

27

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.953/2004

New Delhi, this the 29th day November, 2004

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S.K.Naik, Member(A)

Ms. Poonam Kharbanda
B-7, Shopping Complex
Shanker Garden, New Delhi

..

Applicant

(Applicant in person)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Director of Forensic Sciences
Block No.11, CGO Complex
Lodhi Road, New Delhi
3. Government Examiner of Questioned Documents
Railway Board Building, Shimla
4. Shri M.C. Sood
Deputy Govt. Examiner of Questioned Documents
Railway Board Building, Shimla .. Respondents

(Shri Parvinder Chauhan, Advocate)

ORDER

Shri S.K. Naik

By virtue of the present application, the order dated 3.9.2003 by which the applicant's services as Assistant Government Examiner of Questioned Documents (AGEQD) have been terminated and also another order of the same date asking her to join the substantive post of Laboratory Assistant at Central Forensic Science Laboratory, CBI, New Delhi are being challenged.

2. Brief relevant facts giving rise to the present application, according to the applicant, are that while she was working as Laboratory Assistant in CFSL, CBI, New Delhi w.e.f. 4.6.1993, she was selected through Union Public Service Commission AGEQD and joined the said post at Shimla on 3.1.2001. She was directed by Respondent No.3 to work as Assistant to Respondent No.4. Since then, she has alleged that she was subjected to severe sexual harassment by Respondent No.4 which compelled her to make a complaint on 29.5.2002 to the Additional Superintendent of Police, Shimla but in vain. Thereafter, her father also made complaints against Respondent No.3 and 4 to the Addl. SP, Shimla and

10/11/04

Chief Forensic Scientist, New Delhi. By letter dated 12.6.2002, DG,BPR&D, New Delhi asked one Shri B.N.S.Negi, Principal, CDTS, Chandigarh to conduct an enquiry into the matter and submit his report by 28.6.2002. But no enquiry was conducted. In the meantime she was transferred from Shimla to Chandigarh Unit of GEQD by order dated 12.6.2002. She was also various memos containing insinuations about her work and conduct to which she had replied to on 7.6.2002/4.2.2003. She was given adverse remarks in her ACR for the period 1.4.2001 to 31.3.2002 to the effect that "she is a mental case". She appealed against the same on 14.4.2003 but the same has not been decided. She was not allotted any adequate work during April, 2002 to January, 2003. Thereafter the impugned orders have been passed, which according to her, are malicious.

3. Respondents have contested the application. In their detailed reply, they have denied the allegations made by the applicant against various officers as baseless. It is averred by them that the applicant was never placed under the supervision of Shri N.C. Sood (respondent No.4) and therefore he had no authority to write the ACRs of the applicant. Writing of probation report and ACRs were initiated by Respondent No.3 who supervised and recorded the progress of the applicant. During the period of two years, she could sign only two reports out of a large number of cases assigned to her. It was found that the performance of the applicant was highly unsatisfactory and below average. These facts already find mention in the provisional probation report. Besides, despite repeated warnings and words of caution, she failed to show any improvement and her overall performance was assessed as poor and unsatisfactory. DPC after examining the probation report and service records of the applicant found that she has not completed her probation period satisfactorily and recommended termination of her services and repatriation to her parent department. This was agreed to by the appointing authority and thereafter the impugned orders were issued, which according to the respondents, do not suffer from any irregularity and infirmity as alleged by the applicant.

4. Learned counsel for the respondents has submitted that the impugned order to terminate her services from the post of AGEQD has been passed by the competent authority after a careful consideration of the recommendations of the Departmental Committee constituted for consideration of termination of probation. The Committee so constituted has duly considered the quality of work and output of the applicant while on probation and came to the conclusion that the applicant was not found fit for the post for which she was selected. The stand taken by the applicant that she was not given an opportunity to improve herself in

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the form of extension of probation, the counsel contends, has to be seen in the background of the output of the applicant measuring upto the requirement of the job for which she was selected. Non-termination of probation on account of unsatisfactory performance cannot be termed as a penalty. Further when she has been repatriated to her substantive post in which she holds lien, the action of the respondents is totally justified and cannot be faulted.

5 On the point of the so-called sexual harassment at the hands of Respondent No.4, learned counsel has contended that the same are totally baseless. Series of enquiries held into the matter clearly prove that it was an unfounded mental apprehension. Not only the applicant made allegations against Respondent No.4, but subsequently she leveled allegations against Respondent No.3 as well. In fact when the enquiry was ordered she did not appear before Shri Negi who was a senior Executive. Subsequently, when the allegation of sexual harassment was investigated into by the Committee constituted to look into the case of sexual harassment of working women in the respondent-department, the said Committee had held a detailed inquiry into the matter. The counsel submitted that this Committee was constituted in keeping with the judgement of the Supreme Court in the case of **Vishakha and Ors. State of Rajasthan (JT 1997 (7) 384)** and was headed by Dr. (Smt.) Sukhminder Kaur, a very senior officer of the level of Joint Secretary. It was a all-women Committee and it has a representative from a reputed non-government organization. The Committee has made a detailed enquiry into the allegations made by the applicant and has categorically stated that the allegations made by the applicant look to be "borne out of her stray feeling that everyone around her are conspiring against her and thus should not be given any cognizance". The Committee in its report has quoted that the applicant had perceived ill feelings against Respondent No.4 and leveled charges of sexual harassment to defame him. The Committee also did not find any evidence to conclude that Respondent No.3 had ever protected Respondent No.4 or encouraged his activity. Thus, the counsel submits that all the three enquiries conducted into the allegations by three different agencies have found the allegations to be fabrication of her mind.

