

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE**

**ORIGINAL APPLICATION NO.170/00252/2019**

**DATED THIS THE 17<sup>th</sup> DAY OF JANUARY, 2020**

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER**

**HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

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 Sri A.R.Holla)

Vs.

1. Union of India  
By Secretary  
Department of Posts  
Dak Bhavan  
New Delhi-110 001.
2. The Chief Postmaster General  
Karnataka Circle  
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 Advocate Sri N.Amaresh, Sr.PC for CG )

O R D E R

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

The case of the applicant is that while he was working as Postman in Chitradurga Head Post Office, the 2<sup>nd</sup> respondent issued a notification dtd.20.6.2016(Annexure-A1) for conducting Limited Departmental Competitive Examination for promotion to the cadre of Postal Assistants/Sorting Assistants for the year 2015-16. The applicant appeared for the examination which was held on 31.7.2016. The results of the examination were announced as per the notification dtd.2.9.2016(Annexure-A2) wherein his name was not found. Then the applicant submitted a representation on 6.9.2016(Annexure-A3) to the 2<sup>nd</sup> respondent stating that as per the key answers published, he has scored 88 marks and the candidates secured marks less than him have been selected. In the subsequent notification dtd.8.9.2016, the names of surplus qualified candidates, who could be accommodated in other divisions were announced(Annexure-A4). But the applicant's name was not found in that list also. Accordingly under the provisions of RTI, he sought to know the position regarding his result. In response to the same, the applicant has been informed by letter dtd.13.10.2016(Annexure-A5) stating that the result of the applicant has been kept in a sealed cover in view of pending enquiry into the sexual harassment case filed against him by Smt.Radha Hirehal, GDS MD, Bethur BO, JD Circle SO, Davangere. In the meantime, proceedings were initiated against the applicant for sexual harassment case. After holding an enquiry, the Circle Committee for prevention of sexual harassment submitted its report dtd.28.9.2016(Annexure-A7) to the 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent by order dtd.8.11.2016(Annexure-A6) directed the applicant to submit his representation within 15 days. The committee held that the allegations of physical assault on Smt.Radha P.Hirehal are not proved,

but sexual harassment is proved. Accordingly, the committee recommended appropriate disciplinary action against the applicant. But the 4<sup>th</sup> respondent, without initiating any disciplinary proceedings against the applicant as per the recommendation of the committee, passed an order dtd.22.12.2016(Annexure-A8) imposing the penalty of reduction of his pay by one stage for 3 years with cumulative effect with a direction that the applicant will not earn any increment during the period of reduction and it shall have the effect of postponing his future increments. Then the applicant preferred an appeal to the 3<sup>rd</sup> respondent against the said order on 30.1.2017. The 3<sup>rd</sup> respondent by an order dtd.11.8.2017(Annexure-A9) disposed of the appeal setting aside the penalty imposed on the applicant and directed the 4<sup>th</sup> respondent to start de novo proceedings from the stage of issue of charge memo. Then the applicant submitted a detailed representation to the 2<sup>nd</sup> respondent on 28.9.2017(Annexure-A10) requesting to review his case and consider him for the post of Postal Assistant/Sorting Assistant consequent upon his result in the examination held earlier. In response to the same, the applicant has been informed vide order dtd.29.11.2017(Annexure-A11) that his result will be announced after completion of the disciplinary case. Subsequently, he has been issued with a memorandum dtd.26.3.2018(Annexure-A12) initiating proceedings against him under Rule 14 of CCS(CCA) Rules, 1965 charging him that he has made several unwelcome telephone calls during the period from 18.6.2012 to 26.3.2014 from his mobile phone to the mobile phone used by Smt.Radha P.Hirehal, which attracts provisions of the Rule 3C(1) of CCS (Conduct) Rules, 1964. In the circumstances, the applicant submitted a representation to the 2<sup>nd</sup> respondent on 19.9.2018(Annexure-A13) explaining that there is no justification

