

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00607/2020

Wednesday, this the 30th day of June, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

V. Murugesa Pillai, aged 46 years,
 S/o. Vallinayagam Pillai, (Originally Technician-II),
 reverted as Assistant, Employee No. 16404247887,
 Carriage & Wagon, Kochuveli, Trivandrum Division,
 695 036, Residing at 132 E, Railway Quarters,
 Thampanoor, Trivandrum – 695 001,
 Ph. +91 7356321408.

Applicant

(By Advocate : M/s. P.V. Saleem & Shafik M.A.)

V e r s u s

1. Union of India, represented by the General Manager,
 Southern Railway, Head Quarters, Chennai – 600 003.
2. The Additional Divisional Railway Manager,
 Southern Railway, Trivandrum Division,
 Trivandrum – 695 014.
3. The Senior Divisional Personnel Officer, Southern Railway,
 Trivandrum Division, Trivandrum – 695 014.
4. The Senior Divisional Mechanical Engineer, Trivandrum Division,
 Southern Railway, Trivandrum – 695 014.
5. The Divisional Railway Manager, Southern Railway,
 Trivandrum Division, Trivandrum – 695 014.
6. Internal Complaints Committee, Southern Railway,
 Trivandrum Division, Trivandrum – 695 014.

Respondents

(By Advocate : Mr. S. Radhakrishnan)

This application having been heard on 29.03.2021, the Tribunal on
 30.06.2021 delivered the following:

O R D E R

Hon'ble Mr. P. Madhavan, Judicial Member –

The applicant has filed this Original Application seeking the following reliefs:

- “(i) *To call for the records leading to the issue of Annexure A-1 to A-16 and to declare that the entire proceedings of A-2 as well as A-1 issued based on A-2, to be illegal, arbitrary and conducted in violation of the guidelines issued by the Government of India in A-17 and A-18;*
- “(ii) *To quash Annexure A-1 and A-11 charge memo being illegal and arbitrary;*
- “(iii) *To quash and set aside Annexure A-2 having been conducted without following A-17 & A-18 guidelines and without complying any of the required procedures of natural justice and equity;*
- “(iv) *To declare that the whole proceedings against the applicant as illegal;*
- “(v) *To pass such order or direction which may deem just, fit and necessary in the facts and circumstances of the case;*

And

- “(vi) *To award costs of this Original Application.”*

2. The applicant's case is that while he was working as Technician Grade-II at Carriage & Wagon, Southern Railway, Trivandrum in pay matrix level 4 of 7th CPC, was reverted to the post of Assistant, Carriage & Works which comes under the pay matrix of level 1 of 7th CPC by an illegal penalty advice dated 25.3.2020 issued by the 4th respondent. According to him the punishment was given without even giving an opportunity to defend himself. He had produced the penalty advice as Annexure A1. According to him the said punishment was given on the recommendation of the Internal Complaints Committee (ICC) proceedings and the same was in violation of the principles of natural justice without even giving a copy of the inquiry

report. A copy of the ICC findings were issued to him and it is produced as Annexure A2. He was also transferred on the recommendation of the ICC. It was alleged that the applicant in this case had obtained an amount of Rs. 50,000/- from the complainant for showing favours to her. The said complaint given against him does not contain any specific date of demand etc. The allegation in the complaint was that she was forced to pay an amount of Rs. 50,000/- to the applicant without giving any receipt. It is submitted that the applicant was not given a copy of the complaint till the issuance of Annexure A2 and inquiry report was not officially given to him. The applicant was not allowed to be present during the deposition of witnesses. He was also not granted any opportunity for cross-examining the witnesses and the complainant. This has seriously prejudiced his defence. The applicant was also not asked to give the list of defence witnesses which is usually followed in the disciplinary proceedings. The ICC has randomly picked up the witnesses according to its convenience and it is in violation of the principles of conducting inquiry. The copy of the complaint and copies of deposition of complainant were given to him as per Annexure A8 letter dated 11.10.2019. Since the report of the ICC was not given in full he was not able to produce his defence. He had given a representation on 4.10.2019 against the findings and recommendations of the ICC but no reply was given. According to the applicant he was transferred to Nagercoil first on the recommendation of the ICC as per order dated 10.10.2019. Then he gave a representation against the transfer on 14.10.2019 to the 3rd respondent and the transfer order was modified and he was given a posting at Kochuveli as per order dated 2.11.2019. So according to the applicant he was given

