

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5406 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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- 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 this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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SK PANCHAL - Petitioner(s)

Versus

UNION OF INDIA, THROUGH MEMBER (P) & 2 - Respondent(s)

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Appearance :

MS SNEHA A JOSHI for Petitioner
None for Respondent(s) : 1 - 2.
MS ARCHANA U AMIN for Responden: 1,
None for Respondent(s) : 3.
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 31/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard the learned counsel for the parties.
2. The petitioner being aggrieved by the order dated 13.2.2004, passed in O.A. No. 514 of 2000 by the Central Administrative Tribunal, Ahmedabad Bench, has filed this Special Civil Application with a submission that the order passed by the Tribunal is patently illegal, it does not take into consideration the question raised by the petitioner and that the Tribunal also failed in not taking into consideration that the punishment awarded to the petitioner was shockingly disproportionate to the act of misconduct.
3. The facts, necessary for disposal of the present writ application are that the petitioner was holding charge and was to receive certain money from the higher department and was to distribute the same to the number of the beneficiaries. As the money was not distributed, certain complaints came to be made and a preliminary inquiry was conducted by the department. After being satisfied that the allegations made by the complainants were all sound, Memorandum of Charges and Article of Charges along with certain documents were issued to the petitioner and inquiry was conducted in accordance with the rules. During the course of the inquiry, some of the witnesses did not support the department's case

and turned hostile, therefore, they were confronted with their statements recorded in the preliminary inquiry. After the conclusion of the inquiry, a finding was recorded that the witnesses, subsequent to their complaint, received money and were now trying to protect or save the petitioner. The department, in light of the evidence available in the records, recorded a finding of guilt, issued notice to the petitioner and after receiving the show cause, terminated him. Being aggrieved by the said order, the petitioner preferred the said Original Application before the Central Administrative Tribunal and after dismissal of the same, he is before this Court.

4. Ms. Joshi, learned counsel for the petitioner submitted that the statements recorded during the course of the preliminary inquiry were not supplied to the petitioner and as his defence was seriously prejudiced, statements could not be relied upon by the Inquiry Officer and finding of guilt could not be recorded against the petitioner.

5. Ms. Archana Amin, learned counsel appearing for the respondent no.1 submitted that along with a memorandum dated 7.3.96, statement of imputation of misconduct in support of each article or charge was enclosed, a list

of documents by which and list of witnesses by whom articles of charges were proposed to be sustained was also enclosed. In Annexure:III appended to the said memorandum, according to her, documents were referred to him and copies were also supplied. She submits that the petitioner is raising the false plea before this Court.

6. It is to be seen from the memorandum dated 7.3.96 that the department was referring to certain documents and was also referring to the witnesses which were to be produced and examined respectively in the course of the inquiry. The petitioner, immediately after receipt of the memorandum along with Annexure:III did not raise any objection that the statements of the witnesses referred in Annexure:III were not supplied to him.

7. When witnesses were examined in the inquiry and they turned hostile, the Presenting Officer placed reliance upon the statements and produced the same which were recorded during the course of the preliminary inquiry. Even at the time of production of such documents, the petitioner did not raise any objection that the documents sought to be produced at a late stage were never supplied to him. If on two earlier occasions, the petitioner did not raise any objection regarding

non-supply of the documents, it would not be possible for a writ Court to hold in favour of the petitioner that the documents were not supplied to him or his defence was seriously prejudiced.

8. It was next submitted that the punishment is shockingly disproportionate, therefore, this Court should interfere in the matter. Reliance was placed on a Division Bench judgment of this Court in the matter of **Jagdishchandra Maganlal Trivedi Vs.State Bank of India,reported in 2004(2) G.L.H. 514.** In the said matter, the Division Bench observed that the shortage of cash was considered to be the negligence of the said appellant by the appellate Local Board, but the High Court was of the opinion that when the intention of the appellant was not doubted and when the benefit of doubt had been given, that would mean full exoneration, therefore, conclusion to prove the negligence is a contradictory finding. The Division Bench was of the opinion that at the most, it could be termed as procedural irregularity but it could not be termed to be the negligence of the appellant. Facts of the said case were altogether different. In the present case, the Inquiry Officer has relied upon the statements and the Tribunal has also confirmed the said

findings. It would not be possible for this Court to reappreciate the evidence and to arrive at a different finding.

9. We find no reasons to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief granted earlier, if any, is vacated. No costs.

[R.S. GARG, J.]

[SHARAD D. DAVE, J.]

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