



**CENTRAL ADMINISTRATIVE TRIBUNAL
Chandigarh BENCH**

OA No. 060/01079/2019

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Reserved on: 17.01.2020
Pronounced on: 11.03.2020

**Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Pramod Kumar Gupta,
Son of Nirmal Kumar,
Aged 46 years,
Associate Professor,
Department of Biostatistics,
PGIMER, Chandigarh, Pin Code: 160012.
(Group-A).

...Applicant

(By Advocate: Mr. Surjit Singh with Mr. A. S. Pannu)

Versus

1. Post Graduate Institute of Medical Education & Research, Chandigarh through its Director. (Pin Code 160012).
2. Governing Body, Post Graduate Institute of Medical Education & Research, Chandigarh through its Director. (Pin Code 160012).
3. Director, Post Graduate Institute of Medical Education & Research, Chandigarh. (Pin Code 160012).

...Respondents

(By Advocate: Mr. Amit Jhanji with Mr. Abhishek Premi)



O R D E R

Mohd. Jamshed, Member (A):-

The applicant joined Post Graduate Institute Page | 2

of Medical Education & Research, (PGIMER), Department of Biostatistics, Chandigarh as Assistant Professor on 01.08.2008 and was subsequently promoted as Associate Professor in the year, 2012. Ms. Chinu Sachdeva, Data Entry Operator (DEO) also joined the Department of Biostatistics on 16.07.2015. It is stated by the applicant that Ms. Chinu Sachdeva was frequently absent from duty and, therefore, the applicant advised the same to higher authorities requesting for her transfer vide letter dated 30.11.2015 addressed to DDA, PGIMER, Chandigarh. It is claimed by the applicant that due to this Ms. Chinu Sachdeva submitted a complaint against him dated 27.01.2016 levelling allegations of harassment against the applicant. This complaint was investigated into by the Sexual Harassment Committee which submitted its report concluding that whereas the complaint of physical touch is not proved, the use of abusive and vulgar language



towards all the employees of the department (male and female) was proved against the applicant by the complainant as well as the witnesses. The Sexual Harassment Committee, however, did not recommend any action against the applicant.

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2. It is further submitted by the applicant that another committee was set up, which was illegal in view of the committee already looking into the sexual harassment charges. The applicant was subsequently charge-sheeted vide impugned memorandum dated 11.02.2017 and 25.02.2017. Aggrieved by this, the applicant filed OA No. 060/00291/2017 before the Tribunal challenging the charge memorandum/articles of charge dated 11.02.2017 and 25.02.2017 challenging the same. He contended that since the governing body is the appointing authority of the applicant, therefore, serving of charge sheet by the Director is illegal and arbitrary. The Tribunal vide its order dated 30.01.2018 quashed and set aside the charge sheet stating that the impugned charge sheet have been issued by Director and not by the competent authority i.e. the governing body. However, the



competent authority was given liberty to take appropriate action in this regard, if it so desires.

3. Subsequently two charge sheets were issued against the applicant by the Director of the institute. The applicant on 17.01.2019 submitted representation before the disciplinary authority i.e. the governing body of the institute. The respondents appointed the IO vide order dated 26.06.2019. Another representation was made by the applicant dated 16.07.2019 against the charge sheets. This was considered by the respondents and the applicant was informed vide letter dated 13.08.2019 that as the disciplinary proceedings are pending against the applicant, he should attend the same. The applicant made further representations seeking certain clarifications. Once again vide order dated 04.10.2019, the respondents have asked the applicant to appear before the IO in the inquiry and to raise issues therein. The present OA has been filed seeking the following relief(s):-

“(i) That the Annexure A-1 whereby the respondent no. 3 has appointed the Enquiry Officer and Annexure A-2 & A-2 charge sheets issued by the Governing Body, may be quashed.



(ii) That applicant be held entitled to all consequential benefits/reliefs in the interest of justice.”

4. This is the second round of litigation. In the counter reply the respondents have submitted that the action taken by the respondents are governed by Regulation 38 of the PGIMER, 1967, which provides as under:-

“38. Conduct, Discipline and Penalties:-

(1) The Central Civil Services (Conduct) Rules, 1964, shall apply mutatis mutandis, to employees of the Institute.

(2) Part-IV (Suspension), Part V (Penalties and Disciplinary Authorities), Part VI (Procedure for imposing Penalties), Part-VII (Appeals) and Part-VIII (Review), of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, shall mutatis mutandis apply to employees of the Institute.

Provided that for the purposes of this regulation :-

(a) Class I, Class II, Class III and Class IV posts in the Institute shall correspond to Central Civil Services Class I, Class II, Class III and Class IV posts respectively.

(b) The Appointing Authority, the Disciplinary Authority for the penalties that may be imposed and the Appellate Authority for the various posts in the Institute shall be as prescribed in Schedule-II.

