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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1485/88
New Delhi this the 26th day of November, 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri Brij Raj Singh Fogaat,
C/o Shri A.S. Ramachandra Rao,
E-84, South Extension Part I,
New Delhi-110 049.

...Petitioner

(By Advocate Shri Balraj Dewan)

Vs

Union of India
represented by the
Secretary
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi.

Administrator,
Union Territory of Chandigarh,
Chandigarh

Shri A.R. Malhotra,
Commissioner for Departmental Inquiries,
Central Vigilance Commission,
New Delhi.

...Respondents

(By Advocate none)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was Principal at the Industrial Training Institute, Chandigarh. The Administrator initiated an enquiry against the applicant for a misconduct under Rule 14 of the CCS (CCA) Rules 1965. The charge against him was that between January 1984 and May 1985 when he was Principal of the said Institute he sexually assaulted Smt. Suman Lata Pawar, a Social Study teacher working in the said institute. Agreeing with the findings of the enquiry officer, the disciplinary authority imposed the penalty of dismissal from service by an order dated 5.7.1988.

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The applicant has assailed the order of punishment dated 5.7.1988 report of the enquiry officer Shri A.R. Malhotra dated 30.11.1987 and prayed for the quashing of the impugned order on a number of grounds. He has also prayed for reinstatement in the service with all present and future emoluments and benefits.

A notice was issued to the respondents who filed the reply and opposed the grant of the relief prayed for. The facts have also been stated in the reply which are relevant to the extent that Smt. Suman Lata Pawar joined as a Social Study teacher on ad hoc basis in the said Institute with effect from 25.1. 1984 and she resigned from service on 21.5.1985. A complaint was made on 25.6.1985 to the Director of Training, Government of India, Ministry of Labour regarding the aforesaid sexual abuse of Smt. Suman Lata Pawar by the Principal of the said Institute as a result of which she was constrained to resign. On the basis of the aforesaid complaint made by Shri I.D. Pawar, father-in-law of the victim a Memo dated 15.9.1986 was issued by Home Secretary, Chandigarh Administration. It was proposed to hold an enquiry against the applicant under Rule 14 of the CCS(CCA) Rules 1965. Alongwith this aforesaid Memo the article of charge; the statement of imputation of misconduct, a list of documents and the list of witnesses to be examined in enquiry was also annexed. It is further stated that the applicant was given adequate opportunity to defend himself. After considering the evidence oral and documentary produced before him both by the administration and the applicant, the enquiry officer held the applicant guilty of the charge. The disciplinary authority Agreeing with the above finding passed the order imposing the penalty

of dismissal from service and the applicant has no case. The applicant obviously indulged in sexual abuse on Smt. Suman Lata Pawar who was working as a Social Study teacher in the Institute under his control and administration and as such the disciplinary authority observed that the delinquent has committed a depraved act of the worst order in an institution.

The applicant has also filed the rejoinder to the reply filed by the respondents almost reiterating the same averments made in the original application.

We have heard the learned counsel of the parties at length and perused the record. The applicant has also filed written submissions which have been taken on record. The first contention of the learned counsel is that the complaint was made by the father-in-law who is a District and Sessions Judge much after the applicant has tendered her resignation on 25.6.1985. The enquiry officer has considered this aspect in fact the situation in which Smt. Suman Lata Pawar dragged herself do warrant some thought provoking by a respected family. The affairs of Smt. Suman Lata Pawar with the Principal started soonafter she joined the institution in January 1984. As a lady employee as a (teacher) under the control of the Principal she tried to repel overtures made against her person but subsequently she succumbed to the pressure, coercion, cajolery of the Principal of the Institute. When once she was given to a particular vice then at subsequent occasions it was only a formality. She was between devil and deepsea. If she had made a complaint to her in-laws or husband then she could

not either muster the courage or face the consequences. It was only when she was caught coming late and her husband tried to contact her on that particular day in the Institute where she was not found as well as the Principal was absent then her late reaching home created a suspicion and she had to narrate the whole story including the earlier incidence to the husband, the enquiry officer did not give any weight to the late coming of the complaint. The respected family, therefore, has to think before taking any action. A delayed complaint by itself will not make the allegations levelled against a person as false or without basis. If there are sufficient circumstances which goes to show that in the allegations of the applicant which are likely to undermine the personal life of the victim the delay is not by itself an important factor to discredit the allegations made in the delayed complaint.

