OA/231/93

Date : 6/2/01

PER : HON'BLE MR. G.C. SRIVASTAVA : MEMBER (A)

The applicant who was working as a Sub Postmaster (SPM), Muktampur with effect from 1.1.90 under the respondents is aggrieved by their order of punishment imposed on him under CCS (CCA) Rules, and prays for the following reliefs :-

- i) The impugned chargesheet issued under Memo No. B2/79/04/91-92 dated 15.4.91 by Supdt. of Post Offices, Bharuch (Annexure A-1) be quashed and set aside.
- ii) The impugned punishment order issued under memo No. B2/79/04/91-92 dated 12.6.91 by the Supdt. of Post Offices, Bharuch (Annexure A-3) be quashed and punishment set aside.
- iii) The impugned appellate order issued under Memo No. STA/3-49/91 dated 18.2.92 by the D.P.S., O/O P.M.G. Vadodara be quashed and set aside (Annexure A-5).
- iv) The impugned petition order issued under Memo No.2/223/92-VP dated 30.10.92 issued by Member (P) P.S.B. New Delhi be quashed and set aside.
- v) Any other suitable relief may please be granted.

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2. According to the applicant, while he was working as SPM, Mukhtampur he was served a charge sheet under CCS (CCA) rules vide memo dated 15.4.91 (Annexure A-1) for his alleged involvement in non receipt of 50 gift coupons sent along with the annual report of the shareholders of GNFC, Bharuch and collection of sweet packets in exchange of the aforesaid coupons. He submitted his reply vide his letter dated 22.5.91 (Annexure A/2) and the Supdt. of Post Offices, Bharuch being disciplinary authority awarded to him the penalty of stoppage of next increment for a period of three years without cumulative effect vide his memo dated 12.6.91 (Annexure A/3). The applicant preferred an appeal vide his letter dated 13.7.91 (Annexure A-4) which was rejected and the order of the same communicated to him vide letter dated 18.2.92 (Annexure A-5). Thereafter he filed a review petition vide his letter dated 6.4.1992 (Annexure A-6) and the reviewing authority modified the penalty to that of withholding of his one increment for three years vide order dated 30.10.92 (Annexure A-7). Aggrieved by the order of the punishment of disciplinary authority upheld by the appellate authority and subsequently modified by the reviewing authority, the applicant has filed the present O.A.

3. In their reply, the respondents have stated that a complaint dated 29.12.90 from villagers of Mukhtampur and another complaint dated 3.1.91 from G.N.F.C. Bharuch regarding non receipt of annual report containing gift coupons sent from GNFC and illegal collection of sweet packets in exchange of 50 gift coupons were received by the applicant. A preliminary enquiry was ordered on 15.1.91 as a result of which, it was revealed that while working as SPM, Mukhtampur the applicant intercepted and took

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unauthorised possession and exchanged the gift coupons for sweets packets by forging the signatures of different shareholders of GNFC Bharuch. Accordingly, he was alleged to have contravened the provisions of Rule 3 (1) (i) (ii) (iii) of the CCS (conduct) Rules, 1964 for not maintaining absolute integrity, devotion to duty and acting in the manner unbecoming of a Government servant and a charge sheet was served on him under Rule-16 of CCS (CCA) Rules and he was punished by way of stoppage of his next increment for three years without cumulative effect. His appeal was rejected by the Appellate Authority, but the Reviewing Authority modified the punishment of withholding of his one increment for three years without cumulative effect to that of withholding of his one increment for three years.

3. In his rejoinder, the applicant has not raised any fresh issues other than what was already taken up in the O.A.

4. We have heard Mr. K.C. Bhatt, learned counsel for the applicant and Mr. B.N. Doctor, learned counsel for the respondents and have gone through the pleadings and the departmental files made available by Mr. Doctor.

5. However, before we go into the merits of the application, we would like to mention that as laid down by the Hon'ble Supreme Court in the case of B.C. Chaturvedi Vs. U.O.I., the role of the Tribunal in adjudicating the

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matter involving penalty arising out of departmental proceedings is limited.

The relevant portion of the judgement is extracted below :-

The Court or Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or finding and mould the relief so as to make it appropriate to the facts of that case.

It will be seen from the above that the Tribunal can interfere only where the proceedings are found to have been held in a manner inconsistent with the rules of natural justice or in violation of statutory rules or where the conclusion or finding of the disciplinary authority is based on no evidence. The Tribunal can also interfere with the conclusion or finding where the same is such as no reasonable person would have ever reached.