double punishment by way of imposition of a penalty and he was transferred from Trivandrum to Nagercoil and then from Nagercoil to Kochuveli as part of punishment. Therefore, respondents have imposed double jeopardy as he was punished twice by way of transfer and punishment of reversion. According to him without conducting formal inquiry the respondents had issued a penalty advice as Annexure A1 by reduction to a lower level post. The applicant's pay was reduced from Rs. 30,500/- to Rs. 18,000/-. The respondents have not given a copy of the ICC proceedings and only the findings were given to him. This has caused substantial prejudice to his defence.

3. According to the applicant, Annexures A1 and A2 are arbitrary, illegal and violative of the constitutional provisions. It is also against the procedure laid down in the Sexual Harassment of Women at Workplace Act, 2013 (in short the Act, 2013). It is also against the rules and OMs issued by the DoP&T instructions relating to the conduct of inquiry against the allegations of sexual harassment. The proceedings were conducted against the guidelines in the handbook of Sexual Harassment of women at Workplace issued by the Ministry of Women and Child Development, Government of India. As per Rule 11 proviso 2 both parties should be given an opportunity of being heard and a copy of the finding has to be given to both parties enabling them to make representations against the findings before the committee. Only after hearing both parties, the ICC is required to sent recommendations to the respondents. The said procedures were not followed. The signature of the applicant was not obtained when the

witnesses were examined. He was also not allowed to cross-examine any of them. As per Section 13 of the Act, 2013, on completion of the inquiry under the Act, the ICC or the local committee as the case may be shall provide a report of its findings to the employer or as the case may be within a period of 10 days from the date of completion of the inquiry and such report be made available to the concerned parties. If the inquiry report is not communicated to the applicant it will prejudice the applicant. The ICC recommendations are only re-commendatory in character.

4. The 3rd respondent had filed a detailed reply in this case. According to them the applicant was appointed on compassionate grounds with effect from 17.2.1995 as a Helper. While he was working as Helper Grade-I he was dismissed from service on 7.3.2008 for being convicted in a criminal case under Sections 145(b), 146 and 147 of the Railways Act. He gave an appeal against the said order and the order was modified as removal from service. He filed a representation against the order in appeal and the punishment was reduced to reduction in the grade as Helper Grade-II for a period of 5 years. The period of removal from service was treated as leave due. So according to the respondents the applicant has criminal antecedents. The applicant is not entitled to get any reliefs as prayed for in the Original Application and the OA is liable to be dismissed. Even though the respondents had specifically shown that the applicant is entitled to file an appeal in Annexure A1 proceedings within a period of 45 days from the date of receipt of the order, the applicant did not file any appeal challenging Annexure A1. The penalty was imposed with effect from April, 2020

onwards. The respondents had issued a charge memo as Annexure A11 on 28.10.2019. The said charge sheet was issued on the basis of the recommendations of the ICC as per Annexure A2 dated 29.8.2019. Since the applicant has not filed an appeal, the OA is not maintainable as the applicant has not exhausted all remedies available to him. Respondents admitted that the applicant was a leader of a Union of Railway employees but it does not mean that he had immunity from all criminal and departmental actions for the statutory offences and the misconduct. According to the respondents the applicant was harassing one lady worker in the Mechanical Department (C&W), Trivandrum Central. She had given several complaints to his superior officers but there was no action. On 31.10.2018 the said woman employee had submitted Annexure A3 complaint to the Additional Divisional Railway Manager through proper channel. As per the complaint the applicant used to harass her by canvassing higher authorities for giving heavy duties to her. He demanded money from the complainant lady for allotting light work to her. He also demanded her to visit him alone at the place suggested by him. Since the said woman employee refused to pay the money the applicant used to harass her mentally and physically at the place of employment. Section 3 of the the Act, 2013 reads as follows:

“Prevention of sexual harassment.—

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:—

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her

employment ; or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.”

