

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A/664/1993

Date of Decision : 31.07.2001

Mr. Gulam Mohmed Ghanchi : Applicant (s)

Mr. K. C. Bhatt : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondents(s)

Ms. P. B. Sheth : Advocate for the respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHVI : 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
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? *~*

Mr. Gulam Mohmed Ghanchi
Extra Departmental Branch Postmaster,
Dabhasa (Padra) 391 440.

- Applicant -

Advocate : Mr. K. C. Bhatt

Versus

1. Union of India, through,
The Director General,
Department of Posts,
Ministry of Communication,
Dak Bhavan, Sansad Marg,
New Delhi - 110 001.
2. The Postmaster General,
Vadodara Region,
Vadodara - 390 002.
3. The Senior Supdt., of Post Offices,
Vadodara West Division,
Vadodara - 390 002.

- Respondents -

Advocate : Ms. P. B. Sheth

JUDGMENT
O.A 664 of 1993

Date : 31.7.2001

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

The applicant who was serving as an ED BPM, Dabhasa, Tal. Padra was put off duty on 31.8.91 and was subsequently charge sheeted on dated 11.2.1992. The charges leveled against the applicant were that he had received one registered letter No. 856 for delivery to the Branch Manager of the Central Bank of India but had not delivered the same to the Branch Manager and had instead

handed over the same to some body else which had resulted into misappropriation of some amount. It was also alleged that again on 15.7.1991 a registered letter addressed to the Central Bank of India duly entered at Sr. No. 3 and 4 in B.O. slip dated 16.7.91 was received for delivery was not given to the EDA Dabhasa for delivery and it was delivered to another person and that the address receipt was not kept with the B.O. Slip dated 26.7.1991. After the applicant gave his representation to the charges leveled against him the inquiry in the charges was proceeded against him and the inquiry officer had submitted report to the disciplinary authority holding the applicant guilty of the charges. The disciplinary authority had after giving opportunity to the applicant of representation passed the order inflicting the punishment of removal of service on him. The applicant had preferred appeal against the order but the appellate officer has rejected the appeal. He had thereafter preferred the present O.A. Even though, several contentions are raised in the O.A regarding the legality and validity of the inquiry proceedings and imposition of the punishment by the disciplinary authority, Mr. K. C. Bhatt, learned advocate for the applicant has submitted that he is confining his attack only on the ground of non payment of subsistence allowance to the applicant during the period of the put off duty and the inquiry period. According to Mr. Bhatt, though the applicant was put off duty with effect from 31.8.91 he had not been paid any subsistence allowance. Referring to several decisions of this Tribunal mainly O.A 379 of 92, O.A 216 of 96 and O.A 222 of 91 as well as several

Supreme Courts Judgments, Mr. Bhatt has submitted that non payment of the subsistence allowance to the applicant has not only prejudiced the applicant in defending his own case but has also vitiated the inquiry proceedings. According to him, only on this ground the inquiry proceedings are required to be set aside and the applicant be directed to be reinstated in service with full back wages. He has also submitted that in the criminal case instituted against the applicant at Bombay, the applicant has been acquitted of the charges leveled against him. According to him, for the same charge the applicant ought not to have been punished.

2. On the other hand Ms. Sheth for the respondents while conceding that no subsistence allowance was paid to the applicant during the period of put off duty has contended that the applicant was not prejudiced by not having been paid the subsistence allowance and he had in fact participated in the inquiry. She has relied on decision in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., reported in (1999) 3 SCC 678, and submitted that if the non payment of the subsistence allowance has not come in the way of the applicant in defending the inquiry proceedings, it cannot be a ground for quashing or setting aside the disciplinary proceedings. She has furthermore, contended that the inquiry was carried out as per the rules and regulations and all opportunities were given to the applicant to defend himself in the inquiry. After conclusion of the inquiry the copy of the inquiry report was also given to the applicant and only after receiving his representation on

the inquiry report, the disciplinary authority had passed the punishment order. According to her, appellate authority had also given all opportunities to the applicant to represent his case and only after full opportunity was given to the applicant of being heard, the appeal was decided. According to her, there was no lacuna in the inquiry procedure and since the inquiry was conducted as per the rules and regulations and it is not shown that the order passed by the disciplinary authority is in any way perverse or illegal, the order of punishment passed against the applicant should not be interfered with.

