

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

23

O.A.No 3462/2001

Date of Decision 11.7.2003

Dr. Y.R.Midha ... Applicant

Sh.D.N.Goburdhan ... Advocate for the Applicant

VERSUS

UOI & Ors ... Respondents

Sh.Rajeev Shakdar Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri C.S.Chadha, 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? No

Lakshmi

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

24

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 3462/2001

New Delhi this the 11th day of July, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri C.S. Chadha, Member (A).

Dr. Y.R. Midha,
S/o Shri V.S. Midha,
R/o B-87, Anand Vihar,
Delhi-110092.

... Applicant.

(By Advocate Shri D.N. Goburdhan)

Versus

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.
2. Office of the Comptroller and
Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
3. Union Public Service Commission,
Sher Shah Suri Marg,
New Delhi.
4. Shri V.K. Shunglu,
The Comptroller and
Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.

... Respondents.

(By Advocate Shri Rajeev Shakdhar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has impugned the actions and order passed by the President dated 27.9.2001, by which he was dismissed from service.

2. The above impugned dismissal order has been issued to the applicant after holding disciplinary proceedings against him under Rule 14 of the CCS (CCA).

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Rules, 1965 (hereinafter referred to as 'the 1965 Rules') which were instituted by Memorandum dated 6.12.1999 on two charges, namely, (1) that while the applicant was functioning as Principal Director, he had sexually harassed Smt. Deepa Sharma, Stenographer in the office; and (2) while he was functioning as Head of Office, instead of taking steps to prevent sexual harassment of women in the office, he had himself indulged in such activity and sexually harassed Smt. Deepa Sharma, Stenographer.

3. Shri A.K. Garde, a retired Secretary of Central Vigilance Commission was appointed as the Inquiring Authority who had submitted his report on 9.10.2000. He had come to the conclusion that the various allegations of sexual harassment as contained in Article-I of the charges, excepting the allegation in Para No.6 (Para 23 of the Report) and Article-II of the charges have not been established. The applicant had been given a copy of the Inquiry Officer's report on which he had also made a representation. After taking the advice of the UPSC dated 11.9.2001, the President, as the disciplinary authority had come to the conclusion that the applicant had committed grave misconduct of sexual harassment of a woman employee in his office and hence, the penalty of dismissal was imposed on him.

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4. The Hon'ble High Court in its order dated 16.4.2002 in CW 6499 of 2001, Controller and Auditor General Vs. Y.R. Midha, have held as follows:

"Having heard the learned counsel for the petitioner, although we do not find any merit in the writ petition warranting interference with the conclusion arrived at by the learned Tribunal, we, however, make it clear that the observations of the learned Tribunal to the effect that a charge-sheet against the respondent herein was served, having regard to the involvement of respondent No.3 on personal basis apart from official duties in the audit pertaining to FCI are not in consonance with the Division Bench judgement of this Court in CWP 7344/99 (Dr.Y.R.Midha v. Union of India and Others) disposed of on 6th March 2000 and therefore would not be used against the petitioner. In any event it is one thing to say that there is real likelihood of bias but it is another thing to say there existed actual bias. The Tribunal in the impugned judgment has taken the view from the angle of real likelihood of bias and not actual bias.

So far as the contention as regards interpretation of Rule 11 is concerned, we are of the opinion that as the same would be academic in nature, more particularly, when the respondent has admittedly been dismissed after serving of charge-sheet, in an appropriate case the said question can be considered.

Dismissed".

5. The aforesaid order of the Hon'ble High Court in CWP No. 7344 of 1999, Dr. Y.R. Midha Vs. Union of India and Ors has been disposed of on 6.3.2002 and the copy of the same is placed on record. In Tribunal's order dated 19.9.2001 in OA 748/2001 filed by the applicant against the Memorandum issued to him under Rule 14 of the 1965 Rules, praying for quashing the charge-sheet, certain observations had been made on which the Hon'ble High