(c) In respect of Central or State Government servants borrowed by the Institute, the provisions respectively of Rules 20 and 21 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, shall apply and the Institute shall exercise the functions of the Central or State Government, as the case may be for the purpose of the two rules aforesaid.

(d) No consultation with Union Public Service Commission shall be necessary in any case.”



5. It is submitted that Director, PGIMER is competent to initiate disciplinary proceedings against all Group-A faculty posts except Director in terms of schedule 2 of the PGIMER regulation. It is also submitted that the applicant has not yet submitted his reply to the charge sheet and has approached the Tribunal against the appointment of the IO. The respondents have relied upon the law laid down by the Hon'ble Supreme in **Union of India & another Vs. Ashok Kacker**, 1995 Supp. (1) SCC 180, Hon'ble Apex Court judgment in **P.S. Malik vs. High Court of Delhi** dated 21.08.2019, Hon'ble Punjab and Haryana High Court **in Union of India and another vs. Central Administrative Tribunal, Chandigarh and another** dated 09.12.2002 and Hon'ble Apex Court judgment in **Union of India & Ors. vs. B.V. Gopinath** dated 05.09.2013. The respondents have also submitted that the present application is barred by limitation as the cause of action relates to the year, 2018 and no application for condonation of delay has been filed by the applicant. Respondents have also mentioned the guidelines provided in the judgment passed by the Hon'ble Supreme Court in **Vishaka**



Vs. **State of Rajasthan** (1997) 7 SCC 323 and Section 13 of the Sexual Harassment of Women and work place (Prevention, Prohibition and Redressal) Act, 2013 laid down that for misconduct such as sexual harassment action can be taken in respect of the service rules applicable to the respondents. Respondents claim that the OA filed by the applicant is pre-mature and cannot be sustained in terms of the law laid down by the Hon'ble Apex Court. Even on merits it is stated that the respondents have the authority of issuing charge sheet and initiating regular departmental enquiry in such cases. It is also submitted that the respondents have taken note of the conclusion drawn by the Sexual Harassment Committee and also the other committee headed by HOD, Cytology who recommended that the complaints made against the applicant are found true and it is recommended that a proper inquiry under CCS rules be conducted.

6. We heard Mr. Surjit Singh with Mr. A. S. Pannu, learned counsel for the applicant and Mr. Amit Jhanjhi with Mr. Abhishek Premi, learned counsel for the respondents.



7. In the first round of litigation the applicant had filed OA No. 060/00291/2017 challenging the impugned memorandum dated 11.02.2017 and 25.02.2017, whereby he was charge-sheeted and regular departmental enquiry was proposed to be held by the Director, PGIMER, Chandigarh. The main ground of the challenge by the applicant was that the governing body is the appointing authority of the applicant, and as such serving of charge sheet by the Director, PGIMER is illegal and arbitrary. The applicant had sought quashing and setting aside of the impugned charge sheets. The Tribunal vide its order dated 30.01.2018 quashed and set aside the charge memorandum holding that the impugned charge sheet have been issued by the Director and not by the competent authority i.e. the governing body. However, the competent authority was given the liberty to take appropriate action, if it so desires.

8. This OA has been filed by the applicant almost with the same prayer, however, the facts of the case will have to be kept in view. The applicant was working as Associate Professor in the Department of Biostatistics. During 2015,



one Ms. Chinu Sachdeva was appointed as DEO in the same department. The applicant vide letter dated 30.11.2015 addressed to the DDA, PGIMER, complained against Ms. Chinu Sachdeva stating that she has remained absent from duty on several occasion and also requested for her transfer. The explanation of Ms. Chinu was sought. After filing her explanation dated 31.12.2015, a complaint was also filed by Ms. Chinu Sachdeva on 27.01.2016 against the applicant alleging acts of sexual harassment. This was forwarded by the HOD with the following remarks:-

“For the urgent needful as this is a serious issue of Harassment.”

9. Ms. Chinu Sachdeva had also mentioned that other female employee of the department had also made similar complaints in the past and, therefore, an enquiry be conducted urgently. This was forwarded by the HOD of Biostatistics with the following remarks:-

“Forwarded to the DPGI for inquiry into the matter as already other employees have made similar allegation against Dr. P. Gupta. Request also to transfer to avoid further such incidences/further harassment. Urgent action requested.”



10. The complaint along with remarks of HOD were considered by the Director, PGIMER and the same was refereed to Sexual Harassment Committee, PGIMER for further inquiry into the allegations. The Chairman of Sexual Harassment Committee, PGIMER, Chandigarh submitted its report on 17.06.2016 with the following remarks:-

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“1. The Committee is of the view that the incident of Physical touch as per complaint of Ms. Chinu Sachdeva and attendance of both the parties in office are *prima facie* not in consonance. Hence the complaint of physical touch is not proved.