3. We have considered the rival contentions carefully. It is not in dispute that prior to the institution of the inquiry against the applicant he was put off duty from 31.8.91. It is also not in dispute that he was continued as put off duty even during the inquiry and till the finalization of the inquiry and that during this period i.e., right from 31.8.91 he has not been paid any subsistence allowance. It is no doubt true and undisputed position also that the applicant had participated in the inquiry and the inquiry against the applicant was not proceeded ex-parte. In the context of the admitted position that put off duty allowance or subsistence allowance or any other allowance was not paid during the period of put off duty, the issue is whether such an omission would vitiate the proceedings against the applicant. This question has been decided by this Tribunal in a number of cases including the decision in the case of V. B. Rawal Vs. Union of India in O.A 222 of

91 decided on 12.5.2000 and also in case of A.M. Kapasi Vs. Union of India O.A 379 of 92 decided on 14.6.2000 and also in the case of Ramanlal V. Joshi Vs. Union of India in O.A 216 of 96 decided on 22.11.2000. In these cases the Tribunal have discussed in detail the effect of the failure to pay any allowance qua the put off duty period on the disciplinary proceedings.

4. Relying on various decisions of the Supreme Court as well as that of Bangalore Bench in Peter D' Jada's case which struck down the Rule 9 (3) of the Extra Departmental (Conduct & Service) Rules, which decision was up held by the Supreme Court, this bench has held that failure to put off duty allowance or any subsistence allowance during the period of put off duty period would vitiate the entire proceedings. We may briefly give the back ground.

5. Rule 9 (3) of the E.D.A (Conduct & Service) Rules as it existed then, provided that an employee shall not be entitled to any allowance for the period for which he is kept off duty. This was challenged by some affected persons before the Bangalore Bench in the case of Peter D' Jada and another Vs. Superintendent of Post Offices Udipi and Others (1989) ATC 225. The Bangalore Bench of this Tribunal had extensively examined the various issues and held that the denial to pay any subsistence allowance during the put off duty period was unconstitutional and struck down Rule 9 (3) of the Rules as violative of Article 14 of Constitution of India. It directed the Government of India to re-examine the matter in its entirety and prepare new set of rules providing for payment of subsistence

allowance with due regard to the unique nature of EDA service and all other relevant matters. This decision was rendered in (1989) 9 ATC 25. The department had taken this decision on appeal and an S.L.P. was filed before Supreme Court. The Supreme Court dismissed the S.L.P. by its order dated 10th July 1995. The Supreme Court while dismissing the S.L.P. issued the following directions :-

(1) We declare Rule 9 (3) of the Rules as violative of Article 14 of the Constitution of India.

(2) We leave it open to the Government of India to re examine the matter and if it is so chooses, frame a new set of Rules substituting Rule 9 (3).

(3) It would be open to the Union of India to examine such case to reach the conclusion as to whether the individual is entitled to the salary for the period when he was kept off duty under Rule 9 (1) of the Rules. In the event of any of the respondents being exonerated in the disciplinary proceedings the salary for the off duty period can only be denied to him after affording him an opportunity and by giving cogent reasons.

(4) We direct the appellants concerned to afford reasonable opportunity to the respondents in the disciplinary proceedings which are pending or in progress against any of them. This may be done as directed by the Tribunal in D' Jada's case."

6. Pursuant to such directions, the department has issued amended rules and it also provided for payment of ex-gratia allowance to be paid to the E.D.As during the period of put off duty at the rate of 25% of basic allowance and D.A. with appropriate increase, if the period of inquiry was prolonged.

7. In the light of this position, Rule 9 (3) as it existed earlier which denied the payment of any allowance during the put off duty period has been struck down and ceased to exist as a Rule from

15.7.88 which was the date of decision of the Bangalore Bench which was upheld by the Supreme Court. In the absence of the rule it cannot be argued that any rule provides for not paying any subsistence allowance or any other allowance during the put off duty period. After Bangalore Bench struck down the rule, Rule 9 (3) does not exist in the rule book w.e.f. 15.7.88. We have therefore to consider the effect of the omission to pay any allowance during the period of put off duty on the disciplinary proceedings. This issue has been gone into by us in the case of V. B. Raval and A.M. Kapasi etc. referred to earlier where we have discussed the law laid down by Supreme Court in such matters.

8. The Supreme Court in the case of Fakirbhai Fulabhai Solanki Vs. The Presiding Officer and another, reported in 1986 LLJ 124 has laid down that the non payment of subsistence allowance during the pendency of proceedings under Section 33 (1) or 33 (3) of Act, vitiates the proceedings and decision. It was a case of suspension of an employee and the Supreme Court had observed that the order of suspension by itself does not put an end to the employment. The workman continues to be an employee during the period of suspension and it is for this reason ordinarily the various standing orders in force in several factories and industrial establishments provide for payment of subsistence allowance which is normally less than the usual salary and allowance that are paid to the workman concerned. An order of suspension no doubt prevents the employee from rendering his services but it does not put an end to the relationship of master and servant between the management and the workman.