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23

Court had observed as quoted above. It has been observed that "in any event it is one thing to say that there is real likelihood of bias but it is another thing to say there existed actual bias". Respondent No. 3 in OA 748/2001, Shri V.K. Shanglu, Comptroller and Auditor General of India is Respondent No. 4 in the present case. The learned counsel for the applicant has very strenuously argued that Respondent No. 4, that is, the CAG in consultation with the UPSC - Respondent No. 3, had passed an arbitrary, illegal and mala fide order of dismissal. He has submitted that the mala fide action of Respondent No. 4 was halted by the Tribunal in OA 748/2001. Learned counsel for the applicant has submitted that the present case is a classic example of exercise of mala fide powers by Respondent No. 4 and he had filed a Public Interest Litigation (PIL) in the High Court in CWP 7344 of 1999. According to him, the applicant had exposed Respondent No. 4 before the High Court of Delhi for his illegal activities in giving a contract of Rs.17 crores to a Swiss Company where his son was working, without following the relevant rules and instructions issued by the Government of India. He has submitted that Respondent No. 4 had himself ordered payment of public money to the Swiss Company for crores of rupees and his exposing the illegal activities of Respondent No. 4 had led to the impugned order of dismissal. He has very vehemently contended that drawing up the horoscope of a lady Steno on a computer by the applicant cannot be termed as an offence nor can it be held that permitting his Stenographer to use the staff car for procuring medicine for her ailing mother-in-law be of

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such a serious nature so as to warrant dismissal from service. He has submitted that the Inquiry Officer had himself stated that there is no direct evidence on the allegations made by Mrs. Deepa Sharma, Stenographer of sexual harassment. He has alleged that the Inquiry Officer had prevented him from cross-examining the complainant whom he states had in fact given the complaint at the behest of Respondent No.4 in a most unusual manner. He has submitted that no lady Stenographer would approach the Head of the Office, that is the CAG, to make the complaint and that too, when she was on leave but she could have made the complaint to a Standing Committee, which has been set up in the Department, if indeed there was any sexual harassment. His main contention is that the impugned punishment order has been fabricated, orchestrated, directed and executed at the behest of Respondent No.4, who was biased towards him because of the aforesaid PIL litigation in the High Court initiated by him. He has, therefore, contended that as the whole action leading to the dismissal order is a mala fide and arbitrary action, the order of dismissal should be quashed. He has also contended that the initiation of the disciplinary proceedings is contrary to Rule 12 (2) of the 1965 Rules. He has contended that the Inquiry Officer was not sufficiently senior to the applicant and he was also an old personal friend of Respondent No.4 and was, therefore, interested and biased. Apart from that, learned counsel has also submitted that the principles of natural justice have been violated. He has contended that

there was denial of calling witnesses whom he wanted to call at the inquiry. He has contended that this is a case of no evidence. He has alleged that a very detailed representation made by the applicant was replied to almost immediately, which he states is without any application of mind and also because of the overall motivation and personal bias of Respondent No.4 against him. He has alleged that as Respondent No. 4 had procured the complaint from the lady Steno. by calling her from her house on 23.8.1999 when she was on leave, he could not himself have decided the case. To substantiate the various allegations of bias, mala fides and personal interests of Respondent No.4, the learned counsel for applicant has referred to in detail the facts and documents in the hearing, which we have seen. He has submitted that the applicant had an outstanding record of service of over 23 years as a Class-I Officer and had attended many challenging and prestigious assignments. He has repeatedly submitted that the bias against the applicant is rooted in the PIL filed by him against Respondent No.4 for which he had started dictating to his Steno. in mid-July, 1999. By mid- August, 1999, the lady Stenographer had made the allegations against the applicant. He has contended that Respondent No.4 could not have, therefore, associated himself in any way in the disciplinary proceedings. He has submitted that even a perusal of the complaint made by Mrs. Deepa Sharma would show that the whole thing has been done at the behest of Respondent No.4. Shri D.N. Goburdhan, learned counsel

13

has, therefore, submitted that the entire facts should be viewed as a whole wherein, according to him, the bias and mala fide action of Respondent No. 4 against the applicant is writ large. He has alleged that even after the lady Steno. was transferred, she continued to work with the applicant which would show that his conduct cannot be blamed. The learned counsel has submitted that the Committee constituted by Respondent No.4 did not include a person from a Non-Governmental Organisation (NGO) having experience in cases of sexual harassment but he had appointed Smt. Lata Singh who was also his old personal associate as the Chairman of the Committee. In the circumstances, learned counsel has prayed that the impugned order dated 27.9.2001 should be quashed and set aside and the applicant be re-instated in service with all consequential benefits.

