



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 4630/2018

New Delhi, this the 30th day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Manoj Kumar Baranwal,
S/o Shri Nakul Prasad Baranwal,
Ex-Section Officer,
R/o A-82, 2nd Floor, Dayal Bagh Colony,
Near Sai Baba Mandir,
Surajkund, Faridabad-121009, Haryana.

.. Applicant

(By Advocate: Shri A.K. Behera with Shri R.K. Shukla)

Versus

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director (DCW & Trg.),
Govt. of India,
Ministry of Defence,
Office of JS & CAO,
E-Block, Darashukoh Road,
New Delhi-110011.
3. The Addl. Secretary,
Govt. of India,
Ministry of Defence,
Office of JS & CAO,
E-Block, Darashukoh Road,
New Delhi-110011.

.. Respondents

(By Advocate : Shri Satish Kumar)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman**

The applicant joined the service of the Armed Forces Headquarter (Civil Services) as Assistant. By 2017, he was holding the post of Section Officer. He was issued a Charge Memorandum dated 12.09.2017, alleging that he sent an objectionable video and message on 01.03.2017, to one of the women employees of the Organisation. The applicant submitted explanation, mostly in the form of tendering apology and seeking pardon. Not satisfied with the explanation, the Disciplinary Authority (DA) appointed the Inquiry Officer. Through his report dated 05.03.2018, the IO held the articles of charge framed against the applicant as 'proved'. The copy of the report was made available to the applicant, and on a consideration of the explanation submitted by him, the DA passed order dated 10.05.2018, imposing the punishment of "Dismissal from service". An appeal filed against the order of dismissal on 29.05.2018, was dismissed. Revision petition filed by the applicant dated 03.08.2018, was



also rejected on 13.02.2019. This O.A. is filed challenging the order of dismissal, as confirmed at subsequent stages.

2. The applicant contends that he got a video as well as message on his mobile phone from somewhere, and though he made an attempt to delete the same, it did not materialize. According to him, the mobile was handled by his minor daughter and, inadvertently, the video and message was passed on to as many as 11 persons, including one of the women employees of the Organisation. He contends that on the next day, i.e. on 02.03.2017 itself, when the issue was brought to his notice, he tendered unconditional apology and, despite that, disciplinary proceedings were initiated. The applicant states that the punishment of dismissal from service, for an inadvertent mistake, is highly disproportionate; and would deprive him and his family, of the very survival and livelihood.

3. Respondents filed counter affidavit opposing the O.A. It is stated that the allegation made against the applicant is very serious in nature, and the IO held the



articles of charge as 'proved', on the basis of the oral and documental evidences. According to the respondents, the applicant did not dispute the act of misconduct and, accordingly, the punishment imposed is proportionate to the gravity of the charge. It is mentioned that application submitted by the applicant for compassionate pension, was also disposed of.

4. We heard Shri A.K. Behera with Shri R.K. Shukla, learned counsel for the applicant and Shri Satish Kumar, learned counsel for the respondents.

5. The applicant has completed 19 years of service by 2017. On 01.03.2017, at 10.35 p.m., he is said to have forwarded the SMS and the video to as many as 11 persons from his mobile. One of the recipients was a woman employee of the Organisation. When she brought it to the notice of the higher authorities on the next day, the applicant was summoned and questioned about it. His mobile was also seized. The applicant gave an, on the spot, explanation, stating that the mobile appears to have been operated by his minor daughter, resulting in sending of the message and the video to 11



persons. He expressed regret and apology for that. This was followed by a letter dated 06.03.2017, which reads as under:

"Demand of Explanation

1. Please refer to Note No. A/38012/Gen./MS-3 dated 02 Mar. 2017 on the above subject; which was handed over to me by Col. MS-3 at 6.30 PM on 02 Mar. 2017.
2. In this regard, I accept that obscene videos and objectionable messages were sent to Mrs. Kavita Kundara, ASO on Whatsapp; but it was unknowingly sent on 01.03.2017 at 10.35 pm by my innocent daughter; who is 04 years 11 months old only, alongwith 10 another close relatives and friends.
3. With folded hands; I unconditionally apologies and extreme shameful for accidental contents sent on Whatsapp to Mrs. Kavita Kundara, ASO. During my 18 years of unblemished service (including 04 years of deputation to Municipal Corporation of Delhi); no allegations have been charged on me.
4. I request you to please forgive me for such unincidental mistake committed by the little daughter. I also tendered my apologies to my all relatives and friends; who received such contents. The facts could be verified anytime from my mobile."

6. Obviously, because one of the recipient of the message was a woman employee, the respondents did not leave it to any chance and, accordingly, issued a Charge Memorandum dated 12.09.2017, which contained the following articles of charge:



“STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI MANOJ KUMAR BARANWAL, SECTION OFFICER

Article-I

That the said Shri Manoj Kumar Baranwal, Section Officer had sent obscene messages and porn videos to Smt. Kavita Kundara, Asstt. Section Officer on her whatsapp No.7023590854 on 01 Mar 2017 and also threatened her by saying that “if she will do complaint against him, he will commit suicide”.

