

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

OA No.2292/2012

Order Reserved on:07.09.2016

Pronounced on:07.10.2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)  
Hon'ble Mr. K.N. Shrivastava, Member (A)**

ACP (Rtd.) R. S. Bhardwaj,  
S/o Late Shri Fateh Singh,  
Aged 62 years,  
R/o 1956-B, Mamur Pur,  
Narela,  
New Delhi.

-Applicant.

(By Advocate : Shri Sachin Chauhan)

Versus

1. Government of NCTD  
Through the Lt. Governor of Police,  
Raj Niwas,  
5, Shamnath Marg,  
New Delhi.
2. The Chief Secretary  
5th Level, A-Wing,  
Delhi Sachivalaya,  
IP Estate,  
New Delhi 110 002.
3. The Commissioner of Police  
Police Headquarters,  
I. P. Estate,  
MSO Building,  
New Delhi.

- Respondents

(By Advocate Shri Amit Anand)

## **O R D E R**

### **Mr. K.N. Shrivastava, Member (A):**

This Original Application (OA) has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant has prayed for the following main reliefs:

- “(i) To set aside the order dated 10.08.09, findings of the Enquiry Officer dated 26.08.2008 and order dated 21.05.2012 to further direct the respondents to restore the reduced scale of pay of the applicant with all consequential benefits including seniority and promotion and pay and allowances.
- “(ii) To set aside the memorandum dated 20.05.2003 alongwith articles of charge and imputation of misconduct.”

2. The brief facts of this case are as under.

2.1 The applicant joined Delhi Police as a Constable in the year 1969 and thereafter he got appointed as Head Constable (HC) (Ministerial), on direct recruitment basis, in the year 1971. After getting his promotions regularly, he became Assistant Commissioner of Police (ACP) in the year 1998. A subordinate lady official, Mrs. Sushma Rani filed a complaint on 15.12.1998 alleging sexual harassment against the applicant. The Disciplinary Authority (DA), i.e., Chief Secretary, GNCTD, respondent no.2, issued Annexure A-3 charge memo dated 20.05.2003 to the applicant in which the following articles of charge was levied:

“That the said Shri Randhir Singh Bhardwaj while functioning as ACP/Director (Finger Print Bureau), Delhi Police during the period 1998 committed gross misconduct in as much as he maliciously

misusing his official position as a unit head sexually harassed his subordinate W/ASI Sushma Rani.

Thus the said Sh. Randhir Singh Bhardwaj, Asstt. Commissioner of Police failed to maintain profession integrity and exhibited the conduct unbecoming of a Govt. Servant thereby violating the Rule 3 of the CCS (Conduct) Rules, 1964.”

2.2 The applicant vide his letter dated 02.09.2003 addressed to DA, denied the charge made against him. Not satisfied with reply of the applicant, the DA started Disciplinary Enquiry (DE) against the applicant by appointing Enquiring Authority (EA) and Presenting Officer (PO). The EA submitted its impugned Annexure A-2 report dated 26.08.2008 in which, *inter alia*, was stated that the charge against the applicant ‘is partly proved’. The relevant extract from the findings of the EA is extracted below:

“On the basis of evidence available on record, incidents of frequent calling in his room of Sushma, the particular incident of 14.08.1998 are substantiated with evidence. The statements of all the witnesses about this incident though were based on the version given by Smt. Sushma, yet it emerges from the statements of all the witnesses that Smt. Sushma indeed looked upset and her persistent complaints about the behaviour of Bhardwaj could not be ignored. It was possible that some utterances or talks of Sh. Bhardwaj were such that used to upset and therefore to that extent the conduct of Sh. Bhardwaj was misunderstood.

The record of the inquiry proceedings clearly suggests that Sh. Bhardwaj as ACP/Director (Finger Print Bureau) did not always conducted in a proper manner with a lady subordinate official which led to wrong perception. It is evident and quite apparent from the proceedings of the inquiry that W/ASI, Sushma was aggrieved and perceived that Shri R.S. Bhardwaj was behaving in a manner in order to seek sexual favours from her. To remove that perception Shri R.S. Bhardwaj did not made any corrective steps,

After taking into the consideration the appreciation and detailed examination of all the allegations as discussed under the heading of this inquiry “Appreciation of Evidence”, I have come to the conclusion that the charge levelled against Shri R.S. Bhardwaj is only partially proved to the extent as has been examined and discussed above.”