6. We have seen the reply filed by the respondents and heard Shri Rajeev Shakdhar, learned counsel. The respondents have stated that the O.A. is not maintainable as the Tribunal cannot reappreciate the evidence placed for consideration before the Inquiry Officer. They have submitted that the principles of natural justice have been complied with as the applicant has been imposed the penalty of dismissal from service only after giving him adequate opportunity to cross-examine all witnesses, including the complainant. They have stated that the Inquiry Officer gave his report on 9.10.2000, who after perusal of the documents on record

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and appreciation of evidence had come to the conclusion that the charge of sexual misconduct stood proved. Shri Rajeev Shakdhar, learned counsel has submitted that Smt. Deepa Sharma, Stenographer had made the complaints of sexual harassment dated 18.8.1999 and 23.8.1999 to the Principal Director (Staff) in the office of Comptroller and Auditor General of India, New Delhi. They have stated that a three Member Committee with two lady Members was constituted to inquire into the complaints which, in its report dated 19.11.1999 concluded that the conduct of the applicant amounts to sexual harassment of Smt. Deepa Sharma and was of the considered view that a prima facie case of sexual harassment of Smt. Deepa Sharma stood established. The Committee also observed that being the Head of the Office, it was the duty of the applicant to prevent sexual and other kinds of harassments to any woman employee in his office but on the contrary he himself indulged in it with a subordinate staff, which is contrary to the guidelines laid down by the Hon'ble Supreme Court. The respondents have clarified that Dr. (Smt.) Lata Singh who was appointed as Chairman of the Committee to look into the complaints was a retired Secretary to the Government of India from the Department of Women and Social Welfare and there was no legal infirmity on this ground. Learned counsel for the respondents has submitted that the various allegations made by the applicant of bias against Respondent 4 are baseless and devoid of any merit. He has contended that it is not for the first time that the applicant has been charged with grave misconduct of

sexual harassment of a woman employee but he was issued a warning for keeping the wife of another person in his house while the husband and the CBI were making a nation wide search for the wife. He has submitted that the main contentions of the applicant relates to the linking of the PIL with the charge-sheet which has no relevance to the misconduct of sexual harassment as also held by the Delhi High Court in CWP No.7344 of 1999. Learned counsel has submitted that the charge of sexual harassment has been conclusively proved during the inquiry proceedings on the basis of the evidence of material witnesses. He has, therefore, prayed that the O.A. may be dismissed as it is without any merit and the punishment imposed is reasonable considering the severity and nature of the charge held proved.

7. We have carefully considered the submissions of the learned counsel for the parties and perused the relevant materials and documents on record. We have also seen the Departmental file submitted by the respondents in which a decision has been taken by the Minister-in-charge to impose the punishment of dismissal on the applicant.

8. With regard to the allegations of mala fide and bias alleged by the applicant against Respondent No.4, based on the PIL filed by him in the Hon'ble High Court (CWP 7344 of 1999), the following observations of the High Court are very relevant:

" Before parting with the matter we would also like to consider the question whether or not this petition, which has been filed under the category

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of public interest litigation, is maintainable. In order to determine the question, it will be necessary to mention chronology of events :-

1. On 30th June 1997 the Secretary to the Government of India, Ministry of Food and Consumer Affairs, requested the CAG to conduct a special audit of inventories/stocks of rice held by the FCI.

2. On July 4, 1997, the Cabinet Secretary repeated the request for special audit in respect of inventories and stocks held by the FCI.

3. On December 4, 1997 the petitioner took over charge as Member Audit Board-IV.

4. On December 22, 1997 the petitioner noted certain deficiencies in the working of the SGS (See letter of the petitioner dated December 22, 1997 to the seventh respondent).

5. In March 1998, the FCI submitted report to the Government of India.

6. On March 20, 1998 the petitioner in his capacity as Member, Audit Board-IV, recorded a report with regard to Audit of Food Corporation of India in which it was inter alia stated that the CAG had appointed a well-known and reputed firm of stock verifiers for determination of stock of food grains in the Depots of FCI and also a panel of reputed firms of Chartered Accountants to work out the stock balances as on 31.3.1997.

7. In June 1998 one thousand five hundred and sixty one certificates issued by SGS relating to verification of stocks were sent to the Government of India by the CAG.

8. On 18/23 August, 1999, a lady made a complaint of sexual harassment against the petitioner.

9. On November 19, 1999, fact finding committee submitted its report with regard to the aforesaid complaint of sexual harassment.

