

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 857...of...93...decided on 32.9.99..... 13

Name of Applicant: Shri. Mahavir Singh

By advocate: Mrs. Arvind Ahlawat

Versus

Name of Respondents: Chief Secy. Delhi & Cmr.

By advocate :.....

Corum

Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the Reporter or not? Y
2. Whether to be circulated to other Benches of the Tribunal?


(N. Sahu)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.857/93

New Delhi, this the 3rd day of February, 1999.

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Mahavir Singh,
C/o Mrs. Avnish Ahlawat.
Advocate,
243, Lawyers' Chambers,
Delhi High Court,
New Delhi.

...Applicant

(By Advocate Mrs. Avnish Ahlawat)

Versus

1. The Chief Secretary,
Delhi Administration,
5, Alipur Road,
Delhi.

2. The Director-cum-Secretary,
Directorate of Training &
Technical Education,
Delhi Administration,
Deen Dayal Upadhyay Marg,
New Delhi.

...Respondents

(By Departmental Representative Shri Jagdish Singh,
UDC)

ORDER

By Hon'ble Mr. N. Sahu, Member (A):

The prayer in this OA is to quash the findings of the enquiry officer. order of the disciplinary authority dated 5.8.92 as well as the order of the appellate authority dated 5.11.92. The further prayer is to direct the respondents to reinstate the applicant in service with all consequential benefits. The disciplinary authority levied the penalty of compulsory retirement which was confirmed by the appellate authority, namely, the Chief Secretary, Respondent No.1 by his order dated 5.11.92. The applicant was employed as a Stenography Instructor in Hindi in the office of the Directorate of Training and Technical Education, Delhi

Administration Delhi. It was an Institution meant for girls. The charge was that he molested a girl, namely, Km. Seema Sharma, who joined the Institute for English Stenography. According to the statement of imputation of misconduct or misbehaviour the incident was described in the following terms:-

"1) On 5.8.91 when Km. Seema Sharma a student of English Stenography had gone on third Floor of the Canteen Block of the Institution to find out from Mrs. Sunita Bhalla, a teacher about the payment of tape recorder of the Institution which she had got repaired, she was made to wait by Shri Mahabir Singh, Instructor, who tried to entice her with the favour of helping her get good marks in the examination. When she sensing trouble, tried to leave the room, Shri Mahabir Singh taking advantage of the seclusion made her to submit to his lust in the hope that there was no likelihood of anybody visiting that place at that time because the classes are suspended during this time of the year and lady teachers generally sit and take lunch together at one place.

The fact was reported by a lady visitor Smt. Kulwant Kaur to a lady teacher Smt. Raj Bhanot who alongwith Smt. Krishna Hassanwalia. S.I. and Smt. Shashi Lopes. SI reported the matter to the Principal. The lady visitor Smt. Kulwant Kaur had come to the institution to enquire about the admission of her sister. The Principal, on being informed of this incident, called the Head Clerk, Shri Amrik Singh Sandhu and went to the Canteen Block alongwith Shri Y.P. Gulati, UDC Shri Amrik Singh Sandhu, Head Clerk and Shri Y.P. Gulati, found the girl Km. Seema Sharma standing near the door of the room of Shri Mahabir Singh. On being asked where Mahabir Singh was she informed that he had gone to the toilet. On being enquired by the Principal from the girl what had happened, Km. Seema Sharma admitted that Shri Mahabir Singh forcibly outraged her modesty.

[Signature]
The written statement of Shri A. Sharma, father of Ms. Seema Sharma, dated 10.12.91 brings to light the fact that Shri Mahabir Singh went to the residence of Ms. Seema Sharma sometimes between August 91 to December 91 and tried to influence the witness etc. etc. The statements of Ms.

(3)

Seema Sharma dated Nil and also that of her father Shri A. Sharma dated 10.12.91 are enclosed in original.

2) The lady visitor Mrs. Kulwant Kaur who had come to ITI Sirifort in connection with the admission of her sister has witnessed a man and a girl in semi-naked condition and sexually involved on 5.8.91 at about lunch hour on the same floor and the same room around which Mr. Mahabir Singh and Ms. Seema Sharma were later seen by Shri Amrik Singh Head Clerk and Shri Y.P. Gulati, UDC.

3) Ms. S. Jain brought Ms. Seema Sharma down from the same floor and escorted her to the Principal's office.

4) Principal, Mrs. S. Vasudeva had also stated that Ms. Seema Sharma admitted the facts as stated by the lady visitor Mrs. Kulwant Kaur to Mrs. Raj Bahnot.

