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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated: This the 28<sup>th</sup> day of Sep 2005.

Original Application No. 1060 of 1997.

Hon'ble Mr. K.B.S. Rajan, Member (J)  
Hon'ble Mr. A.K. Singh, Member (A)

Lachhi Ram Ahirwar, S/o Sri Dlhani Ram,  
R/o Village Jakhauli, P.O. Ait,  
Distt: Jalaun.

.....Applicant

By Adv: Sri S. Agarwal & Sri S.K. Mishra

V E R S U S

1. Union of India through its Secretary,  
Post and Telecommunication Deptt.,  
NEW DELHI.
2. The Senior Superintendent of Post Offices,  
Jhansi Division,  
JHANSI.
3. The Post Master General,  
Agra Region,  
AGRA.
4. The Director General, Postal Services,  
NEW DELHI.
5. The Director, Postal Services, Agra Region,  
AGRA.

.....Respondents.

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, Member (J)

The applicant, EDBPM at the material point of time was kept under suspension in January, 1993 and the said suspension was suo motu revoked in April, 1993. According to the applicant the



order of suspension was not communicated and all those day he had worked there but was not paid the due salary and allowance. Similarly, when he was transferred from Konch to Lalitpur by order dated 24<sup>th</sup> June, 1993, even that order of transfer was not stated to be communicated to the applicant.

2. On 8<sup>th</sup> July, 1993, the applicant was served with a charge sheet contained certain charges of misconduct purported to have been committed by the applicant during the period from February, 199 onwards. All the charges were refuted by the applicant. Formalities of appointment of Inquiry Officer, conduct of inquiry etc, were completed and according to the applicant, while on a number of occasion the inquiry officer having fixed the date of hearing either did not attend or had the case adjourned, for a hearing conducted on 16<sup>th</sup> March, 1994, there was no intimation to him about the same and in his absence the inquiry was conducted. Even had the intimation been given, perhaps, the applicant (according to him) would not have been able to attend the same as no salary was paid to him. And the inquiry officer, had submitted the report even without waiting for receipt of the defence brief. Again, according to the applicant, the copy of the inquiry report



alleged to have been sent to him was not received by him and the Disciplinary Authority had passed the order of dismissal from service, vide order dated 14-09-1994. An appeal from the side of the applicant was preferred on 11-11-1994 against the order of dismissal which was followed by various reminders. The applicant has challenged the penalty order dated 14<sup>th</sup> September, 1994.

3. The OA has been contested by the respondents, who had raised the preliminary objection as to limitation and on merit the respondents had stated that the order of suspension was refused to be received by the applicant; that the applicant had chosen not to cooperate in the inquiry; that on 21-10-1993 he did not attend that witnesses were examined. Again the applicant had failed to attend the inquiry scheduled on 07-01-1994 when some more witnesses were examined. On 16-03-1994 also, according to the respondents, even after affording time to participate in the inquiry, the applicant did not turn up. The Inquiry officer had closed the prosecution case and in the absence of the applicant, he could not ask for any defence witness nor could he ask the very applicant himself, as was required by the Rules. As such, the inquiry was closed by the inquiry

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officer and the officer had allowed three days time to file the version of the applicant.

5. Arguments were heard and the documents perused. The learned counsel for the applicant contended that here is a case where no opportunity had been given and the entire case collapses on account of violation of principles of natural justice. In support of his claim that the proof of misconduct is not on the basis of any documents, the applicant relied upon the judgment of the Apex Court in the case of Bareilly Electricity Supply Co., Ltd vs the Workmen and others reported in AIR 1972 SC 330 and the judgment in the case of Union of India vs Sardar Bahadur 1972 SLR 355.

6. First about the limitation issue. The order impugned herein is dated 14-09-1994 and the applicant had to prefer an appeal which he did vide appeal dated 11-11-1994. Six months thereafter is the reckoning of limitation period, i.e. May 1995. It is within one year thereafter i.e. by May 1996 the application ought to have been filed. The application was filed on 01-10-1997 i.e. at least 16 months after the period of limitation. Thus, there is certainly substance in the preliminary objection raised by the respondents.

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7. As regards merit of the matter, the admitted fact is that the applicant did not participate on many occasions. The question that arises for consideration is whether he had been denied the opportunity or he had not availed of the opportunity. A perusal of the records clearly shows that the applicant had not availed of the opportunity. The Inquiry officer has been meticulous in keeping the applicant informed but it is the applicant who had remained complacent. Again, the Inquiry officer by a detailed report held that the charges stood proved. All the formalities as per rules have been complied with.

8. The judgment **Bareilly Electricity Supply Co. Ltd. v. Workmen, (1971) 2 SCC 617**, cited by the applicants do not apply to the facts of the present case. The Apex Court had observed in para 14 therein as under:-

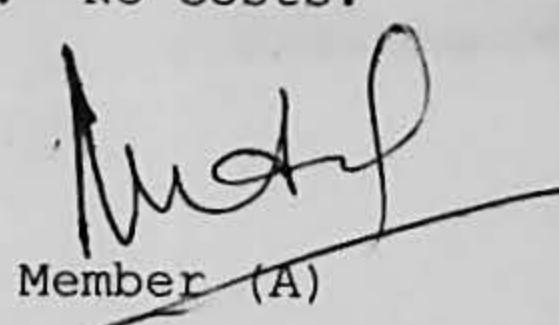
"14. An attempt is however made by the learned Advocate for the appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof. The observations of Venkatrama Iyer, J., in Union of India v. Varma<sup>18</sup> to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the public servant in which he complained he was

not permitted to be cross-examined. It however turned out that lie was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the Enquiry Officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well recognised rules of procedure. In these circumstances it was observed at p. 264:

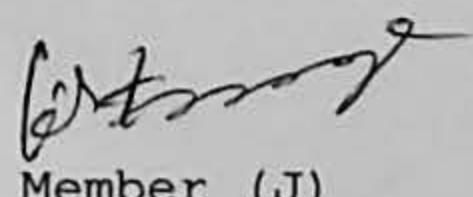
"Now it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law."

9. In the instant case when the applicant himself did not participate in the inquiry, the I.O. was right in relying upon the documents and other evidences to come to the conclusion about the proof of charge.

10. Hence, both on limitation as well as on merit, the application fails and hence is dismissed. No costs.



Member (A)



Member (J)

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