10. On November 29, 1999 the petitioner was placed under suspension pending enquiry.

11. On December 6, 1999, the petitioner was charge sheeted for major penalty.

12. On December 8, 1999 the petitioner filed the instant writ petition.

From the aforesaid chronology of events it is obvious that the petitioner filed the writ petition only after being charge sheeted in connection with the case of sexual harassment.

In case the petitioner had any genuine grievance with regard to the appointment of SGS to verify the stocks of food grains of the FCI on the ground of the fourth respondent's son being an employee of the SGS or on the ground that the fourth respondent had shown a favourable bias towards the SGS in entrusting the work to it, a question arises why did the petitioner wait for so long for filing the writ petition after he took over the charge as MAB-IV. It is not claimed that the petitioner did not know about the employment of forth respondent's son with the SGS and as soon as he came to know about the relationship he filed the writ petition. Rather, it appears that till March 20, 1998 the petitioner was of the view that SGS was appointed as it was a well-known and reputed firm of stock verifiers. The change in the attitude appears to have taken place after the petitioner was charge sheeted even though he was not satisfied with the execution of the work by the SGS as is apparent from the letter of the petitioner dated December 22, 1997 to the seventh respondent (which is at page 74 of the paper book)

....In the instant case since the petitioner has come up only after he was charge sheeted it is difficult to accept the theory that the petitioner filed the instant petition because he was driven by public interest. The petition, therefore, does not fulfil the criteria for filing the public interest litigation as laid down in Srinivas's case (supra). It is hard to believe that the petitioner filed the instant public interest petition bona fide for the purpose only of serving the public interest....

...In case a court finds that in the garb of a public interest litigation actually an individual's own interest is sought to be advanced or protected, it would be the bounden duty of the court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated. Public interest litigation is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of the downtrodden or suffering masses for the redressal of their grievances. Applying the principles laid down by the Supreme Court it cannot be said that the instant petition has been filed by a person who is not aggrieved personally or who has no axe of his own to grind. Obviously, the petitioner has a personal interest in the litigation because of the disciplinary action initiated against him.

In the light of the aforesaid discussion, we consider it appropriate to dismiss the writ petition with the aforesaid observations and in terms of the conclusions reached by us".

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(Emphasis added)

(33)

9. The above findings of the Hon'ble High Court clearly show that the applicant had filed the aforesaid writ petition only after being charge-sheeted in connection with the case of sexual harassment. This would, therefore, show that the allegations of bias levelled by him against Respondent No.4, only because he had filed the PIL (WP 7344 of 1999) and that being the motive to take the decision to charge-sheet him on sexual harassment is not at all correct. In view of these facts and observations of the Hon'ble High Court, the allegations of mala fide and bias made by the applicant against a senior officer are totally baseless and have not been proved. As the Hon'ble High Court itself had pointed out, the writ petition itself was filed only after he was charge-sheeted in connection with the case of sexual harassment on the complaint made by Mrs. Deepa Sharma in August, 1999. In the facts and circumstances of the case, we respectfully follow the findings of the Hon'ble High Court in its judgement dated 6.3.2002, namely, that the change in the attitude appears to have taken place only after he was charge-sheeted, even though he was not satisfied with the execution of the work of SGS and he knew all along that the son of Respondent No.4 was employed in that firm. In other words, after examination of the facts and the submissions made by the learned counsel for the applicant, we are not at all convinced by his arguments that Respondent No.4 was biased and had taken mala fide action against the applicant only because of the PIL he had filed against him but the disciplinary proceeding

82

held against him for sexual harassment based on the complaint made by Mrs. Deepa Sharma was a separate action which has been dealt with in accordance with law. Accordingly, the allegations of bias and mala fide alleged against Respondent No.4 are rejected.

10. The judgements of the Hon'ble Supreme Court in *Vishaka Vs. State of Rajasthan* (AIR 1997 SC 3011) and *Apparel Export Promotion Council Vs. A.K. Chopra* (1999 (1) SLJ 251) are very relevant to the facts of this case. In *Vishaka's* case (supra), the Hon'ble Supreme Court has laid down the guidelines and norms for effective enforcement of the basic human right of gender equality and sexual harassment and abuse, more particularly against sexual harassment at work places. In this case, a definition of sexual harassment was suggested and it was opined as follows:

"Definition

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Whether any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and

13/

safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto".

