

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00270/2019

DATED THIS THE 07TH DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Umesh N B
S/o Sri.Balagangadhara,
Aged 42 years, Working as
Postman, Chitradurga HO-577 501,
Residing at Municipal colony,
Main Road, Near Ganesha Temple,
Kelagote, Chitradurga-577 501.

..... Applicant

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India,
By Secretary,
Department of Posts,
Dak Bhavan,
New Delhi-110 001.

2. The Postmaster General
S.K Region
Bengaluru-560 001.

3. The Director of Postal Services,
O/o the Postmaster General,
S.K.Region,
Bengaluru-560 001.

4. The Superintendent of Post Offices,
Chitradurga Division,
Chitradurga-577 501.Respondents

(By Shri N. Amaresh, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. This matter leaves much to be desired. We have to admit that we think that some sort of a manipulation at some level may have been done to protect the accused. The basic occurrence witness Smt. Sunandamma does not seem to be examined at all. But before looking into it let us go to the complaint. The complaint is produced herein as Annexure-A1, which we quote:

*"From
Radha P. Hirehala
Bethuru Branch office*

*To
Postal superintendent
Chitradurga Division
Chitradurga*

Sub: Complaint about inhumanity and torture given in the office by the mail overseen N.B. Umesh

Sir,

I Radha P. Hirehal, Betur branch officer GDSMD joined to duty on 01-10-2013, and I have been working under the guidance of my senior colleague Sir S. Rajgopal, BPM

During the time or work, if I commit any mistake, he used to correct and guide with patience.

But mail overseen N.B. Umesh had come to my house about 5 to 6 times. Since I joined the job.

He interfered in my personal matter and official matter.

I am from Belur Village, Badami Taluk Bagalkote (Dist) Since our family is poor and my mother is suffering from illness.

I alone stayed at Betur here I am working as GDSMD.

I am in a small rented house. He misused my loneliness and he used to give mental torture, still I tolerated.

Dated 07-03-2014 as daily routine I came home to have lunch at about 3.00 PM when I was talking with my neighbours Radhamma and her mother Sunandamma in their house.

By 4-15 PM I heard the sound of the vessels falling in my house. I went home and saw that the locked lock was opened and N.B. Umesh was inside.

By seeing him inside my house. I was shocked and I screamed Sunandamma to come both we went inside and asked him that why were you here? For that he said that he was thirsty so he came to drink water.

Regarding our B.O work he started enquiry I and Sunandamma both we said that don't enquire at home. Lets go to BO.

Then he got angry and he forced me to give the teddy bear which I liked very much which was in my house.

I rejected to give, then he said that he will kidnap me with my teddy bear and marry me like this he said angrily.

Then he took out the mobile phone from my vanity bag and opened the mobile and took out the sim card from it.

He took away the sim card along with him.

Regarding my work is four villages while I was issuing money orders he used to torture even though there were no complaints about me.

He will make some allegations and threatening that he will make me suspended.

By this I was so unhappy and I am able to continue this job so I give resignation and I go back to my native place like this I said to him.

Then he said first you do that, he gave me a piece of paper and said to me to write resignation letter.

Kind hearted sirs, to the above said matter I request you to save from his torture and protect me from N.B. Umesh and provide me justice.

Thanking you,

Yours faithfully

Sd/-

(Radha P. Hirehal)"

2. Going by the Vishaka judgment, all the elements of sexual harassment is present in this complaint, objection notwithstanding.

3. The matter ended in some punishment for the applicant which does not seem to be in consonance with the gravity of the offence alleged against him. But, on appeal, the Appellate Authority has found certain crucial aspects. We quote from the Appellate Authority's order:

***"Office of the Postmaster General, South Karnataka Region,
Bengaluru 560 001
Memo No. SK/STA/9-3/03/2017/I dated at Bengaluru 560 001, the
11.08.2017***

This is an appeal dated 30.01.2017 preferred by Sri Umesh N.B., Postman Chitradurga Ho against the orders of penalty of reduction of pay by one stage for 3 years with cumulative effect with further directions that the Appellant will not earn increments of pay during the period of reduction and that on expiry of the period of reduction, it shall have the effect of postponing his future increments of pay imposed by Supdt. Of Post Offices, Chitraduga division vide Memo No. B4/PF/NBU/Case/Dlgs dated 22.12.2016

The appeal has been preferred within the time prescribed and addressed to the appropriate authority. Therefore, the appeal may perhaps be taken up for consideration.

