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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7538/2016

ISHWER SINGH MALIK ..... Petitioner  
Through Mr. Viraj R. Datar and Mr. Nitish  
Chaudhary, Advocates.

Versus

MAHANAGAR TELEPHONE NIGAM LTD AND ORS ..... Respondent  
Through Mr. Rajnish Prasad, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

% **ORDER**  
**18.11.2016**

OA No.1756/2009, filed by the petitioner was dismissed by the Principal Bench of the Central Administrative Tribunal, vide order dated 5<sup>th</sup> May, 2010.

2. This order upholds finding of guilty recorded in the disciplinary proceedings and the modified order of punishment imposed by the revisionary authority for reduction of basic pay to Rs.17,300/- in the scale of Rs.14,500 – 18,700/- for a period of three years and one month with effect

from 1<sup>st</sup> April, 2006 with further directions that the petitioner would not earn increment during the period of reduction and on the expiry of this period, the reduction would have effect of postponing future increment of pay.

3. The petitioner did not challenge and question the said order dated 5<sup>th</sup> May, 2010, and retired from service on 28<sup>th</sup> February, 2013.

4. After about four and a half years, the petitioner filed RA No.33/2015 before the tribunal for review of the order dated 5<sup>th</sup> May, 2010. The review application though belated was not accompanied by an application seeking condonation of delay.

5. By order dated 22<sup>nd</sup> March, 2016, the review application has been dismissed.

6. The petitioner has now filed the present writ petition impugning the order dated 5<sup>th</sup> May, 2010, dismissing the OA No.1756/2009 and order dated 22<sup>nd</sup> March, 2016 dismissing the RA No.33/2015. The petitioner's case is predicated on the contention that the competent authority had not passed the original order of punishment. It is submitted that the petitioner's application for review was not dismissed on the ground of limitation, but on merits.

7. Having heard counsel for the parties, we are of the firm opinion that the petitioner should not be allowed and permitted to challenge the order

dated 5<sup>th</sup> May, 2010, whereby OA No.1756/2009 was dismissed on the ground of delay and laches. The review application should have been also dismissed for the reason that no application for condonation of delay was filed. Objection of the respondents on account of delay of more than 1500 days, is recorded in paragraph 4 of the order dated 22<sup>nd</sup> March, 2016 dismissing the RA No.33/2015. This order also records that no cogent ground has been made out for entertaining the review application after four and a half years of passing of the order dated 5<sup>th</sup> May, 2010.

8. Counsel for the petitioner accepts that no application for condonation of delay was filed and submits that the Tribunal should have asked the petitioner to file an application. We may have remanded the matter in case there is sufficient and good cause to condone the delay. We would not remit the case for mere asking. On being asked, counsel for the petitioner states and accepts that the petitioner cannot explain and justify delay of more than four and a half years.

9. It is urged that the petitioner has good case on merits for the order of punishment was not passed by the competent authority. We are afraid that unless delay is condoned and sufficiently explained, this aspect should not be examined and gone into. In these circumstances we do not think an order

of remand would be justified. For the same reason, we should not ignore the delay of more than four and a half years in challenging the order dated 5<sup>th</sup> May, 2010 in OA No.1756/2009. The writ petition is accordingly, dismissed.

**SANJIV KHANNA, J.**

**CHANDER SHEKHAR, J.**

**NOVEMBER 18, 2016**  
**NA/ssn**