

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 27th day of July, 2010

Original Application No. 274/2010
with MA No. 180/2010

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. K.S. SUGATHAN, MEMBER (ADMV.)

Smt. Vimla Nigam
w/o Shri Narendra Nigam,
r/o 6-Fountain Square, Behind Gold Sukh,
Jawahar Circle, Jawahar Lal Nehru Marg,
Jaipur and at present residing at
Apartment 15-H, 118/17, Park Lane (N),
Union Trunpike,
NY- 11375 (USA).

.. Applicant

(BY Advocate: Shri Suresh Pareek)

Versus

1. Bharat Sanchar Nigam Limited
through its Managing Director,
Barakhambha Road,
New Delhi.
2. Chief General Manager,
Bharat Sanchar Nigam Limited,
Rajasthan Telecom Circle,
M.I. Road, Jaipur.
3. Principal General Manager,
Telecom Circle, Jaipur
Bharat Sanchar Nigam Limited,
M.I. Road, Jaipur
4. Deputy General Manager (Admn)
O/o CGMT, Raj. Circle,
Jaipur:

... Respondents

(By Advocate:)



ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"The applicant prays that the original application submitted by the applicant be kindly accepted with costs and the impugned orders dated 24/9/1999, 22/12/1999 and 31/3/2004 passed by the respondents be kindly quashed and set aside and the prayer of voluntary retirement may be accepted in view of application dated 27/9/1999 and the respondents be further directed to pay the applicant the due benefit of G.P.F., Gratuity, leave encashment, CGISS, Bonus, due salary from 16.6.1997 to 27.9.1999 and thereafter the payment of regular pension with interest accused-respondent the rate of 18% per annum on the delayed payment."

Alongwith this OA, the applicant has also filed Misc. Application No.180/2010 for condonation of delay.

2. Briefly stated, facts of the case are that the applicant was initially appointed as Telephone Operator in the P&T Department on 07.11.1978. The applicant was sanctioned 15 days Extra Ordinary Leave w.e.f. 16.6.97 to 30.6.97 to meet her husband abroad. After expiry of the period of sanctioned leave, the applicant did not join, as such, she was served a chargesheet on 6.9.1999. It may be stated that before service of chargesheet, notice dated 21.11.1997 was also served upon the applicant declaring the applicant as absconding w.e.f. 01.07.1997. Subsequently, the appropriate authority has awarded a penalty of reduction by two stages in the pay scale vide order dated 24.9.1999. It is case of the applicant that subsequently on 27.9.1999 she applied for voluntary retirement as she had completed more than 20 years of qualifying service. It is further stated that said request of the applicant was turned down

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vide order dated 22.12.1999. It is further pleaded that the said order of rejection was not served upon the applicant at the U.S.A. address. Since the applicant was absconding from duty, as such, another major penalty chargesheet dated 8.6.2001 was served upon the ^{the applicant} which finally culminated into imposition of the penalty of removal from service and the willful absence of the applicant from duty since 28.09.1999 was treated as dies-non. It is this order, which is under challenge before this Tribunal and based on these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. In the application for condonation of delay, the reason given for condoning the delay find mention in para-2, which thus reads:-

"2. That the letter of punishment for removal from service dated 31/3/2004 was received by the applicant in the month of April, 2004 in USA but the applicant could not come India due to her illness and as such she could not be able to assail the same. As such the delay in filing the application be kindly condoned as the cause of action is recurring cause of action. The respondents have not paid the G.P.F., Gratuity and other retiral benefits and as such the application of the applicant deserves to be heard and decided on merit and the delay occurred in filing of the application could not come in the way."

4. We have heard the learned counsel for the applicant at admission stage. The question which requires our consideration is whether the applicant has made out sufficient cause for condoning the delay. As can be seen from para-2 of the Misc. Application, as reproduced above, the applicant has admitted that the order of removal from service dated 31.3.2004 was received by her in the month of April, 2004 in U.S.A. The only reason given by the applicant for condoning the delay is that she could not come to India due to her illness, as such, the impugned order could not be assailed.

According to us, the reason so given by the applicant for condoning the delay does not constitute sufficient cause and the delay has not been satisfactorily explained. As such, the application for condonation of delay is required to be rejected on this score alone. The applicant has not explained the nature of illness which prevented her to come India for more than six years after receipt of copy of the impugned order in April, 2004. It was orally argued that the applicant was not in a position to travel by air, as such, the OA could not be filed. According to us, such explanation given by the applicant deserves out right rejection. It may be stated that similar plea was taken by the applicant in the year 1999 when in reply to the earlier charge memo, the reply given by the applicant was that she has already requested to grant leave w.e.f. 1.7.1997 to March, 1998 as per her Doctor's advice as she was unable to travel by air due to sickness and as soon as she was declared fit to travel by air as per Doctor's advice she immediately rushed to India to join duty. Such contention of the applicant was rejected as she has not submitted any medical certificate in support of her contention. In the Misc. Application, except making a vague averment that the applicant could not come to India due to her illness, the applicant has neither specified nature of her illness nor submitted any document from the Doctor in the nature of medical certificate to the effect that the applicant was not in a position to travel during the preceding six years computed from filing of this application. As such, this vague assertion of the applicant cannot be accepted.