In A.K. Chopra's case (supra), the Supreme Court has further held:

"22. The High Court was examining disciplinary proceedings against the respondent and was not dealing with criminal trial of the respondent. The High Court did not find that there was no evidence at all of any kind of "molestation" or "assault" on the person of Miss X. It appears that the High Court re-appreciated the evidence while exercising power of judicial review and gave meaning to the expression "molestation" as if it was dealing with a finding in a criminal trial. Miss X had used the expression "molestation" in her complaint in a general sense and during her evidence she has explained what she meant. Assuming for the sake of argument that the respondent did not manage to establish any "physical contact" with Miss X, though the statement of management witness Sube Singh shows that the respondent had put his hand on the hand of Miss X when he surprised them in the Business Centre, it did not mean that the respondent had not made any objectionable overtures with sexual overtones. From the entire tenor of the cross-examination to which Miss X was subjected to by the respondent, running into about 17 typed pages and containing more than one hundred and forty questions and answers in cross-examination, it appears that the effort of respondent was only to ply with the use of the expressions "molestation" and "physical assault" by her and confuse her. It was not the dictionary meaning of the word "molestation" or "physical assault" which was relevant. The statement of Miss X before the Enquiry Officer as well as in her complaint unambiguously conveyed in no uncertain terms as to what her complaint was. The entire episode reveals that the respondent had harassed, pestered and subjected Miss X, by a conduct which is against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances. Such an action on the part of the respondent would be squarely covered by the term "Sexual harassment"..... Unmistakably shows that the conduct of the respondent constituted an act unbecoming of good

92

behaviour, expected from the superior officer. Repeatedly, did Miss X state before the Enquiry Officer that the respondent tried to sit close to her and touch her and that she reprimanded him by asking that he 'should not do these things'. The statement of Miss Rama Kanwar, the management witness to the effect that when on 16th August she saw Miss X and asked her the reason for being upset, Miss X kept on weeping and told her "she could not tell being unmarried, she could not explain what had happened to her". The material on the record, thus, clearly establishes an unwelcome sexually determined behaviour on the part of the respondent against Miss X which was also an attempt to outrage her modesty. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment. The evidence on the record clearly establishes that the respondent caused sexual harassment to Miss X, taking advantage of his superior position in the Council".

(emphasis added)

11. Much emphasis was placed by Shri Goburdhan, learned counsel that it cannot be held that it was an offence to make the horoscope of a lady employee working under the applicant. It is not anybody's case that making of the horoscope as such is an offence but it is stated that the applicant had referred to Smt. Deepa Sharma as ^{BS} ~~he~~ "Janam Janamantar Ka Sathi" (life partner) and that based on such a horoscope, he was persuading her also to leave her husband and child. A perusal of the evidence led in the Departmental proceedings shows that this is not a case of no evidence as contended by the learned counsel for the applicant. The appointment of the Inquiry Officer, Shri A.K. Garde, who had retired as Central Vigilance Commissioner cannot also be faulted, which has also been the subject matter of litigation in O.A. 394/2000 filed by the applicant in the Tribunal, which

8

39

passed the order dated 11.7.2000 read with the order of the Hon'ble High Court dated 4.8.2000 in CWP No. 4085/2000 and the Hon'ble Supreme Court's order dated 20.9.2000 in SLP (Civil) No. 14381/2000. We have also considered very carefully the note/brief submitted by the learned counsel for the applicant with reference to the particular pages in the pleadings but do not find any merit in the submissions to justify any interference in the matter, in exercise of the powers of judicial review. No doubt, the applicant has been given ample opportunities to put forward his case and there has been no denial of opportunity of hearing or violation of the principles of natural justice. We are not impressed by the submissions of the learned counsel for the applicant that there were no 'direct' witnesses as this cannot be expected in such cases of sexual harassment of a lady employee who is subordinate to the senior officer, like the applicant and this argument is, therefore, rejected. As held by the Hon'ble Supreme Court in A.K. Chopra's case (supra), an analysis of the definition of sexual harassment given in Vishaka's case (supra) shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting adversely her employment and unreasonably interfering with her work performance and had the effect of creating an intimidating

or hostile working environment for her. All these ingredients of sexual harassment are present in the present case. It has been further held in A.K. Chopra's case (supra), that in a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and "not get swayed by insignificant discrepancies or narrow technicalities" or dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as in our opinion in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer will be wholly misplaced and mercy has no relevance. The Hon'ble Supreme Court held that the High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like was held to have a demoralizing effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the Departmental authorities. It was held that the act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of

Miss X and the punishment imposed by the appellant, was, thus commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review.

