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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2995 OF 2013
WITH
CIVIL APPLICATION NO. 2160 OF 2014**

Bharat Sanchar Nigam Ltd. and ors. .. Petitioners
Vs.
Subhash M. Sandanvise .. Respondent

**WITH
CIVIL APPLICATION NO. 1941 OF 2019
IN**

WRIT PETITION NO. 2995 OF 2013

Subhash M. Sandanvise .. Applicant
Vs.
Bharat Sanchar Nigam Ltd. and ors. .. Respondents

Smt. Neeta V. Masurkar a/w Ms. Nieyaati Masurkar, for the
Petitioners in WP/2995/2013 & for Applicant in
CAW/2160/2014 and for Respondents in CAW/1941/2019.

Mr. Sunilkumar Karoth, for Respondent in WP/2995/2013 &
CAW/2160/2014 & for Applicant in CAW/1941/2019.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 23, 2022

P.C. (Per Chief Justice):

1. Original Application No. 297 of 2010 on the file of the
Central Administrative Tribunal, Bombay Bench, Mumbai
(hereafter "the Tribunal", for short), instituted by the original
applicant/respondent (hereafter "the respondent") on April 5,

2010 under section 19 of the Administrative Tribunals Act, 1985, was allowed by the Tribunal vide judgment and order dated February 10, 2012. The communications impugned in the original application, dated March 3, 2010 and March 23, 2010, were quashed and the original application allowed by granting order in terms of prayer clause (b). The respondents in the original application, who are the petitioners before us, applied for review of the judgment and order dated February 10, 2012 by instituting Review Petition No. 18 of 2012. By an order dated November 7, 2012, the Tribunal dismissed the review petition. Aggrieved by the judgment and order dated February 10, 2012 passed on the original application and the order dated November 7, 2012 passed on the review petition, the respondents in the original application have invoked the writ jurisdiction of this Court.

2. A list of dates and events forms part of the writ petition. It reveals the petitioners' version of the facts giving rise to the original application. There is another list prepared by the respondent. Based on our reading of both the lists and filtering out unnecessary details therefrom, what appears to have triggered this writ petition are narrated in the next paragraph.

3. The respondent was initially appointed as Telephone Operator on August 1, 1989 under the Department of Telecommunications (hereafter "DoT", for short). In due course of time, the DoT had formed a separate corporation, viz. Mahanagar Telecom Nigam Limited (hereafter "MTNL", for short). The respondent was sent on deputation to MTNL. Between October 1994 and June, 2002, the respondent continuously worked in MTNL. During this time, in 1994 itself, the respondent was promoted as Junior Telecom Officer through a competitive examination conducted by MTNL. Thereafter, on August 28, 1998, the respondent was given officiating promotion by MTNL. Bharat Sanchar Nigam Limited (hereafter "BSNL", for short) was formed w.e.f. October 1, 2000 and all the employees working under DoT as on September 30, 2000 remained with BSNL on deemed deputation till the date of their absorption. On February 27, 2002, an order was issued by the DoT whereby the respondent was promoted as Sub-Divisional Engineer and the BSNL, Maharashtra Circle, gave him posting at Jalna by an order dated April 9, 2002. On August 29, 2003, BSNL issued a circular inviting option for absorption in BSNL from all Gr. B officers. The respondent opted for BSNL on September 29,

2003. A presidential order was issued on September 23, 2004 directing permanent absorption of the petitioner in BSNL w.e.f. October 1, 2000. The respondent was given benefits of Time Bound Promotion policy w.e.f. February 27, 2006. However, by the impugned communication dated March 3, 2010, cancellation of the presidential order dated September 23, 2004 directing the respondent's absorption was conveyed. By a subsequent communication dated March 23, 2010, the benefits of the Time Bound Promotion policy were withdrawn. The communications dated March 3, 2010 and March 23, 2010 were impugned before the Tribunal by the respondent, giving rise to the impugned judgment and order dated February 10, 2012 and the subsequent order dated November 7, 2012.

4. The Tribunal was of the opinion that there were no existing guidelines to deal with stray cases like the one that the respondent presented before it and even the senior officers of BSNL did not have clarity between September 29, 2003 and March 3, 2010 (when the order of cancellation of the presidential order was passed); therefore, in view of such position, it was not expected of the respondent to understand the intricacies of the circular dated August 29, 2003. The

Tribunal held that the respondent was transferred to Jalna in April, 2002 pursuant to an order dated February 27, 2002 issued by the Government of India, Ministry of Communication and Information Technology, DoT without raising any question and, therefore, the respondent ought not to suffer, if at all, there was any inadvertent error in effecting his absorption in BSNL.