5) Mrs. Raj Bahnot accompanied by Mrs Krishna Hassanwalia and Mrs. Shashi Lopes immediately went to report to the Principal the shocking facts as revealed by the lady visitor Mrs. Kulwant Kaur.

6) Mrs. S. Bhalla has also stated that Miss Seema Sharma was to receive some payment for taperecorder repair charges from her".

2. The alleged incident occurred on 5.8.91 in the Stenography room on the third floor of canteen block. It was also alleged that the applicant disobeyed the orders of the Principal and left the Institution without her permission. The main point raised by the applicant is that although the Enquiry Officer recorded the statements of ten witnesses, he did not record the statements of two main witnesses, namely, Smt. Kulwant Kaur a lady visitor on whose complaint to the teachers the enquiry was initiated and Miss Seema Sharma, the alleged victim. According to him failure to examine both these witnesses vitiated the proceedings and the conclusion of guilt was based on very fragile foundation. Her testimony before the Enquiry Officer and the petitioner's cross

examination are fundamental to the case. It is pointed out that lady visitor in her complaint stated that she saw a fair looking man in the room alongwith the victim whereas the petitioner's complexion was black. This was a pointer that he might not be involved in that incident. It is also alleged that the victim's statements dated 5.8.91 and 8.8.91 and the letter written by her father were never shown to the petitioner. In her written submissions the learned counsel for the applicant Smt. Avnish Ahlawat cited a number of decisions in suport of her claim that the Enquiry Report was not based on the principles of natural justice and that suspicion however strong could not take the place of proof. It was finally submitted that the Enquiry Officer could not rely on the statement of a witness without producing the witness for examination. The decisions cited by the learned counsel for the applicant are as under:

1. AIR 1969 SC 983:
2. AIR 1964 SC 364
3. 1998 (3) SCC 227
4. 1994 (2) SLR 359
5. 1984 (3) SLR 554
6. 1971 (2) SCC 617, 1991 (15) ATC 362
7. 1972 (3) SCC 354

3. There was no counsel representing the respondents. Only one departmental representative Shri Jagdish Singh, UDC was present on the last date when the arguments of the counsel for the applicant

were heard. The counter has not been filed inspite of several opportunities. We, therefore, have to go by the pleadings on record and the records submitted by the departmental representative.

4. The Enquiry Officer relied on the statements of the victim Ms. Seema Sharma on the 5th and 8th of August 91 and again in December 91 to the effect that the applicant outraged her modesty taking advantage of her innocence. The Enquiry Officer relied on the letter dated 10.12.91 written by her father Shri A. Sharma addressed to him. The letter shows as to how the whole family was shocked by the deplorable act of the teacher. The third point to notice is that the applicant visited the residence of the victim Ms. Seema Sharma. He tried desparately to contact her. Finally the lady visitor who made the complaint seems to be a responsible elderly woman. She refused to receive summons for enquiry. The Enquiry Officer concluded that her deliberate absence on the day of the enquiry was out of her fear of stigma attached to such matters.

5. The disciplinary authority relied on the decision of the Supreme Court in the case of J.D. Jain Vs. State Bank of India (1982 SCC 143) and stated that in a domestic enquiry the department is not required to establish the charge beyond all reasonable doubts. The appellate authority, respondent No.1 stated that in a case of this type eye witnesses are not always available but in the instant case the circumstantial evidence and the

witnesses produced before the Enquiry officer established the happening of the incident for which the applicant was chargesheeted. Ms. S. Vasudeva the Principal of the ITI is the material witness because she reached the spot after learning about this incident and found the victim -trainee and the applicant present upstairs when nobody else was present. She brought the trainee to her room and the victim narrated the whole incident of misbehaviour of the applicant and also of the fact that he forced her to surrender to **his** sexual lust. The Chief Secretary, Respondent No.1, the appellate authority further held that this version of the principal was corroborated by another witness namely Ms. Sangeeta and Ram Tirath and Shri Y.P. Gulati witness No.6 also confirmed about this incident. Relying on the Supreme Court decision in J.D. Jain's case (supra) the appellate authority also held that misconduct has been established and the applicant violated rule-3 of the CCS Conduct Rules 1965.

6. The Hon'ble Supreme Court in the celebrated decision in Vishakha Vs. State of Rajasthan (1997 (6) SCC 241) laid certain guidelines and norms for protection and enforcement of rights of the working woman in work places. These guidelines and norms have been directed to be followed as law declared under Article-141. It is held as under:-

✓ "Each incident of sexual harrassment of woman at workplace results in violation of the fundamental rights of "Gender Equality" and the "Right to Life and Liberty". It is a clear violation of the rights under Arts. 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident

is also the violation of the victim's fundamental right under Art. 19(1) (g). The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harrassment or abuse".