2.3 Acting upon the EA's report, the DA vide its impugned Annexure A-1-A order dated 10.08.2009 imposed the following penalty:

"NOW, THEREFORE, the undersigned being the competent authority hereby orders that the pay of Shri Randhir Singh Bhardwaj be reduced by two stages in the time scale of pay up to 31.01.2010 i.e. date of his retirement."

2.4 In the meanwhile, the applicant retired from service on 31.01.2010 on attaining the age of superannuation. The applicant challenged the said penalty order passed by the DA, in OA-3280/2010, which came to be disposed of by the Tribunal on 28.11.2011, the relevant part of which reads as under:

"2. From the pleadings of the parties, referred to above, it is clear that the statutory appeal filed by the applicant is pending. We note with some concern the attitude of the authorities to be oblivious of the problems of employees. The appeal is pending since September, 2009. A period of more than two years has gone by without any decision on the appeal. It clearly reflects lack of care and sensitivity on the part of the authorities dealing with the cases of employees, and cannot but be deprecated. We direct the appellate authority to decide the appeal of the applicant, as expeditiously as possible and definitely, within a period of six weeks from the date of receipt of certified copy of this order."

2.5 The Appellate Authority, (AA), i.e., Lieutenant Governor of Delhi, vide its impugned Annexure A-1 order dated 21.05.2012 dismissed the appeal.

2.6 Aggrieved by the orders of the DA and AA, the applicant has preferred the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 07.09.2016. Shri Sachin Chauhan, learned counsel for the applicant and Shri Amit Anand, learned counsel for the respondents argued the case.

4. Besides reiterating the submissions made in the OA, the learned counsel for the applicant raised the following important points during the course of his arguments:

- i) The impugned Annexure A-1 order dated 21.05.2012 passed by the AA is a mechanical order, and passed without application of mind. It has caused great amount of prejudice to the applicant.
- ii) The impugned Annexure A-1-A order of punishment dated 10.08.2009 passed by the DA, the EA's report dated 26.08.2008 (Annexure A-2) and the charge-memo dated 20.05.2003 (Annexure A-3) are illegal, arbitrary and unreasonable.
- iii) Although the EA had accepted the defence of the applicant during the enquiry but still has held that the charge against the applicant is partly proved.

iv) The EA has not recorded any specific finding vis-a-vis the charge, which was a mandatory requirement under the CCS (CCA) Rules, 1965.

v) The DE proceedings is hugely vitiated on the ground of delay and laches. The charge pertains to the year 1998 whereas the charge-memo was issued as late as on 20.05.2003.

vi) The complainant Mrs. Sushma Rani had also filed C.W.P. No.2702/2002 in which the present respondents had filed reply, wherein it has been stated that the petitioner (complainant) was habitual absentee and that she had some differences with ACP, R.S. Bhardwaj (present applicant) and thus she had moved a complaint against his attitude on 05.12.1998, which was got enquired by Shri Jaipal Singh, ACP (Crime & Railway). The conclusion of the enquiry report submitted by the DCP, Jaipal Singh was as under:

"That there is no direct evidence to prove allegations, yet doubt persists, about the conduct of ACP Sh. Bhardwaj, Acts like, inquiring about the personal life of complainant, insistence to be friendly with him, passing of derogatory remarks on her, mostly took place in private and not in presence of the staff. These allegations in normal course do not find the corroboration, especially against the Senior Officer. Although there is no direct evidence about the sexual harassment, yet there is no reason to disbelieve her that she is lying. In such a case only presumption can be drawn. However the conduct of Shri R.S. Bhardwaj has been kept under watch as per directions conveyed vide PHQ's Memo No.329/C&T(AC-II)/PHQ dated 4.1.2002."

