Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2901/2015
MA No.2582/2015

New Delhi, this the 1st day of December, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member (A)

Dilip Wagheshwari, Aged 58 years
s/o Sh. Danabhai,
Presently serving as Programme Executive (PEX)
At Regional Academy of Broadcasting & Multimedia
(Programme), Ahmedabad
(formerly known as Regional Training Institute (P),
Ahmedabad & presently
Residing at D-1/4, Akashdarshan Colony,
AIR & Doordarshan Colony,
Behind Bhaikaka Nagar, Thaltej,
Ahmedabad – 380 059. ...Applicant

(By Advocate: Sh. Vijay Sharma)

Versus

1. Union of India through
(to be represented through its Secretary
to the Govt. of India, Ministry of Information
& Broadcasting, Room No.655, "A" Wing,
Shastri Bhawan,
New Delhi – 110 001.)

2. Prasar Bharati
(to be represented through its Chief
Vigilance Officer, Prasar Bharati Sectt.,
2nd Floor, PTI Building, Sansad Marg,
New Delhi – 110 001.)

3. The Director General (D.D.)
Doordarshan
Prasar Bharati (Broadcasting Corpn of India)
Directorate General, Doordarshan,
"Doordarshan Bhavan, Copernicus Marg,
New Delhi – 110 001.

4. The Director General (AIR),
Prasar Bharati,
Directorate General, All India Radio,
S-I(B), Section, Parliament Street,
New Delhi – 110 001.

5. The Deputy Director,
Regional Academy of Broadcasting & Multimedia
(Programme),
(formerly known as Regional Training Institute (P),
All India & Doordarshan, Prasar Bharati,
Navrangpura, Ahmedabad – 380 009.

6. The Director,
Doordarshan Kendra,
Prasar Bharati,
Dordarshan Kendra, Ahmedabad
Thaltej, Ahmedabad – 380 054. …Respondents

(By Advocate: Ms. Vartika Sharma)

ORDER (Oral)

By Hon'ble Uday Kumar Varma, Member (A):-

The applicant has filed the instant OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> *A. Your Lordships may be graciously pleased to call upon the respondents herein to forthwith produce before the Hon'ble Tribunal the entire original file/records including all the noting sheets, files, internal correspondence exchanged amongst themselves which gave rise to the issuance of the impugned communication no.C-14012/1/99-Vig./154 dated 2.3.2007 at Annexure-A/1 hereto;*
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> *B. Upon perusal of the aforesaid original documents, files, etc. your Lordships may be further graciously pleased to quash and set aside the impugned communication no.C-14012/1/99-Vig./154 dated 2.3.2007 at Annexure-A/1 hereto, holding and declaring the same to be ex facie illegal, contrary to law, arbitrary, unreasonable & discriminatory;*
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> *C. Your Lordships may be further pleased to issue appropriate directions to the respondent herein to (i) forthwith grant to the applicant herein all the 5 annual increments which became due during the period between 15.2.1999 and 2.4.2004, (ii) accordingly undertake the exercise of re-fixing the pay of the applicant herein taking into account the aforesaid 5 increments under the 5th CPC as also under the 6th CPC and (iii) forthwith release all the arrears of salary, etc., arising out of the aforesaid exercise, with all the consequent benefits flowing therefrom including the interest on the arrears at the rate of 18% p.a.*

D. Your Lordships may be further pleased to grant such other and further relief/s as may be deemed fit and proper in the facts and circumstances of the present case.

2. As the applicant has belatedly challenged the order dated 02.03.2007 whereby he was deprived of 5 annual increments that had fallen due during the currency of his suspension between 12.02.1999 and 02.04.2004, which he is otherwise entitled to be granted by the respondent authorities, he has filed MA No.2583/2015 seeking condonation of delay in filing the OA in the year 2015.