to keep his result in sealed cover as no disciplinary proceeding was pending against him when he appeared for the examination and with a request to open the sealed cover and declare his result in the LGO examination. The applicant submits that the procedure adopted by the respondents to keep his result in the sealed cover is not in accordance with law. After permitting the applicant to appear for the examination, there is no justification for the respondents to withhold his result by keeping the same in sealed cover. The eligibility or otherwise of the applicant to be promoted required to be considered after announcing the result only. Therefore, the respondents are liable to be directed to announce the result of the applicant in the Limited Departmental Competitive Examination for promotion of Lower Grade Officials to the cadre of Postal Assistant/Sorting Assistant for the year 2015-16 held on 31.7.2016, in pursuance of his representation dtd.19.9.2018(Annexure-A13).

2. Per contra, the respondents have submitted in their reply statement that a complaint was given by Ms.Radha P.Hirehal, Gramin Dak Sevak Mail Deliverer of Bethur Branch Post Office under J.D.Circle Sub Post Office of Davanagere Postal Division against the applicant while he was working as Mailoverseer at Davanagere-1 sub Division for the period from 18.6.2012 to 26.3.2014 alleging physical, mental and sexual harassment. The ASP(R), O/o Supdt. of PO's, Chitradurga Division, Chitradurga conducted inquiry on 24.3.2014 and submitted report dtd.25.3.2014(Annexure-R1). Further inquiry was conducted by the ASP, Chitradurga Division on 28.4.2014 and he had submitted his preliminary report to the 4<sup>th</sup> respondent(Annexure-R2). In the report, the ASP recommended for initiation of disciplinary action against the applicant. On the basis of *prima facie* evidence, the 4<sup>th</sup> respondent had transferred the applicant as Postman, Hiriyur

Sub Post Office vide memo dtd.26.3.2014 and the applicant had joined at Hiriyur SO as Postman on 2.4.2014. The 4<sup>th</sup> respondent has submitted a report to the Postmaster General, SK Region who ordered to refer the case to the Circle Sexual Harassment Committee for conducting necessary probe and to give its recommendations. The CPMG of Karnataka Circle vide letter dtd.27.5.2014 has constituted the Circle Complaints Committee to investigate and enquire into cases of Sexual Harassment of Women Employees at workplace. The Circle Committee held sittings on 6.8.2014 and on 13.8.2014 and submitted its report dtd.28.9.2016 stating that the allegations of physical assault on Ms.Radha P.Hirehal are not proved. However, sexual harassment is clearly proved. Hence, it recommended for appropriate disciplinary action on the applicant to be taken.

3. The respondents submit that Ms.Radha P.Hirehal has alleged physical/sexual assault on 19.2.2014 but she could not provide any witness. She has also not complained immediately after the assault to anybody. She has submitted doctor's prescription which is only some tablets to increase the Haemoglobin count and hence is no proof that she suffered from fever because of the assault. However, on 7.3.2014, the applicant has unauthorisedly entered her house and witness in support of the incident is Smt.Sunandamma, her neighbour who had given a statement before ASP(R) on 24.3.2014 confirming the incidents of 7.3.2014. However, on 11.4.2014, she has addressed a letter to SPOs, Chitradurga denying the contents of her statement. She has deposed before the committee that three people had come to her house with a letter and asked her to sign it. She is illiterate and she had merely appended her signature to the letter. Hence, the committee feels that being old and not consistent in her statement, she may not be taken as a reliable witness. The applicant has not produced any evidence