12. We respectfully follow the judgement of the Hon'ble Supreme Court in A.K.Chopra's case (supra) that any sympathy or lenient action in the present case also is uncalled for, as it will have a demoralising effect on a working woman. The applicant was a senior officer under whom the complainant was working as Stenographer and this is not a case where we find any justification to set aside the punishment order of dismissal imposed on him by the competent Departmental authority after analysing the evidence adduced in the disciplinary proceedings. We also find that it would also be contrary to the settled law in such cases if, as contended by the learned counsel for the applicant, the Tribunal is to re-appraise the evidence and come to a different conclusion from what has been arrived at by the competent authority. It cannot also be held that the conclusions of the disciplinary authority are in any way perverse or of a manner which can be held to be un-reasonable looking at the facts and depositions of witnesses and evidence adduced in this case. We are also not persuaded by the submissions made by Shri Goburdhan, learned counsel that as some witnesses were not called in the Departmental inquiry or he was not allowed further cross-examination of Mrs Deepa Sharma, any prejudice has been caused to the applicant because he has already been

83

42

given a reasonable opportunity to put forward his case and cross-examine the witnesses. As held by the Hon'ble Supreme Court in A.K. Chopra's case (supra), in such cases the Tribunal/Courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities, as was very elaborately sought to be brought out by the learned counsel for the applicant. Much was sought to be made by the applicant's counsel on the complaints made by Mrs. Deepa Sharma dated 18.8.1999 and 23.8.1999, on the grounds that there were some technical discrepancies and so on but looking at the facts and circumstances of the case as a whole, we are fully satisfied that the actions taken by the respondents on these complaints are within the provisions of law relating to sexual harassment of a female subordinate employee, as dealt with in the judgements of the Hon'ble Supreme Court in Vishaka's case (supra) and A.K. Chopra's case (supra). Shri Goburdhan, learned counsel had contended that merely because the applicant had allowed his lady Steno, to use his car to procure medicines for her mother-in-law, it cannot be held against him. While that may be so, all these facts have been fully considered and appreciated by the competent authority while dealing with the impugned memorandum of charges and it is settled law that it is not for the Tribunal/Courts to re-appraise the evidence to arrive at a different conclusion from that arrived at by the competent authority unless and until the same is so unreasonable or perverse, which is not the position in the present case.

8/

Similarly, we find no infirmity or flaw in the appointment of Dr. (Mrs.) Lata Singh, a retired IAS Officer who was appointed as Chairman of the Committee along with its Members, Shri G.C.Srivastava, Additional Deputy Comptroller and Auditor General (Commercial) and Smt. Rekha Gupta, Principal Director (Railway Audit) to look into the allegations of sexual harassment of Smt. Deepa Sharma. During the hearing, it was submitted that Dr. Smt. Lata Singh was a retired Secretary to the Government of India in the Department of Women and Child Welfare and her appointment as Head of the Committee cannot, therefore, be held to be invalid or contrary to the guidelines laid down by the Hon'ble Supreme Court in *Vishaka's* case (supra). Therefore, this contention also fails and is rejected. Similarly, we find no basis in the allegations of bias levelled by the applicant against the enquiry officer Shri Garde or Dr. Mrs. Lata Singh as he seems to feel that everyone is biased against him or on the general averment that they were all influenced by Respondent 4. All those officers have acted in a responsible manner in accordance with law and the averments to the contrary are rejected.