9. In a recent decision, following the decision in the case of Fakirbhai Fulabhai Solanki (supra) the Supreme Court in the case of Ram Lakhan etc. Vs. Presiding Officer and Ors. reported in 2000 (2) Scale, Page 9 has reiterated that during the period of suspension employees are entitled to be paid for the whole period of suspension at such rates as is provided under standing orders or service rules. It was also made clear that if there is no such provision, they would be entitled to be paid full salary even during the period of suspension.

10. It cannot be denied that put off duty can be equated with the period of suspension and therefore, even during the period of put off duty, an employee is entitled to claim subsistence allowance and if the subsistence allowance is not paid, the whole inquiry proceeding is vitiated. The Supreme Court in the case of State of Maharashtra Vs. Chanderbhan reported in AIR 1983 SC 803, has even struck down a service rule which provided for payment of a nominal amount as subsistence allowance to an employee placed under suspension and has observed that the right of life guaranteed to a person under Article 21 of the Constitution is to be read into the service rules relating to payment of subsistence allowance.

11. Ms. Sheth, learned advocate for the respondents however relying on the decision in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., (Supra) has submitted that the Supreme Court has held that the inquiry proceedings would be vitiated only when the applicant could not participate in the inquiry proceedings

on account of the nonpayment of the subsistence allowance. According to Ms. Sheth one of the qualifications required for the appointment to the E.D. post is that the candidate should possess adequate income and therefore when the E.D employee is placed on put off duty it cannot be said that he would be left with no income to maintain himself and thereby would not be in a position to defend himself properly. According to her the very fact that the applicant had participated in the inquiry proceedings suggest that he was not prejudiced in defending himself on account of the non payment of the subsistence allowance or put off duty allowance.

12. The arguments are quite attractive but when we considered these arguments in the light of the observations made in the case of Capt. M. Paul Anthony as well as in the case of O. P. Gupta Vs. Union of India reported in 1987 4 SCC 328 and also in the light of the striking down of Rule 9 (3) of the ED (Conduct & Service) Rules by the Bangalore Bench as well as by Supreme Court, we have no hesitation in rejecting the same. As observed earlier there was a specific provision made in Rule 9 (3) of the ED (Conduct & Service) Rules for non payment of subsistence allowance during the put off duty. These rules had come to be struck down by the Bangalore Bench and ultimately by Supreme Court in the case of Peter D' Jada as observed earlier on the ground that it is violative of Constitution of India. If in fact the eligibility criteria of having sufficient means of income for the appointment to any post of ED Staff was required to be considered for the non payment of the put

off duty allowance, then, Rule 9 (3) as it existed prior to amendment, would not have been struck down by the Supreme Court as unconstitutional. The very argument that he had other source of livelihood available with him was applicable to the case before the Bangalore Bench as well as the Supreme Court but in spite of the that the Rule regarding the non payment of the subsistence allowance to such a staff has come to be struck down by the Supreme Court. The reason for the same is provided in the case of O. P. Gupta Vs. Union of India wherein the Supreme Court has categorically stated that *'the order of suspension of a Govt. servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of the suspension. The real effect of suspension as explained by this Court in Kapasi Vs. Union of India is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance which is normally less than the salary except the pay and allowances, if he had not been suspended.'*

13. Elaborating further in M. Paul Anthony, the Supreme Court has laid down as under :-

On joining the Govt. service, a person does not mortgage or barter way his past rights as human being, including his fundamental rights, in favor of the Government. The Government by providing job opportunities to its citizens only fulfills its obligations under the Constitution, including the Directive Principles of State Policy. The employee on taking up an employment only

agrees to subject himself to the regulatory measures concerning his service. His association with the Govt. or any other employer, like instrumentalities of the Govt. or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under proviso to Article 309 of the Constitution or other statutory rules including Certified Standing Orders. The fundamental rights, including the right to Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. Provision for payment of subsistence allowance made in service rules only ensures non-violation of right to life of employee. That was the reason why this Court in the case of State of Maharashtra Vs. Chandrabhan Tale struck down the service rules which provided for payment of a nominal amount of Re.1 as subsistence allowance to an employee placed under suspension."