in support of his absence from the scene of the incident i.e. Ms.Radha's house. Sri Rajagopal, the BPM has also supported Ms.Radha's statement. During the cross-examination of Sri S.Rajagopal by the Committee, he has stated that when he picked up the incoming calls on Radha's mobile on certain occasions, the applicant would invariably disconnect the calls. The unwelcome phone calls made by the applicant to Ms.Radha P.Hirehal amounts to sexual harassment. Ms.Radha P.Hirehal in her statement made on 24.3.2014 stated that the applicant had been pestering her and also asking her to marry him. She also has mentioned that the applicant used to look at her with sexual intent and had also destroyed her mobile stating that she does not need the mobile and that she should speak only to him. All these actions of the applicant are construed to be in the nature of unwelcome physical, verbal or non-verbal conduct of sexual nature. The call records clearly show that the calls have been made by the applicant to Ms.Radha at odd hours and repeatedly on many occasions. This unwelcome behaviour of the applicant proves the sexual harassment by the applicant. Sri S.Rajagopal, BPM has also supported the contention of sexual harassment by the applicant through unwanted unwelcome mobile calls in his statement before the committee. Therefore, the committee has arrived at a conclusion that the case of sexual harassment against the applicant is proved. The committee is of the opinion that such misbehaviour on the part of the departmental officials has to be curbed in the initial stage itself. The copy of the committee's report was sent to the applicant vide memo dtd.8.11.2016 giving him an opportunity of 15 days for making a representation on the report. The applicant submitted his representation dtd.19.11.2016 requesting to supply of annexures for submitting representation and asked further 15 days time from the date of receipt of

annexures. Then annexures I to XXIII of the report were supplied to the applicant vide letter dtd.25.11.2016 and asked him to submit his representation on or before 8.12.2016. A representation dtd.3.12.2016 received from the applicant requesting for the annexures in typed version and asked further 15 days time for submitting his representation. He was permitted to visit office of the 4<sup>th</sup> respondent on 19.12.2016 for verification of documents and taking notes if any at the office. Further he was instructed to submit his representation if any on or before 21.12.2016 failing which action as intimated vide office memo dtd.8.11.2016 will be taken against him and no more extension of time will be granted. The applicant was relieved on 17.12.2016 for verification of documents at 4<sup>th</sup> respondent's office but he had produced medical certificate and proceeded on leave on 19.12.2016. Since the applicant did not submit his representation against the proposed action communicated vide 4<sup>th</sup> respondent's letter dtd.8.11.2016 and as he was dragging the issue causing hindrance to finalize the action proposed vide letter dtd.8.11.2016, the 4<sup>th</sup> respondent decided to finalize the disciplinary action against the applicant and punishment of reduction of pay by one stage for a period of 3 years with cumulative effect and with immediate effect and he will not earn increments of pay during the period of reduction and that on expiry of this period of reduction, it shall have the effect of postponing his future increments of pay, was imposed against the applicant vide memo dtd.22.12.2016. Then the applicant preferred an appeal against the punishment order to the appellate authority i.e. Director of Postal Services, SK Region, Bengaluru. The appellate authority has set aside the punishment imposed by the disciplinary authority and further directed the disciplinary authority to start de-novo proceedings from the stage of issue of fresh charge sheet. Accordingly, a

charge sheet under Rule 14 of CCS(CCA) Rules-1965 was issued against the applicant vide 4<sup>th</sup> respondent's memo dtd.18.12.2017 on the following article of charge:

*That the said Sri N B Umesha, while working as Mail Overseer, Davanagere-I sub division, Davanagere from 18.06.2012 to 26.03.2014 has made several unwelcome telephone calls from mobile number 9902993375 to mobile telephone No.8746970238 being used by Ms.Radha P Hirehal, GDS MD, Bethur BO a/w J D Circle SO Davanagere which attracts provisions of Rule 3 C (1) of CCS Conduct Rules, 1964.*

*Thus it is alleged that, Sri N B Umesha, then Mail Overseer, Davanagere I sub division, Davanagere now Postman Chitradurga HO has acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule-3 (1) (iii) of CCS(Conduct) Rules, 1964.*

4. The applicant was given an opportunity to submit the written statement of defence within 10 days of receipt of the charge memorandum. The applicant submitted a representation on 28.12.2017 requesting another 15 days time to submit his defence statement and further 10 days time was granted to him and finally he submitted his representation dtd.5.1.2018 denying the charges. 4<sup>th</sup> respondent noticed that the members of the Circle Committee have been erroneously cited as prosecution witnesses. Hence, in exercise of powers conferred vide Director General P&T Orders No (3) under Rule 15 of CCS(CCA) Rules, 1965, the Memorandum of charges issued to the applicant vide memo dtd.18.12.2017 was cancelled without prejudice to further action which may be considered in the circumstances of the case. Accordingly a fresh charge sheet under Rule 14 of CCS(CCA) Rules-1965 was issued against the applicant vide memo dtd.26.3.2018 and in his defence the applicant denied the charges vide his representation dtd.2.4.2018. Ms.K.R.Usha, ASP(HQ), Shivamogga Division,

