

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 292 of 2008

Reserved on 28.1.2015

Pronounced on 05th February, 2015

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Ajay Pratap Singh, aged about 44 years, S/o Sri Yagya Ram Singh, R/o LIG 118, Sector G, Jankipuram, Lucknow.

By Advocate : Sri Amit Verma for Sri A. MoinApplicant

Versus.

1. Union of India through Secretary, Ministry of Culture, New Delhi.
2. Director, National Research Laboratory For Conservation of Cultural Property, Aliganj, Lucknow. \
3. Scientist 'D', and Head of Office, National Research Laboratory for Conservation of Cultural property, Aliganj, Lucknow.

.....Respondents.

By Advocate :

ORDER

Per Ms. Jayati Chandra, Member (A)

In this O.A., the relief(s) has been sought in the following manner:-

- “(a) to quash the impugned order dated 24.7.2008 passed by respondent no.2 as contained in Annexure no. A-1 to the O.A. with all consequential benefits.
- (b) to quash the impugned order dated 24.7.2008 passed by the respondent no.2 as contained in Annexure no. A-1 to the O.A. with all consequential benefits.
- (c) To direct the respondents to pay full salary, pay and allowances for the period of suspension from 20.12.2007 to 5.5.2007 with interest @ 18% p.a.
- (d) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case.
- (e) To direct the respondents to pay the cost of this application.”

2. The facts of the case are that the applicant was initially appointed in the year 1992 as Technical Restorer. The applicant was placed under suspension dated 19.12.2007 on the complaint

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made by a trainee girl. By means of order dated 4.3.2008 the respondent no.2 called upon the applicant to attend the office on 17.3.2008 to give his explanation before Sri S.K. Bhatia, Dr. (Miss) Shashi Dhawan for a proposed enquiry against him, to which the applicant submitted explanation stating therein that he had not indulged in any alleged misconduct for which he had been charged and that a false and fictitious complaint had been submitted against him. The suspension of the applicant was revoked vide order dated 6.5.2008. The respondent no.2 by means of order dated 24.7.2008 imposed the minor penalty of 'Censure' under Rule 16 of CCS (CCA) Rules, 1965 upon the applicant. By another order of the same date, the period of suspension of the applicant from 19.12.2007 to 5.5.2008 was treated as spent on duty for all purposes except pay and allowances as per FR 54. The pay & allowances was restricted to subsistence allowance for the period of suspension.

3. The applicant has challenged the impugned orders on the main grounds that the punishment order has been passed by the appellate authority and not the disciplinary authority and once the powers of the disciplinary authority has been exercised by the appellate authority, then the applicant would be deprived for filing an appeal against the order of punishment. The applicant has also taken a ground that though the disciplinary proceedings have been initiated against him under Rule 14 of CCS (CCA) Rules, 1965, but no charge-sheet has ever been served upon him and as such the entire proceedings are vitiated.

4. The respondents have contested the claim of the applicant by filing a detailed Counter Reply through which they have indicated that the applicant was placed under suspension vide order dated 19.12.2007 which was subsequently revoked vide order dated 6.5.2008. The respondents after considering the gravity of the charges leveled against the applicant have imposed a minor punishment of 'Censure' under Rule 16 of CCS (CCA) Rules, 1965. Under FR-54 the absent from duty for the period of suspension from 19th December, 2007 to 5th May, 2008 it has been treated as spent on duty for all purposes except pay and allowances. The subsistence allowance, which was due to the applicant, had already been paid to him during the suspension

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period. It is further averred that on 15th December, 2007 while students were returning from lunch, the applicant purposely selected Ms. Deepti Sachan, Trainee and asked her to be accompanied with him and to bring some material from his room where the laboratory material was kept. While Ms. Deepti Sachan, Trainee started to move out with material the applicant grabbed her hand and tried to hold her waist. She resisted and succeeded to make herself free from his clutches and joined the other trainees who were working at little away from the residential rooms. As a consequence thereof, Ms. Deepti Sachan made a written complaint against the applicant for sexual harassment. The respondents constituted a Committee under Rule 3 (C) of CCS (CCA) Rules, 1965 for inquiring into the charges leveled against the applicant who after holding the enquiry had observed that the incident must have actually taken place and there seems to be no reason to believe that Ms. Deepti Sachan would lie to frame Sri Ajay Pratap Singh and on basis thereof, the respondents imposed minor punishment of 'Censure' upon the applicant. Lastly, they have submitted that the O.A. has no merit and the same is liable to be dismissed.

5. The applicant has filed Rejoinder Reply denying the averments made by the respondents in their Counter Reply and reiterating the averments already made in the Original Application.

6. During the course of arguments, learned counsel for the applicant has placed reliance on the following case laws:-

- (i) R.P. Pandey Vs. U.P. Power Corporation Limited & Others reported (2004) 3 UPLBEC 3110.
- (ii) P.M. Joy Vs. Superintendent of Post offices, Alappuzha reported in 2002 (3) ATJ 503.

7. We have heard the learned counsel for the parties and have also perused the pleadings on record.

8. We are constrained to observe that this case has been very badly/casually handled. The disciplinary case against the applicant arose out of a complain of sexual harassment made against the

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applicant by a female trainee. The Hon'ble Supreme Court had been particularly concerned about such incidents in the work place and in the land landmark judgment rendered in the case of **Vishaka Vs. State of Rajasthan reported in (1997) 6 SCC 241** has held as under:-

"Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum."

Such being the case, the respondents being model employer were bound to establish the truth of such complaint and punish the wrong done. It is the equal responsibility of the model employer to give protection to an innocent employee against any frivolous charge of sexual harassment, so that no innocent person can suffer any social stigma through innuendos and gossip.

9. Such being the case there was a need for full-fledged inquiry which in the instant case has not been done. However, it is noticed that though an inquiry had been held as evident from letter dated 4.3.2008 (Annexure-4) and a mention of an inquiry under Rule 14 CCS (CCA) Rules, 1965 has been made in the impugned order dated 24.7.2008 (Annexure no.1) no charge-sheet under Rule 14 of CCS (CCA) Rules has ever been issued to the applicant. Further, the applicant has been punished under Rule 16 of CCS (CCA) Rules, 1965, though the alleged inquiry had been initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965. Rule 14 of CCS (CCA) Rules, 1965 deals with for major penalty for which a charge-sheet is mandatory which in the instant case is missing. It is also interesting to note that the

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punishment order has been passed by the appellate authority after exercising the powers of disciplinary authority as a consequence thereof, the applicant is deprived for making an appeal before the appellate authority against the punishment so imposed upon him.

10. In view of the above, the O.A. succeeds. The impugned orders are quashed. However, it will be open to the respondents to hold disciplinary proceedings against the applicant under Rule 14 or under 16 of CCS (CCA) Rules, 1965, as they deem fit, from the stage of issuance of chargesheet. However, in the view of the fact that considerable time has already been elapsed, it is directed that a decision regarding a fresh disciplinary action is taken within a period of two months from the date of receipt of a certified copy of this order. The applicant is expected to cooperate in the disciplinary proceedings, if any, initiated and incase he fails to do so, the respondents would be at liberty to pass the orders accordingly. No costs.

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(Ms. Jayati Chandra)
Member (A)

U.R. Agrawal

(Navneet Kumar)
Member (J)

Girish/-