3. Before considering the main OA, it is necessary to take up the MA first. In the MA, the applicant has stated that though the impugned communication is alleged to have been issued on 02.03.2007, but he received the same only on 22.11.2011 that too when he asked for the same under RTI Act. However, he could not file the OA for the reasons beyond his control because at the relevant point of time he was heavily pre-occupied with the ongoing criminal trial in CBI Special Case No.8/2000 and his prime responsibility was to assist his advocate which yielded his acquittal from the criminal case on 31.01.2015. The applicant has further submitted that in the month of July, 2015, he was shocked to know that he was being shunted out of STI (P), Ahmedabad to another AIR station with a

view to oblige a lady employee who was under transfer to Godhra AIR Station and, hence, he approached this Tribunal by filing OA No.2268/2015, which is still pending consideration. The applicant submits that despite revocation of his suspension w.e.f. 02.04.2004 he has been deprived of his 5 increments for which he was entitled to even during the period of suspension w.e.f. 15.02.1999 and 02.04.2004. The applicant contends that the delay in filing the present OA is neither deliberate nor willful, rather the same was beyond his control as he was pre-occupied with the criminal case in CBI Court and, therefore, the same deserves to be condoned.

4. The respondents in their counter reply have taken preliminary objections – misuse of process of law, concealment of material facts, OA being misconceived and non-maintainable including the limitation. With regard to limitation, the respondents have relied upon several judgments e.g. D.C.S. Negi vs. Union of India & Ors. [SLP(Civil) NO.7956/2011 decided on 07.03.2011]; S.S. Rathore vs. Union of India & Ors. [AIR 1990 (SC) 10]; Karnataka Power Corporation Ltd. Through its CMD & Anr. Vs. K. Thangappan & Anr. [2006 (4) SCC 322]; Bhoop Singh vs. Union of India & Ors. [1992 (3) SCC 136]; Union of India & Ors. vs. M.K. Sarkar [2010 (2) SCC 58]; P.K.

Ramachandran vs. State of Kerala & Anr. [JT 1997 (8) SC 189]; State of Karnataka vs. S.M. Kotraya [1996 (7) SCALE 179] and Ramesh Chand vs. Udham Singh Kamal [2000 SCC (L&S) 53].

5. The respondents have further stated that vide the impugned order dated 02.03.2007, the competent authority has clearly mentioned that since the applicant was issued major penalty chargesheet and disciplinary enquiry was going on, the applicant was not entitled to any annual increments during the currency of suspension till culmination of the disciplinary enquiry.

6. On the point of limitation, Hon'ble High Court of Gujarat at Ahmedabad in the case of ***Uttar Gurajart Vij Company Vs. Ghelabai Varvabhai Raval*** [case No.C/CA/11343/2013 decided on 13.12.2013], has dealt in detail and considered various judgments of the Apex Court and held that "if delay is not condoned, it would result into miscarriage of justice". The relevant parts of the said judgment read as under:-

> *"24 Moreover, at least in AIR 2008 SC 1688 Sinik Security Vs.Sheel Bai, AIR 2009 SC 2170 D.D. Vaishnav Vs.State of M.P. and AIR 2009 SC (Supp.) 195 Commissioner, Nagar Parishad, Bhilwara Vs.Labour Court, Bhilwara, the Apex Court has condoned inordinate delay (769 days, 589 days and 178 days respectively) even by imposing some costs upon the applicant.*

25. In Collector, Land Acquisition, Anantnag Vs. Katiji AIR 1987 SC 1353, the Apex Court has held as under:-

Whereas atleast decision in O.P. Kathpalia Vs. Lakhmir Singh (Dead) & Ors. (supra) is by the three Judges bench of the Apex Court wherein delay of more than 6 years was condoned observing that otherwise it would result into miscarriage of justice. Therefore, when there is a judgment by the bench of three Judges of the Apex Court that to avoid miscarriage of justice, delay of even 6 years can be condoned and when the judgments referred above are yet not overruled or distinguished in any of the later judgment by the Bench of three Judges, only because the Apex Court has not condoned the delay in some of the cited cases, it cannot be said that delay cannot be condoned in all cases after such judgments even if there is sufficient cause to condone the delay. Thus, in general, if there is sufficient reason to condoned the delay, irrespective of the cited cases, delay can be condoned"

