

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.3032/2001

Date of decision: 12.08.2002

N.K. Suroya, IAS (Retd) .. Applicant

(By Advocate: Smt. Sunita Rao, through proxy counsel
Shri R.K. Shukla)

versus

UOI & Others

.. Respondents

(By Advocate: Shri K.C.D. Gangwani)

CORAM:

The Hon'ble Shri Kuldip Singh, Member(J)

The Hon'ble Shri M.P. Singh, Member(A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?


(M.P. Singh)
Member(A)

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3032/2001

New Delhi, this the 12th day of August, 2002

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

N.K. Suroya, IAS (Retd)
37-L, New Colony, PO Maharishi Nagar
Gurgaon-122001 (Haryana) .. Applicant

(By Smt. Sunita Rao, Advocate, through proxy counsel
Shri R.K. Shukla)

versus

Union of India, through

1. Secretary
Ministry of Personnel, Public Grievance
and Pension, North Block
New Delhi
2. Chairman
Union Public Service Commission
dholpur House, Shahjahan Road
New Delhi .. Respondents

(By Shri K.C.D.Gangwani, Advocate)

ORDER

Shri M.P. Singh, Member(A)

By the present OA, the applicant prays for the following reliefs:

(i) To quash the order dated 14.5.2001 imposing upon him the punishment of 40% cut in the monthly pension on permanent basis;

(ii) To quash the report of Inquiring Authority (IA) dated 8.4.98; and

(iii) Quash the report of IA on remittal of the case dated 23.11.99.

2. The facts of the case in brief, as stated by the applicant, are that the applicant, a retired IAS (AP-62) Officer was served with a charge-sheet dated 7.1.97 on the following charges:

Article-I - That during the period from the date he joined duty at the Centre for Agricultural Marketing (now known as the National Institute of Agricultural



Marketing), Jaipur till 6.4.1992 and while functioning in the said office in the post of Director General, Shri N.K. Suroya, IAS (AP: 62) had attempted to sexually harass Mrs. Stella Pal, Ex-Private Secretary to Director General during office hours. The action of Shri N.K. Suroya indicates that he has tried to misuse his official position and, therefore, his conduct can not be conducive of ethics, morality and standard of the post held by him.

Thus, Shri N.K. Suroya, IAS (AP: 62) abusing his official position failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Member of the All India Services thereby violating the provisions of Rule 3(1) of the All India Services (Conduct) Rules, 1968.

Article-II - That the said Shri N.K. Suroya, while functioning as the Director General, Centre for Agricultural Marketing (now known as the National Institute of Agricultural Marketing), Jaipur was found to have visited the residence of Mrs. Stella Pal, Ex-Private Secretary to Director General, NIAM (At house No.B-339, Vaishali Nagar, Jaipur) in summer 1991 and November, 1991 when she was alone at her residence. On both these occasions, her husband Shri Vijay Pal - who was working as Section Officer in NIAM was sent on official tour with the approval of the Director General. By visiting Mrs. Stella Pal at her residence in the absence of her husband and acknowledging the fact that she was functioning as a subordinate to him as Private Secretary to the Director General, Shri N.K. Suroya tried to misuse his official position and his conduct can not be conducive of ethics, morality and standard of the post held by him.

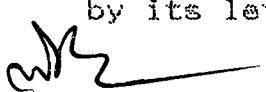
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3. According to the applicant, Mrs. Stella Pal, his former PS filed WP No.7984/1992 in the Hon'ble High Court of Rajasthan against her suspension order and that an inquiry should be instituted against the applicant as he was guilty of sexual harassment. The High Court vide its order dated 8.12.92 directed that allegations made by Mrs. Stella Pal should be inquired into by a senior officer. One Dr. T.C.A. Srinivasaramanujam, Director General, National Institute of Rural Development was appointed to inquire into the allegations made against the applicant. Though a copy of the inquiry report was



not given to the applicant, the High Court taking into consideration the enquiry report held vide its order dated 22.11.95 (A-4) that the conduct of the applicant is sufficient to take disciplinary action against him. The said order of the High Court was challenged by the applicant before the DB but the petition was dismissed. Thereupon, an inquiry was conducted against the applicant and the IO vide his report dated 8.4.1998 held that charge No.1 was not proved but charge No.2 was proved against the applicant. He also came to the conclusion that the applicant was guilty of charges of sexual harassment.