The next contention of the learned counsel is that in the enquiry the applicant was denied the services of a lawyer while the disciplinary authority was represented by the District Attorney, Chandigarh Administration. It is not stated that the disciplinary authority unreasonably and illegally refused permission until a very late stage in the case for the applicant to engage a legal petitioner to defend him. Looking to the cross examination of the main witnesses Shri I.D. Pawar, complainant and father-in-law of the victim and of the victim Smt. Suman Lata Pawar the cross examination continued for days together and runs into several pages. Similarly, the cross examination of Shri

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Naresh Pawar, husband of the victim also runs into several pages. The contention of the learned counsel that the services of the experienced lawyer was not provided on the face of it appears plausible. This is also a law as well as a decision of the Government of India that if the Presenting Officer in the enquiry is conducted by a lawyer then the delinquent be also provided with the services of a lawyer as defence assistant. In the case of Bombay Port Trust reported in AIR 1983 SC P 109 it has been held that when prosecution is conducted by a legal trained person the accused officer is entitled to legal assistance. In fact the enquiry officer has to see that the delinquent should not be at a comparative disadvantage as compared to the disciplinary authority represented by the Presenting Officer. The delinquent has to show that he has suffered prejudice and only then the enquiry shall stand vitiated as held by the Hon'ble Supreme Court in Bhagat Ram Vs. State of Himachal Pradesh AIR 1983 SC P 454 in para 5. The learned counsel who argued for the applicant could not show that any prejudice has been caused to the applicant by providing the legal assistance at a late stage. Moreover, the personal qualification and ability of the charged officer is also a relevant factor in judging the issue of not giving legal assistance to the delinquent. The cross examination of the witnesses examined by the administration goes to show that they have been examined quite at length. Moreover, in the present case there was no legal issue of any material imposed which required legal assistance. There were certain allegations against the persons of the applicant which were deposed by the witnesses and they have

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been cross examined at length. No question of law or interpretation was involved in the present case. The contention of the learned counsel therefore cannot be accepted. In Krishan Chander Tandon Vs. Union of India AIR 1974 SC P 1589 the refusal of permission of engaging of legal petitioner was upheld by the Supreme Court on the ground that the applicant himself was an income tax officer and all that he was required to defend was the correctness of an order passed by himself. In the present case the applicant had only to impeach the credit of the witnesses, particularly of the victim so far she has alleged sexual abuse against her by the applicant.

The other contention raised by the learned counsel for the applicant is that the enquiry officer has not followed the procedure laid down under Rule 14(14) of the CCS(CCA) Rules 1965, which provides that on the day fixed for the enquiry, oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the Government servant. In Annexure IV six witnesses proposed to be examined on behalf of the authorities is mentioned. Before the enquiry officer, the statement of Shri I.D. Pawar, Smt. Suman Lata Pawar and Shri Naresh Pawar were tendered by the Presenting Officer. All these statements were recorded by the Investigating Inspector of the Vigilance Department in August 1985 under Rule 14(4) of the Rules there is Government of India's instructions issued