13. The Inquiry Officer in his report dated 9.10.2000 had found the various allegations, except the allegation No. 6 in Para 1 as established and Article-II as not established. The learned counsel had very vehemently contended that the respondents had taken a decision in February, 2000 itself to dismiss the applicant

44

whereas the Inquiry Officer's report was sent to UPSC only on 27.11.2000. He has also contended that Respondent No. 4 had also hurriedly sent the papers to Respondent No.3/UPSC which was illegal. The respondents have stated that after obtaining the written submissions of the applicant on Inquiry Officer's report, the whole matter was referred to the Ministry of Finance and UPSC on 27.11.2000. The UPSC communicated its advice to Respondent No. 1 on 11.9.2001 and finally the order of dismissal from service of the applicant was passed by the President on 27.9.2001, which has been impugned in the present case. We have seen the relevant Departmental file and note that the Hon'ble Minister of Finance vide his order dated 25.9.2001 had, as the competent authority approved the imposition of major penalty of dismissal from service against the applicant on 27.9.2001. We have also seen the advice given by UPSC/Respondent No.3 wherein they have observed, inter alia, that it is extremely difficult to prove or disprove absolutely a case of sexual harassment. It is an established fact that sexual harassment which is severly viewed both by the Government and Courts, occurs in offices, especially against junior women employees in subordinate positions. The Commission also observed that cases of sexual harassment are unlikely to indulge in such activities in public and as such, there can never be any direct witness to a woman's complaint. The judgment in the case of AEPC Vs. A.K.Chopra (supra), has been referred to and it has been opined that the statement of the victim must be appreciated in the

8/

background of the entire case. After analysing the evidence which has been led in the disciplinary proceeding against the applicant, the Commission had recommended the imposition of penalty of dismissal from service which had been agreed to by the competent authority. The Commission had also observed that the circumstantial evidence, including the fact that the complainant had been sharing her problems with her colleagues, establish the case of sexual harassment of the complainant against the applicant. In this connection, the contention of Shri Goverdhan, learned counsel that another lady Stenographer who had worked under the applicant had not made any such complaint is not relevant as, in the present case there is sufficient evidence to prove the allegations of sexual harassment made by the complainant Smt. Deepa Sharma. In this context, the further contention of the learned counsel for the applicant that the respondents had acted in a hurried manner without application of mind are baseless and rejected. Similarly, his contention that since Respondent No.4 has sent a copy of the Inquiry Officer's report to the UPSC, that would vitiate the entire proceeding is also without any basis as the decision to impose the penalty of dismissal from service has been taken by the President, acting through the Minister-Incharge in accordance with the Rules and after obtaining the advice of UPSC/Respondent No.3. Therefore, it cannot be held that the relevant Rules of procedure or the principles of natural justice have been violated in the present case. In the context of the case,

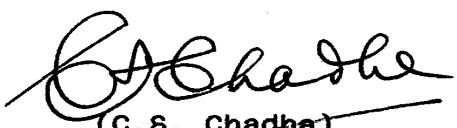
one may also note the earlier Memorandum dated 3.12.1996 issued to the applicant wherein he was given a formal "Warning" relating to an incident where he had allowed one Smt. Maryakutty, a Central Government employee to stay in his Government quarter at Gwalior from 19.8.1994 till she was traced by the CBI on 29.4.1995. Even when the lady's husband had contacted him on 6.9.1994, the applicant had told him that he did not know her whereabouts. No doubt, this Memorandum was not part of the impugned charge-sheet but has only been referred to in passing to show applicant's attitude towards a woman employee. The facts also show immoral, indecent and unacceptable behaviour of the applicant in society and in the work place which calls for no sympathy or any reduction of the punishment of dismissal.

14. We have also considered the other contentions of the learned counsel for the applicant but having regard to the relevant law on the subject of sexual harassment in work places of female employees, particularly those in a subordinate position, we have no hesitation to come to the conclusion that the applicant had indeed sexually harassed Smt. Deepa Sharma. Minor discrepancies, if any, fade to insignificance when the facts and circumstantial evidence are considered as a whole on the basis of which the punishment order has been issued. The penalty order is commensurate with the serious nature of the charge which has been held proved in the Departmental proceedings. This is not a case of no evidence where the action taken by the respondents based on the complaint made by the lady stenographer can be held to be contrary to law which justifies any judicial interference. On the contrary, any lenient view of the



-24-

action taken by the respondents in such a case will be most uncalled for as it will send a wrong signal, which will have the effect of demoralising the working woman, particularly at the subordinate levels, considering also the fact that the applicant was a senior officer and Head of the Office. Therefore, from whatever angle the facts and circumstances of the case are looked at, we find no merit in this application nor any good grounds to justify any interference in the matter. The O.A. accordingly fails and is dismissed. No order as to costs.


(C.S. Chadha)
Member (A)

'SRD'


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)