

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00388/2014

Date of decision: 14.8.2015

Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

Ananda Samanta S/o Late Sripati Charan Samanta, Tutor Technician,
Department of Biochemistry, Postgraduate Institute of Medical Education
and Research, Chandigarh.

-Applicant

(By Advocate Shri Karan Singla)

-Versus-

1. Postgraduate Institute of Medical Education and Research,
Chandigarh, Sector-12, Chandigarh through its Director.
2. Committee to examine complaints of Sexual Harassment of Women
at Work Places through its Chairperson Prof. Savita Malhotra,
Department of Psychiatry, Postgraduate Institute of Medical
Education and Research, Sector-12, Chandigarh.
3. Prof. & Head, Department of Biochemistry, Postgraduate Institute of
Medical Education and Research, Chandigarh.

-Respondents

(By Advocate Shri Vikrant Sharma)

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ORDER

Mr. Sanjeev Kaushik, Member (J):

The present Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, is directed against an order dated 29.04.2014 (Annexure A-16), vide which the services of the applicant have been dispensed with during the probation period.

2. The facts, which led to filing of the present Original Application, are that the applicant was offered appointment as Tutor Technician vide appointment letter dated 28.08.2012 and he was put on probation of two years. It is his case that he was working to the entire satisfaction of his superiors. On 25/28.10.2013 he was informed by respondent no.3 that they have received a complaint from some B. Sc. MLT students and warned him not to repeat such mistake in future and sought his explanation within three days, which he submitted on 29/30.10.2013 and denied the allegation to be false and baseless. Respondent no.3 constituted a Committee of three Faculty Members of the concerned department. The applicant submitted his comments to the Enquiry Committee on 08.11.2013. However, on 16.11.2013 he received a communication from the office of respondent no.2 to the effect that they have received another complaint and accordingly he was asked to appear before respondent no.2 on 20.11.2013. It is the case of the applicant that without adhering to the procedure laid down under the CCS (CCA) Rules, 1965 (for brevity, 1965 Rules) the respondents conducted ex-parte

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enquiry and he was not provided an opportunity to defend his case and based thereupon the respondents dispensed with his services by passing the impugned order though during the period of probation but the basis of which was a complaint. Hence the Original Application.

3. Shri Karan Singla, learned counsel appearing for the applicant vehemently argued that the action of the respondents in passing the impugned order is totally illegal, arbitrary and against the settled proposition of law. To elaborate his argument, he submitted that once the basis of dismissal was a complaint then the respondents were required to have a full-fledged departmental enquiry, as envisaged under Rule 14 of the Rules. Since the respondents have not conducted the enquiry, therefore, the impugned order is liable to be set aside. He further submitted that though the order does not suggest that it is a punitive action but the reasons behind the impugned order of his termination is an enquiry, therefore, in view of the settled law by the Hon'ble Supreme Court the order is liable to be set aside and if the respondents are considering that the conduct of the applicant is not worthy to be retained in service then they have to adopt the procedure enshrined under Rule 14 of the 1965 Rules. To buttress his submission he placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Union of India & Ors. v. Mahaveer C. Singhvi**, (2010) 8 SCC 220 and the judgment of the Hon'ble jurisdictional High Court in the case of **Rajender Kumar v. National Institute of**

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Technolgo, (Deemed University) Kurukshetra, Haryana, CWP

No.5616/2011, decided on 27.03.2012.

4. The respondents have resisted the claim of the applicant by filing written statement wherein firstly they have taken a preliminary objection that the present Original Application is liable to be dismissed on the ground of *res judicata*, as the earlier OA filed by the applicant was dismissed, as withdrawn without seeking liberty to file a fresh OA, thus he cannot agitate before this Court the same very matter second time. On merits, they have submitted that the impugned order is an order simpliciter and the respondents have terminated the services of the applicant during probation period, as he was not found worthy to be retained in service and there is nothing against him which can be said to against the terms and conditions of the appointment letter. It is submitted that the applicant was under probation and during the probation respondents found that he will not be proved to be a good tutor and for that very reason they have decided to terminate his services and in lieu of one month's notice a cheque amounting to Rs.43,889/- was handed over to him. It is further submitted that after receiving complaint of sexual harassment the matter was referred to Sexual Harassment Committee where the applicant was provided an opportunity and based upon the report the appointing authority after considering the conduct of the applicant decided to dispense with his services during the probation

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period and there is nothing in the order, which can be construed as stigmatic.