Shivamogga, has been appointed as presenting officer in the said case and the Circle Sexual Harassment Committee which has done the investigation of the said case would function as IA as per rules. The applicant had filed bias petition dtd.13.6.2018 against the appointment of IA to the 4<sup>th</sup> respondent and he disposed off the same vide letter dtd.19.11.2018 rejecting the request of the applicant for changing IA. Then the applicant had preferred an appeal dtd.24.11.2018 to the DPS, SK Region, Bengaluru against the disposal of the bias petition by the 4<sup>th</sup> respondent and the same was rejected by the DPS, SK Region vide memo dtd.28.1.2019. Aggrieved by this, the applicant filed OA.No.270/2019 before this Tribunal and the Tribunal in its interim order dtd.6.3.2019 had stayed the charge memorandum dtd.26.3.2018 and letter dtd.19.11.2018 issued by the 4<sup>th</sup> respondent and in view of which, the inquiry of sexual harassment case against the applicant was stopped. In the meantime, a notification for conducting of Limited Departmental Competitive Examination(LDCE) for promotion of Lower Grade Officials to the cadre of Postal Assistants/Sorting Assistants for the year 2015-16 was issued vide memo dtd.20.6.2016. In response, the applicant had also applied for the said examination. Since the sexual harassment case was pending before the Circle Sexual Harassment Committee against the applicant, the applicant was permitted for the appearance to the examination as per the provisions in Postal Directorate letter dtd.10.12.2015(Annexure-R3) which clarified that 'such an official might be admitted to the examination even though he may be under suspension or disciplinary proceedings might have been initiated against him, if he satisfies all other conditions prescribed for admission to such examination. The official can however be promoted only after the disciplinary proceedings are

over and he is completely exonerated'. The applicant appeared for the examination. The result was announced vide memo dtd.2.9.2016 but the result of the applicant was kept in sealed cover since the case against the applicant was under inquiry by the Circle Sexual Harassment Committee. The applicant submitted representation dtd.28.9.2017 to the 2<sup>nd</sup> respondent with a request to declare the result of LGO examination held on 31.7.2016. The 4<sup>th</sup> respondent vide letter dtd.29.11.2017 communicated the applicant that the results of the official will be announced after the completion of disciplinary case. The applicant through RTI application sought for permission to inspect his original OMR sheet/Answer Sheet for which the CPIO of 2<sup>nd</sup> respondent's office replied vide letter dtd.13.10.2016 that his result has been kept in sealed cover treating the candidature as 'provisional' in view of pending inquiry and permission to inspect the answer sheet was not given. Subsequently memo of charges was issued against him under Rule-14 of the CCS(CCA) Rules 1965 which is pending for inquiry. It is not correct on the part of the applicant to say that the sealed cover procedure adopted in his case is not proper since there was no disciplinary case pending against him when he appeared for the examination. It is a fact that the complaint of sexual harassment dtd.17.3.2014 was under inquiry against the applicant when he was permitted to appear for the examination and he was permitted on provisional basis since case of sexual harassment was pending for inquiry. As rightly held by the Hon'ble Apex Court in *Union of India vs. Janakiraman (AIR 1991 SC 2010)* that 'an employee has no right of promotion. He has only a right to be considered for promotion..... An employee found guilty of misconduct cannot be placed on par with other employees and his case has to be treated differently. There is therefore no discrimination when in the