5. The woman employee had given complaints to the Chairman, Railway Board, Superintendent of Police, Railway Police for extending protection to her against the applicant. On 29.11.2018 the Railway police filed an FIR against the applicant before the Chief Judicial Magistrate, Trivandrum alleging offences punishable under Sections 294(b) [for singing, reciting or uttering any obscene song, ballad or words in or near any public place], 506(1) [Punishment for criminal intimidation] read with 509 (word, gesture or act intended to insult the modesty of a woman) of Indian Penal Code. The copy of the FIR is produced as Annexure R1(c). Now the case is pending as CC No. 129 of 2018 for offences under Section 354A (sexual harassment) and other related provisions. The respondents had only followed the principles laid down by the Hon'ble Supreme Court in *Vishaka & Ors. v. State of Rajasthan* – (1997) 6 SCC 241. As per the Act, 2013 the internal committee has to conduct the inquiry into the complaint in accordance with the provisions on service rules applicable to the respondents. During the pendency of the inquiry by ICC, the ICC can recommend for transfer of the alleged offender to any other work places. The ICC had recommended the transfer of the applicant to some other station and he was transferred to Nagercoil. Later his place of transfer was modified to Kochuveli. As per Section 9 of the Act, 2013, “*if there is a complaint for sexual harassment*

within the meaning of Rule 3C of the Railway Services (Conduct) Rules, 1966 the Complaints Committee established for inquiring such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the complaints committee shall hold if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules". The ICC conducted the fact finding inquiry regarding the applicant within Section 3C of the Railway Services (Conduct) Rules, 1966 and after appreciating all relevant facts and circumstances it had given the final recommendations. The ICC was constituted in the Trivandrum Division of Southern Railway and the complaint of the woman worker was forwarded to the said ICC and it conducted sittings and examined different witnesses during the proceedings and finally it had given a report as Annexure A2 findings. The applicant in this case had appeared before the committee on 10.1.2019 and 15.7.2019 and deposed before it. He was given ample opportunity to defend his case. He had not made any complaint against the conduct of the ICC so far. In view of the provisions of the Railway Services (Conduct) Rules, 1966 read with the provisions contained in the Act, 2013, no separate inquiry by the disciplinary authority is required. The Hon'ble Supreme Court in ***Medha Kotwal Lele & Ors. v. Union of India & Ors.*** - (2013) 1 SCC 297 held that the reports of the complaints committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter, the disciplinary authority will act on the report in accordance with the rules. The applicant in this case has not utilized the

opportunities granted to him by the ICC to prove his contentions. As per the Act, 2013 the ICC is empowered under Section 11 to make an inquiry into the complaint in accordance with the provisions of the service rules applicable to the applicant. As per the law while considering a complaint by a lady regarding sexual harassment, adequate protection is to be granted to the victim to depose and to furnish statements before the committee. Therefore, it may not be possible or practical for the committee to follow the strict principles of trial and evidence. In such inquiries what is required is preponderance of probabilities to come to a finding. If strict principles of trial are insisted, it may not be possible to achieve the object and intention of the ratio laid down in *Vishaka*'s case (*supra*) and the Act, 2013. The ICC will have to comply with the principles of natural justice as far as practical. The respondents also relied upon the decision of the Hon'ble Supreme Court in ***Hira Nath Misra v. The Principal, Rajendra Medical College, Ranchi*** – AIR 1973 SC 1260 in support of their above proposition. The Hon'ble Supreme Court while considering the complaint of indecent behavior of boys to girls during odd hours of night held that the rules of natural justice do not require that the statement of girl students should be recorded in the presence of the male students concerned or that the latter should be furnished with the report of the inquiry committee. It was also held by the Hon'ble Supreme Court in ***Shiv Sagar Tiwari v. Union of India*** – AIR 1997 SC 2725 that natural justice is after all no unruly horse nor lurking landmine. Its unnatural expansion without reference to the realities can be exasperating as observed by Justice Iyer in ***S.L. Kapoor v. Jagmohan*** – AIR 1981 SC 136.

