

**Central Administrative Tribunal
Principal Bench**

OA No.459/2016

Order Reserved on:21.07.2017.

Pronounced on: 31.07.2017.

Hon'ble Mr. K.N. Shrivastava, Member (A)

Gurpreet Singh age: 30 years
S/o Shri Ishwar Singh
Technician 'A' NTRO ID 0851
Centre for Communication Application (CCA)
CEI Division, National Technical Research Org.
Chankya Bhawan,
New Delhi-110021.
R/o M-41, Shyam Park,
Nawada, New Delhi-110059.

-Applicant

(By Advocate: Shri S.R.Jolly)

VERSUS

1. Chairman,
National Technical Research Org.
Block III Old JNU Campus
New Delhi-110067
2. Chairperson,
Woman Cell (Complaints Committee)
Block III Old JNU Campus
New Delhi-110067
3. Director (Estt.& Pers.)
National Technical Research Org.
Block III Old JNU Campus
New Delhi-110067
4. National Security Adviser,
Prime Minister's Office
South Block, Central Sectt.
New Delhi-110001.

-Respondents

(By Advocate: Shri Hanu Bhaskar)

ORDER

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

“II. Quash and set aside the inquiry report received by the applicant under Chairman’s letter No.XXVII/12/NTRO/2014(15)-317.

III. Quash and set aside the Chairman, NTRO order dated 9th March, 2015 imposing thereby the penalty of “Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.”

IV. Quash and set aside the order of the Disciplinary Authority dated 27th May, 2015 rejecting thereby the appeal of the applicant.”

2. The facts as extracted from the OA and relevant for adjudication of the controversy involved are as under:

2.1 The applicant joined the National Technical Research Organization (NTRO) on 18.02.2008 as Technician ‘A’ in the pay scale of PB-1 Rs.5200-20200 with grade pay of Rs.1900/- and had worked in the Centre for Communication Application (CCA) division of the NTRO. Seven lady officials working in the CCA division made a complaint of teasing and mental harassment to them by

the applicant. The competent authority referred the complaint to the Internal Complaint Committee (ICC) of NTRO in accordance with the guidelines issued by the Hon'ble Supreme Court in the case of **Vishakha & Others v. State of Rajasthan & Others**, [(1997) 6 SCC 241] and as per "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

2.2 The complaint was enquired into by the ICC. The Chairperson of ICC Smt. Dipti M. Chawla, Director (Finance) submitted the enquiry report on 31.10.2014 holding the applicant guilty of sexual harassment. The Disciplinary Authority (DA) in accordance with the law laid down by the Hon'ble Supreme Court in the case of **Medha Kotwal Lele and Ors. v. Union of India and others**, [(2013) 1 SCC 297] directed that the report of the ICC shall be deemed to be enquiry report within the meaning of Rule 14 (2) of the CCS (CCA) Rules, 1965 read with Rule 15 (2) of CCS (CCA) Rules, 1965. A copy of the enquiry report was provided to the applicant by the DA vide letter dated 26.12.2014.

2.3 The applicant submitted his representation against the enquiry report on 02.01.2015 denying all the charges

of sexual harassment. The DA after considering the representation of the applicant passed the impugned Annexure A-2 order dated 09.03.2015, imposing the penalty of reduction to lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting his pension. Thus the pay of the applicant was reduced from Rs.9260/- to Rs.8990/- in the time scale of pay, i.e., PB-1 Rs.5200-20200/- for a period of three years with effect from the date of issue of the said order.

2.4 Aggrieved by the Annexure A-2 order of the DA, the applicant preferred an appeal before the departmental Appellate Authority (AA), who vide Annexure A-4 order dated 27.05.2015 rejected the appeal, finding it devoid of any merit and substance.

2.5 The applicant in the instant OA has challenged the impugned Annexure A-2 and Annexure A-4 orders passed by the DA and AA respectively and has prayed for grant of the reliefs as indicated in para-1 supra.

3. The important grounds pleaded in the OA are as under:

3.1 The sexual harassment has been defined in CCS (Conduct) Rules, 1964 as under:

“(a) “sexual harassment” includes any one or more of the following acts or behavior (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.
- (b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behavior or sexual harassment may amount to sexual harassment:-
 - (i) implied or explicit promise of preferential treatment in employment; or
 - (ii) implied or explicit threat of detrimental treatment in 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.”

3.2 The ICC in its report has listed the charges against the applicant as under:

- i) Shri Gurpreet Singh badly stare at them and make them feel most uncomfortable
- ii) Shri Gurpreet Singh frequently sat near the ladies staff of CCA in the NTRO office Ayanagar complex canteen as well as in Dwarka Bus and hence the ladies staff feel uneasy.”

iii) The charges levelled against the applicant do not fall within the definition of sexual harassment as defined under the Conduct Rules. The DA has not followed the procedure laid down under Rule 14 of the CCS (CCA) Rules, 1965 in imposing the punishment on the applicant. The report of ICC is in the nature of report of a fact finding committee. The procedure for conduct of enquiry as laid down in DoPT circular No.11013/2/2014-Estt.(A-III) dated 16.07.2015 has not been followed.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The important averments made in the reply are as under:

i) The enquiry report of the ICC is required to be treated as an enquiry report within the meaning of Rule 14 of the CCS (CCA) Rules, 1965, as laid down by the Hon'ble Supreme Court in **Medha Kotwal Lele** (supra). Accordingly, the Government have amended Rule 14 (2) of the CCS (CCA) Rules, 1965.

ii) The report of the ICC is deemed to be an enquiry report and not a preliminary report.