5. We have heard Ms. Masurkar, learned advocate appearing in support of the writ petition.

6. According to her, the Tribunal fell in error in not appreciating the controversy between the parties from the proper perspective. She contends that the officers of BSNL had no option, but to act on the order dated February 27, 2002 by which the respondent was promoted as a Sub-Divisional Engineer and to grant him posting in terms thereof. However, subsequently, it was discerned that the respondent had been sent on deputation to MTNL which he accepted and, thus, was not entitled to be absorbed in BSNL; therefore, cancellation of the presidential order of absorption as well as withdrawal of benefits of the Time Bound Promotion policy followed, which ought not to have been interdicted by the Tribunal. It is also submitted by her that in respect of other

similarly placed employees the Tribunal had spurned their challenges and there was no valid reason for the Tribunal to take a different view *qua* the respondent.

7. Despite the valiant effort of Ms. Masurkar to defend the indefensible, we are not impressed at all. Having heard her and on perusal of the materials on record including, *inter alia*, the reasons assigned by the Tribunal in the impugned judgment and order dated February 10, 2012, we find no reason to interfere.

8. Our conclusion as above would be incomplete if we do not begin by taking a first look at the impugned communications dated March 3, 2010 containing the order of cancellation and March 23, 2010 withdrawing the benefits of the Time Bound Promotion policy.

9. The first communication reads as follows:

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprises)
o/o Chief General Manager Telecom, Maharashtra Circle,
4th Floor, 'A' Wing BSNL Complex Juhu Road,
Santa Cruz (West) Mumbai – 400 054

No.A/PPE-11/Absorption/Group 'B'/Pune/32

Dated:- 3/03/2010

ORDER

Approval of Chief General Manager Maharashtra Telecom Circle BSNL, Mumbai – 54 is hereby conveyed for cancellation of Presidential Order (P.O.) issued inadvertently vide No.27-

1/MH/Pune/224/ dated 23.09.2004 to Shri Saindanvise Subhash Manohar JTO Staff Number 110031, with immediate effect. Consequent upon the cancellation of the said P.O, the permanent absorption in BSNL of the aforesaid officer is ceased, and his status as Government Employee is revoked henceforth.

Authority to cancel the said P.O. has been delegated by BSNL Corporate Office vide it's letter No. BSNL/11/SR/2003/MH Dated 22.02.2010. Necessary updation in all the relevant records should be made accordingly.

Sd/-
(C.K. RAVINDRAN)
Assistant General Manager (Estt.)

10. The aforesaid communication was followed by the next communication issued twenty days later reading as follows:

Bharat Sanchar Nigam Limited, Pune,
(A Government of India Enterprise)
O/o Principal General Manager,
Satara Road, Pune – 411 009

No.PTA/SE-386/Gr B/Time Bound/F / 29

Dated:- 23-03-2010

As per instructions issued from CGMT MH Circle Mumbai No. A/PPE-11/Absorption / Group B / Pune / 32 dated 03-03-2010, the time Bound Promotion given to Shri S M Saindanvise, SDE RTTC w.e.f. 27-02-2006 vide this office order No PTA/SE-386/Gr B/Time Bound/ 09 dated 13-06-2007 has been withdrawn due to cancellation of Presidential Order. The overpayment after withdrawal of Time Bound Promotion may please be recovered as per Rules.

This is issued with the approval of Competent Authority.

Sd/-
Assistant General Manager (Admn.)
BSNL, Pune – 411 009.

11. Perusal of the first communication would reveal that upon cancellation of the presidential order leading to cesser of

absorption in BSNL, the respondent's status as a Government Employee stood revoked. The order effectively amounted to termination of the respondent's service under the Government. Such order did not also provide what the status of the respondent henceforth would be and how he would be treated in future. We have failed to comprehend the source of power of the Chief General Manager, Maharashtra Telecom Circle, BSNL to pass an order of the nature contained in the communication dated March 3, 2010 which not only holds the presidential order to have been issued inadvertently requiring grant of approval to its cancellation but also make other observations bringing upon concomitant adverse effects on the career of the respondent. The petitioners have not referred to any law that authorized them to act in the manner they did; hence, we declare such action to be absolutely illegal. This is the first ground on which this writ petition ought to fail.

12. Since the order withdrawing promotional benefits and directing recovery of overpayment had the earlier order as its foundation and the same (the earlier order) has been found by us to be illegal, the subsequent order would also have no legs to stand on and is also declared illegal.