by Memo in 1976 which allows the statements recorded during the investigation to be used as substitute for evidence-in-chief. Now coming to the factual position besides the statements earlier recorded of Shri I.D. Pawar by the Vigilance Inspector, he was also examined-in-chief on 5.2.1987. Similarly, Smt. Suman Lata Pawar, SW 2 was examined-in-chief on 28.9.1987 and recorded her statement taken by the Investigating Officer was also tendered in examination-in-chief. Her examination-in-chief runs into 5 pages and then she was cross examined on behalf of the charged officer. The statement of Naresh Pawar, SW3 was taken on 1.10.1987 and he was also tendered the statement recorded by the Investigating Officer in his examination-in-chief on 1.10.1987. Similarly, the statement of Shri Daljit Singh, SW4 was recorded on 29.9.1987 and in his examination-in-chief he tendered his earlier statement recorded by the Vigilance Inspector and then he was cross examined, Shri Mahender Pratap Singh Lamba, SW5 was examined on 1.10.1987 and in his examination-in-chief he has tendered his statement recorded by the Vigilance Inspector. ~~Smt.~~ le Bhajan Singh, SW6 was also ^{examined} on 1.10.1987 and he tendered his earlier statement recorded by the Vigilance Inspector in examination-in-chief. Thus, all these prosecution witnesses were first examined-in-chief and then they were cross examined. This practice has been adopted by the Enquiry Officer on the basis of OM of 1976. The contention of the learned counsel is that the findings arrived at by the enquiry officer is based on the testimony of the prosecution witnesses taking into account their earlier statements which were tendered during the course of the examination-in-chief

and this evidence cannot be termed as legal evidence. We have given a careful consideration of the arguments advanced by the learned counsel which has also been supported by the authorities of Hon'ble Supreme Court based on the provisions of Section 162 of the CRPC. In fact that analogy cannot be drawn for a departmental enquiry when there is, already Government of India's instructions issued in 1976 and that has not been challenged in the present proceedings. The learned counsel has referred to the authorities of the Hon'ble Supreme Court in the case of Union of India vs. T.R. Verma reported in AIR 1957 SC P 882 which lays down that the witnesses should be examined in the presence of the charged officer. The learned counsel has also referred to a number of other authorities on the same point. ~~Statement~~ of Bombay Vs. Gajanan AIR 1964, Bombay P 351, Kanhya Lal Vs. State of Rajasthan AIR 1958 Rajasthan 1986 (4) SLR P 545. Kaptain Singh Vs. Union of India decided by the Principal Bench, CAT, and Dhuni Ram Ramji Lal Vs. Union of India & Ors, AIR 1987 (2) P 35 CAT, Bombay Bench. The authority stated by the learned counsel are not relevant in the present case. In the case of Ramji Lal Dhuni Ram in examination-in-chief the witnesses did not support the earlier statement recorded by the Vigilance Inspector. Even then the Enquiry Officer relied on such statements. In the case of Kaptain Singh, the statements were placed on the file at the back of the charged officer and taken into account by the enquiry officer. The law laid down by the Hon'ble Supreme Court is that the proceedings should not be drawn behind the back of the charged officer. In the present case as referred to above all the prosecution witnesses were first examined-in-chief and they testified their earlier recorded statements by the Vigilance

Inspector. Thus, the enquiry officer has not violated the procedure laid down under Rule 14(14) of the Rules. In any case the applicant was free to request the enquiry officer that whole of the examination-in-chief be taken afresh. The applicant had nowhere raised any objection before the enquiry officer and had cross examined the witnesses on the basis of the earlier statements which they have testified to have given to the Vigilance Inspector. The applicant has also examined certain defence witnesses Shri Iswar Singh, DW1, Shri O.N. Mallik, DW2 who have also tendered in their examination-in-chief earlier statement recorded by the Vigilance Inspector and on the basis of which the Presenting Officer has cross examined these witnesses. The other witnesses examined by the Charged Officer are Shri Avtar Singh, DW3, Shri G.C. Dhandwal, DW4, Shri H.R. Batra, DW5, Shri Bachan Singh, DW6, Shri Honsla Prasad, DW7, Shri Daulat Ram, DW8, Shri Usha Fogaat, DW9 and charged officer Shri B.R. Fogaat as DW10. It is therefore cleared from the evidence recorded by the enquiry officer that he adopted the same procedure in taking down the evidence. The applicant has not been prejudiced because of this procedure adopted by the enquiry officer. The learned counsel could not show how the earlier recorded statements have prejudiced his case.