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5. Further contention raised by the applicant is that termination of service is recurring cause of action, which cannot be accepted. It is settled position that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is exception to this principle. If the grievance in respect of any order or administrative decision which related to or affected several others also and if reopening of the issue would affect the settled rights of third parties then the claim will not be entertained. The Hon'ble Apex Court in the case of Union of India and Ors. vs. Tarsem Singh (2008) 2 SCC (L&S) 765 has held that issue related to payment or fixation of pay or pension, relief may be granted in spite of delay as it does not affect rights of third parties. But if the claim involved issues relating to seniority or promotion etc. affecting others, delay would render the claim stale and doctrine of laches/limitation would apply.

6. As can be seen from the facts as stated above, in this case, the cause of action has arisen when the impugned order of removal from service was passed on 31.3.2004. It is not a case where cause of action accrued from month to month. Thus, the contention raised by the learned counsel for the applicant that removal from service is a recurring cause, cannot be accepted. As already stated above, it is not a case of such nature where cause of action is continuing from month to month and in that eventuality, relief can be restricted to a reasonable period of about 3 years or so. Thus, contention of

the applicant to this effect is without any basis and deserved out right rejection in the light of the law laid down by the Apex Court in the case of Tarsem Singh (supra) where the Apex Court has held that service related claims should be rejected either on limitation where limitation period is prescribed or on the ground of delay and laches where there is no limitation and also that continuing wrong is a single wrongful act which causes a continuous injury whereas recurring wrongs are those which occur periodically, each wrong giving rise to distinct and separate cause of action. Section 21 of the Administrative Tribunals Act, 1985 prescribes period of limitation within which the OA could be filed which, inter alia stipulates that the Tribunal shall not admit an application unless the applicant is made within one year from the date on which such final order is made. In the instant case, final order was passed on 31.3.2004, as such the applicant ought to have filed the OA on or before April, 2005. Admittedly, the OA was filed on 25th May, 2010 i.e. after a lapse of more than six years. Thus this OA suffers from inordinate and explained delay. The applicant by her conduct which may fairly be regarded as equivalent to waiver of right, cannot be granted relief especially when the applicant has abandoned the service since 28.9.1999 and left the country without any intimation/permission of the competent authority, which fact is also not disputed and cannot be disputed by the applicant when charges against the applicant stood fully proved. Further, the request of the applicant for voluntary retirement stood already rejected vide order dated 22.12.1999 which order was passed within three months from the date of notice

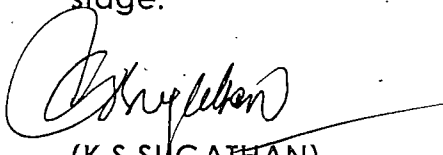
of voluntary retirement, validity of which order has not been challenged by the applicant in this OA on any permissible ground. Thus, the prayer of the applicant that notice of voluntary retirement dated 27.9.1999 which stood already rejected, be allowed, cannot be granted in the facts and circumstances of this case, more particularly,, when the order regarding rejecting request of voluntary retirement was passed on 22.12.1999 i.e. more than a decade ago. Thus, we are of the firm view that the present OA is hopelessly time barred in terms of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985 and the applicant has not given satisfactory explanation for condoning the delay. Thus, without going into merit of the case, the Misc.Application No.180/2010 for condonation of delay is dismissed. In view of dismissal of Misc. Application for condonation of delay, no order is required to be passed in OA No.274/2010 which shall stand disposed of accordingly.

7. Lastly, the learned counsel for the applicant submits that the applicant has also not been paid GPF amount which the respondents were bound to refund, even if the order of removal from service of the applicant is upheld. From the material placed on record, it is not borne out whether the applicant has made any request before the appropriate authority for payment of GPF amount. In case the applicant makes such request before the appropriate authority, we see no reason why the appropriate authority shall not entertain request of the applicant and pass appropriate order regarding release of GPF amount, if any. In any

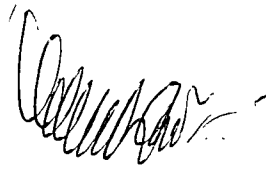
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case, such order shall be passed within a period of three months from the date of receipt of such request from the applicant.

8. With these observations, the OA is disposed of at admission stage.



(K.S.SUGATHAN)
Admv. Member



(M.L.CHAUHAN)
Judl. Member

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