6. With regard to the averment that Respondent No.4, even though not entitled, has initiated the Confidential Report of the applicant, respondents have denied the same and have stated that under the Rules it was Respondent No.3 who was the Reporting Officer and who had initiated her CR and the applicant has resorted to making false claim to hide her incompetence and poor performance. Contending further, he has stated that while the applicant herself has alleged that

30/10



she was over burdened with work, the truth is to the contrary. The dispute of her claim can be judged from the fact that while at one place she has stated that she is over burdened with work, yet at another place she is complaining of not being entrusted with enough work. The fact however remains that she was not capable of handling even minimal responsibility entrusted to her. Therefore the counsel submits that the OA has absolutely no merit and deserves to be dismissed.

7. We have heard the learned counsel for the parties, perused the records and carefully considered the various enquiry reports furnished by the respondents in this connection. In the enquiry conducted by Ms. Punita Bhardwaj (ACP, Shimla) herself against the complaint made by the applicant, she has concluded that "Punam Kharbanda is going through a disturbed phase. Her general behaviour and attitude have been observed to be abnormal and erratic, may be requiring medical help. The complaint may therefore be filed". Again in the enquiry conducted by Shri B.N.S.Negi, he has given his conclusion as under:

"It has been revealed that the behavior of Poonam Kharbanda was abnormal as she seemed to be under mental depression. None of the officers or staff of GEDQ, Shimla or Chandigarh endorsed her allegations, instead everyone offered her help in terms of finding accommodation, taking her to the hospital when ill etc. Rather by her actions Ms. Kharbanda harassed the whole office of GEQD both at Shimla and Chandigarh and disrupted its smooth functioning. Moreover, she has not been able to submit any proof/evidence to substantiate her allegations against the officers and staff of GEQD, Shimla. To sum-up, her allegations seem to have been born out of her persecution complex – a state in which the afflicted feels that every one around are conspiring against her and talking ill of her and hence the blurting out against everyone around without rhyme or reason. In view of the above, it is commended that the case may be filed."

8. In addition to the above, in pursuance of the Supreme Court's direction in the case of **Vishaka & Ors.(supra)**, Respondent-department had constituted a Committee, comprising **Dr.(Smt.) Sukhvinder Kaur**, AD,CFSL, Hyderabad (in Chair), **Ms. S.Santha**, SO, GEQD, Kolkata and **Ms. Vasudha Bhatt**, NGO from Ashadeep, Shimla as Members, to look into the charges of sexual harassment by the applicant. After conducting a detailed enquiry from 7.7.2004 to 13.7.2004, the Committee gave its findings as under:

"Taking into consideration the charges leveled by Ms. Poonam Kharbanda, all the statements given by the concerned officers/officials, and also her non-cooperation to the committee members to substantiate her allegations, the committee is of the view that her is a case of disintegration personality marked by disorderly thought and disorganized behavior. The incident of 18.6.02 strengthen the observation that she had used "sexual harassment" as a weapon to "beat the system" as in general

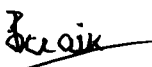
Dr. Smt. Sukhvinder Kaur

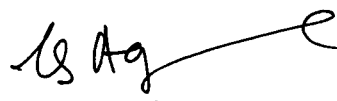
no lady could behave like that and attempt to tear her clothes. It is felt that she is irrationally suspicious of everyone around her and perceive everything in her own ways. All the allegations made by her during that phase looks to be born out of her stray feeling that everyone around her are conspiring her and thus should not be given any cognizance."

9. We find from the above that three enquiries had been held into the allegations of sexual harassment. The findings and conclusions arrived at in all the three enquiries lead to the same conclusion that the allegations do not stand established and are without any substance. In fact, the all-women Committee constituted for the purpose state that the applicant has used "*sexual harassment*" as a weapon to beat the system.

10. We have therefore no reason to hold that the applicant was a victim of sexual harassment. In fact we find that the applicant has gone to the extent of claiming that Respondent No.4 had initiated her CR which is not based on fact. Her own claim with regard to the work entrusted to her and the output are contradictory. While out of 9 cases entrusted to her, she was able to submit only one report whereas she has argued that she was not deliberately given enough work. Respondents have stated that the applicant was given guidance from time to time as also advisory memos which had no effect as the applicant continued to ~~expose~~^{espouse} her cause by resorting to intimidating tactics of raising the bogie of sexual harassment. When her work and conduct based on her performance have not been found to be satisfactory during the period of probation that the Committee constituted for the purpose has categorically stated that her probation may not be terminated and there is nothing illegal or irregular on the part of respondents to have repatriated ~~to her~~^{to the} substantive post in her parent department.

11. Resultantly we find no merit in the present application and the same is accordingly dismissed.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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