

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9332 OF 2019

Kripashankar Rajnarayan Mishra }
Residing at Flat No. A 503, Sai }
Leela Apartment Daulat Nagar, }
Road no. 6, Borivali (East), }
Mumbai – 400066. } ... Petitioner.

V/s.

1. Deputy General Manager (MRD)}
Mira Road Telephone Exchange, }
MTNL, Mumbai Sheetal Saurabha }
Building, 2nd floor, Sheetal Nagar, }
Mira Road (East) Thane – 401 107 }

2. The General Manager (West- III),}
MTNL, Mumbai, 4th floor, Kandivli }
Telephone Exchange Building, SV }
Road, Kandivli (West), Mumbai }
400 067 }

3. The Executive Director, MTNL, }
Mumbai 15th floor, Telephone }
House, Prabhadevi Veer Savarkar }
Marg, Dadar (West) Mumbai- }
400 028 }

4. The Chairman and Managing }
Director, MTNL, Mahanagar Door }
Sanchar Sadan, 5th floor, 9 CGO }
Complex, Lodhi Road, New Delhi- }
110 003. } ... Respondents.

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Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy, Ms Kavita Anchan, Ms Seema Sorte and Mr. Karthik Pillai for the Petitioner.

Mr. Yogendra Pendse for the Respondents.

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**CORAM : NITIN JAMDAR AND
MANJUSHA DESHPANDE, JJ.**

DATE : 30 November 2023.

P.C. :

The Petitioner is taking exception to the order passed by the Central Administrative Tribunal, Mumbai Bench, in Miscellaneous Application No. 813 of 2016 in Original Application No. 696 of 2016 for condonation of delay vide order dated 13 February 2019. The Miscellaneous Application filed by the Petitioner in Original Application No. 696 of 2016 has been rejected by the Tribunal refusing to condone the delay occurred in filing the Original Application.

2 It is the case of the Petitioner that the Central Bureau of Investigation (CBI), Mumbai, registered an FIR against the Petitioner for alleged demand of illegal gratification and filed charge-sheet in Criminal Jurisdiction. As a result, the Petitioner was placed under suspension on 20 April 2002 in contemplation of Disciplinary proceedings. It is contention of the Petitioner that his employer MTNL had no material to issue a charge-sheet other than the

material gathered by the CBI. Even the allegation in the Departmental charge-sheet was identical to the charge-sheet issued by the CBI in the case filed before the Special Judge, Thane.

3 Special Case No. 3 of 2003 was after a full fledged trial decided vide judgment dated 30 January 2012. The Petitioner was acquitted of the offences alleged under Section 7 r/w Section 13 of the Prevention of Corruption Act. In the meanwhile, departmental charge-sheet was issued on 11 April 2003 and after concluding the Departmental inquiry, an order of penalty was passed on 6 June 2006 by the Disciplinary Authority. The punishment of removal from service was imposed on the Petitioner by order dated 6 June 2006. The Petitioner had filed an appeal against the said order. However, the said appeal filed by the Petitioner also came to be rejected by order dated 24 February 2009. The Petitioner went in revision before the higher Authority by order dated 23 May 2009.

4 The Special Case pending before the Special Judge, CBI, Thane, was decided on 30 January 2012, wherein, the Petitioner was acquitted. Therefore, he had preferred an Application on 24 February 2012 to the Executive Director, MTNL, Mumbai, to set aside the order of punishment in the departmental inquiry and reinstate the Petitioner in service, considering the acquittal in the criminal proceedings. Since no action was taken on his request, the Petitioner preferred a Review Petition on 29 January 2015 before the Chairman and Managing Director, MTNL, Delhi. According to the

Petitioner, the said Revision Petition was pending with the concerned Authority even during the pendency of the Original Application.