14. The Supreme Court thereafter examined the facts of the case before it and held that since the applicant therein could not attend the inquiry proceedings as he was not paid the subsistence allowance, the inquiry proceedings were vitiated. The Supreme Court has however nowhere stated in this decision that the participation in the inquiry proceedings by the delinquent would not bring any infirmity to the inquiry proceedings even if he has not been paid the subsistence allowance. However, the striking down of the service rules where it provided for the payment of nominal amount of Re.1 as subsistence allowance in the case of State of Maharashtra Vs. Chandrbhan Tale 1983 (3) SCC 387, suggests that the non payment of the subsistence allowance or payment of unreasonable amount would vitiate the inquiry proceedings. When the relationship of the master and servant during the period of put off duty does not come to an end and the delinquent continues to be a member of the service he is entitled to be paid the salary even

if not the full salary. If he is not paid, then, the Govt. is violating the provisions of the Constitution. The nonpayment of this allowance or part of the salary is clearly injurious to the delinquent and even if he has another source of income, it cannot be denied that this nonpayment of the subsistence allowance had the prejudicial effect on his defence. We are therefore unable to agree with submissions of Ms. Sheth that because the applicant had participated in the inquiry, it cannot be held that the nonpayment of the subsistence allowance had prejudiced him in defending the inquiry proceedings. We note that subsequent to the directions of the Supreme Court in Peter D' Souza's case the Govt. has amended Rule 9 of the P & T ED Agents (Conduct & Service) Rules, 1964 and introduced one new sub-rule 3 in place of the old sub-rule 3 struck down by the Supreme Court. Newly introduced sub-rule 3 now reads as under :-

An employee shall be entitled per month for the period of put off duty, the amount of compensation as ex-gratia payment equal to 25% of his basic allowance together with admissible dearness allowance thereon on such 25% of basic allowance. Provided that whether the period of put off duty exceeds 90 days, the authority which made the order of put off duty shall be competent to order the amount subsequent to the period of first 90 days as follows

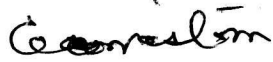
15. No doubt this sub-rule (3) has come into force from the date of its amendment i.e., 13.1.97 and was not applicable to the case of the applicant. However the amendment implies that the Govt. has recognized the need of payment of put off duty allowance or compensation to the employees who were placed put off duty and this itself suggests that the inquiry conducted prior to the

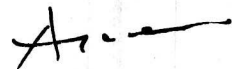
introduction of this amendment without payment of subsistence allowance was vitiated. We have therefore no hesitation in concluding that the nonpayment of the put off duty allowance or subsistence allowance to the applicant had the prejudicial effect to his defence in the inquiry and because of the non payment of this allowance, the inquiry proceedings against the applicant are vitiated and being illegal are required to be set aside. In view of this finding, we are not discussing the other contentions of Mr. Bhatt.

16. In the light of the above discussion, we have no doubt that the applicant ought to have been paid subsistence allowance during the put off duty period and since the same had not been paid, it can easily be said that the delinquent did not have sufficient opportunity to defend himself in the inquiry and therefore the whole inquiry proceedings are vitiated. The impugned inquiry therefore requires to be struck down on this ground. We are of the view that allowing the lump sum amount to the applicant for the period he remains under put off duty would be meeting the ends of justice in this case. We assess the same at Rs.5000/- with the further direction that from the date of the passing of this order the applicant shall be regularly paid compensation / ex-gratia payment under the due instructions issued by the Govt., at a rate not exceeding 50% of the wages he would otherwise get had he continued in service.

17. We also hold that the inquiry proceedings without his being paid any subsistence allowance are being illegal we set aside the

impugned inquiry. We also direct that the applicant be reinstated with immediate effect in the same post and the amount of lump sum compensation be paid to him within a period of four months from the date of the order and if not paid, the same would be payable with running interest at the rate of 12% per annum from the date of the payment. The O.A is allowed with the above direction. No order as to costs.


(G. C. Srivastava)
Member (A)


(A. S. Sanghvi)
Member (J)

Mb

Sr. No. 1102

Dated: 7.1.02

Submitted : Hon'ble Vice Chairman &

Hon'ble Mr. A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated 19.12.01 in CA/
Spt. C.A. No. 11238 of 2001 passed by the
~~Supreme Court~~/High Court against the Judgment/Oral
Order passed by this Tribunal in CA/664/93 is placed
for perused please.

De
7.1

S. J. (J)

D.R. (J)

Hon'ble Vice Chairman

Hon'ble Mr. A.S.Sanghavi, Member (J) & I/c.v.c. Acc 8/1/02

Hon'ble Mr. G.C.Srivastava, Member (A)

cc/8/1

WRIT

Dispatch No.

(TO BE RETURNED TO THIS COURT/TO BE SERVED ON RESPONDENT NO. 13)

(TO BE RETURNED TO THIS COURT DULY EXECUTED)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Interim Stay of Execution order XLI of L.P.C.
Special Civil Application No 11278 of 2001

UNION OF INDIA

& 2

Vs

GULAM MOHMED GHANCHI

Fixed on :

District AHMEDABAD

Petitioner(s) Advocate

MR ANANT S DAVE

Opponent(s).