6. As regards the transfer of the applicant the respondents would say that Section 12 of the Act, 2013 provides for transfer of the delinquent during inquiry on the basis of the written request of the woman. The purpose of the above transfer is to create a congenial atmosphere for the complainant lady to work and to keep the delinquent away from the place of incident, so that he will not tamper with the record or influence the witnesses. On 29.1.2019 the woman worker submitted a request to the Chairman of the ICC explaining the subsequent conduct of the applicant, again harassing the complainant. The copy of the complaint dated 29.1.2019 is produced as Annexure R1(d). The ICC is empowered to make such recommendations under Section 12. It is not a punishment and it is only to protect the interest of the women workers. If the committee finds that the allegations are established it can recommend to take action on sexual harassment as a misconduct. As per Section 13 of the Act, 2013 on the completion of an inquiry, the ICC shall provide a report of its findings to the employer and such report is to be made available to the concerned parties. The findings of the ICC was given to the applicant on 19.12.2019. There is nothing wrong in it. As per Sections 16 and 17 of the Act, 2013 notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under Section 9, the identity and addresses of the aggrieved woman, charged official and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the internal committee and the action taken by the employer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner. It is only because of that the report was

kept as confidential. So the Railways cannot handover any other documents relating to sexual harassment to the applicant. According to the respondents the applicant being a trade union leader should not have acted in this manner and the respondents Railway is bound to take strict action in all such cases and in this case the punishment imposed is only reasonable. There is no reason to interfere in the findings arrived at in this case.

7. The applicant has filed a rejoinder asserting the main allegations in the OA. They also take support from the judgment of the Hon'ble High Court of Calcutta in ***Nutrition & Ors. v. Suddhasil Dey & Anr.*** - WPCT 137 of 2019 for holding that the recommendations of the ICC was not fully provided. The Hon'ble Calcutta High Court held as under:

“The language employed in section 13(4) of the 2013 Act does not make it imperative for the disciplinary authority to act on the recommendations of the ICC by accepting it. The expression “act upon the recommendation” would mean either accept or reject the recommendation, for reasons to be recorded in writing. If the recommendations were binding, it would cease to be a recommendation and partake the character of a command which obviously is not the legislative intent. We hold that the recommendation of the ICC has to be seen and understood as a recommendation, nothing more nothing less. It is entirely for the disciplinary authority to decide its next course of action upon giving the recommendation due consideration.”

It was also contended that the Hon'ble Kerala High Court in ***Dr. Sobha Jasmine and Anr. v. The General Manager, Southern Railway & Ors.*** - OP (CAT) No. 302 of 2019 held that *“we cannot find the transfer to be punitive, since it is not a punishment imposed or recommended by the ICC”* which implies that if a transfer is based on ICC recommendation then the same is a punitive transfer. It was also contended that the ICC should also follow all the procedures as in the Service Rule, if the respondent is an employee. The copy of the findings should also be made available to the

parties enabling them to make representation against the findings. However, in the present case the ICC has neither followed the procedures as in Service Rules, as no opportunity to cross-examination was granted to the applicant nor the applicant was given opportunity to represent against the findings of the ICC. The statement that the respondents had given all opportunities to the applicant for defending his case is absolutely untrue. The ICC had put leading questions and answers were obtained from the witnesses which itself is against the procedures to be followed.

8. We had anxiously heard the counsels Advocate Mr. Shafik M.A., appearing for the applicant and Advocate Mr. S. Radhakrishnan appearing for the respondents. The applicant's case mainly centers on the ground that the inquiry conducted by the ICC was against the principles of natural justice. The applicant was not allowed to adduce any defence evidence and he was also not given a copy of the details of the ICC report. It was also the contention of the applicant's counsel that, the applicant was given double punishment i.e. a punitive transfer as well as reduction in pay. Before going into the details, we make it clear that the role of the Tribunal in these type of cases is not that of an appellate authority. The scope of interference is very limited. It has to be born in mind that the inquiry conducted was against the allegation of sexual harassment and the inquiry was conducted within the scope of the Act, 2013. In *Medha Kotwal Lele*'s case referred (*supra*) the Hon'ble apex court has held that the inquiry conducted by the Internal Complaints Committee can be considered as an inquiry conducted under the CCS (CCA) Rules, 1965. In this case, the relevant rule is Rule 3(c) of the