6. In the above background, we now proceed to discuss the merits of the present O.A. The main contention of the applicant is that one Shri A.A. Shaikh, who worked as Postal Assistant (clerk) under the applicant himself wanted to become SPM, Muktampur and accordingly, persuaded the Superintendent of Post Offices, Mr. A.R. Chafekar with whom he had

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friendly relations on account of both having worked together elsewhere in the past to ask the applicant to apply for a transfer out of Mukhtampur. However, when the applicant did not oblige the said Shri Sheikh hatched a plan to get him implicated in the cooked up case of gift coupons and punished and transferred out of present place of posting. The applicant accordingly contends that the action of the respondents in implicating him in a cooked up plan and consequently punishing him is malafidy. Mr. B.N. Doctor, learned counsel for the respondents has rebutted this contention stating that except a mere allegation made in the O.A. that both Mr. A.A. Shaikh and Mr. A.R. Chafekar who had worked together earlier had been friends and therefore prepared a plan to punish the applicant and transfer him out, there is no other evidence to prove that such a plan was ever made and hence the allegation deserves to be rejected. We have examined the contention in the light of the arguments and also find that the respondents have categorically denied in their reply that Shri Chafekar, Superintendent of Post Offices had ever asked the applicant to apply for transfer out of Mukhtampur and also that he had any intention of posting Shri Shaikh as SPM, Mukhtampur before the complaint was received. In view of this, the main contention of the applicant that the punishment being a result of a cooked up plan hatched at the instance of Mr. Shaikh is malafide is without any substance and is rejected.

7. Another contention of the applicant as also emphasised by his learned counsel Mr. K.C. Bhatt during arguments is that the procedure followed in the disciplinary action is not as per rules as the charge sheet is wrong since no rule has been quoted, no enquiry conducted, complaint not given to him,

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witnesses not examined/cross examined opportunity of proving his innocence not given and hence principles of natural justice violated. We have examined the contention and find that the memo of the charge sheet issued to the applicant dated 15.4.91 clearly mentions that action is proposed to be taken against the applicant under Rule-16 of CCS (CCA) Rules, 1965 and the statement of imputation and misconduct or mis-behaviour enclosed along with the aforesaid memo also clearly mentions Rule 3 (1) (I) (ii) (iii) of CCS (Conduct) Rules, 1964 under which he has been charged. As regards the complaint not having been given to the applicant, we find from a perusal of the departmental file made available to us by Mr. Doctor that the applicant had asked for copies of certain documents including the complaint vide his letter dated 18.4.91 and he was informed by the respondents that he should inspect and if necessary take extracts of the documents. Accordingly, as per the noting recorded on 13/14.5.91 in the departmental file, he attended the office of the respondents and took extracts of the documents. It is evident that only thereafter he gave his explanation vide his letter dated 22.5.91. It does not therefore lie in the mouth of the applicant to say now that he was not supplied the complaint since he had already inspected on 13/14.5.91 the documents including the complaint and during the course of the examination of the said documents he had been given full opportunity of taking extracts of the documents he desired. As far as the examination/cross examination of witnesses is concerned, such examination/cross examination is mandatory in cases where an enquiry is held for disciplinary action under Rule-14 of CCS (CCA) Rules. As far as the present case is concerned, we find that on the basis of complaint dated 29.12.90 from villagers of Maktampur as also a complaint dated 3.1.1991 from G.N.F.C., Bharuch, the

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respondents had ordered an enquiry on 15.1.91 which is evidently only a preliminary fact finding/enquiry conducted by the departmental officers on the basis of the order of the superior officer only for the satisfaction of the Superior authority to enable him to come to a conclusion whether there is a prima facie case to proceed against the delinquent official. As laid down by the Supreme Court in the case of Mohammad Sarif Khan Vs. Omkar Singh (AIR 1957 ALL 217 : Mohd Umar Vs. IG Police AIR 1957 ALL 767 : NR Roy Vs. Commissioner of Post of Calcutta AIR 1955 Cal 56) in a preliminary enquiry it is not necessary that the delinquent official should have been called for and the preliminary enquiry is for the satisfaction of the superior officers. We find that in the present case the applicant was given an opportunity of inspecting all the documents demanded by him and in their possession such as complaint dated 29.12.90 from the villagers and complaint dated 3.1.91 from GNFC, written statement of all the 8 shareholders of GNFC mentioned in the chargesheet, xerox copies of exchanged gift coupons for the gifts received from 8 shareholders, statement of Shri A.A. Shaikh, P.A. Matktampur dated 8.1.91 and the statement of EDA, Shri A.H. Saiyed dated 8.1.91, copy of ED Packer Shri G.K. Pagi dated 8.1.91. Considering these facts, the above contention of the applicant that the procedure followed in disciplinary action is not as per rules is also not sustainable and hence rejected.

