

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-77/2013 in
OA-3420/2011**

Reserved on : 27.01.2016.

Pronounced on : 29.01.2016.

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Alok Mittal,
Assistant Engineer (Civil-IV), MTNL,
S/o late Sh. M.L. Mittal,
R/o 27/19, Shakti Nagar,
Delhi-7.

..... Applicant

(through Dr. Ashwani Bhardwaj with Sh. Madhur Singh and Sh. Rinku Singh,
Advocate)

Versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan,
Ashoka Road, New Delhi-1.

2. Member (Production),
Telecom Commission,
Ministry of Communications,
Department of Telecommunications,
(Vigilance II Section),
West Block I, Wing II,
Ground Floor, R.K. Puram,
New Delhi-66.

3. The Superintendent Engg.(Civil),
Telecom Civil Circle,
A-2/E2, Kasturba Gandhi Marg,
New Delhi-1.

4. Mahanagar Telephone Nigam Limited
through its Chairman cum Managing Director,
12th Floor, Jeewan Bharti Building,
Connaught Place, New Delhi. Respondents

(through Sh. P.S. Parihar for Dr. Ch. Shamsuddin Khan and Ms. Rachana Joshi
Issar, Advocates)

ORDER**Mr. Shekhar Agarwal, Member (A)**

This Review Application has been filed by the OA applicant for review of our order dated 04.02.2013 by which the OA was dismissed. The respondents in OA as well as in the Review Application have filed their reply opposing the averments made in the Review Application.

2. Several opportunities were given to the learned counsel for the review applicant to appear and argue the matter. However, the review applicant for last several dates was being represented only through proxy counsel. Thereafter, on 05.11.2015, the following order was passed:-

"It is seen that since 27.02.2014, learned counsel for the review applicant has been seeking time. Even today, Shri Ashish Nischal, proxy counsel for Dr. Ashwini Bhardwaj, seeks further time. It appears that they have not interested to pursue the review seriously. However, as a last chance, list on 27.01.2016."

3. Again when this case was taken up on 27.01.2016, learned counsel for the review applicant was not present and only through proxy counsel appeared. We, therefore, proceeded to decide the review application on the basis of material available on record.

4. After reproducing his relief clause and narrating the averments made by him in the OA in great details, the review applicant has raised the following grounds to seek review of our order. Each of these grounds is dealt with as hereunder:-

(i) The review applicant has alleged that this Tribunal has decided the O.A. on the basis of the premise that the case is still at charge sheet stage whereas the applicant had challenged the enquiry proceedings after the final

orders had been passed by DA and AA. In our opinion, this ground taken by the review applicant is totally baseless. As is evident from our judgment in Para-2 of the same, we have recorded the facts of the case in great details. After quoting the charges levelled on the applicant, we have recorded the punishment of reduction of pay awarded by the DA on 09.03.2000. We have also recorded that the applicant had earlier filed OA No. 3173/2001 when decision on his appeal was not forthcoming. Thereafter, the Tribunal directed the respondents to decide the appeal. Then the applicant filed CP-152/2002 for enforcement of this order of the Tribunal. It is further recorded that during pendency of this petition, the AA remitted the matter to the DA and thereafter DA passed a fresh order on 21.08.2002. Again, the applicant preferred an appeal against that order and filed OA-1950/2005 challenging the orders passed by the respondents. This was dismissed for want of jurisdiction as the applicant had been absorbed in MTNL and MTNL had not been notified under Section-19 of the Administrative Tribunals Act, 1985. The applicant then filed Writ Petition (C) No. 5412/2007, which was transferred to this Tribunal as TA-1248/2009. When the appeal of the applicant was rejected on 24.01.2008 during pendency of this TA, this Tribunal vide its order dated 19.07.2011 granted permission to the applicant to withdraw the TA and file fresh OA. It was only thereafter that this OA was filed on 14.09.2011.

From the above, it is quite clear that this Tribunal was well aware of the history and facts of this case and was not under impression that the case was at the charge sheet stage. We, therefore, dismiss this ground of the review applicant as baseless.

(ii) The next ground taken by the review applicant is that this Tribunal has not decided the issue of procedural flaws in the enquiry even though

Hon'ble Supreme Court has held in a number of decisions that an enquiry is liable to be quashed on the ground of violation of principles of natural justice. From our judgment, we notice that in Para-6, we have observed that the applicant had not chosen to participate in the enquiry. We have further observed that had he participated in the enquiry, he could have raised all such issues, such as, non-supply of documents, taking documents on record without getting them proved and not allowing defence witnesses examined etc, before the EO. Thus, all these grounds regarding procedural flaws have been rejected because in our opinion, it was not open to the applicant to raise these issues as he had chosen not to participate in the enquiry. This is a finding given by us. If the applicant is aggrieved by the same, remedy lies elsewhere. He cannot question our findings through review application as this is beyond the scope of review.

(iii) The next ground taken by the review applicant is that even though this Tribunal in Para-7 of the judgment have quoted the judgment of Hon'ble Supreme Court in the case of **State of A.P. Vs. N. Radhakishan**, (1998) 4 SCC 154, the same has not been applied in the present case. Again, we are unable to accept this argument of the review applicant. The issue of delay has been dealt with by us in great detail in Paras-7 & 8 of our judgment. Therein we have given reasons as to why these proceedings cannot be quashed on the ground of delay alone. We have observed that delay in initiating the proceedings was caused partly because the irregularities committed by the applicant came to light after Public Accounts Committee gave its report of 1983-84 and a CBI investigation on the same had been carried out. We have also observed that the applicant himself was partly responsible for delay in conclusion of the proceedings as he had been not appearing in the enquiry for one reason or the other. We have also relied on the judgment of Hon'ble Supreme Court in the

case of **Government of Andhra Pradesh & Ors. Vs. V. Appala Swamy**, (2007) 14 SCC 49 to say that the applicant should have taken the plea of delay before the enquiry officer. We have further observed that the applicant did make a representation before EO on 09.12.1991 on the ground of delay amongst others but did not care to press the same for several years. Thus, we had come to the conclusion that the enquiry proceedings could not have been quashed on the ground of delay. Again, if the applicant is aggrieved by these findings, he should avail of appropriate remedies under law rather than trying to re-argue his case in the guise of review.

5. No other ground has been pressed in the review application. We are, therefore, of the opinion that this review application has no merit and is accordingly dismissed.

(Shekhar Agarwal)
Member (A)

(A.K. Bhardwaj)
Member (J)

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