5 The Petitioner had thereafter approached the CAT, Mumbai Bench by filing the Original Application No. 696 of 2016 with Miscellaneous Application No. 813 of 2016. After notices were issued on the condonation of delay application, reply was filed by the Respondents to the Original Application as well as Miscellaneous Application and after hearing the respective parties, the Miscellaneous Application for condonation of delay has been rejected by the Tribunal, which is challenged by the Petitioner in the present Writ Petition. According to the Petitioner, the Tribunal has caused serious prejudice to the Petitioner by not deciding the Original Application on merits and only deciding the Miscellaneous Application for condonation of delay. The Petitioner has contended that the Tribunal ought to have accepted the reason given by the Petitioner for condonation of delay and considered the case of the Petitioner on merits.

6 The thrust of the argument of the learned Counsel for the Petitioner was mainly based on the ground that the criminal as well as the Departmental proceedings were based on the CBI case. Therefore, acquittal in the Special Case created a right of reinstatement in service in favour of the Petitioner. It is the case of the Petitioner that even the Appeal filed by the CBI before this Hon'ble Court has been dismissed by this Court on 16 June 2014.

Therefore, it was incumbent upon the Respondent- employer to reinstate the Petitioner by passing appropriate orders. The Miscellaneous Application has been dismissed by the Tribunal on the ground of inexcusable delay. After hearing extensively, the said order came to be passed by the Tribunal. The Respondent-Authorities have opposed the Miscellaneous Application on the ground that, so far as the aspect of delay is concerned, it is contended that the Petitioner did not take recourse to the legal remedies after his appeal has been rejected on 24 February 2009, or after his Review Petition was dismissed on 23 May 2009. The delay has to be counted from the date of rejection of order communicated by the Authority, therefore, the delay needs to be counted from 23 May 2009. Similarly, if the ground raised by the applicant that he needs to be reinstated in view of his acquittal, even then the said order of acquittal has been passed on 30 January 2012 counting the delay from the said date, the Original Application is hopelessly barred by limitation.

7 In order to substantiate the stand taken by the Respondent-employer, reliance has been placed on the judgment in (i) *Union of India and Ors. V/s. M. K. Sarkar*¹ (ii) *State of Uttaranchal V/s. Shri Shivcharan Singh Bhandari*² (iii) *State of Tripura V/s. Arabinda Chakravarti*³. Therefore, according to the Respondents, there was a delay of over 2,600 days which is not supported by valid reasons.

1 (2010) 1 SCC (L&S) 1126

2 2014 (2) SLR 688 (SC)

3 2015 SLR 12

8 The Tribunal therefore has framed preliminary issue of limitation before proceeding with the merits of the case. The Tribunal has observed that there is a huge delay which is not properly explained, even for exercising the discretion purely in the interest of justice, there has to be proper explanation for exercising such discretion. In the present case, the Tribunal has recorded that the, Tribunal was not at all satisfied with the reasons for delay mentioned by the Petitioner. The Tribunal has observed that the proceedings have been concluded in the year 2009, during which, the opportunity to defend has been given to the Petitioner on every possible occasion. Since there is no satisfactory explanation given for delay, the Miscellaneous Application for condonation of delay is not maintainable.

9 We have gone through the pleadings of the parties and the order passed by the Tribunal. Admittedly, there is a huge delay of more than 1953 days. The Petitioner is seeking review/ setting aside of the order which was passed in the year 2009, that too without satisfactory explanation for the delay caused in approaching the Tribunal. We are in fully agreement with the findings recorded by the Tribunal, that the delay is not satisfactorily explained and the said delay is unconscionable. The Petitioner ought to have approached the Tribunal immediately after the impugned order was passed in the year 2009 or at least immediately after his order of acquittal was passed by the Special Court.

10 Considering that the Petitioner has failed to satisfy the Tribunal about the delay and the Tribunal has refused to exercise its discretion, we do not find any error in the order passed by the Tribunal and no case for interference. Hence, the order passed by the Tribunal needs no interference. As a result, the Writ Petition stand rejected.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)