5. The applicant filed rejoinder to the reply of the respondents in which he has by and large reiterated the averments made in the OA.

6. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 21.07.2017. The arguments of Shri S.R. Jolly, learned counsel for the applicant and that of Shri Hanu Bhaskar, learned counsel for the respondents were heard. Besides highlighting the grounds pleaded by the applicant in the OA in support of the reliefs claimed, the learned counsel for the applicant submitted that from the report of ICC it is evident that the applicant was only sitting near the ladies and that itself cannot be termed as sexual harassment. The learned counsel for the applicant questioned the methodology adopted in punishing the applicant. He said that the enquiry has not been conducted in a proper manner and hence the penalty orders passed deserve to be quashed and set aside. In this connection, the learned counsel placed reliance on the judgment of this Tribunal in the case of **K.S. Meena v. Union of India & Ors.**, 2016 (1) SLJ 36 (CAT), wherein it has been held as under:

“22. In any case, when the applicant had specifically requested for regular inquiry into the charges leveled against him, in the facts of the case, the Disciplinary Authority ought to have ordered a detailed inquiry into the matter, particularly so for the reason that even after examining 23 witnesses and 14 documents, the Sexual Harassment Committee also not arrived on at a definite conclusion, i.e., whether the applicant had simply harassed or sexually harassed to the complainant. In the circumstances, the orders passed by the Disciplinary Authority as well as the Appellate Authority

are quashed. It would be open to the Disciplinary Authority to pass fresh orders, after complying with the requirements of the said OM dated 28.10.1985 (referred to hereinbefore).”

7. Per contra, Shri Hanu Bhaskar, learned counsel for the respondents submitted that the enquiry has been conducted in the prescribed manner. The ICC has followed the procedures laid down for conduct of enquiry. It was also submitted that the provisions of Rule 14 (2) clearly stipulate that the enquiry report of ICC is deemed to be enquiry as per the procedure laid down under Rule 14 (2) of the CCS (CCA) Rules, 1965. Shri Hanu Bhaskar further submitted that the minor penalty of reduction of pay by one stage is not disproportionate to the offence committed by him, which has been duly established in the enquiry report of the ICC. The learned counsel also drew my attention to the averments made by the respondents in MA-2665/2016 to say that the applicant was examined by a Medical Board of Dr. Ram Manohar Lohia (Dr. R.M.L.) hospital and the hospital vide letter dated 21.01.2016 has conveyed the opinion of the Medical Board as under:

“Shri Gurpreet Singh has been examined by Medical Board and found to have Paranoid Schizophrenia. He has been advised appropriate treatment and medical rest for one month. He will be reviewed again after one month”

7.1 The learned counsel further stated that the applicant did not go for psychiatric consultation on review at Dr. R.M.L. hospital after the period of rest advised for him till 06.03.2016. Hence, the hospital could not make any comments regarding his medical fitness. The learned counsel for the respondents drew my attention to the reply of the respondents to paras 4.3 to 4.5 of the OA, wherein sexual misadventure of the applicant against several lady colleagues have been vividly described.

8. I have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. From the medical report of Dr. R.M.L. hospital it is quite evident that the applicant is a Paranoid Schizophrenia patient. After the sexual harassment complaint was made by the lady colleagues of the applicant against him, the matter was enquired into by the ICC, who in its report has held him guilty of the charges. The DA had sought the comments of the applicant on the ICC report and a copy of the said report was also furnished to him. After considering his representation against the ICC enquiry report, the DA has passed the impugned Annexure A-2 penalty order, which has been upheld by the AA vide its Annexure A-4 order.

9. The proviso to Rule 14 (2) of CCS (CCA) Rules, 1965 makes it absolutely clear that the enquiry report of ICC is deemed to be an enquiry report under Rule 14 (2) of the CCS (CCA) Rules, 1965. For clarity, Rule 14 (2) togetherwith the proviso is extracted below:

“14. (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into 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 harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”

10. The scope of judicial intervention in the matter of disciplinary proceedings is highly limited. The Hon’ble Apex Court in the case of **B.C. Chaturvedi v. Union of India & Others**, [(1995) 6 SCC 749] on the scope of judicial review has held as under:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

11. Furthermore, the Hon’ble Apex Court discussing the scope of judicial review in **Ashif Hamid v. State of J&K**, [(1989) Supp.2 SCC 364] and **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, [(2006) 10 SCC 337], held as under:

“(i) While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to

direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power.

(ii) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, the same cannot be interfered with.

(iii) The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review.”

12. In the case of **Union of India & Ors. v. P.**

Gunasekaran, [(2015) 2 SCC 610] the Hon’ble Apex

Court on this issue has observed as under:

“In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence.

The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be; (vii). go into the proportionality of punishment unless it shocks its conscience.”

13. In the instant case, I find that the principles of natural justice have been observed in the conduct of the disciplinary enquiry, all the laid down procedures under Rules 14 and 15 of the CCS (CCA) Rules, 1965 have been followed by the DA and AA. The medical report of Dr. R.M.L. hospital had clearly established that the applicant was of unsound mind and suffering with Paranoid Schizophrenia. The charges against the applicant have been proved in the enquiry report of the ICC. Under these circumstances, I do not find any valid ground for intervention in the orders passed by the DA and AA.

14. In the conspectus of the discussions in the foregoing paras, the OA is dismissed having been found devoid of any substance or merit.

15. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

‘San.’