7. In another case titled as ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors*** [2013 (12) SCC 649], after considering the entire case law on the issue of condonation of delay in filing petitions, the Apex Court observed as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1.An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

8. Having gone through the pleadings and taken into consideration the arguments on either side, we are of the view that the respondents have not been able to establish whether the impugned order dated 02.03.2007 was actually served upon the applicant or not. We also find that admittedly the applicant was furnished the above impugned letter only on 22.11.2011 after he filed an application under RTI Act. It is true that the applicant would have approached the Tribunal to challenge the above letter within one year at least from the date of its receipt which he failed to do. However, the applicant in the MA has submitted that he was pre-occupied with the criminal case in CBI Court to assist his lawyer and resultantly he came to be acquitted, and that on apprehension that he would be shunted out from his present place of posting to oblige one lady, who was under transfer, he had to file OA No.2268/2015, which has not been controverted by the

respondents. Although the grounds for condonation of delay taken by the applicant are not entirely convincing but tested against the principles laid down in the Supreme Court judgment in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors*** (supra), the preponderance of consideration weighs in favour of the applicant. Moreover, the OA involves grant of annual increments, which is a recurring cause of action. On the balance, therefore, we are inclined to allow the MA and the same is accordingly allowed.

OA No.2901/2015

9. The applicant initially joined as Production Assistant (a Group C post) on 27.11.1987. Thereafter, in response to an advertisement dt.03.09.1988, he was selected as Programme Executive in the pay scale of Rs.2000-3500 and joined the services on 10.06.1991. In the year 1997, his services stood transferred w.e.f. 22.07.1997 on deemed deputation by virtue of Govt. of India Notification dated 15.09.1997 in Prasar Bharati (Broadcasting Corporation of India but he was not absorbed there and, hence, he was still Central Government servant. The applicant submits that while working with the respondents as Programme Executive, he was falsely implicated in a trap by the CBI on 15.02.1999 and was detained for more than 48 hours.

Consequently, he was placed under suspension w.e.f. 15.02.1999 vide order dated 09.03.1999 and was being paid subsistence allowances equal to the leave salary. In the wake of acceptance of the recommendations of the Fifth CPC, the applicant's pay was revised and fixed at Rs.8000/- w.e.f. 01.01.1996 and was being paid the subsistence allowance in the revised scale. Ultimately, the suspension of the applicant was revoked w.e.f. 02.02.2004 and he was allowed to join his duties. Despite that he was not allowed his due five annual increments during the currency of suspension, for which he was otherwise entitled to. The applicant submits that after revocation of suspension, he made several representations to the respondents for grant of 5 annual increments and payment of arrears thereof, but the respondents did not pay any heed to his genuine request. In the meanwhile, he came across the decision of the Ahmedabad Bench of this Tribunal in ***A.K. Tripathi vs. Union of India & Ors.*** [OA No.175/2001 decided on 08.03.2002] wherein the Tribunal held that the government servant under suspension is entitled to the grant of annual increment even during the currency of suspension. When the respondents did not comply with the Tribunal's order, the applicant approached the Tribunal by filing another OA No.02/2005, which was

also allowed by the Tribunal vide order dated 31.03.2005 directing the respondents to grant annual increments to the applicant therein. The order of the Tribunal was challenged before the High Court by way of Writ Petition SCA No.6662/2002 which was not interfered with by the High Court vide order dated 20.09.2006. Immediately on coming to know about the above ruling, the applicant submitted a formal representation on 01.02.2007 to the respondents requesting them to take necessary action in granting him his due annual increments, which was forwarded to the DG, Doordarshan for appropriate action. Though no action was taken on his representation, but his pay under the 5th CPC came to be fixed at Rs.9000/- w.e.f. 01.01.1996 and issued a Due Drawn Statement dated 12.03.2007 which clearly reveals that no annual increment for the intervening 5 years (from 15.02.1999 to 02.04.2004 suspension period) was granted to the applicant. In the meanwhile, the applicant stood transferred and he joined his duties as PEX at Staff Training Institute (Prog) at Bhubaneshwar in June, 2007 and took up the matter for grant of annual increments vide representation dated 17.03.2008 but of no avail. In the year 2010, the applicant was transferred back to Ahmedabad and immediately on joining at Ahmedabad on 01.07.20100, he again requested

