

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No. 060/01319/2018

Order pronounced on: 27.10.2020
Order Reserved on: 09.09.2020



**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. AJANTA DAYALAN, MEMBER(A)**

S.P.S.Sondhi, son of Sh. Amar Chand Sondhi, aged 51 years, D.S.P. (Traffic Central), Union Territory, Sector 9, Chandigarh-160 009.

...Applicant

(By Advocate: Mr. Yogesh Putney)

Versus

1. Union of India through the Secretary, Government of India (U.T. Chandigarh Branch), Ministry of Home Affairs, New Delhi-110 001.
2. Chandigarh Police through the Director General of Police, Police Headquarters, Additional Deluxe Building, Sector 9, Chandigarh-160 009.
3. The Director, Social Welfare, Women & Child Development, Chandigarh Administration, U.T. Chandigarh, Sector 17, Chandigarh-160 017.

... Respondents

(By Advocate: None for Respdt. No.1
Sh. Aseem Rai for Respds. No. 2 and 3)

ORDER

AJANTA DAYALAN, MEMBER (A):

1. The present OA has been filed by the applicant S.P.S. Sondhi, DSP (Traffic Central), UT Chandigarh, seeking quashing of impugned order dated 13.10.2018 (Annexure A-1),



forwarding copy of Enquiry Report of the Internal Complaints Committee (ICC) set up to conduct an enquiry into the complaint of Ms. Beena Devi, ADC, Home Guards, U.T., Chandigarh against the applicant. The applicant has also sought direction to the respondents to drop the proceedings initiated against the applicant.

2. As per facts given in the OA, the applicant joined service as Assistant Sub Inspector of Police in Chandigarh Police on 11.09.1989. He was promoted to the rank of Deputy Superintendent of Police on 22.02.2011. He has a very good service record with no adverse report. In fact, there are number of commendation certificates in his favour. He was posted as District Commandant (Home Guard) on 28.02.2017 and remained there till 09.04.2018. On 23.10.2017, he sent a report regarding work and conduct of Ms. Beena Devi who was not found interested in working and was vitiating the atmosphere of the office. Giving the specific instances, he sought her transfer. Accordingly, the complainant was transferred vide order dated 24.10.2017. The applicant has alleged that as a counter measure to his special report, Ms. Beena Devi made a complaint on 23.10.2017 against the applicant. In her complaint, she has alleged an incident of 18-20 days back when the applicant asked her to accompany him to Zirakpur when he was alone and when she denied, he started insulting her and physically harassed her. An inquiry was conducted in which



statements of Gurjeet Kaur and some other employees were taken who vouched for the good conduct of the applicant. They also explained that complainant does not have good behavior. The applicant also submitted a detailed representation before the Enquiry Committee on 07.12.2017 (Annexure A-6). To the knowledge of the applicant, the matter ended there. This impression was also supported by the reply given by his office on 23.07.2018 (Annexure A-7) wherein the complaint filed by Ms. Beena Devi was shown as filed. Similar letter was also sent to Director, Social Welfare, Chandigarh on 10.08.2018 (Annexure A-8). On this basis, a report was also sent to Government of India on 21.09.2018 (Annexure A-9).

3. In view of the above, the applicant has pleaded that the report of the Committee has been prepared behind his back and after such a long time. Further, he pleaded that the report is delayed as the inquiry was to be completed within 65 days. This is indicated by "TL 65" meaning 'time limit of 65 days' which was decided by senior officers. In the instant case, the report has been submitted on 13.10.2018 i.e. almost one year after the complaint was made i.e. on 23.10.2017.

4. The complainant has relied on the guidelines laid down by Hon'ble Supreme Court in Vishakha and Ors. Vs. State of Rajasthan case, AIR 1997 SC 3011 as well as Department of Personnel & Training OM dated 04.08.2005 issued in pursuance thereof. The applicant has stated that the complaint



does not fall in the definition of sexual harassment as defined in Section 2(n) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The applicant has further contended that provisions of CCS (CCA) Rules, 1965 have not been followed by the Committee of Sexual Harassment though this was required to be done in view of the above OM. The applicant has also stated that the enquiry has been conducted by the Committee without involving him.

5. According to the applicant, there is no merit in the complaint. Even otherwise, thrice the complaint has been shown as having been filed. Yet, now the Committee was constituted without involving the applicant which has held him guilty. As such, the report which has been submitted beyond the stipulated time limit is liable to be quashed.