4. Applicant submitted his representations against the inquiry report on 3.7.1998 pointing out therein several irregularities committed during the course of the enquiry. In view of this, the inquiry was remitted back by the disciplinary authority (DA) on 5.7.1999 to hold inquiry at Jaipur limited to the examination and cross-examination of those witnesses who could not depose in the previous inquiry against the applicant, but the DA did not modify the charge and the same charge continued in the remitted enquiry also. IO vide order dated 23.11.1999 reiterated his findings contained in his report dated 8.4.1998. Applicant filed his representation against the second inquiry report inter alia making certain allegations inasmuch as Smt. C.K. Ojha, PW did not appear inspite of several opportunities given to her and hence her earlier statement recorded at the time of investigation cannot be relied upon to prove the second charge. Representation of the applicant as well as the inquiry report were forwarded to UPSC, which by its letter dated 13.3.2001 suggested punishment of 40%



cut in pension on permanent basis. Thereafter, DA passed the impugned order dated 14.5.2001 imposing the aforesaid penalty on the applicant. Aggrieved by this, applicant has filed this OA seeking the aforesaid reliefs.



5. Respondents have opposed the OA and have stated in their reply that the aforesaid penalty has been imposed on the applicant after following the proper procedure as envisaged in Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 read with Rule 6(1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. They have stated that while the applicant was functioning as Director General, NIAM, Jaipur during the period from 8.8.88 to 7.8.1993, he had made attempts to sexually harass and victimize Smt. Stella Pal, who had joined the said Centre on 10.12.88 as PS to the applicant and worked in that capacity till 6.4.92. Applicant often behaved rudely with Mrs. Stella Pal by his angry outbursts and snubbed her in public because she refused to submit to his advances and overtures. Aggrieved by the indecent behaviour and intemperate remarks of the applicant, Mrs. Stella Pal had submitted five representations between 3.4.92 and 6.11.92 to various authorities for redressal of her grievances, levelling serious allegation against the applicant, which prompted him to place her under suspension vide order dated 20.11.92 on the pretext of a contemplated disciplinary action against Mrs. Pal. Subsequently, disciplinary proceedings were initiated against her at the behest of the applicant. Smt. Pal challenged her suspension order by filing CWP No.7984/92 in Rajasthan High Court. As per the order of Rajasthan High Court, an inquiry into this



matter was conducted and the IO submitted his report dated 6.7.94 to the High Court with the following conclusions:-

- (i) Taking all facts into consideration, there is no direct evidence to suggest that sexual harassment has taken place;
- (ii) Shri N.K. Suroya should be held to have visited the house of Smt. Pal once in summer, 1991 and subsequently in November, 1991; and
- (iii) Since sexual harassment has not been proved, Shri Suroya may be absolved of immoral conduct. However, it is proved that he made the visits to the residence of Smt. Pal without her consent and that the same was not proper.

6. After considering the above Inquiry Report, the Rajasthan High Court vide its judgement dated 22.11.95, while directing DoPT to take disciplinary action against the applicant for the said misconduct, has observed as under:-

"Direct evidence to suggest sexual harassment was not found, though from the statement of Smt. C.K. Ojha (one of witnesses), it was found that such harassment was in November, 1991. The fact that Shri Suroya visited the house of petitioner in summer, 1991 and subsequently in November, 1991 was found correct. In the matter of sexual harassment, there may not be direct evidence but the circumstantial evidence may be sufficient to come to the conclusion that there had been sexual harassment in fact. The statement of Smt. C.K. Ojha support the contention of the petitioner. The statements of the petitioner and the respondent No.4 which have been recorded are without there being cross-examination and in the disciplinary proceedings, the parties would have their defence and right of cross-examination."

7. The applicant was not required to be provided with a copy of the report of IO as a full fledged departmental inquiry was ordered to be conducted into the matter by the High Court. Therefore, with the approval of the competent DA, memo of charges dated 2.1.97 was served on

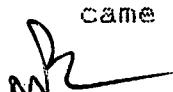


the applicant. As the applicant denied the charges, an oral inquiry was conducted. IA vide its report dated 8.4.98 on the basis of appreciation of oral and documentary evidence adduced during the inquiry, arrived at the following conclusions/findings:-

(i) As regards charge No.1 notwithstanding the position that Smt. Stella Pal, PW-1 has withstood cross examination, her version has not been supported by any other prosecution witness examined in this case;

