

**Central Administrative Tribunal
Principal Bench**

OA No. 454/2012

This the 8th day of August, 2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Inspector Susheel Chandra Sharma,
s/o late Sh. Sis Ram Sharma,
r/o B-706, MIG Flats,
East of Loni Road Shahdara,
Delhi-93.

- Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police,
Police Headquarter,
I.P.Estate, New Delhi.
2. The Special Commissioner of Police,
Armed Police,
Police Headquarter,
I.P.Estate, New Delhi.

- Respondents

(By Advocate: Mr. Vijay Pandita)

ORDER (ORAL)

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant has filed the present OA seeking the following relief:

“(i) Quash and set aside the order dated 08.06.2010, passed by the Respondent No.2 vide viz the applicant was awarded the punishment and order dated 19.1.2011 passed by the respondent No.1, vide which the appeal of the applicant was rejected.

(ii) Quash and set aside the findings submitted by the inquiry officer vide which the inquiry officer has partly proved the charge against the applicant.

(iii) Direct the respondents to grant all the consequential benefits to the applicant.

(iv) Cost of the proceedings may be awarded to the applicant.”

2. The respondents served on the applicant summary of allegation containing the following charges:

“It is alleged against Inspr. Sushil Chander Sharma, No.D-I/73 the then SHO/New Usman Pur that while posted as SHO/New Usmanpur he misbehaved with W/ASI Suman Rana No.2257/NE on 31.10.08 while she was performing her duty as Duty Officer, he deliberately removed her from the duties of Duty Officer as he was annoyed with the W/ASI because 20-22 days back she was summoned by him while she was not feeling well. She was called in his chamber alone and asked whether she was feeling ill, she replied that she was suffering from back ache. He asked her if she was not feeling well, he would arrange the doctor from Shastri Park Hospital to get her checked up properly in his Rest Room. She declined promptly. He insisted and asked her about the schedule and period of menses and tried to tell her that he understood why women have back aches. After observing the behaviour of SHO, she told him how could he be speak to her like that and she never expected such behaviour from him. He (SHO) also told her not to get annoyed and if she wanted, he could massage her back. He used to sit in a weird posture that would also be a cause of embarrassment to women while talking to the lady Duty Officer. Similarly, W/ASI Anuradha Tyagi, No.270/D posted in PS Bhajan Pura also stated that while she was posted in P.S. New Usmanpur in the month of February, 2008, Inspr. Sushil Chander Sharma, SHO called her and asked her whether she has ever seen his new bathroom and insisted upon her to see his bathroom on that day. He also once asked whether she was feeling well or not. She said nothing. He further told that if any lady was wearing a black salwar, he understands that it means she was having periods/menses.”

3. The applicant completely denied the charges and faced the departmental enquiry. The Enquiry Officer (EO) returned the finding that the charge of sexual harassment against the applicant was not substantiated but the charge that he had used

objectionable sentences in his conversation with his subordinate female staff in the Police Station was substantiated. The applicant was given opportunity to represent against these findings and after considering the representation the Disciplinary Authority (DA) passed an order on 08.06.2010 imposing the punishment of *forfeiture of two years of approved service permanently entailing proportionate reduction in his pay*. His appeal was also rejected by the Appellate Authority (AA) vide order dated 19.01.2011.

4. According to the learned counsel for the applicant, the DA has ignored the fact that the EO had given a finding that the charge of sexual harassment was not proved. The DA has imposed the punishment only on the charge of using objectionable sentences against the female staff of the Police Station. The punishment was disproportionate and stigmatic affecting the career of the applicant. The finding of the EO also was not based on any evidence. Even the prosecution witnesses, other than the complainant and another W/ASI Anuradha Tyagi, did not support the charge that the applicant was involved in an act of sexual harassment while working as SHO. The EO has given his finding only on the basis of the statements of PW-5 (W/ASI Anuradha Tyagi) and PW-6 (complainant). The EO did not consider the statements of defence witnesses and the reply of PW-5 and PW-6 during the cross examination. The earlier statements of PW-5

and PW-6 had been taken on record which was not permissible under Rule 16 of Delhi Police (Punishment and Appeal) Rules, 1980 since these witnesses had appeared in person during the departmental enquiry. The statements of DW-22 Smt. Nirmal Kaur, the then ACP of CAW/North East and Head of Sexual Harassment Committee had stated that the allegations against the applicant could not be established and also that W/ASI Suman Rana was habitual ~~in~~of submitting such type of complaints,~~which~~ were not given due weightage. Similarly, the statement of DW-10 ACP Data Ram that the complainant had told him about her apprehension that the applicant could take action against her due to non-registration of a case but did not disclose anything regarding sexual harassment by the applicant, was not considered. According to learned counsel, the entire episode of the complaint of sexual harassment was concocted by the complainant W/ASI Suman Rana when she was reprimanded by the SHO. The impugned orders, therefore, deserve to be declared illegal as the same are based on perverse finding and non-consideration of the evidence supporting the applicant and non-application of mind.