Gist of the case is as under:

*On receipt of written complaint preferred by Radha P. Hirehal GDSMD, Bethur BO alleging harassment by Sri N.B. Umesh Mail overseer Davanagere I Sub Division enquiries were conducted through ASP (R) Chitradurga. The ASP (R) submitted his report finding *prima facie* evidence on the allegations. The case was thereafter entrusted to the circle complaints committee on 09.05.2014.*

Circle complaints committee headed by Smt. Veena Srinivas submitted its report dated 28.09.2016 holding that the allegations of physical assault on Ms. Radha P. Hirehal are not proved. However, sexual harassment is clearly proved and hence appropriate disciplinary action on Sri N.B. Umesha to be taken. A copy of the inquiry report of the circle complaints committee was furnished to the appellant vide SPOs Chitradurga division letter No. B4/PF/NBU/Case/Dlgs dated 08.11.2016 directing him to submit his representation if any within 15 days. In response to this, the Appellant requested supply of clear and decipherable copies of the annexures to the report of the circle committee and sought for 15 days time to submit his representation. The Appellant was furnished with copies of the annexures to the complaint's committee report vide letter dated 25.11.2016 and he was asked to submit his representation on or before 08.12.2016. In response, the appellant again represented vide his letter dated 03.12.2016 seeking photo copies of two annexures and remaining annexures typed in Kannada. The Appellant was then directed to visit the office of the SPOs on 19.12.2016 for verification and to take notes of the annexures and also to submit his representation on or before 21.12.2016. The Appellant instead of utilizing this opportunity on his relief, produced medical certificate. Since, the Appellant failed to submit his representation within the time prescribed, the Disciplinary authority imposed the penalty of reduction of his pay by one stage for 3 years with cumulative effect with further directions that the Appellant will not earn increments of pay during the period of reduction and that on expiry of the period of reduction, it shall have the effect of postponing his future increment of pay vide memo No. B4/PF/NBU/Case/Dlgs dated 22.12.2016. The order of penalty is appealed against now.

In his appeal, the appellant puts forth the following.

1. *That being native of North Karnataka, Ms. Radha P. Hirehal with an intension of getting transfer to her native and with the instigation of the GDSBPM made false sexual harassment complaint against him.*
2. *That findings of the committee are not tenable for the following reasons as it did not follow the basic principles of inquiry but conclusions are drawn with predetermined notions.*
 - a. *Committee did not make serious efforts to ascertain the actual facts and whether the complaint was genuine or not. Ms. Radha P. Hirehal was not put to cross verification.*
 - b. *The deposition of Sri. Rajagopal is unrealistic particularly with regard to picking up the mobile phone of Ms. Radha P. Hirehal and thus he conspired to fix him.*

- c. The committee relied upon the call details to conclude sexual harassment but the authenticity of the call records is doubtful.
- d. Out of 130 calls from mobile No. 9902993375 to 8746970238, 120 calls have not recorded any conversation. Thus the evidence of Sri Rajgopal that he used to pick up the call and whenever he picked up, the call used to be cut proves false.
- e. The committee did not get the outgoing call details of Ms. Radha P. Hirehal indicating that the committee was not interested to eke out the truth.
- f. The said Ms. Radha P. Hirehal in her statement before the ASP (R) had narrated an incident of assault on her by him on 19.02.2014 but as per the call details for 01.04.2015 show conversation for 1027 seconds (17.11 mts.) The committee did not consider as to how such a long conversation is possible after the assault.
- g. The committee ignored the invaluable evidence produced by him in the form of message details and thus proved to be biased.
- h. The Disciplinary authority being lower in rank to the head of the committee and its members except one NGO cannot be expected to apply his mind on the conclusions arrived at by the Committee. Thus the Disc. Authority has been dictated by the highest authority through the report and therefore the penalty imposed is highly erroneous and proceedings are vitiated.

3. That reasonable opportunity was not provided to him during the inquiry and in the proceedings and the committee held enquiry on 13.08.2014 and submitted its report on 27.09.2016 after a gap of two years which is against the mandatory period of ten days for submission of report as per sec 13(1) of sexual harassment of women at workplace (Prevention, prohibition and redressal) Act 2013.

4. That the witnesses were not allowed to be cross examined and thus there is clear violation of principles of natural justice.

5. That the penalty imposed on him was to prevent him from promotion.

6. That the Disc Authority has not followed the Rule 14 of CCS CCA Rules 1965 in his case and therefore the order of Disc Authority is liable to be set aside.

7. That the Disc. Authority has exhibited undue haste in finalizing the case and did not allow him to give his representation against the committee's report.

8. That the principle of preponderance of probability is followed in the case instead of the principle of beyond doubt. That opportunity to

prove his innocence was not provided to him as also the provisions available for him to defend his case by engaging defense counsel to cross examine witnesses was not followed.

9. That as per CCS CCA Rules each witness shall be examined separately in his presence and he should have been allowed to cross examine witnesses. Thus, the right of proper and effective defense has been totally violated.

10. That as per CCS CCA Rules, whenever senior officers themselves observe omissions and commissions against any employee, such findings shall be taken into consideration only by the next higher authority. Present Disc. Authority is four ranks lower than Smt. Veena Srinivas, PMG (BD) and thus the action of the DA is totally ab initio.

I have gone through the appeal carefully with connected records. One of the Major contention of the appellant is that the disciplinary authority has not followed the procedure outlined in conducting inquiry in case of allegation of Sexual Harassment as per OM dated 16.07.2016 (F No. 11013/2/2014-Estt (A-III) from Ministry of personnel, public grievance and pensions (Dept. of Personnel and training) before imposition of penalty of reduction of pay by one stage for period of three years without cumulative effect. I find that reasonable opportunity as prescribed in the said memo was not provided to the appellant and the procedure laid down is not followed. Therefore, I consider the appeal on the limited grounds as ordered under.