6. The respondents have contested the claim of the applicant. They have stated that the report of the ICC has been submitted to the competent authority after following due process and after affording ample opportunity to the applicant. Further, the said report has been accepted by the competent authority and process for initiating departmental action against the applicant would have continued, but for the interim directions issued by the Tribunal on 30.10.2018.

7. The respondents have stated that the basic premise that the said complaint had already been enquired into and filed as



reflected in the report sent in response to Lok Sabha Unstarred Question No. 6 is incorrect and against the facts. It is stated that in the factual position prepared by Deputy SP on 12.07.2018, details of total six cases were given; all other five cases were recommended for filing, but qua the present applicant, the case was recommended for taking action (Annexure R-2/1). However, inadvertently, in communication dated 23.07.2018, all complaints were shown as filed (Annexure R-2/2). When the said error was detected, Police Department sent another letter dated 26.10.2018 to the Director Social Welfare clarifying the correct position (Annexure R-2/3). Thereafter, the matter was taken up with concerned authorities for forwarding corrected report to the Government of India/Parliament. The departmental action is also being taken against the erring official responsible for sending incorrect information.

8. The respondents have further stated that the report dated 23.10.2017 (Annexure A-2) appears to be fabricated, and forwarded by the applicant as an after-thought as a counter measure to the complaint filed by Ms. Beena Devi. They have stated that this is evident from the dispatch register entry 2521-A which is in different ink and handwriting and has been inserted between 2521 and 2522.

9. The respondents have further averred that the transfer of the complainant was not as a result of special report dated



23.10.2017 forwarded by the applicant. They have further stated that the matter has been thoroughly enquired into by the ICC after giving ample opportunity to the applicant. Also, it is incorrect to suggest that the said complaint by Ms. Beena Devi is a counter blast or a consequence of the special report.

10. The respondents have also alleged that the statement collectively attached as Annexure A-5 in the OA has not been recorded as part of the proceedings conducted by the ICC. It appears that these have been collected by the applicant without any authority being vested in him and without following prescribed procedure and as such, no reliance can be placed on them.

11. Regarding the delay, the respondents stated that the Committee had explained reasons for submitting its report beyond the stipulated period. According to the respondents, delay was bonafide and arose out of administrative exigencies. The said delay does not, in any manner, impair or mitigate seriousness of the misconduct alleged against the applicant.

12. The respondents have also denied that the Committee prepared its report behind the back of the applicant. They have stated that the action of the Committee as well as of the respondents is in conformity of the law laid down by Hon'ble Supreme Court in Vishakha case.

13. In view of the above, the respondents have concluded that the relief sought by the applicant is illegal and baseless.



The ICC has after due process found the applicant guilty of the allegation of sexual harassment leveled against him and now disciplinary action needs to be taken against him in accordance with applicable service rules.

14. The respondents have further stated that the impugned report dated 13.10.2018 constitutes only the first stage, i.e. investigation into the allegation of sexual harassment conducted by the ICC. The said report is yet to be considered by the disciplinary authority which may thereafter decide the further course of action. The department has, therefore, concluded that the OA is pre-mature.

15. During arguments, the counsel for the applicant stated that the enquiry report is patently not valid as the same has been signed only by four members as is apparent from a perusal of the report. On the other hand, the Committee constituted was of five members. The fifth member namely Smt. Gurdarshan Kaur Bhullar, Inspector has not signed the report. Counsel for the applicant pleaded that merely on this ground, the report needs to be held as void ab initio and quashed.

On this point, the respondents have quoted Section 4(2) of the Act which reads as under:-

“The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:



Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):-

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other work place of the same employer or other department or organization;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.”

They have also stated that Rule 7(7) of the Rules framed under the Act reads as under:-

“In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.”

The respondents have contended that as the report has been signed by four members including the Presiding Officer, the report is valid.

The fifth member Inspector Bhullar retired from service on 31.03.2018 and as such, did not sign the report which was finalized thereafter. But this does not affect the validity of the report or the inquiry proceedings conducted.

16. We have gone through the pleadings of the case and heard the arguments of the counsel of the opposite sides. We have also given our thoughtful consideration to the entire matter.

17. We observe that in the OA, the enquiry report of the ICC dated 13.10.2018 holding the applicant guilty of the allegations



leveled against him is challenged. This report is yet to be considered by the disciplinary authority in view of the directions of this Tribunal dated 30.10.2018 staying further proceedings.