45. Learned counsel for the respondents, on the other hand, denied the submissions made by the learned counsel for the applicant and submitted that the applicant had used language and words that were improper to be used with female

subordinates and the same has been proved in the departmental enquiry without any doubt. The departmental proceeding had been conducted observing the rules, procedures and principles of natural justice. The applicant was given full opportunity to defend himself, and therefore, at this stage the Tribunal ~~is barred from re-appreciating the evidence~~ cannot act as an appellate forum against the decision of the respondents. The scope of judicial review was restricted to the manner which the decision has been made. Powers of judicial review is exercised to ensure that the individual receives a fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. ~~in which administrative authority has exercised its power but decision of the authority may not be correct, the Tribunal may interfere with the punishment.~~ Learned counsel relied on the cases of **B.C.Chaturvedi vs. U.O.I.**, (1995) 6 SCC 749, **Union of India vs. Parma Nand**, AIR 1989 SC 1185, **Union of India vs. Sardar Bahadur**, 1972 (2) SCR 225 and **Union of India vs. A. Nagamalleswara Rao**, AIR 1998 SC 111.

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65. We have carefully considered the submissions made by learned counsel for the parties and perused the record. What is striking in this case is that the EO has based his finding only on the examination of PW-5 and PW-6 though there were four other prosecution witnesses and 11 defence witnesses. The EO does not appear to have even considered the cross examination of

these two witnesses. The PW-2 Constable Rahul and, PW-3 HC Balbir Singh had categorically denied having knowledge of any harassment of W/ASI Suman Rana. DW-1 Sh. Data Ram, the then ACP Seelampur had stated that on 31.10.2008, the complainant W/ASI Suman Rana had told him that she hasd not lodged FIR on Rukka given by HC Balbir Singh on 30.07.2008, and therefore, SHO (applicant) was angry with her and she apprehended some action against her by the applicant. Significantly ~~T~~the complainant did not disclose any type of sexual harassment or maltreatment from the SHO alleged to have taken place "20-22 days" earlier. ~~H~~She also hads not received any complaint from-against SHO of sexual harassment of any staff. DW-2 Smt. Nirmal Kaur, who was also the head of Sexual Harassment Committee required to go that enquired into the allegation of sexual harassment, submitted that allegation against the applicant could not be established and added that W/ASI Suman Rana was habitual in submitting such type of complaints like sexual harassment. In cross examination she denied having a proof of her being a habitual complainant but did mention the case of Sh. R.P.Gautam, retired ACP who had informed her about a similar verbal complaint against him. Inspector Suraj Bhan Gautam, who was SO to DCP/North-East Distt., confirmed that the day the complainant had gone to meet the DCP/NE, had only told him that she was removed from DO/ P.S. New Usmanpur but

did not disclose any complaint of sexual harassment. Likewise, other defence witnesses have also placed on record their statement that they never come across any complaint of sexual harassment against applicant. ~~and t~~Those, who were present in the PS on that day when the complainant was removed from the desk of DO/P.S.New Usmanpur, ~~submitted-deposed~~ that they did not witness any misbehaviour of the applicant towards the complainant.

76. The statements of star witnesses PW-5 and PW-6 also shows that the EO has not considered them in totality. PW-5 W/ASI Anuradha Tyagi in the cross examination had stated that the applicant had never misbehaved with her. She also admitted that ASI Suman Rana had told her that applicant was spreading rumour against her and due to which she had developed a pre-conceived opinion about him probably because of that she got emotional and had given her statement. She did not support the allegation of sexual harassment of the complainant by the applicant.

87. W/ASI Suman Rana, the complainant ~~also~~ in the cross examination had admitted that the applicant had never abused her or any staff in the Police Station. She was ~~also~~ not sure of the intentions behind the alleged conversation between them and if the same was not bad, she was withdrawing ~~of~~ her complaint.

She also submitted that she may have misunderstood the intention of the SHO and, therefore, she ~~had~~ did not want the matter to proceed further. In response to the clarification sought by the EO, she mentioned that she was not under pressure to make the statement that she did not want to proceed further into the matter. She ~~further also~~ clarified that definitely the intention of the applicant was not to obtain sexual favours from her. During his entire tenure as SHO, he ~~has~~ had not physically touched her nor, hinted for any sexual favours. It is ~~relevant~~ significant to note that the alleged incident of sexual harassment by the applicant had occurred 20-22 days ~~earlier~~ while prior to the incident of delay in registration of FIR on Rukka sent by HC Balbir Singh that came to light on 30.10.2008, and the complainant was removed from the post of Duty Officer ~~on~~ 31.10.2008. It was only after ~~that the latter incident that~~ the complainant decided to approach the DCP with the complaint of sexual harassment.

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9. We have considered the judgments cited by the respondents but these are not relevant in this case as the IO, DA and AA have not only failed to take note of the evidence brought on record, but failed to deal with the contentions raised by the applicant in his representations. Hon'ble Supreme Court has held time and again that the authorities while functioning administratively or quasi judicially must give reasons for their decision. In **M/S Kranti**

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Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors, SLP (C)

No.12766 OF 2008, the same principle was stated in following words:

“18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the ‘inscrutable face of a Sphinx’.”

108. From the foregoing discussion, it is concluded that there was enough evidence to show that the complaint by W/ASI Suman Rana was probably ~~the a~~defensive ~~action move to counter any possible against any person action against her~~ for delay in registering of FIR. The EO has also after discussing the evidence during the enquiry has listed out the reasons why the statement of PW-5 & PW-6 may not be accepted and the reasons why these statements cannot be rejected but ultimately he came to the conclusion that the statements of PWs and DWs “neither proved nor disproved the question in issue” and the only charge he has proved against the applicant has not been alleged by any of the witnesses that were ~~required~~examined. The DA and the AA have failed in appreciating the above factual position.

119. Keeping in view the above facts and the reasons stated, we allow this OA. The impugned orders dated 08.06.2010 and 19.01.2011 are quashed. The applicant shall be entitled to all consequential benefits. No costs.

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(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)

‘sd’

August 8, 2016