I, G. Natarajan, Director Postal Services, South Karnataka Region, Bengaluru 560 001 in exercise of the conferred by Rule 27 of CCS (CCA) Rules 1965 hereby Set aside the penalty of reduction of his pay by one stage for 3 years with cumulative effect imposed vide memo No. B4/PF/NBU/Case/Dlgs dated 22.12.2016 with further directions to Disciplinary authority to start de nova proceedings from the stage of issue of fresh charge sheet.

Sd/-
(G. Natarajan)
Director Postal Services
South Karnataka Region,
Bengaluru 560 001"

4. The Appellate Authority has found that the witnesses were not allowed to be cross-examined by him and it is a clear violation of the principles of natural justice. We are inclined to agree with the Appellate Authority on this

point. Witnesses should have been allowed to be cross-examined and, without that, the fair opportunity given to anybody will not be complete, so, we uphold the order of the Appellate Authority which also said that let there be a denovo inquiry.

5. Now the complaint of the applicant is that in the charge memo issued thereafter one additional element had been crept in. Apparently during the inquiry through the Committee it has come out that the applicant was in the habit of calling the original complainant at odd hours and that element also has been brought in as a new charge in the complaint. Shri A.R. Holla, learned counsel for the applicant, submits that this cannot be as only a denovo inquiry is ordered and this cannot be seen to mean that additions are to be permitted. But we have examined that matter and found that there is no new complaint, as such, as call at odd hours is only within the stream of events as narrated by Annexure-A1 complaint and nothing else. Therefore, we cannot say that there is a new element brought in to which the applicant was not able to reply at this stage. Since it is only a technical matter on the evidence and the credibility of the evidence, we need not go into it at this point of time. We will leave it to the good sense and discretion of the concerned Inquiry Officer to be appointed in accordance with the rules in existence now. There is no need for the sexual harassment committee to finally constitute themselves into an inquiry committee as their inquiry is only recommendatory in nature but the regular Inquiry Officer's inquiry will be more commensurate with the procedure allowed for the same. Therefore, let

the respondents appoint a proper Inquiry Officer and conduct an inquiry but at the same time Smt. Sunandamma who is the occurrence witness at that point of time must be examined as only she can say about the intrusion of the applicant, or the allegation thereof, into the house of the alleged employee. We will point out that it is of utmost importance that truth be found out in any allegation and that should be the basis of punishment or acquittal. Therefore, we will now direct the respondents to appoint an Inquiry Officer and complete the inquiry within the next four months. It appears that there is no provision for cross-examination in the proceedings of the sexual harassment committee which was promulgated after the Vishaka judgment and the Apparel Export Promotion Council judgment and therefore the later judgments have decided that the sexual harassment committee will be deemed as having conducted the preliminary inquiry but the regular inquiry will be conducted by the regular Inquiry Officer appointed under the rules. But then the respondents must also examine the sole occurrence witness as we cannot understand her exclusion at all. The OA is therefore disposed with the above direction. The inquiry to be completed within the next four months. Applicant is specifically directed to cooperate with the inquiry as the respondents point out that he is raising technical objections and impeding the inquiry at every stage. He is put on caution.

6. At this point of time, the learned counsel for the applicant put up certain matter for clarification. We clarify that the new charge memo, Annexure-A11, will not be stayed but applicant will be given all opportunity

to defend his contentions. But at the same time we make it clear that the exclusion of Smt. Sunandamma on the part of the respondents is wrong and quite arbitrary. It shall be immediately attended to.

7. The OA is disposed with the above directions. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00270/2019

Annexure A1: Copy of the complaint dated 17.03.2014
Annexure A2: Copy of the order dated 25.03.2014
Annexure A3: Copy of the letter dated 21.05.2014
Annexure A4: Copy of the report of the Committee for prevention of sexual harassment dated 28.09.2016
Annexure A5: Copy of the order dated 08.11.2016
Annexure A6: Copy of the order dated 22.12.2016
Annexure A7: Copy of the order dated 11.08.2017
Annexure A8: Copy of the memo dated 18.12.2017
Annexure A9: Copy of the applicant's representation dated 05.01.2018
Annexure A10: Copy of the memo dated 26.03.2018
Annexure A11: Copy of the order dated 24.05.2018
Annexure A12: Copy of the applicant's representation dated 03.06.2018
Annexure A13: Copy of the applicant's representation dated 03.06.2018
Annexure A14: Copy of the order dated 19.11.2018
Annexure A15: Copy of the applicant's representation dated 19.9.2018
Annexure A16: Copy of the order dated 28.01.2019

Annexures referred in reply statement

Annexure R1: Copy of the letter dated 16.7.2013
Annexure R2: Copy of the Rule 14 of the CCS(CCA) Rules
Annexure R3: Copy of the Notification dated 23.4.2013
Annexure R4: Copy of the OA No.764/2016 dated 22.2.2017

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