

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 14288 OF 2016**

- 1 The Chairman & Managing Director,  
Mahanagar Telephone Nigam Ltd, 12<sup>th</sup>  
Floor, Jeevan Bharati Towers,  
Connaught Place, New Delhi -1
- 2 The Executive Engineer  
Mahanagar Telephone Nigam Ltd.,  
15<sup>th</sup> Floor, Telecom House, V. S. Marg,  
Prabhadevi, Mumbai 400 028.  
Through the Sr. Manager Legal H.Q.  
of MTNL, Mumbai, Mr. Satish  
Damodar Kalbende, Age 49 yrs.

**...Petitioners**

**Versus**

- 1 Shri. S. C. Shrivastava, Retired Chief  
Engineer (BW), MTNL, Mumbai,  
residing at 704/E, Grace CHS  
Ltd., Vasant Oskar, LBS Road, Mulund  
(West), Mumbai 400 080.
- 2 Union of India  
Through The Secretary, Department of  
Telecommunications, 20 Ashoka  
Road, New Delhi 110 001.

**...Respondents**

Mr. Sandeep V. Marne, for the Petitioners.

Mr. Ramesh Ramamurthy, a/w Mr. Saikumar Ramamurthy,  
for the Respondents.

**CORAM: B. R. GAVAI &  
N. J. JAMADAR, JJ**

**DATED: 8<sup>th</sup> March, 2019**

**JUDGMENT :-** (Per N. J. Jamadar, J.)

**1.** Rule.

**2.** Rule made returnable forthwith. By consent of the  
Counsels for the parties heard finally.

**3.** The challenge in this Petition is to the legality, propriety and correctness of the order dated 23<sup>rd</sup> November, 2015 passed by Central Administrative Tribunal, Mumbai Bench, Mumbai, in Original Application No.173 of 2011, whereby the penalty of reduction of three stages in the time-scale, imposed upon the Respondent – employee by the Petitioners – employer, was quashed and set aside.

**4.** For the sake of clarity and convenience, the parties are hereinafter referred to in the capacity in which they were arrayed before the Tribunal.

**5.** The applicant retired as a 'Chief Engineer' (BW) of Mahanagar Telephone Nigam Limited (MTNL), Mumbai. During the period from 1986 to 1990 the applicant was posted as 'Executive Engineer' (Civil) at Jabalpur. A charge memo came to be served upon the applicant on 10<sup>th</sup> July, 2008 with the imputation that while working as 'Executive Engineer' (Civil), Jabalpur, during the aforesaid period, the applicant got executed construction of Canteen Block and Dispensary in new Telecom Factory at Aichhai, Jabalpur in breach of the departmental norms, resulting in loss to the department and corresponding undue benefit to the contractor. After completion of the inquiry, the Inquiry Officer

submitted report on 21<sup>st</sup> May, 2009, and held the applicant guilty of the misconduct on account of improper supervision. The disciplinary authority, by order dated 28<sup>th</sup> May, 2010, imposed the penalty as aforesaid. The departmental appeal preferred was also dismissed. Hence, the applicant approached the Tribunal.

**6.** After appraisal of the material on record, the Tribunal was persuaded to allow the application holding, *inter alia*, that the initiation of the disciplinary proceedings after 20 years of the alleged misconduct caused serious prejudice to the applicant, and, even otherwise, there was no material to substantiate the charge of misconduct. Being aggrieved, the Department has preferred this petition.

**7.** We have heard Mr. Marne, the learned Counsel for the Petitioners and Mr. Ramamurthy, the learned Counsel for the Respondent – original applicant, at some length.

**8.** Mr. Marne, the learned Counsel for the Petitioners urged that the Tribunal has committed a manifest error in setting aside the order of the Disciplinary Authority as well as the Appellate Authority. While exercising the power of judicial review, according to the learned Counsel for the Petitioners,

the Tribunal could not have delved into the factual aspects and overturned the findings of the Disciplinary Authority.

**9.** In contrast, the learned Counsel for the Respondent – applicant supported the impugned order and urged that the initiation of the disciplinary proceedings after an inordinately long period of 20 years itself was unsustainable.

**10.** The material on record reveals that the elements of diligence and despatch were conspicuous by their absence in proceedings initiated by the Disciplinary Authority. Concededly, the work in question was completed during the financial year 1987-1988. The charge memo came to be served on 10<sup>th</sup> July, 2008. The Tribunal found that there was no explanation, much less justifiable one, for such an inordinate delay in initiating the disciplinary proceedings. Not only the delay caused serious prejudice to the applicant in defending himself but there were intervening events, in the nature of the repairs to the structure in question in 1993 and 1997 – 1998, which rendered the very imputation unsustainable.

**11.** The importance of initiation of the disciplinary proceedings soon after the alleged misconduct can hardly be overemphasised. Initiation of the disciplinary proceedings

after lapse of a considerable time is neither fair to the employee nor of any practical value to the employer. On the one hand, the delay makes the task of proving the charges difficult, and, on the other hand, the employee is prejudiced in his defence, as the documents and evidence, which may be of assistance in proving his innocence may not be available, by passage of time. We are conscious of the fact that disciplinary proceedings cannot be thrown overboard on the count of mere delay. However, when the delay is extremely inordinate, like the case in hand, and that too sans any explanation, the action cannot be sustained.

**12.** A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***State of Madhya Pradesh vs. Bani Singh and another***<sup>1</sup>, wherein the disciplinary enquiry was initiated after a lapse of 12 years. In that context, the Supreme Court observed as under:

“4. The appeal against the order dated December, 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and

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**1** 1990 (Supp) SCC 738.

the investigations were going on since the. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

(emphasis supplied)

**13.** The aforesaid pronouncement makes it abundantly clear that, a disciplinary proceeding initiated after an inordinate delay without any satisfactory explanation for the same cannot be sustained. In the aforesaid case, the delay was of 12 years. In the case in hand, the delay is of 20 years. The instant case, thus, stands on a much weaker foundation on facts and in law.

**14.** It is pertinent to note that the learned Tribunal rightly found the Inquiry Officer had returned the finding of guilt in respect of Article 1 of the charge by recording an omnibus observation that the concerned officers did not properly supervise the work. In this backdrop, the misconduct on the part of the applicant could not be said to have been established directly and definitively. Thus, on facts also, the order of the Disciplinary Authority was wholly unsustainable.

**15.** In the backdrop of the aforesaid legal position and the glaring facts of the case, we do not find that the Tribunal committed any error in quashing and setting aside the

penalty imposed upon the applicant. It is trite that in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India, the scope of interference in the orders passed by the statutory tribunals is limited. Ordinarily interference is not warranted unless the impugned order is either perverse or it takes a view which is impossible one.

**16.** On the aforesaid premise, we are inclined to hold that there is no error in the order passed by the Tribunal. In the facts of the case, no other view than the one taken by the Tribunal appears to be possible. The petition is, therefore, devoid of substance. Resultantly, the petition stands dismissed. In the circumstances, there shall be no order as to costs.

**17.** Rule made absolute in aforesaid terms.

**[N. J. JAMADAR, J.]**

**[B. R. GAVAI, J.]**