the respondents vide representation dated 13.08.2010 through proper channel for granting him five annual increments for the period of suspension but this time also the result was no different. Having no response from the respondents on his request of grant of five annual increments, the applicant sought information under RTI Act, 2005 vide application dated 17.11.2011 to ascertain the specific reason for non-grant of 5 annual increments. When he received the reply under RTI Act on 22.11.2011 with certain documents, he was shocked to learn from the communication dated 02.03.2007 enclosed with the RTI reply issued by the Vigilance Section that Chief Vigilance Officer had taken a decision *inter alia* that insofar as the grant of increments to the applicant is concerned, no increment would be granted to him during the suspension from 15.02.1999 to 01.04.2004 and the pay and allowances for the period of suspension and treatment of the period are subject to review and revision consequent upon completion of the disciplinary proceedings. Hence, he has approached this Tribunal by way of present OA for the relief(s), reproduced above, on the following grounds:-

i) That the order dated 02.03.2007 holding that no increment will be granted to the applicant during the period of suspension is *ex facie* arbitrary,

unreasonable, discriminatory and runs counter to the law settled on the subject which had been brought to the notice of the respondents in various representations;

ii) That the applicant is entitled to five annual increments during the period of suspension as there is no rule whatsoever to prevent the grant of such annual increments particularly after revocation of suspension w.e.f. 02.04.2004.

iii) That the respondents had been playing hide & seek game with him as has been evident from the documents received under RTI Act.

iv) That the respondents were aware of the decision of the Ahmedabad Bench of this Tribunal in the case of ***A.K. Tripathi vs. Union of India & Ors.*** (supra) even then they ignored the same and did not grant the annual increments to him.

v) The applicant has also relied upon the decision of this Tribunal in the matter of ***Ram Nath vs. Govt. of NCT of Delhi & Ors.*** [OA No.2884/2013 decided on 16.12.2014] wherein it has been categorically held that an employee is entitled to annual increment during the period of suspension.

The applicant, therefore, prays that in view of the above grounds and judicial pronouncements relied upon by him, the OA deserves to be allowed.

10. The respondents have filed their counter affidavit denying the averments of the applicant made in the OA. The only ground taken by the respondents for not granting annual increments to the applicant is that the applicant has been issued with a major penalty chargesheet and disciplinary enquiry is going on against him, and, therefore, he is not entitled to annual increments till conclusion of the disciplinary enquiry.

11. We have carefully gone through the pleadings of the case as also the judicial pronouncements relied upon by either side, and have heard the arguments of the learned counsel for the parties.

12. At the time of oral submissions, the learned counsel for the respondents at the very outset raised objection that one OA has been filed in the Ahmedabad Bench of this Tribunal seeking redressal on the same issue, which is not permissible in law. Counsel for the applicant, however, strongly opposed it and submitted that the issue before the Ahmedabad Bench of the Tribunal is entirely different from the issue to be adjudicated before this Bench.

13. We have seen the record. The issue before the Ahmedabad Bench of this Tribunal relates to departmental enquiry and early conclusion of the same whereas the issue before this Bench relates to grant of increments during the period of suspension. In our view, these two issues are not inter-connected although they relate to the same person and, therefore, this objection of the respondents is not sustainable.