By his above act, Shri Manoj Kumar Baranwal, Section Officer has failed to adhere to the norms/guidelines stipulated to prevent Sexual Harassment of Women at Workplace and thus violated the Rule 3-C (1) of CCS (Conduct) Rules, 1964 and acted in a manner which is unbecoming of a public servant, thereby violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri Manoj Kumar Baranwal, Section Officer being in-charge of the section MS-3A, it was his duty to take appropriate steps to prevent sexual harassment to any woman at the workplace, but he failed to discharge his duties as in-charge of the Section i.e. MS-3A by sending obscene messages and porn videos to Smt. Kavita Kundara, Asstt. Section Officer of the same section, MS-3A.

By his above act, Shri Manoj Kumar Baranwal, Section Officer has failed to take appropriate steps to prevent Sexual Harassment to a woman posted at his office, thus, violated the Rule 3-C (2) of CCS (Conduct) Rules, 1964 and also failed to maintain devotion to duty thereby, has violated Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-III

That the said Shri Manoj Kumar Baranwal, being a Gazetted Officer and having rendered more than 18 years of Govt. service, should have refrained from doing any thing which is or may be contrary to any law, rules, regulations and established practices but by sending lewd messages and videos to his female subordinate employee, violated provisions of



Information Technology Act, 2000; Indian Penal Code 1860 and Indecent Representation of Women (Prohibition) Act, 1987.

By his above act, Shri Manoj Kumar Baranwal, Section Officer has violated Rule 3(1)(xviii) of CCS (Conduct) Rules, 1964; new insertion in the CCS (Conduct) Rules, 1964 vide Gazette Notification dated 27 Nov 2014 and acted in a manner unbecoming of the Govt. servant thereby violating Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

7. In the explanation submitted by him, the applicant did not offer any justification and, there again, he tendered apology. The departmental inquiry was conducted, in which three witnesses were examined. The IO submitted his report on 05.03.2018, holding the articles of charge framed against the applicant as ‘proved’. The DA made a copy of the report available to the applicant, and on a consideration of the explanation submitted by him, a detailed order dated 10.05.2018 was passed. After referring to the entire history and documents of the case, the DA imposed the punishment of ‘dismissal from service’. The same was confirmed in the appeal and revision filed by the applicant.

8. Article-I of the charge against the applicant is certainly serious in nature. However, this is not a case,



in which the charged employee has flatly denied the charges; and the charges came to be established only during the course of inquiry. From the beginning, the applicant admitted the lapse on his part. He pleaded that improper handling of the mobile by his minor daughter has resulted in communication of the message and the video to 11 persons. Assuming that forwarding of the message and the video was by the applicant himself, it needs to be seen as to whether the punishment as imposed by the DA, is warranted.

9. In these days of uncontrolled and almost unregulated information technology, one hardly knows the source of the messages or objectionable contents. While those, who are fully acquainted with the technology, know how to prevent and avoid such messages, others become vulnerable and victims thereof. Sometimes, improper or half baked knowledge and lack of proper information about the consequences in the context of handling phones, would land the person in trouble.



10. There are certain aspects, which need to be taken into account in this case. They are: (i) the record of the applicant, till the Charge Memorandum was issued, was free from any blemish; (ii) there is nothing to indicate that the applicant has any ill will or bad intention towards the woman employee, and it was incidental that she happened to be one of the 11 persons, to whom the message was sent; (iii) the conduct of the applicant, as soon as the issue was brought to his notice, reveals that he was apologetic from the beginning, and did not even make an attempt to justify, what has happened. One cannot downplay the effect of the message and the content of the video, but, at the same time, there is nothing to indicate that the applicant has either deceived or resorted to any acts or omissions vis-à-vis the said employee.

11. It is no doubt true that the inquiry was held strictly in accordance with law, and it cannot be said that any illegality has crept in. The whole issue is the very proportionality of the punishment, imposed on the applicant. This is not a case, in which the applicant



went on denying the charge; and that the same was proved, in the findings in the inquiry. Even before the Charge-Memorandum was issued, the applicant owned his mistake. For the inconvenience caused to the women employees, the applicant deserves to be punished, but one cannot ignore the livelihood of the applicant and his family. Though respondents have stated that an order was passed on 08.11.2018, granting compassionate pension, we find that the same did not result in any benefit to the applicant. We are of the view that the ends of justice would be met, if the punishment is modified to the one of reduction in rank to a lower stage for a period of two years, from the date of order of punishment.

12. We, therefore, partly allow the O.A. and modify the order of punishment imposed to the one of 'reduction in rank to a lower stage, i.e. to the post of Assistant, to be in force for a period of two years, from the date of order of punishment. He shall not be entitled to any increment, during the period of punishment in operation. The exercise of reinstating the applicant shall

be completed within four weeks from the date of receipt of certified copy of this order. There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/