To

✓ 1. THE REGISTRAR
CENTRAL ADMINISTRATIVE
TRIBUNAL, AHMEDABAD BENCH
OPP. STADIUM, NAVRANGPURA,
AHMEDABAD.

UPON Reading the petition of the abovenamed petitioner(s) presented this Court through his/her/their Advocate MR ANANT S DAVE praying that Pending the hearing and final disposal of this petition, the execution, operation and implementation of the order dtd.31.7.2001 passed by the Ld. Tribunal in O.A.No.664/1993 Ann.A to the petition is so far as the Tribunal has quashed and set aside the inquiry and has further directed the petitioner to reinstate the respondent, be stayed.

And Whereas Upon hearing MR ANANT S DAVE, Advocate for the petitioner Court passed the following order:-

Coram : D.M.Dharmadhikari, C.J. & K.A.Puj. J.(dt.14.2.01)

Rule. In the meantime, the impugned order of the Tribunal to the extent it directs reinstatement of the respondent employee in service, shall remain stayed on the condition of the petitioner, Union of India satisfying the money part of order within two months.

It is hereby accordingly ordered that, in the meantime, the implementation, execution and operation of the impugned order passed by you in O.A.664/1993, dated 31/07/2001, to the extent it directs reinstatement of the respondent employee in service, be and are hereby stayed on the condition of the petitioner, Union of India satisfying the money part of the order within two months.
Witness DEVDATTA MADHAV DHARMADHIKARI, Esquire Chief Justice

at Ahmedabad aforesaid this 14th day of Dec. 2001

By the Court.

✓ For

Deputy Registrar

This 19th day of Dec 2001

✓ For

Deputy Registrar

True copy

1 (11278) 2 (11278)
SR.NO. 40 (1281) REGISTER NO. 3 (1281) PAGE NO.

DATE: 12/7/04

RESPECTFULLY SUBMITTED TO : HON'BLE VICE CHAIRMAN
HON'BLE MEMBER (J) (J) (J)
HON'BLE MEMBER (A) (A) (A)
HON'BLE MEMBER () () ()

Certified Copy of order dated 24/6/04 in C.A.

Special C.A. No. 11278/01 of 12531/03 passed by the
Hon'ble Supreme Court / Hon'ble High Court against the
Judgment / Oral Order passed by this Tribunal in OA. No.
664/93 placed for perusal please.

Dealing Clerk

S.O. (J)

D.R. (J)

Registrar

HON'BLE VICE CHAIRMAN

HON'BLE MEMBER (J)

HON'BLE MEMBER (A)

HON'BLE MEMBER ()

Sr. No.

Dated:

Submitted : Hon'ble Vice Chairman &

Hon'ble Mr. A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated _____ in CA/

Spt. C.A. No. _____ of _____ passed by the
Supreme Court/High Court against the Judgment/Oral

Order passed by this Tribunal in CA/ _____ is placed
for perused please.

S.D.(J)

D.R.(J)

Hon'ble Vice Chairman

Hon'ble Mr.A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C.Srivastava, Member (A)

COMMON WRIT

URGENT/TIME LIMIT

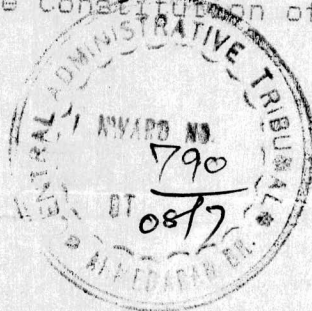
Decree Despatch No.
Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

14816
2/7

Special Civil Application No 11278 of 2001
(Under Article(s) 226, 227 of the Constitution of India)

1. UNION OF INDIA & ORS.
Vs
1. GULAM MOHMED GHANCHI



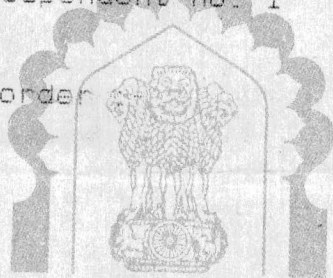
Petitioners
Respondent

To
Addressee List Attached
Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 03/12/2001 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 14/12/2001

And Whereas Upon hearing
MR ANANT S DAVE for the Petitioner no. 1-3
MR KANTILAL C BHATT for the Respondent no. 1
MR ANAND L SHARMA for the Respondent no. 1

Court passed the following order



CORAM: BHAWANI SINGH, C.J. & H.K. RATHOD, J.

DATE : 24-6-2004.

THE HIGH COURT
OF GUJARAT

SPECIAL CIVIL APPLICATION NO. 11278 OF 2001

WITH

SPECIAL CIVIL APPLICATION NO. 12531 OF 2003

1. "Both these petitions, (Union of India & others Vs. Gulam Mohmad Ghanchi (S.C.A.No.11278/01)).....