8. The other contention of the applicant is that the charges on the basis of which penalty has been imposed are without any evidence. In support of this contention, he argues that the preliminary sorting of articles in the Branch offices is done by the sub accountant, Mr. Shaikh and Sub

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Postmaster i.e applicant has nothing to do with the articles of Branch offices. He further argues that he was on sanctioned leave from 24.12.90 to 31.12.90 and during that period, he was in Bombay and hence the question of his involvement in the incident occurred on 27.12.90 does not arise. We have examined this contention and find that in his written statement of defence the applicant has admitted that during recess time from 11.00 to 13.00 hours he remains in the office. The respondents further contend that his presence at the relevant time in the office can not be ruled out particularly when the articles remain unlocked. Further he has been caught red handed with gift coupons and this fact has been established during the preliminary fact finding enquiry. Moreover, the facts of the case also reveal beyond doubt that the applicant was caught red handed with gift coupons of the GNFC Authority on 27.12.90 and his presence in Bharuch is also more than established by the fact that he had himself received his own gift coupon in his own handwriting on the same date. As far as the alibi that he was not in Bharuch on the day of occurrence, Mr. Doctor has argued that where the plea of alibi is taken, the onus of proving its authenticity lies on the person who makes such a plea, but in the instant case, the applicant has not produced any evidence to prove that on the relevant date, he was in Bombay. His statement that since he was not asked to produce any evidence of his being in Bombay on the relevant date he did not do so is therefore not acceptable. Further the respondents have made a categorical statement that on 27.12.1990 the applicant was in Bharuch and accepted the gift coupons from GNFC under his own signature and even as per the complaint dated 3.1.1991, he was present in the GNFC with 50 gift coupons. The Disciplinary authority has also in his order dated 12.6.91 stated that the

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applicant made a mistake of accepting gift coupons of his own share under his own signature on the above date. The fact that he was not only present on the relevant date in Bharuch but also intercepted the gift on behalf of other shareholders also stands corroborated by the written statements of the concerned shareholders to the effect that they did not sign the coupons and that this was not their signature and a perusal of the gift coupons also reveals that in all these cases, signatures have been apparently given by one person in the same hand-writing. In its order of 12.6.91, the disciplinary authority has stated that from the circumstantial evidence he has come to the firm conclusion that the mischief of stealing of eight articles is played by the applicant and there is absolutely no possibility of any other official having done it. In this connection, it is necessary to point out that it is a settled position of law that the standard of proof of evidence in the case of departmental proceedings for proving guilt of the official is preponderance of probability and not proof beyond reasonable doubt and therefore the Tribunal can not go into the adequacy of evidence. (K. Shethuraman Vs G.M. Madra, Telephones 1989 (1) S.L.R. 701 (CAT Madras). In the facts and circumstances we are of the considered view that the present case can not be treated as a case of no evidence and hence there is no cause for intervention by this Tribunal.

9. The only other contention of the applicant is about the hand-writing of the applicant having not been verified by a handwriting expert. In reply, the respondents have stated that the hand-writing of the applicant had been verified by his sub-ordinate who was doing savings bank payment work and comparing signatures of deposits daily on a regular basis. There was no

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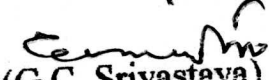
complaint of wrong payment by saving bank withdrawals and therefore they contend that taking into account the circumstances of the case verification of signature of the applicant by his sub-ordinates was considered sufficient. While dealing with this question, the disciplinary authority has also made a categorical statement that the procedure for consulting a hand writing expert was not required to be undergone since his immediate sub-ordinates have recognised his hand writing and also opinion has been given by the investigating officer as also that it has been proved that the articles were unauthorisedly taken by him. In this context, we would like to quote the opinion of Lawson in his book on 'Expert and Opinion Evidence' : "The evidence of the genuineness of the signature based upon the comparison of handwriting and of the opinion of experts is entitled to proper consideration and weight. It must be confessed, however, that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a court, this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence." In view of this, we are unable to find any fault with the action of the respondents in not referring the matter to a hand writing expert to have the signature of the applicant confirmed and getting the same verified by their own subordinates and therefore this contention is also rejected.

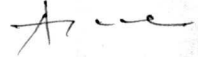
10. In the light of the foregoing discussions, we are of the view that based on principles enunciated by the Supreme Court in the case quoted in para-5 (supra) the O.A. is not one where judicial intervention is warranted.

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Therefore we hold that O.A. is devoid of any merit and deserves to be rejected. O.A. is therefore rejected with no order as to costs.


(G.C. Srivastava)
Member (A)


(A.S. Sanghavi)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CF/ 231/93 of 200

m. m. m. Vantwala

APPLICANT (S)

VERSUS

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RESPONDENT (S)

I N D E X ----- S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
	<u>ent</u>	<u>1-64</u>
	<u>Reply</u>	<u>65-72</u>
	<u>Rejoinder</u>	<u>73-76</u>
	<u>Rejoinder</u>	<u>77-82</u>
	<u>July 12 06/2/01</u>	
	<u>W. Reply</u>	<u>83-86</u>
	<u>July 12 06/02/01 (13 Pages)</u>	

Revised Document File in C' part. 1 to 10

Certified that the file is complete in all aspects.

PG 14/12/01
Signature of S.O. (X)

[Signature]
Signature of Dealing Hand.