(ii) With reference to charge No.2, pertaining to the allegation about sexual harassment, that Shri N.K. Suroya as Director General visited the house of Mrs. Stella Pal, Steno in his office during summer, 1991 and November, 1991 in the absence of her husband, is established. It was observed by the Inquiring Authority in para 24 of the Inquiry Report that in this case there was no evidence of any physical sexual harassment nor was that the case of the prosecution, but on the basis of evidence and on the basis of preponderance of probability, one could conclude that the Charged Officer visits to her house in the absence of her husband and despite her earlier protests, were manifestations of his unwholesome intentions and the conduct of the Charged Officer cannot be said to be conducive to ethics and morality and standard of the post held by him.

5. A copy of IO's report was forwarded to the applicant vide letter dated 18.5.1998. He submitted his representation dated 3.7.98 to the DA. The department then examined the findings of IO and submissions made by the applicant in his representation. With the approval of the competent DA, the case was remitted back to the IO for further inquiry limited to the examination/cross-examination of the three witnesses. This remitted inquiry was conducted at Jaipur by Shri A.K.Garde, a retired Secretary in CVC, who had previously conducted the detailed inquiry into this case. Shri Garde submitted his report on 26.11.99, reconfirming the findings in the previous inquiry report dated 8.4.98 and came to the conclusion that no modified view was called



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for in the remitted inquiry. A copy of the report of the remitted inquiry was given to the applicant on 17.12.99, who in turn submitted his representation on 11.1.2000. In this representation, he generally reiterated various contentions/submissions made by him in his representation dated 3.7.98. The representations of the applicant against the original report as well as the remitted inquiry report were examined by the respondents and it was found that there was no substance in them. It was concluded by DA that in the light of the evidence brought out in the two inquiry reports, charge No.2 against the applicant was proved on the basis of preponderance of probability as the findings in the reports in this case were well reasoned.

9. After examination of the records of the departmental case against the applicant and the evidence brought on record during the oral inquiry, DA tentatively decided to impose upon him a penalty of suitable cut in his monthly pension as envisaged under rule 6(1) of the AIS (Death-cum-Retirement Benefits) Rules, 1958. Thereafter, the case documents were referred to UPSC vide DoPT's letter dated 30.8.2000, as the applicant in the meantime had retired from service and the departmental proceedings continued as deemed proceedings. UPSC vide its letter dated 13.3.2001, after detailed examination/analysis of the departmental case against the applicant, observed that the charge under Article II that he misused his official position and that his conduct was not conducive of ethics, morality and standard of the post held by him and that, in this process, he failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Member of the All India Services, in



(P)

violation of the provisions of Rule 3(1) of AIS (Conduct) Rules, 1968, stands clearly established on the principle of preponderance of probability. UPSC observed that the offence committed by the applicant was clearly grave and one of moral turpitude, judging from his intentions and actions. The Commission advised that since the charge proved against the applicant constituted grave misconduct, the ends of justice would be met in this case if a penalty of 40% cut in pension of the officer on a permanent basis was imposed on the applicant. In agreement with the advice of the Commission, DA imposed on the applicant the aforesaid penalty vide its order dated 14.5.2001. In view of this position, the applicant is not entitled to any relief.

10. Heard the learned counsel for the rival contesting parties and perused the records.

11. During the course of the arguments, the learned counsel for the applicant has taken the following main grounds in support of the relief sought for by the applicant:

- (a) Order of DA has been passed in mechanical manner without application of mind;
- (b) DA ought to have examined the definition of sexual harassment as per Rule 2 of AIS(Prevention of Sexual Harassment) Regulations, 1998;
- (c) DA and IO presumed that a mere allegation of visits to a subordinate's house would amount to sexual harassment, which is not correct as per the definition of sexual harassment;
- (d) The charges against the applicant do not allege any specific misconduct and do not give any particulars;
- (e) Inquiry conducted is biased and perverse in so far as the material witnesses were not examined; neither the applicant had a chance to cross examine the same which is against the order of the High



Court which directed that the inquiry should be conducted to give the applicant a better chance of defence as well as the right to cross examination; if Mrs. Ojha was subjected to cross examination it would have come to light that no visit whatsoever was made in November, 1991.

(f) Visits to anybody's house does not constitute sexual harassment as per the definition;

(g) procedure laid down as per Rule 14 of CCS(CCA) Rules has been violated completely; and

(h) defence of the applicant was not recorded.