14. Given the nature of the relief being claimed, what is material for adjudication is the rule position. Now the fact which remains undisputed and accepted by both the parties is that the applicant was suspended on 15.02.1999 and was reinstated on 02.04.2004. It is also not disputed that the departmental enquiry initiated against the applicant has yet to reach conclusion. It is also not disputed that the applicant has been acquitted on 31.01.2015 in the CBI case. It is apparent from the above that the applicant has not yet been found guilty as a consequence of departmental enquiry as it is still pending and, therefore, his legal entitlement till he is found guilty and till he is punished for the alleged misconduct cannot be withheld or curtailed. If he is entitled for salary and allowances or any other benefits during the pendency of departmental enquiry, he is to be given the same. The rule

position with regard to the grant of increments also makes it clear that as there is no punishment against the applicant till now, his increments cannot be withheld. Only because the applicant was under suspension for a period of time, withholding of his increments during that period cannot be the basis particularly in view of the fact that his suspension has been revoked by the respondents. Moreover, suspension by no means is a punishment till it is specifically held so. It is merely an exercise to ensure that during the pendency of enquiry, the alleged perpetrator of misconduct is not able to influence the course of enquiry. There is nothing specific in the rules which provide that grant of annual increments during the period of suspension is barred under the rules. There is no such assertion made by the respondents either orally or in the counter affidavit.

15. In this context, it may be appropriate to refer to the judgment of the Apex Court in ***Balvantrai Ratilal Patel vs. State of Maharashtra*** [AIR 1968 (SC) 800], relevant part whereof is reproduced hereunder:-

> *"On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty As we have already pointed out, the question as to what amount should be paid to the public servant during the*

> *period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection."*

Considering the question whether a suspended employee is eligible to earn increment during suspension, the High Court of Allahabad in ***Mritunjai Singh vs. State of U.P. & Ors.*** [AIR 1971 Allahabad 214] relying on the decision in ***Balvantrai Ratilal Patel vs. State of Maharashtra*** (supra) held as under:-

> *"14. We now come to the last point, namely, whether the petitioner should be allowed to earn his increment due during the suspension. In that connection again my attention was drawn to the same authority of the Supreme Court which has already been referred to as the first authority, namely, that relating to the Management Hotel Imperial. It has been laid down therein that the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. Emphasis is laid down on the words 'master is not bound to pay' on behalf of the State and it is said that if the master is not bound to pay during the suspension how can the servant claim that he is entitled to earn his increment during the period of suspension. The matter, however, has been clarified in the later authority of Balvantrai Ratilal, AIR 1968 SC 800 where it is indicated that even if there is no express term of suspension in the contract of employment , the employer has power to suspend his employee and it amounts to the issuing of an order to the employee which, because such contract is subsisting, the employee must obey. This shows that the contract of service subsists during the period of suspension and if the contract subsists, even though there is suspension, the employee remains in service and if he remains in service, he is entitled to all benefits of service even though he is not expected to work during the period of suspension. Rule 24 of the Financial Hand Book Volume II issued under the authority of the Government of the Uttar Pradesh in Chapter IV Part II provides that an increment shall ordinarily be drawn as % matter of course unless it is withheld. An increment may be withheld from a government servant by the Government or by any authority to whom the Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been*

> *satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments. As the contract of the service of the petitioner continued even though he was under suspension, the increment should be allowed ordinarily to be drawn unless it is withheld in the manner provided under Rule 25. As it is not the case of the opposite parties that it has been so withheld, the petitioner is entitled to the increments during the pendency of his suspension and the subsistence allowance shall be calculated accordingly, it being 1/3rd of the pay plus dearness allowance."*

16. We have also gone through the decisions of the Tribunal in ***A.K. Tripathi vs. Union of India & Ors.*** (supra) and ***Ram Nath vs. Govt. of NCT of Delhi & Ors.*** (supra) relied upon by the applicant and find that the identical issue as involved in this OA with regard to grant of annual increments during the suspension period has already been dealt with and held that annual increments cannot be withheld even during the period of suspension.

17. In view of the above discussion, rule position and the judicial pronouncements, we find merit in the OA and the same is accordingly allowed. The impugned order dated 02.03.2007 is quashed and set aside. The respondents are directed to grant annual increments due to the applicant during the period of his suspension, which were withheld during the currency of suspension, if he is otherwise eligible to be given the same, and accordingly re-fix his pay and make the payment of arrears accruing after re-fixation

of pay on grant of due annual increments to the applicant. The respondents are further directed to complete this exercise within a period of three months from the date of receipt of certified copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

(Permod Kohli)
Chairman

/AhujA/