matter of promotion he is treated differently'. As such action of the respondents in keeping the result of the applicant under sealed cover is justified. On the conclusion of the disciplinary proceedings, the sealed cover will be opened on the basis of the final outcome of the proceedings. Therefore, the OA being devoid of merit is liable to be dismissed.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The short issue to be decided in this case is whether the respondents are right in not declaring the results of the examination held on 31.07.2016 based on the complaint of sexual harassment against the applicant pending from the year 2014. The examination was conducted on 31.07.2016 and the results were also declared on 2.9.2016. The fact that the Sexual Harassment Committee report was submitted on 28.9.2016 is not denied. In fact the committee report is forwarded to the applicant only on 8.11.2016 giving him an opportunity to defend himself on the report of the Circle Committee for prevention of sexual harassment of woman employees at work place. The orders of the disciplinary authority vide Annexure-A8 were set aside by the appellate authority vide Annexure-A9 and a fresh charge memo has been issued vide Annexure-A12 which has not reached its finality. The OA.270/2019 filed against this fresh charge memo has also been disposed of by this Tribunal vide order dtd.7.11.2019 allowing the disciplinary proceedings to continue and to be completed. The respondents would also urge vide Annexure-R3 that in case of officials against whom either disciplinary proceedings have been initiated or who were under suspension may be allowed to take the examination provided they satisfy all the other conditions prescribed for admission to such examination. The official can however be promoted only after the disciplinary proceedings are over

and he is completely exonerated. The respondents in this case have adopted the sealed cover procedure by not declaring the results of the examination held on 31.7.2016 stating that the inquiry by the Sexual Harassment Committee was going on and therefore they are not able to take further action based on the results of the examination. The crucial point to be noted here is that the position regarding the applicant is different from what has been stated in Annexure-R3. There was no formal charge sheet or any other proceedings against the applicant on the date when he took the examination on 31.7.2016 and the date when the results were declared namely on 2.9.2016. The report of the Sexual Harassment Committee was forwarded only on 8.11.2016 i.e. after the declaration of the results of the examination. Therefore, the respondents are clearly in the wrong when they state that the disciplinary proceedings against the applicant were pending on the date of examination as well as on the date of declaration of the results and therefore he can be considered for any further promotion only after the completion of the disciplinary proceedings. We also have to note at this point that the incident happened in the year 2014 and even though the Sexual Harassment Committee completed its hearings in August 2014 itself, it took more than two years to submit its report whereas as rightly contended by the applicant, the report should have been submitted within a period of ten days from the completion of enquiry. A reasonable time could be given for finalising such reports as they are being of a sensitive nature. However, there is no explanation as to why it took more than two years for the committee to submit its report. Whatever be the reasons for them, on the date of examination and declaration of the results, no disciplinary proceedings were pending against the applicant and

therefore, the respondents have no right to withhold the result of the examination of the applicant.

6. The OA is therefore allowed and the respondents are directed to issue necessary orders within a period of one(1) month from the date of issue of this order. No costs.

(C.V.SANKAR)  
MEMBER (A)

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

/ps/

**Annexures referred by the applicant in OA.No.170/00252/2019**

Annexure-A1: Copy of the notification dtd.20.6.2016

Annexure-A2: Copy of the notification dtd.2.9.2016  
Annexure-A3: Copy of the applicant's representation dtd.6.9.2016  
Annexure-A4: Copy of the order dtd.9.9.2016  
Annexure-A5: Copy of the letter dtd.13.10.2016  
Annexure-A6: Copy of the order dtd.8.11.2016  
Annexure-A7: Copy of the report of the committee for prevention of sexual harassment dtd.28.9.2016  
Annexure-A8: Copy of the order dtd.22.12.2016  
Annexure-A9: Copy of the order dtd.11.8.2017  
Annexure-A10: Copy of applicant's representation dtd.28.9.2017  
Annexure-A11: Copy of the order dtd.29.11.2017  
Annexure-A12: Copy of the memo dtd.26.3.2018  
Annexure-A13: Copy of applicant's representation dtd.19.9.2018

**Annexures with reply statement:**

Annexure-R1: Copy of the inquiry report dtd.25.3.2014  
Annexure-R2: Copy of the preliminary inquiry report  
Annexure-R3: Copy of order dtd.10.12.2015

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