

AM

Hon'ble Mr. Justice U.C.Srivastava, V.C.  
Hon'ble Mr. A.E. Gorthi, Member (A)

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

As the parties have ~~exchanged~~ the pleadings and  
the case is <sup>ripe &</sup> ~~right~~ for hearing. We have <sup>heard</sup> the learned counsel  
for the parties <sup>and</sup> ~~for~~ disposed of the case finally. Admit.

The applicant who was appointed as Extra Departmental Branch Postmaster at Kukra Town after enquiry was dismissed from the service vide an order dated 19.7.1982 but later on he was removed from the service vide order dated 29.4.83. According to the applicant he preferred a departmental appeal against the same and he waited for years together, but the appeal was not been disposed of and that is why he has come before the Tribunal after several years.

2. The respondents have stated that no appeal has ever been received and the applicant never filed any appeal and the application is barred by time and as such it should be dismissed. The applicant has filed before us certain postal receipts indicating that some communication was sent through the registered post to the Director of Postal Services Lucknow Region in the year 1983 and thereafter also certain receipt in which it was not known that what was sent in it, and who was the despatcher of

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of that. But anyhow without intimating the question of limitation we are deciding the case on merits.

3. From the facts as stated by the parties it appears that the Mail Overseer, Shri Ram Darshan Lal who visited Kukra on 23.11.65 on the direction of Sub Post Master for getting the liabilities cleared at the Branch Post Office which were pending for consideration since long and he found shortage of Rs.412.88/- in the balance of Kukra Town Branch Office on 23.11.65 on verification of Cash and Stamps of the Office. The applicant was also found absent which was taken as unauthorised absence on 22.11.1965 and it was discovered that the Mail Peon of Usha Farm and Paharnagar Branch Post Office could not get their mails from Branch Post Master, Kukra Town upto 2 P.M. on 22.11.1965. The applicant was therefore ordered to be put off duty vide an order dated 25.11.65. The applicant did not receive the said order. He was again ordered to put off duty by the respondents by the letter dated 26.11.65. Although the applicant had made certain allegations against the said Mail Overseer who made a inspection. Obviously a surprise inspection which has been denied, but it <sup>will serve no</sup> ~~is not the~~ useful purpose ~~itself into~~ going <sup>into</sup> ~~those~~ allegations, as the applicant has failed in establishing those allegations which have been denied. A charge-sheet was issued to the applicant by the Superintendent of Post Offices Kheri Division on 2.4.1979 i.e. some 14 years thereafter, and the respondents have tried to explain this by stating that two criminal cases (No.114 & 63) registered against the applicant under Section 409 of I.P.C. were under investigation by the Police and disciplinary proceedings against the applicant could not be initiated till their finalisation. After the finalisation of the above two criminal cases, disciplinary proceedings under Rule 8 of the E.D.A. (Conduct & Service)

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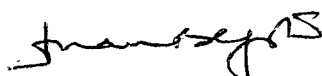
Rules, 1964 were initiated and a charge-sheet was issued to the applicant. The applicant submitted his reply to the chargesheet. An Enquiry Officer was appointed. The Enquiry <sup>officer</sup> held an enquiry into the matter and although four PWs were named but only two were examined and the remaining two PWs did not turn up and the complaint of the applicant is that he could not get an opportunity to cross-examine them. Obviously they were not examined and as such there was no occasion for cross-examining those witnesses. The applicant raised the grievance that the Enquiry Officer arbitrarily and prejudicially denied to have produced and examined the documents and witnesses as requisitioned by the applicant. Though this fact has been denied and it has been stated that in connection with the charge against him all the relevant documents were given to the applicant and the applicant has not pointed out any document which may have a direct bearing on the charge against him.

4. The Enquiry Officer submitted his report to the disciplinary authority and it appears that the copy of the report was not given to the applicant to make a representation against the same. An order was passed against the applicant on 19.7.82 terminating his services as a result of the enquiry but the said order was reviewed by the Director of Postal Services and it was ordered by him that the case should be re-examined and the punishment order should be cancelled. Accordingly the punishment order was cancelled and the Enquiry Officer report was given to the applicant, who filed an objection against the same. The matter was re-considered and thereafter the disciplinary authority passed the removal order. Against the removal the applicant filed an appeal. The applicant had challenged the enquiry proceedings on variety of grounds. So far as the first ground is that the Enquiry

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Officer report was not given to him, <sup>it is</sup> relegated into the background ~~and~~ in as much as the order of disciplinary authority the Enquiry Officer's report was given to the applicant and the applicant got an opportunity to file an objection against the same. The other grievance of the applicant is that there was no such evidence against the applicant from which the findings <sup>embarrassment</sup> could have been recorded. Obviously it is a case in which it cannot be said that it is a case of no evidence. But there was some evidence and if some evidence was there on the basis of it the findings could have been recorded, The disciplinary authority <sup>has the</sup> ~~were evident~~ jurisdiction to record its finding. The Tribunal is not competent to enter into the question of fact where there was some evidence on the record. It was ~~repeated again~~ <sup>for</sup> on the authorities concerned to appreciate the evidence one way or the other. So far as the charge of bias <sup>and prejudice</sup> against the Enquiry Officer they have not been able to get any ground on which it can be said the bias and prejudice against him has been established. Regarding the enquiry proceedings we have found that the applicant was given opportunity to file objection against the same and no such documents could be pointed out, which <sup>examine</sup> ~~elevate~~ the prejudice to the case of the applicant or that he was denied of the opportunity. On merits we do not <sup>find</sup> ~~found~~ any force in the application or any defect in the enquiry proceedings, and accordingly this application is without any merit and it is dismissed. No order as to costs.

  
MEMBER (A)

  
VICE-CHAIRMAN.

10th December, 1991, Lucknow.  
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