.....Rule in each matter is discharged. Interim relief granted earlier shall stand vacated."

Contd.....2

917

DRG/1

(COPY OF THE ORAL JUDGEMENT IS ATTACHED HEREWITH)

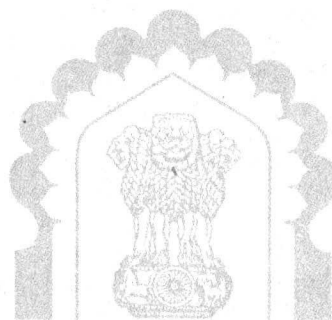
Witness BHAWANI SINGH, Esquire Chief Justice at Ahmedabad
aforesaid this 24th day of Jun, 2004.

By the Court

For Deputy Registrar

This *nd* day of Jul 2004

Note : This writ should be returned
duly certified within 2 weeks.
(501) 010720



सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

1. UNION OF INDIA

2. POSTMASTER GENERAL

THRO' DIRECTOR GENERAL
DEPTT. OF POSTS, MINISTRY OF
COMMUNICATION, DAK BHAVAN,
SANSAD MARG, NEW DELHI 1

VADODARA REGION
VADODARA 390 002

3. SENIOR SUPDT. OF POSTS
VADODARA WEST DIVISION
VADODARA 390 002

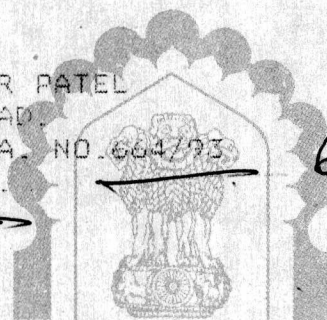
OFFICES

4. UNION OF INDIA, THROUGH CHIEF
POST MASTER GENERAL,
KHANPUR,
AHMEDABAD.

5. THE DIRECTOR,
POSTAL SERVICES,
OFFICE OF P.M.G.,
VADODARA.

6. THE SUPERINTENDENT OF POST
OFFICES,
BHARUCH DIVISION,
BHARUCH.

7. THE MEMBER
C.A.T., OPP. SARDAR PATEL
STADIUM, ASHRAM ROAD,
AHMEDABAD. (REF. O.A. NO. 664/93
& O.A. NO. 324/98)



THE HIGH COURT
OF GUJARAT

664/93

1

AUTHENTICATED COPY

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

District : Ahmedabad.

Special Civil Application NO. 11278 of 2001.

In the matter of Articles 226
and 227 of the Constitution of I,

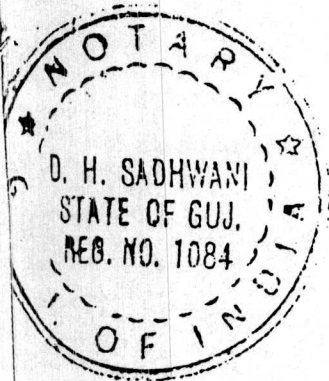
A N D

In the matter of Posts and
Telegraphs Extra- Departmental
Agents (Conduct and Service)
Rules, 1964;

A N D

In the matter between.....

1. Union of India, through
The Director General,
Department of Posts,
Ministry of Communication,
Dak Bhavan, Sansad Marg,
New Delhi.1.
2. The Postmaster General,
Vadodara Region,
Vadodara. 390 002.



(3) The Senior. SuPtt of Posts offices
Vadodra West Division

Vadodra. 39002, --- Petitioner ---

V/S

Mr. Gulam Mohamed. Ghanchi

Extra. Departmental. B. & Post Master

Dabhasa. (Padra, J. 391440. ---

--- Respondent ---

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 12531 of 2003

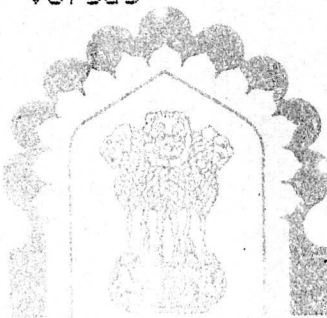
(Under Articles 226 of Constitution of India)

1. UNION OF INDIA
THRO' CHIEF POST MASTER GENERAL
KHANPUR, AHMEDABAD
2. DIRECTOR
POSTAL SERVICES
P.M.G.
VADODARA
3. SUPERINTENDENT OF POST OFFICES
BHARUCH DIVISION,
BHARUCH