2. The use of abusive and vulgar language towards all employees of the department (male and female) was stated by the complainant as well as the witnesses.

3. The Committee has taken serious note of Dr. Pramod Gupta approaching the higher authorities directly.”

11. Another fact finding Committee under HOD, Cytology was constituted to inquire into the complaints made by the contractual staff against the applicant vide office order dated 08.02.2016. The Chairman of the Committee vide letter dated 04.11.2016 has submitted the inquiry report with the following conclusions:-

“After giving thoughtful and due consideration to the available facts and documents, the Committee is of the collective opinion that the complaints made against Dr. Pramod Kr. Gupta are found true and the Committee



recommended a proper inquiry under CCS rules.”

12. These two complaints were thus investigated by the two separate committees.

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Based on these reports, the applicant was charge-sheeted in two different cases of misconduct under Rule 14 of the CCS (CCA) Rules, 1965 vide charge memorandum dated 11.02.2017 and 25.02.2017.

In the counter reply the respondents have submitted that the action taken by the respondents are governed by Regulation 38 of the PGIMER, 1967, which provides as under:-

“38. Conduct, Discipline and Penalties:-

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(d) No consultation with Union Public Service Commission shall be necessary in any case."

13. According to this regulation Director, PGIMER is competent to initiate disciplinary proceedings against all Group-A faculty posts except Director. Accordingly, the IOs have been appointed to inquire into the charges levelled against the applicant. The applicant in the meanwhile approached the tribunal through OA No. 060/00291/2017 seeking setting aside of the charge sheet as the same have not been issued by the competent authority i.e. the governing body. The Tribunal vide order dated 30.01.2018 quashed and set aside the impugned charge sheet stating that the same was not issued by the competent authority. However, a liberty was granted by the tribunal to the competent authority to take appropriate action, if it so desires. The charge sheets have now been accordingly issued to the applicant. The applicant has furnished a detailed



reply to both the charge sheets vide his replies dated 17.01.2019 and 16.07.2019. Vide office order dated 26.06.2019 the IO was also appointed.

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The applicant has also challenged the order of appointment of the IO and both the charge memorandum. He has also challenged the various aspects including the charges against him and the report of the Sexual Harassment Committee.

14. It is evident that the applicant has been held responsible in two cases wherein preliminary enquiry were held by the respondents. As a result of these preliminary enquiries, one of which was conducted by the Sexual Harassment Committee, the respondents have decided to initiate disciplinary proceedings under CCS (CCA) Rules, 1964 vide memorandum dated 29.08.2018. The applicant has been directed to attend the enquiry and avail all opportunities for submitting his case and refuting the charges. In the earlier OA, similar charge sheets issued to the applicant were set aside as these were not issued by the Competent Authority i.e. governing body. Subsequently, the charge sheets issued now have the approval of the governing body of the institute. The respondents



have also confirmed that in terms of schedule 2 of the regulation 38 of the PGIMER, 1967 the Director, PGIMER is competent to initiate disciplinary proceedings against all Group -A faculty posts except Director. The IO and presenting officers have also been appointed to enquire into the charges levelled against the applicant. The representations made by the applicant have also been considered by the Competent Authority and he has been advised to participate in the disciplinary proceedings. The applicant even in this second round of litigation has sought quashing of the charge sheets and the appointment of the IO. The ratio of the judgments quoted above and also the rulings laid down by the Hon'ble Apex Court in **Bank of India and another vs. Degala Suryanarayana** dated 12.07.1999, the interference of Courts and Tribunals in the disciplinary proceedings has been defined. The relevant portion of the judgment reads as under:-

“Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against



the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority.”

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15. Hon'ble Supreme in **Union of India & another Vs. Ashok Kacker**, 1995 Supp. (1) SCC 180 also prescribed these limitations on Tribunals and Courts to interfere with the disciplinary proceedings at the issuance of the charge sheet itself. The relevant portion of the judgment read as under:-

“Admittedly, the respondent has not yet submitted his reply to the charge sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondents made no attempt to support. The respondents has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet



and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondents or which may have been raised by him.”

16. In this OA, the applicant has been seeking quashing and setting aside of the inquiry proceedings which are yet to begin. He should instead attend the enquiry and put forward his pleadings and grievances etc., if any, during the course of the inquiry and, thereafter, during the conclusion of the disciplinary proceedings. It is obvious that by these litigations, the applicant has been deliberately delaying the process of disciplinary proceedings. The actions taken by respondents in our opinion do not suffer from any illegality or infirmity.

17. Therefore, we are of the view that the present OA is devoid of merit and the same is dismissed. Pending MAs, if any, shall be dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Sanjeev Kaushik)
Member (J)