13. Now, let us look into the aspect of alleged inadvertent error in effecting the respondent's absorption in BSNL. It is not in dispute that when the respondent was promoted as Sub-Divisional Engineer by the order dated February 27, 2002 and the BSNL, Maharashtra Circle, gave him posting at Jalna by the order dated April 9, 2002 he was working in MTNL. If indeed the petitioners were under compulsion to give effect to the order dated February 27, 2002 and grant the respondent posting at Jalna, nothing prevented them after complying with the said order to raise the question in 2002 itself or anytime thereafter within a reasonable period, say within a year, that the respondent was all along till February 27, 2002 deemed to be an employee of MTNL and hence, he ought not to be regarded as an employee of BSNL. Admittedly, they failed to do so. Even after the presidential order was issued on September 23, 2004 directing permanent absorption of the respondent in BSNL with effect from October 1, 2000, no action was initiated during the next six years to correct any alleged inadvertent error in the matter of such absorption. On one fine morning, a senior officer of the BSNL woke up from his slumber and passed the order dated March 3, 2010 granting approval to cancellation of the presidential order of

absorption of the respondent in BSNL. Twenty days later, the benefits of the Time Bound Promotion Policy were withdrawn.

14. We had enquired of Ms. Masurkar as to whether the impugned orders were preceded by any opportunity of showing cause/hearing extended to the respondent. She answered in the negative.

15. Law is well-settled that any administrative order visiting an employee with evil or civil consequences must be preceded by compliance with principles of natural justice. If any authority is required, one may usefully refer to the decision of the Supreme Court in the case of **State of Orissa Vs. Dr. (Miss) Binapani Dei and ors.**¹.

16. However, it has to be remembered that in **Binapani Dei** (supra), no error was sought to be rectified; on the contrary, the dispute arose out of an order of compulsory retirement based on a certain disputed date of birth. The case had nothing to do with rectification of error.

17. In the present case, the impugned orders admittedly not having been preceded by compliance with the principles of natural justice, let us now draw guidance from the decisions of the Supreme Court on applicability of principles of natural

¹ AIR 1967 SC 1269

justice to actions which are sought to be undertaken with the ostensible purpose of rectifying an inadvertent error.

18. In Ram Chandra Tripathi vs U.P. Public Services Tribunal², the Supreme Court held that the principles of natural justice would not be attracted if an administrative order beneficial to a person passed in violation of the High Court's order is sought to be revoked with a view to correcting the mistake.

19. While deciding the case of Union of India & Others vs. Bikash Kuanar³, the Supreme Court observed that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation, require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the record, that a rectification thereof is permissible without giving any hearing to the aggrieved party.

20. Shri Shekhar Ghosh vs. Union of India & another⁴ is a case where the appellant was transferred to another department and given promotion there; however, it was later

² (1994) 5 SCC 180

³ (2006) 8 SCC 192

⁴ (2007) 1 SCC 331

found that the promotion was mistakenly given to the appellant. Such mistake was sought to be rectified by repatriating the appellant to his original department in the lower post in which he had lien. The Court noted that the mistake in the service book of the appellant, made admittedly on the part of the respondents, was detected on the basis of a complaint made by four employees. Serious allegations had been made against the appellant therein; however, no departmental proceedings were drawn up. The Court held that the case was not such where the mistake was apparent on the face of the record and, thus, compliance with the principles of natural justice would not have made any difference. Requirements to comply with the principles of natural justice would vary from case to case and if upon giving an opportunity of hearing to the affected employee, it is possible to arrive at a different finding, the principles of natural justice must be complied with. At the same time, the Court also held that when a mistake is sought to be rectified and if by reason thereof, an employee has to suffer civil consequences, ordinarily, the principles of natural justice are required to be complied with. It was also observed in the aforesaid decision that if a mistake is to be rectified, the same should be done as

expeditiously as possible.

21. In *Union of India & anr. vs. Narendra Singh*⁵, the Supreme Court held that before an action is taken for reverting an employee, he must be given an opportunity to show cause even if in the process, a mistake was sought to be corrected. According to the Court, if such opportunity was extended, the employee could be able to satisfy the authorities that there was no such mistake. Even otherwise, the Supreme Court observed that the principles of natural justice and fair play would require extending of such opportunity to the employee. On facts, however, the Court held that the impugned order was passed after considering the explanation of the employee and, therefore, the same was just, proper and in consonance with law.

22. While most of the aforesaid rulings have been rendered while dealing with service matters, let us now consider a case relating to rectification of a contract on the ground of mistake in which BSNL itself was the appellant. In ***BSNL v. BPL Mobile Cellular Ltd.*⁶,** the Supreme Court held as follows:

"52. *** If they have committed a mistake, the same could be rectified. Indisputably, mistakes can be rectified. Mistake may occur in entering into a contract. In the latter case, the

⁵ (2008) 2 SCC 750

⁶ (2008) 13 SCC 597

mistake must be made known. If by reason of a rectification of mistake, except in some exceptional cases, as for example, where it is apparent on the face of the record, mistake cannot be rectified unilaterally. The parties that would suffer civil consequences by reason of such act of rectification of mistake must be given due notice. Principles of natural justice are required to be complied with. The fact that there was no mistake apparent on the face of the records is borne out by the fact that even the officers wanted clarification from higher officers. The mistake, if any, was sought to be rectified after a long period; at least after a period of three years. When a mistake is not rectified for a long period, the same, in law, may not be treated to be one."

