

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**



O.A./350/01636/2018  
M.A./350/00367/2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. N. Chatterjee, Administrative Member**

Shri OM Prakash Rawat,  
Son of Late Bishwa Ram Rawat,  
Aged about 57 years,  
Residing at 73, East B. Park, Ichapur Estate,  
Post Office – Ichapur-Nawabganj,  
District – 24-Parganas (North),  
Pin – 743144 and working to the post of  
Additional General Manager in Rifle Factory, Ishapore,  
Post Office – Ishapore Nawabganj,  
District – North 24-Parganas, Pin 743144.

..... Applicant.

-Versus-

1. Union of India  
Service through the Secretary,  
Ministry of Defence (Defence and Production),  
Government of India,  
South Block,  
New Delhi – 110001.
2. The Chairman-cum-DGOF,  
Ordnance Factory Board,  
Having his office at 10A,  
Shaheed Khudiram Bose Road,  
Kolkata – 700001.
3. The Senior General Manager,  
Ordnance Factory,  
Kalpi Road, Kanpur,  
Uttar Pradesh, Pin – 208009.
4. The General Manager,  
Ordnance Factory,  
Kalpi Road, Kanpur,  
Uttar Pradesh, Pin – 208009.

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5. The Additional General Manager,  
(Administration) Ordnance Factory,  
Kalpi Road, Kanpur,  
Uttar Pradesh, Pin – 208009.
6. The Deputy General Manager,  
(Administration) Ordnance Factory,  
Kalpi Road, Kanpur,  
Uttar Pradesh, Pin – 208009.
7. The Secretary,  
Ordnance Factory Board,  
Having his office at 10A,  
Shaheed Khudiram Bose Road,  
Kolkata – 700 001.
8. Mrs. Urmila Yadav,  
Personnel No. 305404 working as PA to  
Principal Medical Officer, PMO/Incharge,  
Ordnance Factory Hospital, Armapur Estate,  
Kanpur, Pin –
9. Mr. Rajneesh Kumar,  
Joint General Manager/Administration,  
Indian Ordnance Factories,  
Ordnance Cable Factory,  
Chandigarh, Pin – 160002.

.....Respondents.

For the applicant : Mr. P.C. Das, Counsel  
Ms. T. Maity, Counsel

For the respondents : Mr. B.P. Manna, Counsel

Date of Order : 14.07.2021

### ORDER

Per: Bidisha Banerjee, Judicial Member

Heard Ld. Counsels.

2. This application has been preferred to seek the following reliefs:

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"8. (a) To quash and/or set aside the impugned complaint dated 15.04.2013 made by Mrs. Urmila Yadav the then Personal Assistant against the applicant in respect of using slang and unparliamentary languages which is not a complaint of sexual harassment being Annexure A-3 of this original application.

(b) To quash and/or set aside the impugned Enquiry Report dated 30.07.2014 submitted by Women Sexual Harassment Committee/OFC being Annexure A-16 of this original application.

(c) To quash and/or set aside the impugned penalty order of punishment dated 25<sup>th</sup> September, 2018 which was imposed against the applicant by the Under-Secretary, Government of India, Ministry of Defence, Department of Defence Production by which they have imposed of penalty of 'Reduction of pay by two stages for a period of one year with further directions that he will earn increments of pay during the period of such reduction and the reduction will not have effect of postponing the future increments of his pay, on the applicant which has been imposed without any due process of law and the aforesaid penalty order has been sent to the applicant vide office order dated 06.10.2018 and your applicant has received the same on 06.10.2018 being Annexure A-26 of this original application.

(d) To declare that the entire proceeding which has been initiated by the concerned department on the basis of the baseless complaint made by the private respondent against the applicant by applying the statutory act of the Sexual Harassment of Women at Workplace' (Prevention, Prohibition and Redressal) Act, 2013 is bad in law and illegal as because the said Act came into force with effect from 22.04.2013 as per Gazette Notification dated 22.04.2013 and before enactment of said Act in the Official Gazette, the said complaint was made by Mrs. Urmila Yadav on 15.04.2013 and the said Act is not applicable in the present applicant's case is concerned and on that ground alone the entire proceeding which was conducted on the basis of the said complaint may be liable to quashed and/or set aside and the applicant should be exonerated in respect of all charges.

(e) To pass an appropriate order directing the respondent authority to withdraw the impugned penalty order of punishment dated 25<sup>th</sup> September, 2018 which was imposed against the applicant by the Under-Secretary, Government of India, Ministry of Defence, Department of Defence Production being Annexure A-26 of this original application and to give all consequential benefits to the present applicant and also to impose cost at least Rs. 2,00,000/- (Rupees two lacs) against the private respondent for making baseless complaint against the applicant only to damage the service career of the applicant who has done no wrong on his part for advising the private respondent to come office timely and to maintain the duties in office hours by not absenting habitually."

3. The penalty order is extracted hereunder for clarity:

No.4(3)/2015-D (Estt/Gaztt)  
 Government of India  
 Ministry of Defence  
 Department of Defence Production  
 D (Estt./Gaztt.)

Room No.339, B-Wing  
 Sena Bhawan, New Delhi

Dated: 25<sup>th</sup> September, 2018

ORDER

WHEREAS disciplinary proceedings were initiated against Shri O.P. Rawat, AGM/OFC (now AGM/RFI, Kolkata) on the complaint of sexual harassment by Smt. Urmila Yadav, PA/OFC (the then PA to the CO). Based on the complaint dated 15.04.2013 made by Ms. Urmila Yadav, PA, Committee on sexual harassment was constituted in OF Kanpur. The Committee inquired into the allegations and concluded that the allegation of sexual harassment is established by virtue of evidences on record.