18. We also observe that the complaint by the complainant alleging sexual harassment and special report by the applicant against the work and conduct of the complainant are both dated 23.10.2017. We further note that the complainant was transferred from the applicant's office on 24.10.2017, i.e. on the very next day after the complaint and the special report were made. The applicant has stated that the complaint is a counter blast to his special report against the work and conduct of the complainant and the transfer of the applicant in pursuance thereof. The respondents have categorically rebutted that the special report by the applicant was a ground for transfer of the complainant. Both the complaint and the special report, being of the same date, it may normally have been difficult to say which preceded the other one. However, in this case, there is a clear indicator. The department has categorically stated that the dispatch register entry showing dispatch of the special report is numbered 2521-A. This has been inserted between 2521 and 2522 and has a different ink and handwriting. The department has further stated that said entry is not in the usual course of business as far as recording or maintenance of dispatch register is concerned. A perusal of Enquiry Report (Annexure R-2/4) also shows that the Special Report was in fact



received in the office of W/DIG, UT Chandigarh much later on 27.03.2018. Thus, we are clear that special report was fabricated and has been forwarded by the applicant as an afterthought and as a counter measure to the complaint filed by Ms. Beena Devi. This contention is further supported by the statement of the department that the transfer of the complainant was not in view of the special report of the applicant.

19. Regarding the argument from the applicant's side that the enquiry report of the ICC is invalid as all the five members of the Committee have not signed the same, we observe that the Committee was constituted immediately after filing of the complaint on 23.10.2017. Undisputedly, the Committee consisted of five members. The Committee submitted its report on 13.10.2018. It is also true that only four members have signed and fifth member Smt. Gurdarshan Kaur Bhullar has not signed as she has retired from service w.e.f. 31.03.2018. We observe that meetings of the Committee took place both prior to her retirement and subsequently. In respect of conducting the inquiry, the Rules framed under the Act mandated only a minimum of three members. Further, as per Section 4(2) of the Act, the mandatory requirement in respect of constitution of ICC is only of four members- one Presiding Officer not less than two other members from amongst employees and one external member. These requirements have been fully met in the instant



case. As such, we do not find any illegality or invalidity on this account.

20. We also observe that one of the arguments put forth by the applicant's counsel is the various reports submitted by the department to the higher authorities as well as to Government of India and Parliament indicating filing of the complaint. As clarified by the respondent department in detail in their written statement, this was a clerical error. This was also rectified by them once they noticed the same. They also sent report to higher authorities correcting the mistake. They have even stated that they are taking action against the official found responsible for submission of incorrect report to the Government of India and Parliament. We cannot allow a clerical mistake to go to the advantage of the delinquent official or to reflect on the validity of the enquiry report.

21. The department has categorically stated that the enquiry report has been prepared after involvement of the applicant and as per provisions of the Act and rules framed thereunder. Besides, the issues mentioned above, the applicant has not pointed out any substantive objections to the inquiry report. He has also not indicated any other provisions or procedures that according to him stand violated in preparation of enquiry report.



22. Regarding delay in submission of the enquiry report by the ICC, it is true that the report has been submitted almost a year after the filing of the original compliant. However, the delay worked out by the applicant is with reference to 65 days which is purely an administrative decision taken by supervisory officers. Any delay with reference to such executive decision can be considered by the executive on case to case basis. In the instant case, the respondents have stated that the delay was due to bonafide reasons and arising out of administrative exigencies. They have stated that this does not affect the validity of the report or its findings.

23. We observe that the Act does provide for a limitation of 90 days for submission of enquiry report. However, a mere delay in submission of report cannot be taken to work against a victim of sexual harassment. Delay in the inquiry report cannot also be taken to work towards undue advantage to the erring government officers who are found guilty of charge of sexual harassment. This would not be in consonance with the letter and spirit of the Act. If at all there is delay in submission of report, the cause thereof has to be gone into by the superior officers and the defaulting officers responsible for delay have to be penalized. That would be the right course of action and not a mere dumping of the inquiry report which will result in letting the delinquent officers going scot-free.



