

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

PRESENT

SMT. PRANITA MOHANTY
PRESIDING OFFICER

REF. CGIT-1/14 OF 2011

9.9.2022

Mr. Rajesh Kothari, Adv present for management.

R.S.Upadhyay, adv present for second party workman.

Matter came up for hearing today on the application filed by the workman on 2.3.2020 praying therein for recall of the E.O. already examined on behalf of the management for further cross-examination. A detailed reply to the said application has been filed by the management.

The contents of the workman praying recall of the witness is that on 22.4.2016, a petition was filed by the claimant workman for bringing 15 documents from the Vol.II of the documents filed by the management to record as due to inadvertence those documents could not be proved / confronted. The management first party on 19.4.2017, filed reply to the said application stating that the documents described in Sr.No.1 to 9 available in the compilation of documents Vol.II filed by the management are now were relevant as those are the representations sent to different persons by speed post. However, the documents described in Sr.No.10 to 15 in the document Vol.II of the management could not be placed on record along with other documents. The first party management has no objection if those documents will be taken on record as part of the enquiry proceeding. Thereafter the second party workman

filed the application praying that the said documents were in possession of the management and when the enquiry officer was examined and cross-examined those were intentionally not brought to the record. Now that the management is agreeing to bring those documents into this proceeding, it is necessary that the workman should cross-examine the management witness i.e. the enquiry officer and confront the documents to him. The denial of the opportunity would be prejudicial to him.

The learned A.R. for the management took serious objection and submitted that all those documents at Sr.No. 10 to 15 are the documents filed by the workman during the enquiry and the copies of the same were available with the workman. Even if the management omitted to prove those documents through the management witness it could have been done by the workman by producing the same from his possession and confronting to the witness. He further added that the said witness who was the E.O. is too old and retired from service some 12 years back. His whereabouts is not known to the management and his attendance cannot be procured without inordinate delay and difficulty. The learned A.R. in support of his contention placed reliance in the case of Ram Rati vs. Mange Ram (D) through LRS and others decided by the Hon'ble SC in Civil Appeal No.1684 of 2016 wherein the Hon'ble SC have held that under order 18 Rule 17 A the law permits production of evidence not previously known or which could not be produced despite due diligence. Rule 17 further provides that a Court make all a witness at any stage who has been examined to put such question as the Court thinks fit. But the basic purpose of Rule 17 is to enable the court to make order for the ends of justice or to prevent abuse of process. But the said power cannot be invoked to fill up the omission in the evidence already laid by a witness. It cannot also be used for the purpose of filling of lacunae in the evidence. But this argument advanced by the learned A.R. for the management sounds not convincing though there is no doubt on

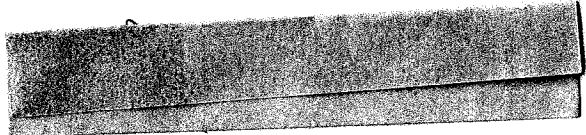
the principle pronounced in the judgment since the management has already agreed for admission of the document in Sr.No.10 to 15 into evidence.

In reply, the learned A.R. for the workman submitted that the said documents though in the possession of the workman as his personal copies could not be confronted since the A.R. conducting the case omitted to do so. The learned A.R. for the management took objection for the stand taken.

On hearing the argument advanced by both the parties, it is found that the documents proposed to be brought on record and for which the management has already agreed by filing reply to the application are material documents for proper adjudication of the matter. Once those documents are admitted as evidence the party relying on the document has a right to confront the same to the witness of the opposite party. It is true that the matter is very old and the witness cannot be called without delay and difficulty. But at the same time, it is to be considered that a party to the litigation who is not conversant with the procedure of the legal proceedings should not suffer for any fault committed by his advocate or A.R. in conduct of the case to whom he had entrusted the matter and reposed with.

The Courts and Tribunals exist to subserve the cause of justice and not to punish a party for any mistake committed in conduct of the case. Keeping that principle in view the petition filed by the workman second party on 2.3.2020 is hereby allowed. The management is directed to produce the witness for further cross-examination before argument is heard on preliminary issue.

Call the matter on.14.12.22....for the purpose as indicated above.



PRESIDING OFFICER

CGIT-1 MUMBAI