.....Petitioners

Versus

1. ARVINDBHAI M PATEL
OZ. TAL. KARJAN,
DIST. BARODA



.....Respondents

APPEARANCE ON RECORD

MR ANANT S DAVE for Petitioner no. 1-3
MR PK HANDA for Respondent no. 1

CORAM: THE CHIEF JUSTICE & MR. JUSTICE H.K. RATHOD

Date of Decision : 24/06/2004

ORAL JUDGEMENT (Per : THE CHIEF JUSTICE)

16

SPECIAL CIVIL APPLICATION No 11278 of 2001

with

SPECIAL CIVIL APPLICATION No 12531 of 2003

Date of Decision: 24-06-2004

UNION OF INDIA
Versus
GULAM MOHMED GHANCHI

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting? *yes*

For the Petitioner

Mr Anant S. Dave

For the Respondents

Mr. Anand L. Sharma

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

~~1. Both these petitions. (Union of India & others~~
Vs. Gulam Mohmad Ghanchi (S.C.A.No.11278/01) and Union
of India & others Vs. Arvindbhai M. Patel (S.C.A.
No.12531/03)), are decided by this common judgment, since
ultimate question for determination is common. However,
before adverting to the same, brief facts of each case *b*
are being given separately.

Whether Reporters of Local Papers may be allowed to see the Judgment? *yes*

2. S.C.A.No.11278/01-Gulam Mohmad Ghanchi:

Respondent-Gulam Mohmad Ghanchi was serving as Extra Departmental Branch Post Master (EDBPM), Dabhasa, Taluka Padra. He was put off duty (suspension) on 31-08-1991. Thereafter, he was chargesheeted on 11-02-1992 on the charges that he received one registered letter no.85b for delivery to the Branch Manager of the Central Bank of India, but did not deliver the same to the Branch Manager, and instead delivered the same to somebody else, resulting in misappropriation of some amount, and that he received a registered letter dated 15-07-1991 for delivery to the Central Bank of India, duly entered at Sr.No.3 and 4 in B.O. slip dated 16-07-1991, but was not delivered to EDA Dabhasa for delivery and given to another person, and the address receipt was not kept with B.O. slip dated 26-07-1991. Enquiry was conducted against him and held guilty of the charges, therefore removed from service. After putting him off duty from 31-08-1991, no subsistence allowance was paid to him. Appeal against the order was rejected by the appellate authority, therefore, action was challenged before the Central Administrative Tribunal, Ahmedabad Bench (CAT). In the Criminal Case No.138/P/1999 (C.R.No.624/91) (Old Case No.154/P/1995) filed for the same charges, the respondent stood acquitted by judgment dated 31-03-2001 of Addl. Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai.

3. S.C.A.No.12531/03-Arvindbhai M.Patel:

Arvindbhai M.Patel was working as Extra-Departmental Branch Post Master (EDBPM) Oz (Bhalod SO). He was charge-sheeted on 15-02-1996 for imputations that he failed to maintain devotion to duty, engaged in forgery of signatures of the depositors, etc. Enquiry was conducted. However, Enquiry Officer reported that all the charges were not proved. The disciplinary authority disagreed with the findings of the Enquiry Officer, and issued notice to the respondent inviting his representation against proposed penalty to be imposed on him. Accordingly, respondent submitted his reply. Thereafter, penalty of removal from service was inflicted on him. He was put off duty (suspension) from 23-11-1995 prior to service of charge sheet and as per order dated 23-11-1995, no subsistence allowance was paid to him during the pendency of the inquiry. The respondent challenged the order before the CAT.

4. The common grievance advanced by the respondents is that during the course of inquiry they were not paid subsistence allowance, therefore, they could not defend themselves in the inquiry proceedings, and consequently, there is failure of principles of natural justice, and on this count, inquiry proceedings stand vitiated. CAT placed reliance on Apex Court decisions in Peter D' Jada & another Vs. Superintendent of Post Offices Udupi & others ((1989) ATC 225), Fakirbhai Fulabhai Solanki Vs. The Presiding Officer & another (1986 LLJ 124), Ram Lakhan etc. Vs. Presiding Officer & others (2000 (2) Scale 9), State of Maharashtra Vs. Chanderbhan (AIR 1983

SC 803), Capt.M.Paul Anthony Vs. Bharat Gold Mines Limited & another (AIR 1999 SC 1416) and O.P. Gupta Vs. Union of India (1987 4 SCC 328), and came to the conclusion that non-payment of subsistence allowance during the pendency of domestic inquiry amounts to violation of principles of natural justice, therefore, enquiry proceedings stand vitiated, and consequently respondents has been directed to be reinstated with immediate effect in the same post. It was further directed that lump sum compensation be paid in four months from the date of order, and failure will entail running interest @ 12% per annum in the case of Arvindbhai M.Patel, and in the case of Shri Gulam Mohmad Ghanchi, direction is for reinstatement and payment of Rs.5000/- etc. etc.