24. The above contention is further buttressed if we see the larger purpose of the Act – that is to ensure speedy and quicker justice to a victim of sexual harassment. Various time lines have been given to ensure this purpose - including time line for submission of inquiry report. These time lines have been made mandatory as would be clear from the usage of the word 'shall' in the Section 11 (4) of the Act. However, here, the idea is to ensure that the report is submitted in a time-bound manner. The idea of giving time line is thus in a positive way – that is to ensure submission of report within stipulated time. This would be quite different from a negative time line – such as in Central Administrative Tribunals Act, 1985 which states that no application will be admitted after lapse of stipulated time line given therein. Here, the purpose is different and is to deny the applications filed beyond time line. In the Sexual Harassment Act, the purpose of the time line given is not in a negative manner as the consequence of that interpretation would go totally against the victim of sexual harassment. For example, if the Inquiry Committee gives report after 90 days and holds the truth of sexual harassment, the option then would be to discard that report – meaning thereby that either the inquiry will need to be done suo-motu again or the delinquent officer is left scot-free. The result of both will be to delay or deny justice to the victim of sexual harassment.



25. We, therefore, are of the view that even though there is delay in submission of inquiry report in this case beyond the time line stipulated in the Act, the inquiry report is comprehensive and holds the applicant guilty. Besides, the applicant himself has even gone to the extent of influencing witnesses and tempering of official records (as discussed earlier and in subsequent paras). He has further gone to the extent of trying to mislead this Tribunal by giving partial copies of inquiry report in the OA as Annexure A-1 so as to hide the portions of inquiry report against him. The applicant is, therefore, not coming with clean hands before this Tribunal. The law as laid down by the Supreme Court is clear – that those who come before the Court should come in with clean hands, else, they cannot claim equity. In view of all this, we do not consider that mere delay in submission of inquiry report should go to benefit the applicant. We, therefore, do not consider this as an adequate ground for ignoring the report in view of the facts of the case before us.

26. We also observe that the inquiry report as annexed by the applicant in the OA as Annexure A-1 is not a complete report. The complete report has been submitted by the respondents as Annexure R-2/4. It is seen by comparison of the two that some of the crucial pages of the ICC Report were missing in the copy annexed with the OA by the applicant.



These pages pertain to the conclusion portion and relate to the portions where the ICC has reached a conclusion that the Special Report was fabricated and was an afterthought. We also find from the Enquiry Committee report that all the statements of the witnesses were prepared and typed by the same person, i.e. Inder Mohan, Police Constable at the behest of the respondents. This is so even in respect of witnesses who did not know English well and even though the statements were in English. The possibility of the missing pages in the OA being a deliberate attempt by the applicant to avoid negative findings against him to be brought on record cannot be ignored.

27. We also observe from the findings of the report of the Enquiry Committee that the applicant has tried to influence the witnesses. He has also fabricated a Special Report as an afterthought and as a tool to be used in his own defence. That Special Report made by the applicant against the complainant is fabricated, is further proved by the Complaints Committee's findings that this Report was received by the W/DIG, UT Chandigarh only on 27.03.2018, i.e., more than five months after its stated date of dispatch i.e. 23.10.2017. The conduct of the applicant in making effort to conceal findings of the ICC adversarial to him in the OA and in fabricating a Special Report against the complainant and in



influencing the witnesses cannot at all be said to be appropriate or becoming of a Senior Government Officer. In fact, this tends to point towards guilt in his own case.

28. In view of the above, we do not find much merit in the OA. The same is, therefore, dismissed. No costs.

(Ajanta Dayalan)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh

Dated: 27.10.2020

ND*



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

I have gone through the order dictated by Hon'ble Member (A) vide which she has dismissed the Original Application ignoring the mandatory provision of completion of enquiry within 90 days relating to Sexual Harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short "Act of 2013") . Therefore, I respectfully disagree with the view expressed by Hon'ble Member, and proceed to dictate a separate order allowing the Original Application.

2. The factual scenario is not mentioned once again for the sake of brevity and proceed to examine the star argument raised by the applicant seeking quashing of the Report dated 13.10.2018 (Annexure A-2) prepared by Internal Complaint Committee constituted under the Act of 2013, on the ground that if enquiry is not completed within 90 days, then it becomes nonest in the eyes of law.

3. It is not in dispute that a complaint relating to sexual harassment is to be enquired into the same manner as is done in Discipline and Appeal Rules. The Department of Personnel and Training had issued Office Memorandum dated 4.8.2005 on the basis of directions of Hon'ble Supreme Court of India, that report of the Complaint Committee shall be deemed to be an enquiry report under the CCS (CCA) Rules, 1965, and as such sub-rule (2) of rule 14 of the said rules was amended as



per which the Committee has to follow the provisions contained in these Rules and in the case of the applicant it is Rule 16.24 of Punjab Police Rules which would be applicable.