5. Shri Vikrant Sharma, learned counsel appearing on behalf of the respondents vehemently argued that the impugned order of termination is an order simpliciter and cannot be construed as suggested by the applicant that it is stigmatic. Since he was on probation for a period of two years, which was upto 07.09.2014, therefore the competent authority rightly decided to terminate his services during the probation period. It is also submitted that there was no necessity for the respondents to adopt the procedure envisaged under Rule 14 of the 1965 Rules to conduct the full-fledged enquiry on an allegation levelled against the applicant of sexual harassment as they have gone into by the said Committee and found substance in the allegation. To buttress his submission he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Medha Kotwal Lele and others v. Union of India & others**, (2013) 1 SCC 297.

6. The applicant has filed rejoinder where he has contradicted the averments made by the respondents in the written statement and submitted that the respondents are duty bound to adopt the procedure in terms of DoP&T OM dated 12.12.2002 and 01.07.2004. Since they have not adopted the said procedure, therefore, the impugned order be set aside. He also placed reliance on a decision of the Hon'ble Supreme

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Court in the case of **Nehru Yuva Kendra Sangathan v. Mehbub Alam Laskar**, (2008) 2 SCC 479.

7. We have given our thoughtful consideration to the entire matter and have gone through the pleadings available on record with the able assistance of the learned counsels appearing for the parties and the judgments relied thereupon.

8. The solitary contention at the hands of the applicant is whether the services of a probationer can be terminated during probation or not?

9. Conjunctive perusal of the pleadings makes it clear that the applicant was offered appointment on 28.08.2012 and was put on probation for a period of two years upto 27.08.2014 and as per the conditions of the appointment letter his services can be dispensed with at any time with one month's notice by either side viz., the appointing authority or the appointee without assigning any reason whatsoever and it was open to the Institute to pay in lieu of notice, for the period, by which the notice falls short of one month and similarly the employee can also resign by depositing salary in lieu of notice period. The impugned order (Annexure A-16) does not talk of any stigma or any remark which can be said to be stigmatic. Rather it is an order simpliciter of termination during the period of probation. The contention raised by the applicant that it was an outcome of an enquiry on a complaint of sexual harassment by the Committee of the department which became basis for

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passing the impugned order cannot be accepted for the simple reason that it is prerogative of the employer to dispense with the services of the probationer if his services were not found satisfactory. The applicant, who was a Tutor Technician in the respondent-department, was given warnings twice during the probation period to improve his conduct. Despite that complaints were received against him, which were looked into by the Committee constituted for this purpose in terms of the judgment rendered by the Hon'ble Supreme Court in the case of **Vishaka & Ors. v. State of Rajasthan**, JT 1997 (7) SC 384 where the applicant was also provided an opportunity but that was not the basis of passing the impugned order. Therefore, we do not find any fault with the impugned order. In so far as the contention of the applicant that due procedure has to be adopted by the respondents, i.e., to conduct a full-fledged enquiry in terms of Rule 14 of the 1965 Rules and DoP&T instructions dated 12.12.2004 and 01.07.2004, is concerned, that has to be rejected for the simple reason that it is held by the Lordships of the Hon'ble Supreme Court that a report submitted by the Sexual Harassment Committee is sufficient and equal to the report submitted by the enquiry officer under Rule 14 of the 1965 Rules. Moreover, the respondents have denied that the said report became the basis of termination, thus we are satisfied that the applicant has been given adequate opportunities before the Committee to stake his claim and after considering his reply and the allegation levelled against him, the Committee proved all the charges

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against him. Even the judgments relied by the applicant do not help him because facts of those cases are entirely different to that of the present case. In both the cases relied upon by the applicant the enquiry was conducted behind the back of the petitioner therein and based upon the ex-parte enquiry the impugned order of termination came to be passed, whereas in the present case the report of the Sexual Harassment Committee was not the basis of the impugned order. Even otherwise, perusal of the document suggests that applicant was given proper opportunity by the said Committee to defend his case.

10. In view of the above, the OA fails and is accordingly dismissed being devoid of merit.

11. No costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(RAJWANT SANDHU)
MEMBER (A)

Chandigarh

Dated: 14.8.2015

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