5. In support of his argument that the order of AA is not a speaking order and has been passed in a mechanical manner

and as such it is liable to be quashed and set aside, the learned counsel placed reliance on the following judgments:

- a) Decisions of this Bench of the Tribunal in **Yuvraj Gupta v. Union of India & Ors.**, [OA No.1529/2012, decided on 11.02.2014], **Constable Gandharv Singh v. Govt. of NCTD**, [OA No.3032/2012, decided on 17.04.2013], **Head Constable Chander Veer v. The Commissioner of Police & Ors.**, [OA No.616/2010, decided on 04.05.2011] and **Constable Harpal Singh v. Union of India & Ors.**, [OA No.535A/2004, decided on 17.11.2004 along with **Constable Kartar Chand v. Union of India & Ors.**, [OA No.656/2004].
- b) Judgment of the Hon'ble High Court of Delhi in **Union of India & Anr. V. Hari Singh**, [W.P. (C) No.4245/2013 & CM No.9885/2013, decided on 23.09.2013].
- c) Judgment of the Hon'ble Supreme Court in **M/s. Kranti Associates Pvt. Ltd. & Anr. V. Sh. Masood Ahmed Khan & Others**, [SLP (Civil) No.20428/2007 with SLP (C) No.12766/2008, decided on 08.09.2010].

6. Per contra, learned counsel for the respondents stated that the applicant has indeed indulged into sexual harassment of the complainant Mrs. Sushma Rani, who was working under him, as proved during the course of the enquiry. It was also submitted that the applicant has been issued displeasure and

advisory note dated 06.02.2007 for not wearing proper uniform and his name also exists in the secret list of officers of doubtful integrity. The learned counsel concluded his arguments by stating that since the charge against the applicant during the course of enquiry has been partly proved, the punishment inflicted by the DA is fully justified and as such the OA deserves to be dismissed.

7. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. The main ground raised by the applicant is that the order passed by the AA is a non-speaking order and passed in a mechanical manner and that the enquiry has been started much belatedly in the year 2003 for an alleged offence committed in the year 1998. He has also tried to suggest that as the complainant Mrs. Sushma Rani was a habitual absentee and as he had warned her, she went to the extent of lodging a complaint of sexual harassment against him.

8. We have gone through the impugned orders passed by the DA and AA. The order of DA is quite comprehensive and a speaking one. The order of the AA basically states that AA has agreed with the DA. It is not a detailed and speaking order. In this connection, we would like to refer to the judgment of the

Hon'ble Supreme Court in the case of **S.N. Mukherjee v. Union of India**, [AIR 1990 SC 1984] wherein it has been stated as under:

“The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

9. Since the AA has only agreed with the order of DA, as such following the ratio of law laid down by the Hon'ble Supreme Court in **S.N. Mukherjee** (supra) a detailed and speaking order from the AA was not considered necessary.

10. As regards the ground of delay and laches raised by the learned counsel for the applicant, we would like to say that before the DA decided to set the DE proceedings against the applicant in motion by way of issuing the impugned Annexure A-3 charge memo dated 20.05.2003, quite a few internal enquiries had been held. The matter had also gone upto Hon'ble High Court of Delhi. Taking all these things into consideration, we are of the clear opinion that the delay in starting formal DE against the applicant is quite understandable.

11. The Hon'ble Supreme Court, defining the scope of judicial intervention in DE proceedings in the case of **B.C. Chaturvedi v. Union of India & Others**, [(1995) 6 SCC 746], has laid down the following principle for intervention of Courts/Tribunals:

*“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.”*

12. Further the Hon'ble Apex Court in the case of **Ranjit Thakur v. Union of India & Others**, [(1987) 4 SCC 611] has held as under:

*“The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”*

13. In the instant case, we decided to peruse the original records of the DE proceedings. We have gone through the original records. We have observed that the DE proceedings have been conducted in accordance with the laid down procedure by following the principles of natural justice. We are also convinced that punishment of reduction of pay by two stages awarded to the applicant, till the date of his retirement on 31.01.2010, is quite in proportion to the offence committed.

14. In light of the observations in the foregoing paras, we are of the view that this OA, being devoid of merit, is liable for dismissal. Accordingly, the OA is dismissed.

15. No order as to costs.

16. The record produced by the respondents be returned to the learned counsel for the respondents under proper receipt.

**(K.N. Shrivastava)**  
**Member (A)**

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

‘San.’