5. Shri Anant S.Dave, learned Additional Standing Counsel for the petitioners, contended that the judgments of CAT are liable to be set aside, since it did not consider that respondents did not raise the objection as to non-payment of subsistence allowance during enquiry proceedings, in which they participated regularly and in the absence of prejudice being shown, inquiry proceedings cannot be quashed. Reference is made to the Apex Court decision in Indra Bhanu Gaur Vs. Committee, Management of M.M.Degree College & others (2003 Lab IC 3844). We have earlier referred to the decisions of the Apex Court referred by the CAT in its judgments in our decision dated 18-06-2004 in Chief Post Master General Vs.Rameshbhai L.Parmar (S.C.A.No.5080/04) with regard to the contention raised by Shri Anant S. Dave, besides

State of Punjab and others vs. K.K.Sharma (2003 AIR SCW 2792). The fact remains that the respondents have not been paid subsistence allowance. Question is whether the respondents should raise this objection or the petitioners are duty bound to extend the benefit to the respondents. Where statute provides for payment of subsistence allowance, competent authority is duty bound to pay subsistence allowance. Even in absence of such a provision, the delinquent must be paid monthly salary he is entitled to from time to time, the reason being that suspension does not put an end to his service under the Government, he continues to be member of the service and master servant relationship continues. What is suspended by termination is that the delinquent is asked not to work. With this relationship, he is entitled to the salary because situation of suspension is brought about by the employer. The delinquent and his family have to subsist, defend the case against him and engage experts to help him. All these require substantial funds. Where from they will come? Therefore, by denial of pay or subsistence allowance/compensation amount, he is bound to suffer enormously with regard to his existence and cannot defend himself in the enquiry. The prejudice to the delinquent is writ large, therefore, obvious. The Apex Court has elevated the right to subsistence allowance to the level of right to live under Article 21 of the Constitution of India, therefore, non-payment thereof amounts to violation of this right. It is profitable to refer to Captan M.Paul Anthony case (supra)(paragraph 29):

"Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of "Subsistence Allowance", so that the employee may sustain himself. This Court in O.P.Gupta v. Union of India, (1987) 4 SCC 328: (AIR 1987 SC 2257) made the following observations with regard to Subsistence Allowance (para 15 of AIR):

~~"An order of suspension of a Government servant~~ does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India (AIR 1958 SC 300) is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance which is normally

less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. The very expression "subsistence allowance" has the undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter Oxford English Dictionary, Vol. II at p.2171 is "to remain alive as on food; to continue to exist". "Subsistence" means means of supporting life, especially a minimum livelihood". (Emphasis supplied)"

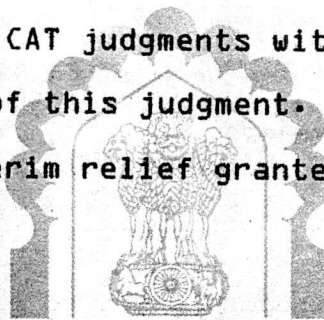
Division Bench of this Court in Special Civil Application No.11693 of 2002 - Union of India vs. Ishwarbhai R. Patel, held that where subsistence allowance is not paid during suspension, prejudice to delinquent is obvious."

6. Turning to the facts, apart from our conclusion that prejudice to employees is obvious on account of non-payment of subsistence allowance during the course of inquiry proceedings, respondents have stated before the CAT that they claimed subsistence allowance, which was not paid.

7. Consequently, the defence suffered, therefore, proceedings are liable to be quashed for violation of principles of natural justice. We have no doubt in our mind, for the reasons referred to hereinabove, that

respondents have suffered defence for non-payment of subsistence allowance/compensation/monthly salary. They could not defend themselves properly, they and their families suffered with regard to their subsistence and defence. Therefore, what emerges out of the aforesaid discussion is that CAT has examined the matter quite seriously and comprehensively before allowing the claims. We find no justification to take a different view in the matters.

Consequently, we find no merit in these Petitions and the same are dismissed. The petitioners are directed to implement the CAT judgments within four weeks from the date of receipt of this judgment. Rule in each matter is discharged. Interim relief granted earlier shall stand vacated.



सत्यमेव जयते

(BHAWANI SINGH)

THE HIGH COURT CHIEF JUSTICE
OF GUJARAT

sd/-

sd/-
(H.K. RATHOD)
JUDGE[sndeavu]
ps

By order of the Court

Deputy Registrar

TRUE COPY

P.S. TO THE HONBLE JUDGE
HIGH COURT OF GUJARAT.

TRUE COPY

Assistant Registrar

The ___ day of ___ 200