12. On the other hand, the learned counsel for the respondents has submitted that the case against the applicant was examined on the basis of evidence on record. IO as well as DA/UPSC had concluded that the charge of sexual harassment in office had not been proved against the applicant but charge No.2 relating to visiting the residence of Smt. Pal in the absence of her husband had been proved against him. Therefore, the conduct of the applicant was not conducive to the ethics and morality expected of a senior officer. Out of 9 PWs, 6 were examined in Delhi and the case was remitted to the IO for conducting further inquiry at Jaipur limited to the cross examination of the remaining 3 witnesses. In the remitted inquiry conducted at Jaipur, 2 witnesses had appeared and the applicant was afforded an opportunity of cross examination. Smt. Ojha did not appear before IO despite notices issued to her. Therefore IO had given his findings on the basis of all the evidence adduced during the inquiry including the previous statement of Smt. Ojha made before the Investigating Officer wherein the applicant had been given an opportunity of cross examination. DE in this case had been conducted in accordance with the provisions of AIS(D&A) Rules, 1969



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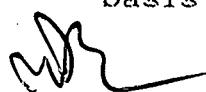
which were applicable in applicant's case. CCS(CCA) Rules are not applicable in his case and he was an All India Service Officer. Applicant was given full opportunity to put forth his defence for rebuttal of evidence adduced against him during oral inquiry. Had that not been the case, IO would not have come to the conclusion that charge No.1 was not proved against him.

13. The learned counsel for the respondents also contended that the applicant has not availed of the facility of submitting a Memorial to the President as envisaged under Rule 25 of the AIS (D&A) Rules, 1969 and in terms of the provisions of AT Act, 1985.

14. We find that the IO has given a very exhaustive report taking into consideration all the evidence on record, the applicant was given enough opportunity to cross examine all the witnesses and he has rightly concluded in his findings as under:

"The allegation about sexual harassment that Shri N.K. Suroya as Director General visited the house of Mrs. Stella Pal, Steno in his office in summer 1991 and November, 1991, in the absence of her husband is established. This has to be viewed against the overall evidence examined in this report. The conduct of the CO can not be conducive of ethics and morality and standard of post held by him".

It is clear from the above that the applicant visited the residence of Mrs. Pal when her husband was away. In disciplinary proceedings standard of proof is preponderance of probability. It is settled legal position that court is not a fact finding body; so long as there was preponderance of probability even on the basis of one witness, court cannot interfere. We are



supported in this view of ours by the judgement of the apex court in the case of N.Rajarathinam Vs. State of Tamil Nadu & Anr. 1997(1) SC 310.

15. We further note from the inquiry report that the substance of one of Mrs. Pal's representations is to the effect that "whenever he (applicant) called her alone, he would complement her on her dress and looks. She used to discourage such remarks, but he would persist". Such remarks amount to 'sexually coloured remarks' as per the definition of sexual harassment. We are supported in this view of ours by the judgement of the apex court in the case of Vishaka & Ors. Vs. State of Rajasthan & Ors. JT 1997(7) SC 384. In this case, while dealing with the matter relating to sexual harassment in work places, the apex court has directed the Government to strictly observe certain guidelines and norms in all work places for the preservation and enforcement of the right to gender equality of the working women. The apex court has observed that 'where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules'. In the instant case, the High Court of Rajasthan has observed that "in the matter of sexual harassment, there may not be direct evidence but the circumstantial evidence may be sufficient to come to the conclusion that there had been sexual harassment in fact. The statement of Smt. C.K. Ojha supports the contention of the petitioner".



16. The applicant being an officer of All India Service, CCS(CCA) Rules, 1965 are not applicable to him. He has been rightly dealt with in accordance with AIS (Discipline & Appeal) Rules, 1969 and AIS (Death-cum-Retirement Benefit) Rules, 1958 after obtaining the advice of UPSC. UPSC has discussed all the relevant points in great depth including the evidence, before tendering its advice, vide its letter dated 13.3.2001. Therefore, this cannot be said to be a case of no evidence, as contended by the applicant. DA has also passed a detailed and speaking order which does not suffer from any infirmity. In this view of the matter, we are of the considered opinion that the action taken by the respondents in the instance case is legally justified and does not warrant our interference.

17. In the result, for the reasons recorded above, the present OA is bereft of merit and is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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