4. It is also not in dispute that the Enquiry was to be completed within a period of 90 days and the issue raised by the applicant was that since the SHC did not follow this mandatory provision of completion of inquiry within indicated time frame, the enquiry becomes nonest in the eyes of law. For better appreciation of the issue, the relevant Section 11 (4) of Act of 2013 is reproduced as under :-

11. Inquiry into complaint.— (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.



(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

5. A perusal of the extracted provision makes it more than clear that the inquiry under sub-section (1) shall be completed within a period of ninety days. The tone and tenure used in the Section does not leave any manner of doubt that the term "shall be" is mandatory in character and if the Authorities do not take timely action then they can be hauled up. The provision has been made with a view to ensure that the relevant Authorities perform their part of the job with sincerity; objectively and within a fixed time frame and if such time frame is not followed, then resultant consequential result would be that the accused person would get the benefit on legal side.

6. The question as to whether if the indicated enquiry is not completed within 90 days by the SHC, does it become void ab initio was examined by the Karnataka High Court in WRIT PETITION No.56994/2018 (S - DE), titled **PROFESSOR GIRIDHAR MADRAS VS. THE INDIAN INSTITUTE OF SCIENCE & OTHERS**, in which it has been held as under:-

"In the instant case, due to lack/ignorant of procedure prescribed under Rules 1964, Rules 1965, Act 2013, Rules 2014, ICC Rules 2017 and various official memorandums issued by the Government of India from time to time, due to which, ICC Committee and Disciplinary Authority have committed error in not following stipulated provisions in the aforesaid Act, Rules and official memorandums. Consequently, from the inception in not furnishing copy of the complaint, the relevant provisions/procedures have not been followed. Thus, petitioner is entitled to relief only on the legal issues. Therefore, it is necessary to have refresher training programme to such of those Committee Members as well as Disciplinary Authority. In this regard, Government of India/Disciplinary Authority/Experts like a trained persons should conduct programme to apprise how to conduct inquiry in a sexual harassment case. In this regard, Department of



Personnel & Training is requested to make necessary arrangement for refresher training programme to the Members of Committee and Disciplinary Authorities so as to avoid any procedural/violation statutory rules in conducting inquiry and punishing concerned government servant/ employee/student and other staff of the department/organization/institution. Copy of this order shall be communicated to the Secretary to1 Department of Personnel & Training and Law Department of Government of India, through Registry.

RESULT As a upshot of the above analysis, both on factual and legal feature of the matter.

- (i) The findings report dated: 08.02.2018 at Annexure-L issued by the respondent No.2, the inquiry report dated: 28.02.2018 at Annexure-N issued by respondent No.2 and the order dated: 17.10.2018 at Annexure-R issued by respondent No.1 are set aside.
- (ii) Concerned authority is hereby directed to take appropriate action against Committee Members and Director in accordance with law for violating Sections 16 & 17 of Act, 2013, after providing ample opportunity to them. Such proceedings shall be completed within a period of four months from the date of receipt of this order.

Accordingly, writ petition stands allowed. Rule is made absolute in the above terms. There shall be no order as to costs."

7. In the aforesaid case, the High Court even though did not interfere with the findings of the enquiry on merit of the allegations but held that since the Committee did not follow the procedure provided for under the Discipline & Appeal Rules including completion of enquiry within 90 days, as such the proceedings were set aside with direction to take action against the erring Officials/Members of the Committee.

8. In this case the delay in completion of enquiry is not even disputed by the respondents during the course of hearing except the defence that the enquiry could not be completed by the Committee due to one or the other administrative formality. Considering the view taken by the High Court of



Karnataka in the case indicated above, I am of the considered opinion that the impugned Enquiry Report, Annexure A-1, having not been completed within the prescribed period of 90 days in terms of Section 11 (4) of Act of 2013, becomes null and void and has to be ignored for all intents and purposes. However, since there is a finding against the applicant in the Inquiry Report relating to sexual harassment, therefore, being it being misconduct, the respondents can proceed against him under the relevant Discipline & Appeal Rules for alleged misconduct wherein they have vast power to deal with such kind of allegations by making a proper enquiry against the concerned person.

9. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

Place: Chandigarh
Dated: 27.10.2020

HC*