

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.477/2018 with MA No.398/2018

This the 03rd day of December, 2018

**Coram : Hon'ble Ms. Archana Nigam, Administrative Member
Hon'ble Shri M.C.Verma, Judicial Member**

Shri Rajaram Paswan
S/o. Shri Jagbasi Paswan
Male, Aged about 58 years,
Residing at : F/3, Sant Jogiraj Society
Pavanchakki Road, Nadiad- 387 002..... . Applicants

(By Advocate : Shri P.H.Pathk)

VERSUS

1. Bharat Sanchar Nigam Ltd.
Notice to be served through
The Director, BSNL
Head Quarter Office,
New Delhi 110 001.
2. Assistant General Manager
BSNL Office of G.M.
Door Sanchar Bhavan
PIG Road, Nadiad 387 002.
3. Sub Divisional Engineer (Phones)
PIG Road, Nadiad 387 002.

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4. Divisional Office-II (Phones)
BSNL, Nadiad 387 002.
5. Divisional Engineer (Phones)
Office of GMTD, Nadiad 387 002..... Respondents.

ORDER – ORAL

Per : Hon'ble Shri M.C.Verma, Member (J)

Pleadings, as has been set out in the OA reveals that the case of applicant is that he is employee of BSNL and that for alleged theft of BSNL property, he was put on anvil of Criminal Trial, he was tried for the offence under Section 381 of I.P.C. and simultaneously departmental proceedings was also initiated. That on conclusion of departmental enquiry, penalty of withholding of three increments with future effect was inflicted. That he preferred appeal, on 08.5.2009, challenging the order of disciplinary authority. It has been pleaded further that Trial of Criminal Case No.6411/2008 was conducted by 5th Additional Chief Judicial Magistrate, Nadiad and it ended into acquittal on

04.2.2012. Regarding appeal preferred against the order of the Disciplinary Authority, it has been pleaded that nothing was heard for long or even after his acquittal in criminal case and when he got sent advocate notice then it was informed that appeal is not available in the office of the respondents. Hence, is the OA with prayer to declare the decision of respondent Nos.2 to 5 treating the period as dies non and deduction from his salary and the order of punishment issued by respondent No.2 dated 09.2.2009 at Annexure A-1 and inaction to decide the appeal as well not considering him for promotion on the ground of penalty as arbitrary, illegal, violative of Article 14 and to quash and set aside the same.

2. Copy of the judgment of acquittal passed by 5th Additional Chief Judicial Magistrate, Nadiad, has been enclosed with the OA as Annexure A-4. The judgment is in Gujarat language. On 24.10.2018, learned counsel was directed to supply translated

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version of the judgment, in English and he took four weeks time to do the needful. Matter thereafter came on Board on 26.11.2018 and it was adjourned for today. Today, learned counsel made submission that he has filed another MA in Registry, having prayer that he is not placing reliance on said Judgment of acquittal and that the same may be discarded from consideration and matter may be heard further. No such MA is on record, may be because of its late filing as learned counsel is stating that it was filed today only. However, learned counsel made statement at Bar that he is not placing reliance upon Judgment of acquittal of the applicant and he may be heard on merits, as per material, other than judgment of acquittal, available on file discarding from consideration the judgment of acquittal.

3. Learned counsel was heard at considerable length and taking us to pleading again and again and referring the annexed

documents of OA repeatedly, learned counsel urged to condone the delay and issue notice. Regarding limitation and condonation of delay, learned counsel referred Paras 3 & 5 of MA No. 398/2018.

4. Para 3, of application for condonation of delay, merely stipulates that Advocate has issued notice which, informing that the appeal of the applicant is not traceable, was replied on 20.7.2017 and therefore, technical objection of delay be condoned in interest of justice. Verbatim said Para 3 read: “*The advocate has issued notice which was replied on 20th July 2017 saying that the appeal of the applicant is not traceable. I rely on the contention raised in the original application and say that applicant is having meritorious case. Therefore, technical objection of delay is required to be condoned in interest of justice.*”

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5. In Para 5, reason for delay as has been mentioned is that applicant being low paid employee and due to financial crises, he was not able to approach the Tribunal and remained depending on the officers of the Department and representatives of Union and that good circumstances were beyond his control Verbatim said Para 5 read: *“That the reply by AGM was received by the applicant on 20th April, 2018. The applicant is entitled for promotion. That the order of punishment imposed to the applicant in 2009 and the appeal is pending. The applicant being lowly paid employee he depends on the officers of the department and union representatives. Due to financial crisis, the applicant was not able to approach the Tribunal. That the circumstances were beyond the control of the applicant. Therefore, over all circumstances of the case, delay is required to be condoned in the interest of justice”.*

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6. Section 20(2)(a) of the Administrative Tribunals Act, 1985, which provides about period of limitation read : “*where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*”

7. Appeal as per OA was filed by applicant on 08.5.2009 and therefore, limitation as per above quoted Section (2) (b) has started to run on completion of six months from date of appeal and expired on completion of further one year thereafter, meant to say one and half year, after 08.5.2009, when appeal was filed. Taking this period of one and half year, after 08.5.2009, the time to prefer the OA, was upto 7th November, 2010. We are now in year 2018. The OA was preferred on 18.9.2018 and therefore, approximately 07 years and 10 months delay is there. No plausible reason for such long delay has come on record or was explained by learned counsel during his submission advanced.

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The applicant is still in service so the ground of alleged financial crisis, may not be construed as plausible nor can be said to be convincing reason compelling non-agitating of the matter in time.

8. We do not want to enter into merit of the OA as we already have found the OA suffering badly by limitation, however, we cannot restrain ourself to note that the applicant was Store Incharge, cables from the Store were stolen and the order, by which penalty was inflicted by Disciplinary Authority, reflects that he being Store Incharge was directly responsible for custody of Store, was bound to lodge complaint if something wrong was traced but instead of performing his duty, he wrote to SDOT Nadiad to lodge police complaint. Disciplinary Authority also has observed that all these strange behaviour of the applicant leads to conclude that charges levelled against the applicant is beyond doubt and looking to said circumstance he

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deserves harsh action due to his misconduct, but on polite request, penalty of withholding of three increments with cumulative effects only is inflicted.

9. Taking note of entirety, especially the delay of about 7 years & 10 months in filing of appeal, which tantamount to latches as well the fact that reply of respondents, pursuant to advocate, notice reveal that no appeal of applicant is available in respondent's office, we do find no point or reason, much less cogent, for issuance of notice and accordingly, MA No.398/2018, for condonation of delay is rejected. In view of rejection of MA for condonation of delay, the OA also deserve dismissal, being time barred and accordingly, is dismissed.

10. Before parting we want to express our anguish and concern about approach of respondents, when they say that no appeal of applicant is traceable in their office. Neither this affirm nor negate whether any appeal was preferred or not by the

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applicant. As a model employer it was duty of the respondent to take decision on the appeal, if it was preferred. Let copy of this order be sent to Director, BSNL and it is expected from him that he will ascertain whether the appeal was filed or not by the applicant, if was filed why it could not be disposed off yet, would take further necessary steps for decision on appeal and would inform this Tribunal, within a month about his action taken report.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)