"Definition:

For this purpose, sexual harrassment 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 welcome physical, verbal or non-verbal conduct of sexual nature".

1. It is a case of actual sexual molestation assault. Even if actual molestation and assault are not proved by positive eye witnesses, the applicant must be held to have committed sexual harrassment.

8. In U.O.I. Vs. Perma Nanda (J.T. 1989 (2) SC 132) it is held that jurisdiction of the Tribunal to interfere with disciplinary matters and punishment cannot be equated with appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or the competent authority where they are not arbitrary or utterly perverse. The Hon'ble Supreme Court laid down the following law:

"It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or

rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority".

9. In the case of N. Rajarathinam Vs. State of Tamil Nadu (1996 (10) SCC 371) the Supreme Court held that imposition of punishment of dismissal on finding the delinquent guilty of demanding and accepting illegal gratification merely on the basis of solitary evidence of a witness was held to be not illegal and not warranting interference. The fact that there was no allegation of misconduct against the delinquent earlier was held to be inconsequential. The recommendation of the Public Service Commission to take a lenient view is held to be not binding on the Government. Finally the Supreme Court held that while appreciating evidence in a departmental enquiry the standard of proof required under the Evidence Act of 1872 is inapplicable and the appellate authority and the courts cannot interfere in service matters.

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10. We have come across a decision of the Supreme Court rendered in this month in the case of AEPC Vs. A.K. Chopra (Reported on 25.1.99 in Judgements Today) at the time of writing this order. In this ruling the Hon'ble Supreme Court deemed it appropriate to accord weightage to the statement of

✓ the victim against the overall background of the case, maintaining that in a matter involving charge of a sexual harrassment or molestation of a woman employee, it is important for the courts to examine broad probabilities rather than be bogged down in dictionary definition of the expression 'molestation'. It reversed the decision of the Delhi High Court. It upheld an order of the Apparal Export Promotion Council removing a Secretary for causing sexual harrassment to a junior woman clerk. Interference by the High Court was held to be unwarranted considering that the conduct of the employee towards his junior colleague was "wholly against the moral sanctions, decency and was offensive to her modesty." The Apex Court termed the reduction of punishment by High Court a retrograde step, one that is bound to have demoralising effect on working women. This decision of the Supreme Court pronounced by the Hon'ble Chief Justice has explained the standards of evidence that are necessary in disposing of a case of disciplinary proceedings. The case before the Hon'ble Supreme Court was a case of sexual misbehaviour. In this case before us is a complaint of sexual assault. The modesty of the girl has been outraged. No strong words can be enough to condemn the incident.

11. We have perused the facts from the file (P.No. 16) as summed up by the officers processing the proceedings and we agree with the same. The Inquiry Report is based on sound evidence. The evidence consists of three statements in writing

given by the complainant, though due to obvious reasons she avoided to appear before the Inquiry officer and did not allow her to be cross-examined by a person who had dishonoured her. No girl would concoct a story or make a false statement against the person for such a fact. Even the father of the girl supported the statement given by the complainant. Mrs. Kulwant Kaur, another witness in the case also confirmed her statement by sending a letter in writing to the Inquiry Officer. She also avoided to appear before the Inquiry Officer for various reasons. The attempt on the part of the charged official to try to see the complainant girl after the incident in disregard of the order of the Principal in this behalf and his subsequent act to try to see her and her parents at their residence to persuade them to withdraw from the inquiry only went to show that in all probability the official committed the misconduct. The other witnesses who also came to know about this incident immediately after it happened were examined and they all corroborated the fact of the incident.

12. It is a case of assault on a trainee student. The alleged assault was by a teacher. The circumstantial evidence points out to his guilt. It is in fact a crime. We are surprised as to why and how a criminal complaint was not lodged against the applicant. We have not found any denial on his part anywhere about this incident. The letters relied

upon by the Enquiry Officer are genuine documents and are valid evidence. We believe that the applicant was guilty after a perusal of all the evidence recorded. The order of punishment does not call for any interference. The O.A. is dismissed. No costs.

13. Before we part we are surprised at the total lack of interest shown by the respondents in not filing a counter-affidavit even. No counsel has been appointed in this case. It shows how in spite of the Supreme Court laying down the law to protect woman employees from sexual abuse and harassment, the respondents have not shown any interest or enthusiasm in pursuing the fight against the applicant. It is hoped that Govt. will take note of the spirit in which Hon'ble Supreme Court intends to strengthen the ~~laws~~^d of prosecution to prevent harassment of woman at work places and instil awareness and urgency in the minds of those who are entrusted with the responsibility of running an office.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

Narasimha Sahu
(N. Sahu)
Member (Admnv)

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