2. AND WHEREAS the Competent Disciplinary Authority in MoD has accepted the Inquiry Report and a copy of the Inquiry Report was forwarded to Shri O.P. Rawat for his defence submission on 13.06.2016. Shri O.P. Rawat has submitted his representation against the Inquiry Report on 09.12.2016.

3. AND WHEREAS after considering the inquiry report, the representation of Shri O.P. Rawat, AGM against the inquiry report and the facts borne on record the Competent Disciplinary Authority in the Ministry has come to the following conclusion:

- (a) In the Inquiry Report, sexual harassment of woman at work place has been conclusively established by virtue of evidences on record and the Competent Disciplinary Authority in MoD accepted the Inquiry Report.
- (b) Nothing on record established that the Inquiry Committee was gender biased as claimed by Shri O.P. Rawat and his claim that the Committee was caste biased not established.
- (c) Shri O P Rawat adopted delay tactics during the inquiry proceedings. He approached to Hon'ble CAT questioning constitution of the Women's Sexual Harassment Committee but Hon'ble CAT upheld the constitution of the committee.
- (d) It was derived that Shri O.P. Rawat used abusive language in front of the Complainant (the lady Officer) and vitiated the decency and modesty of the Workplace. As a Senior Officer he should maintain proper decorum of the office. It is seen from the evidence that the officer was in the habit of using abusive language in the presence of the complainant which is termed as sexually coloured and hence deemed to be a case of sexual harassment.



(e) The term "sexual harassment" has many aspects and connotations. As per the order of Supreme Court dated 20.01.1999 related to Apparel Export Promotion Council Vs. A.K. Chopra, it is established that "A conduct which is against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances. Such an action on the part of the respondent would be squarely covered by the term Sexual Harassment."

4. AND WHEREAS the Disciplinary Authority after giving careful consideration to the charges, inquiry report, submission of charged officer and the gravity of the misconduct has come to conclusion that the charges of sexual harassment against the charged officer are established and he deserves major penalty.

5. NOW THEREFORE, the President as Disciplinary Authority, in exercise of the power conferred under Rule 11 of CCS (CCA), Rules 1965, hereby orders for imposition of penalty of "Reduction of pay by two stages for a period of one year with further directions that he will earn increments of pay during the period of such reduction and the reduction will not have effect of postponing the future increments of his pay", on Shri O.P. Rawat, Addl. General Manager/OCFC (Presently AGM/ RFI).

By order and in the name of the President of India

Sd/-

(Biswajit Sarkar)

Under Secretary to the Govt. of India"

4. The legal lacunae in the conduct of proceedings that culminated into the impugned penalty order, as pleaded in this OA, are inter alia the following:

1) The complainant, a woman was the junior most PA given to the applicant. She was in habit of taking frequent leave and official work was suffering due to her non-availability on the work spot.

The Administration was frequently apprised of the inconveniences cause by her and how the office work suffered. Requests were made to make alternate arrangement when she goes on leave, but Administration did not pay head to the requests instead enquiry, Administration did not solve the problem and conducted did not take any counseling session for her.

2) The enquiry has not been conducted in accordance with Rule 14 CCS (CCA) Rules in as much as

(i) The copy of the proceeding and statement of witnesses were not provided to the applicant.

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- (ii) The aggrieved woman (complainant) was not allowed to be cross-examined by the applicant.
- (iii) No defence assistance was provided.
- (iv) Audio recordings of the proceedings were not provided to the applicant.
- (v) The request for personal interview with the disciplinary authority was not considered.
- (vi) The enquiry officer admitted that she has enquired with the other officers under whom the aggrieved woman worked, but nothing is available on record.
- (vii) The enquiry committee has not enquired from the male and female employees attached to the office of the applicant.
- (viii) The required documents were not supplied to the applicant. His provisional reply on 31.12.2014 against the so-called enquiry report submitted by the Committee and a detailed reply against the enquiry report dated 30.07.2014 were not considered.
- (ix) The decision has been taken by enquiry committee based on three-fourth majority but the committee has not recorded the opinion of any male employee and has failed to justify such inaction.

3) That Sexual Harassment of Women at Workplace' (Prevention, Prohibition and Redressal) Act, 2013 will not be applicable because the said Act came into force with effect from 22.04.2013 as per Gazette Notification dated 22.04.2013 whereas the complaint was made on 15.04.2013 by Mrs. Urmila Yadav. His representation on 19.09.2016 before the 1<sup>st</sup> Appellate Authority, the Senior General Manager (Administration), Ordnance Factory, Kalpi Road, Kanpur in respect of non-applicability of the said act was not responded to.

4) That a Complaints Committee should be headed by a woman and not less than half of its members should be women and that further to prevent the possibility of any undue pressure or influence from senior levels, it should be headed by an officer sufficiently high in rank so as to lend credibility to the investigations whereas all the officers of the Committee were junior to the applicant therefore the enquiry report cannot be sustainable in respect of the DOP&T office memo dated 2<sup>nd</sup> February, 2009.

5) That the penalty vide order dated 25<sup>th</sup> September, 2018 has been imposed without any due process of law.

5. It is discernible that the applicant had raised all these grounds in his representations and reply to enquiry report including violation of procedure, but

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they seem to have not been addressed to by the disciplinary authority as evident from its order supra. There is no next tier available to seek remedy.



6. Hence, in the interest of justice the matter is sent back to the Disciplinary Authority to reconsider the legal lacunae enumerated supra as highlighted in the reply and issue an appropriate reasoned and speaking order dealing with the same.

O.A. accordingly stands disposed of. M.A. also stands disposed of. No costs.

(Dr. N. Chatterjee)  
Administrative Member

  
(Bidisha Banerjee)  
Judicial Member

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