From another angle also, we find that the applicant has never raised any objection that he had not received earlier the statements already recorded of the Prosecution Witnesses at the time of enquiry by the Vigilance Branch. It is not the case of the applicant also that these statements were not recorded earlier in the

investigation. The analogy sought by the learned counsel with the provision of Section 162 CRPC is not available in the departmental enquiry. The strict rule of evidence are not applicable in the departmental enquiry. The procedure is prescribed under CCS(CCA) Rules, 1965. No breach of Rule has been committed particularly of Rule 14(14) in as much as all the Prosecution Witnesses have been examined in presence of the charged officer and he has been given the fullest opportunity to cross examine those witnesses. Thus, no illegality has been committed by the enquiry officer in taking the statements of the prosecution or defence witnesses during the course of the enquiry.

The contention of the learned counsel that the evidence so recorded by the enquiry officer is not legally admissible has no basis. In a departmental enquiry the witnesses have been examined and the prosecution witnesses some of the defence witnesses instead of deposing the same facts again have corroborated in material particularly the statements given by them in the investigation and tendered the same as a part of the examination-in-chief. As said above, the charged officer had an opportunity to oppose the tendering of those statements but he has not done so. When the evidences have been recorded and he has already been cross examined on all aspects of the matter and ~~deposed~~ ^{deposed} facts ~~disposed~~ to either in the recorded statements or in the examination-in-chief given at the time of hearing, he cannot have any right to challenge that evidence. The

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evidences given before the enquiry officer therefore is evidence of facts to establish the misconduct alleged against the applicant in the article of charge.

The learned counsel has dealt at length about the appreciation of evidence by the enquiry officer. A fact is established when the existence of that fact is proved by oral deposition which withstood the the test of cross examination and was further corroborated by documentary evidence. In this case the misconduct alleged against the applicant was of having sexually assaulting the victim Smt. Suman Lata Pawar on various occasions in his chamber in the IIT Campus and also at the residence and at the residence of one of his friends who was away at that time. The statement of the victim is sufficient in such cases as she has no motive to falsely implicate the applicant who has ^{been} shown extreme ^{kindness by the applicant} ~~kindness~~ and also she would not have entered into any adventure to make her married life a hell. She very well knew that any false imputation against the applicant would damage her married life. The silence on her part ^{because she has} ~~fallen~~ prey either by coercion or cajolery of the applicant. The applicant as ~~has~~ given in the evidence has raised foxy manner and totally brain washed her to attract her towards him which culminated finally at the sexual assault on her. The scope of the Tribunal is not to re-appreciate the evidence but only to see that the Principle of natural Justice, Rules and Regulations have been observed in the oral enquiry and adequate opportunity has been given to the charged officer. There is no evidence to show that the applicant has not been given sufficient opportunity to rebut the allegations levelled against him. The charged

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officer has also been examined and as many as ten defence witnesses were produced by him. The enquiry officer had made certain points and on every point he has discussed the rival contention to reach conclusion which cannot be said to be unreasonable. The enquiry officer has taken into account every aspect of the matter and there is sufficient evidence on record to justify the conclusions drawn by him. The learned counsel for the applicant had tried to raise doubt in the case on the ground that in the premises of the institution itself the sexual assault on the victim was not practically possible. There is sufficient evidence to show that the applicant has changed his own chamber and has called the victim even at the time she was taking classes and also gave her various benefits which were not ordinarily available to her. In view of these the contention of the learned counsel could not make any dent in the report of the enquiry officer and the conclusions drawn by him.

We have also considered the case from another angle that the applicant has taken the defence that because there were certain enemical staff members in the Institute who had conspired with the victim to take revenge against him. The voluminous evidence on record does not justify this after thought taken by the applicant in the present application. As a Principal of the Institute he was holding a fiduciary relationship with the lady teacher who is a victim in this case and he has exploited that as has been projected by independent testimony of some staff members of the Institute.

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In view of the above facts and circumstances we do not find any ground to interfere in the impugned order of the punishment imposed on the applicant. The application is dismissed leaving the parties to bear their own costs.



(B.K. Singh)

Member (A)



(J.P. Sharma)

Member (J)

Mittal