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*Wmp No.34111 of 2019 and
Rev.Appl.SR 148933 of 2019 and etc. batch*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

WMP No.34111 of 2019 and Rev.Appl.SR 148933 of 2019

WMP No.33850 of 2019 and Rev.Appl.SR 143105 of 2019

WMP No.30932 of 2019 and Rev.Appl.SR 127850 of 2019

WMP No.30936 of 2019 and Rev.Appl.SR 127861 of 2019

WMP No.30942 of 2019 and Rev.Appl.SR 127853 of 2019

WMP No.30943 of 2019 and Rev.Appl.SR 127846 of 2019

WMP No.33855 of 2019 and Rev.Appl.SR 143109 of 2019

In WMP No.34111 of 2019 and Rev.Appl.SR 148933 of 2019

Uma Maheshwari

... Petitioner

Vs.

- 1.The Union of India, rep. by its Chairman,
Managing Director BSNL, Corporate Office,
Bharat Sanchar Bhavan, Harish Chandra Mathur Lane,
Janpath, New Delhi 110 001.
2. The General Manager (Personnel) BSNL,
Corporate Office, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi 110 001.



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3. The General Manager (Recruitment),
Corporate Office, Eastern court, Janpath,
New Delhi 110 001.

4. The Chief General Manager,
Telecommunications, BSNL,
Tamil Nadu Circle, No.80, Anna Salai,
Chennai-2.

5. The Registrar, Central Administrative Tribunal,
High Court Buildings, Chennai-104.

... Respondents

Prayer in WMP No.34111 of 2019: Writ Miscellaneous petition filed under
Section 226 of the Constitution of India to condone the delay of 966 days in
filing the Review Application SR 148933/2019.

Prayer in Rev.Appl.SR No.148933 of 2019: Review application filed under
Order 47 Rule 1 of Code of Civil Procedure, 1908 to review the order
passed by this Court in W.P.No.12616/2015 dated 21.02.2017.

In WMP No.34111 of 2019 and Rev.Appl.SR 148933 of 2019

For Petitioner : Mr.R.Singaravelan, Senior Counsel

for Mr.M.Muruganantham

For Respondents : Mr. Vijayan, Standing Counsel
for Mr.K.R.Ramesh for R5



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COMMON ORDER

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(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

All the miscellaneous petitions have been filed to condone the respective 925 and 966 days delay in filing the respective Review Applications to review the common order passed by this Court in W.P.Nos.7683, 12615, 12616, 12617 and 18205 of 2015 dated 21.02.2017.

2. The issues involved in all the miscellaneous petitions and the connected impugned orders are one and the same and hence the same were heard together and disposed of by common order.

3. Originally, the petitioners were appointed as Junior Telecom Officers (Telecom) in the year 2001. Their next promotion was to the post of Sub Divisional Engineer (SDE) and the mode of recruitment was on two methods, viz. i) 75% of posts have to be filled up by promotion, on the basis of seniority cum fitness and ii) 25% of posts have to be filled up by conducting Limited Department Competitive Exam (LDCE) among the JTO. The Recruitment Rules (RR) fixed the eligibility of the candidates to



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writ the LDCE that they must be completed three years of service on or before 01.07.2005.

4. According to the petitioners, though they were selected during July 2001, they were given training only in August 2002 and hence there was a delay for about one year in conducting the training and issuance of posting order by the 4th respondent, without any fault on the part of the petitioners. Due to the above said delay, there was a shortfall about one month for completion of three years. However, the petitioners had participated in the LDCE examination on 15.07.2007 and their applications were duly scrutinized by the authorities concerned and they have passed the examination and subsequently, they were promoted as SDE in the year 2008.

5. In such circumstances, after completing more than two years of service as SDE, a show cause notice dated 20.09.2010 was issued to the petitioners as to why their appointment to the post of SDE(T) should not be cancelled, since the petitioners did not complete their three years of regular



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service on or before 01.07.2005. Therefore, the petitioners approached the Central Administrative Tribunal, Madras Bench by way of filing original applications No.42, 55, 56 and 736 of 2011. The above applications were allowed by the Tribunal, vide order dated 02.01.2013 and the impugned show cause notices were quashed.

6. As against the order passed in the afore said original applications, the official respondents had filed Review Applications in R.A.No.38, 39, 40 and 41 of 2013. The Tribunal has allowed the review applications, vide order dated 18.02.2015. Challenging the above orders, the petitioners have filed writ petitions in W.P.No.7683, 12615, 12616 and 18205/2015 before this Court. This Court, vide common order dated 21.02.2017, has dismissed the writ petitions and confirmed the orders passed by the Central Administrative Tribunal in the Review Applications.

7. Now, the petitioners have filed the instant miscellaneous petitions to condone the delay of 925 and 966 days in filing the respective review applications.



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8. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent and we have perused the materials on record.

9. In the affidavits filed along with the miscellaneous petitions, the petitioners have stated that immediately, after passing orders by this Court on 21.02.2017 in the writ petitions, the aggrieved employees have approached the respondents and the Deputy General Manager (HR), Tamil Nadu Circle, Chennai has also positively addressed their grievances, vide proceedings dated 05.09.2017 and the Department has also given assurance that a positive action would be taken. Therefore, as per the instructions of the Department, expecting a positive result, the petitioners have been waiting. But, the department has passed an order, directing other circles to take steps to revert the petitioners into their initial post. Therefore, the petitioners have approached the Central Administrative Tribunal in O.A.No.310/2019 to quash the above said order. In such circumstances, having no other way, the petitioners have approached this Court to review the orders passed in the afore said writ petitions along with the instant



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petitions to condone the delay.

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10. We have carefully examined the above said averments made in the affidavit. But, we are not satisfied with the above explanation for the inordinate delay of 925 and 966 days in filing the respective Review Application. At this juncture, it is worthwhile to rely upon the decision of the Hon'ble Supreme Court in ***H.Dohil Constructions Company Private Limited vs Nahar Exports Limited and Another reported in (2015) 1 Supreme Court Cases 680***, wherein, the Apex Court has categorically held as follows:

“23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the



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failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time CIVILAPPEAL NOS. OF 2014 22 of 25 (@ SLP (C) Nos.10811-10812 of 2014 & Connected matters prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant



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the relief for specific performance but grant only apayment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered”

In the light of the decision of the Hon'ble Supreme Court cited supra, we are of the view that the reasons stated in the affidavit for the inordinate delay of 925 and 966 days in filing the respective Review applications are not satisfactory. Hence, the miscellaneous petitions for condoning the delay in filing the respective Review applications are liable to be dismissed.

11. It is pertinent to note that, though the original applications were filed challenging the show cause notice, subsequently, the official respondents have issued order, directing their circle office to take steps to revert the petitioners to their initial post. According to the petitioners, challenging the above said order, the petitioners have filed O.A.No.310/2019 before the Central Administrative Tribunal and the same is pending. Therefore, it is for the Tribunal to decide the above said original



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application, on its own merits and in accordance with law, without influencing any of the observations made in this order. Further, we are not giving any positive direction to the Tribunal with regard to the disposal of the aforesaid original application.

12. Accordingly, all the miscellaneous petitions are dismissed. Consequently, all the Review Applications are rejected at the SR stage itself.

(D.K.K.J.)

(P.D.B.J.)

19.06.2023

Internet: Yes/No
Index : Yes/No
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To

1.The Chairman, Union of India,
Managing Director BSNL, Corporate Office,
Bharat Sanchar Bhavan, Harish Chandra Mathur Lane,
Janpath, New Delhi 110 001.



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