(emphasis ours)

23. In the present case, the so-called inadvertent error was not detected for more than six years. Since the error was not detected for so long, not to speak of rectification, the error, if any, in law of this nature should not be treated to be an error. This, we hold in view of the dictum in **BSNL** (supra), as well as the settled position of law that delay defeats discretion. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. There ought to be a limit of time by which human affairs should stand settled and uncertainty obliterated.

24. Even if we accept the contention of Ms. Masurkar that there was any inadvertent error in the entire process leading to absorption of the respondent in BSNL, that by itself did not grant any immunity to the petitioners from complying with

natural justice since the error was not an error that was apparent on the face of the record. If, indeed, opportunity was granted to him, the respondent could have either persuaded the petitioners to hold that there was no inadvertent error, or that even if there was any inadvertent error, it was too late for the petitioners to unsettle the settled position much to his detriment and prejudice by which he would lose out on Government service. It is for this additional reason, apart from the reasons assigned by the Tribunal, that we hold the petitioners to have been grossly wrong in their approach of taking away a vested right of the respondent of absorption in BSNL without following the rule of law. Illegal and unjust actions taken unilaterally are anathema to Article 14 of the Constitution and, accordingly, the Tribunal was right in its interference with the impugned orders.

25. We, therefore, find no reason to interfere with the judgment and order dated February 10, 2012.

26. Insofar as the order dated November 7, 2012 dismissing the review petition of the petitioners is concerned, we find that the Tribunal has applied its mind and while relying on the decisions of the Supreme Court in **Meera Bhanja (Smt.) Vs.**

Nirmala Kumari Choudhury (Smt.)⁷ and Ajith Kumar Rath Vs. State of Orissa⁸, formed an opinion that there was no error apparent on the face of the record deserving a review of the judgment and order dated February 10, 2012. In fact, we are minded to hold that it was for the petitioners to place before the Tribunal, at the time Original Application No. 297 of 2010 was finally considered, the orders that were passed by the Tribunal on the original applications filed by other employees where a contrary view was taken by it. We have not been shown any authority that omission of a party to the proceedings to rely on a previous decision involving the same issue can be a ground to attract review. On the contrary, in the decision in **Dokka Samuel Vs. Jacob Lazarus Chelly (Dr.)⁹**, the Supreme Court has held that the "omission to cite an authority of law is not a ground for reviewing the prior judgment saying that there is an error apparent on the face of the record, since the counsel has committed an error in not bringing to the notice of the court the relevant precedents". The onus lay on the petitioners to bring to the notice of the Tribunal its earlier decisions, which they failed. That would not

⁷ (1995) 1 SCC 170

⁸ (1999) 9 SCC 596

⁹ (1997) 4 SCC 478

constitute an error apparent on the face of the record for having the review jurisdiction exercised.

27. Even otherwise, we find that the Tribunal has assigned reasons why such earlier orders were distinguishable on facts. We, accordingly, uphold the order of the Tribunal dismissing the review petition.

28. For the reasons aforesaid, there is absolutely no merit in this writ petition.

29. We find that during the pendency of the writ petition, the respondent had filed a civil interim application seeking an order for promotion. A co-ordinate Bench of this Court by its order dated May 3, 2018 observed that the prayer of the respondent for promotion would be considered at the time the writ petition is heard finally and the prayer for promotion was refused at that stage. In such view of the matter, we direct that if indeed the respondent was entitled to be considered for promotion but has been deprived of such promotion on the ground of pendency of the writ petition, his case be considered by the petitioners and appropriate orders passed in accordance with law as early as possible but positively within 3 (three) months from date of receipt of a copy of this order.

30. In view of dismissal of the writ petition, Civil Application No. 2160 of 2014 filed by the petitioners seeking an order for stay of absorption of the respondent in BSNL does not survive; hence, the same also stands dismissed.

31. Civil Application No. 1941 of 2019 is at the instance of the respondent seeking an order that he may not be transferred outside Maharashtra during the pendency of the writ petition. Since it has not been informed to us that he was transferred outside Maharashtra during the pendency of the writ petition, such application also does not survive with the dismissal of this writ petition by this judgment and order. The said Civil Application also stands disposed of.

32. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)