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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 06.02.2002

O.A. No. 188/1997.

Smt. Mangi Devi wife of Late Srichand aged about 52 years, resident of vill. and PO, Momasar Distt. Churu, (LRS of Late Sri Chand, last employed on the post of PA at Sardar Shahar, Distt. Churu).

... APPLICANT.

v e r s u s

1. The Union of India through Secretary to Ministry of Communication, Department of post, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Churu Division, Churu, Rajasthan.
3. Director of Postal Services, Raj. Western Region, Jodhpur-342003.
4. The Member (Personnel), Postal Board, Dak Bhawan, New Delhi.

... RESPONDENTS.

Mr. B. Khan counsel for the applicant.
Mr. Vineet Mathur counsel for the respondents.

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Hon'ble Mr. Justice O.P. Garg, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Justice O.P. Garg)

Late Shri Srichand, who was a Postal Assistant and was looking after the work of EDBPM, had challenged the order of his dismissal dated 31.03.1994 (Annexure A-2). He filed a departmental appeal as well as a Revision



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Application which too were dismissed on 08.02.1995 and 06.03.1996 respectively. During the pendency of this OA, the original applicant died and in his place his widow, Smt. Mangi Devi, has been substituted.

2. The charge against the original applicant was that during the period from 27.06.1990 to 24.11.1990, he had squandered a sum of Rs. 16,575/- which he received in official capacity and thereby committed temporary embezzlement. Another charge also relates to the similar misconduct. After holding the enquiry, the departmental authorities found the applicant guilty of the charges and accordingly the order of punishment was passed by the competent authority, and affirmed in appeal and revision.



3. The order of dismissal has been challenged primarily on two grounds, firstly, that certain necessary documents, which were required by the applicant to be supplied, were not made available to him and secondly, the applicant was not examined and denied the opportunity of leading his defence.

4. After having heard the learned counsel for

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the parties at some length and taking into consideration the material available on record and the circumstances of the case, we find that the applicant did not make any application for supply of the documents at the initial stage. He made an application only on 12.01.1994 for supply of the additional documents, after the prosecution witnesses had already been examined. The additional documents, which were demanded by the applicant, were not germane to the enquiry and, in any case, they could not be said to be material documents. The law on the point is now well settled by a catena of decisions of the Apex Court that the prejudice test has to be applied in every case of departmental enquiry and merely because certain documents were not made available to the charged employee, the enquiry proceedings cannot be quashed. If any authority on the point is required, a reference may be made to the recent decision of the Apex Court in the case of ~~State of U.P. vs. Harendra Arora & Anr.~~ ^{State of U.P. vs. Harendra Arora & Anr.} 2001 (3) AISLJ 421.



5. Now it is the time to consider the second ground whether the applicant was unlawfully denied the opportunity of leading his defence, as contemplated in Rule 14(18) of CCS(CCA), Rules,

1965. Learned counsel for the applicant pointed out that on 21.01.1994 the applicant was to appear before the enquiry officer but he could not present himself as he had fallen ill. This fact is fortified from the ordersheet maintained by the Enquiry Officer, a copy of which has been brought on record. The Enquiry Officer after taking into consideration the inability of the applicant to appear on 21.01.1994 sent an intimation by registered post, intimating the next date on which the applicant was required to appear i.e. 28.01.1994. Learned counsel for the applicant asserted that this registered letter was received by the charged employee on 01.02.1994. In support of his contention, he placed reliance on the observations made by the Apex Court in the case of Ministry of Defence and Others Vs. S. B. Ramesh 1998(2) SLJ 67. We have perused the decision aforesaid and find that the observations made in this case are not of universal application and are of no help to the applicant as in the instant case when the applicant failed to appear on a particular date i.e. 21.01.1994, another opportunity was afforded to him. The report of the enquiry was submitted on 04.03.1994. During the long period, intervening between 01.02.1994 to 04.03.1994, the charged employee did not take any



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steps to ascertain as to what was the stage of the enquiry. He deliberately avoided to appear as a defence witness.

6. The enquiry report cannot be faulted on any ground. The procedure prescribed by law has been followed. Since there is no legal infirmity in the proceedings of departmental enquiry, the order of dismissal passed against the original applicant, who has since expired, cannot be interfered by this Tribunal on flimsy grounds.

7. The OA, being devoid of any merit, is dismissed without any order as to costs.




(A.P. NAGRATH)
Adm. Member


(JUSTICE O.P. GARG)
Vice Chairman