Railway Services (Conduct) Rules, 1966 and the inquiry conducted is to be considered as inquiry under Rule 3 of Railway Services (Conduct) Rules, 1966. On a perusal of the reply of the respondents they had specifically stated that the applicant was given all opportunity to adduce his defence evidence but he did not do the same. He had also not raised any complaint against the ICC also before filing this OA. It is true that the recommendations of the ICC is recommendatory and the disciplinary authority can differ from it. In this case, the recommendation was accepted by the disciplinary authority and punishment was imposed. It is clear from the pleadings that the applicant was permitted to participate in the inquiry conducted. The respondents rely on the decision of the apex court in *Hira Nath Misra*'s case (supra) in support of their case that ordinary procedure of taking evidence cannot be followed. In that case the allegation was indecent behaviour to girl students by the boy students. The Hon'ble Supreme Court held that the rules of natural justice do not require that statement of the girl students concerned should be recorded in the presence of male students concerned or that latter should be furnished with report of the inquiry committee. Since this is also a case relating to indecent behaviour to a woman employee, we cannot insist that the ordinary procedure of inquiry should be followed. So we find that there is no merit in the contention of violation of natural justice in the procedure adopted by the ICC and the disciplinary authority in this case.

9. If we go through the provision in Section 12 of the Act, 2013, we can see that it gives power for transfer of the delinquent employee when the

inquiry is going on, on the request of the aggrieved woman. It was done only to create a congenial atmosphere for the woman to work freely and keep away the delinquent from the work place. It cannot be considered as a punishment. On going through Annexure A1, it can be seen that the applicant was given an opportunity to file an appeal within 45 days of the order. The applicant did not file an appeal and filed this OA without exhausting all the remedies available to him. The punishment imposed is only proportionate with the gravity of the offence committed.

10. Considering all these circumstances, we find that there is nothing to interfere with the punishment imposed. So we find no merit in this OA and it is accordingly, dismissed. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00607/2020**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the order penalty advice No. V/M.226/DAR/VMP dated 25.3.2020 issued by the 4th respondent.

Annexure A2 - True copy of findings and recommendations of ICC dated 29.8.2019.

Annexure A3 - True copy of the complaint of Smt. Sasirekha dated 31.10.2018 submitted before the ICC.

Annexure A4 - True copy of the deposition of Smt. Sasirekha P., the complainant dated 4.1.2019.

Annexure A5 - True copy of the deposition of Smt. Sasirekha P. the complainant dated 15.7.2019.

Annexure A6 - True copy of the communication No. V/M.226/Confidential/part dated 26.9.2019.

Annexure A7 - True copy of the representation dated 4.10.2019.

Annexure A8 - True copy of the covering letter No. V/CS.182/SP/Helper C&W/TVC/3/2018 dated 11.10.2019.

Annexure A9 - True copy of the representation dated 4.10.2019 against the ICC proceeding, finding and recommendation.

Annexure A10 - True copy of the order of this Hon'ble Tribunal in OA 180/751/2019 dated 25.10.2019.

Annexure A11 - True copy of charge sheet No. V/M/226/DAR/VMP dated 28.10.2019 issued by the 4th respondent.

Annexure A12 - True copy of the request of the applicant seeking the copies of documents in Annexure-III submitted on 19.11.2019.

Annexure A13 - True copy of the communication of the respondents dated 19.12.2019.

Annexure A14 - True copy of the request seeking full ICC report dated 13.3.2020.

Annexure A15 - True copy of the short reply to charge memo dated 13.3.2020.

Annexure A16 - True copy of the appeal dated 29.5.2020 against the penalty advice, A-1.

Annexure A17 - True copy of the DoP&T has also issued OM F. No. 11013/2/2014-Estt(A-III), dated 16.7.2015.

Annexure A18 - True copy of extract of relevant page from the hand book on Sexual Harassment of Women at workplace issued by Ministry of Woman and Child Development, Government of India.

Annexure A19 - True copy of deposition of one of the witnesses dated 15.7.2019.

Annexure A20 - True copy of relevant orders of Railway Board related with transfer of Railway servants who are office bearers of recognized Trade Unions.

RESPONDENTS' ANNEXURES

Annexure R1(a)- True copy of the complaint dated 1.11.2018 filed before the Chairman Railway Board.

Annexure R1(b)- True copy of the complaint dated 27.11.2018 filed by Smt. Sasirekha against Mr. V. Nurugesha Pillai before the Superintendent of Police.

Annexure R1(c)- True copy of the FIR No. 314 of 2018 dated 29.11.2018 submitted by the Railway Police before the Chief Judicial Magistrate Court, Trivandrum.

Annexure R1(d)- True copy of the complaint dated 29.1.2019 filed by Smt. Sasirekha addressed to the Chairman ICC with a copy to the Sr. DPO, Trivandrum.

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