

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4326/2011

Reserved on : 13.07.2016
Pronounced on : 01.02.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Saurabh K. Mallick, IA&AS
C/o C. K. Mallick,
A-700/A, Sector-C, Sant Market,
Mahanagar, Lucknow-226006. Applicant

(By Advocate: Mr. Praveen Kumar Singh with Mr. Rajeev Gupta)

Versus

Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi-110002. Respondent

(By Advocates: Mr. Anuj Aggarwal with Mr. Shubhanshu Gupta)

O R D E R

Justice Permod Kohli, Chairman :

The applicant has been awarded major penalty of reduction from his present Selection Grade of Junior Administrative Grade (JAG) [PB-4 Rs.37400-67000 with Grade Pay Rs.8700/-] to the lower grade of Senior Time Scale (STS) [PB-3 Rs.15600-39100 with Grade Pay Rs.6600/-] until he is found fit for restoration to the next higher post. It is further provided that the applicant shall not regain his original seniority in the higher post on such restoration. His pay on

such reduction was fixed at Rs.35000/- with Grade Pay Rs.6600/- in PB-3. He was, however, allowed to earn increments in the lower post as per rules. This penalty has been imposed pursuant to the inquiry against the applicant on the charges of sexual harassment of a female officer. In the present OA, the applicant has challenged the legality and validity of the order of penalty.

2. The facts are brief and are being noticed hereunder. The applicant is an Indian Audit & Accounts Service (IA&AS) officer of 1993 batch. In the year 2007, he was posted as Director (Administration) at the National Academy of Audit and Accounts at Shimla. Another female officer who has alleged sexual harassment against the applicant was also posted as Director at the same institution at Shimla during the relevant period, and was two years senior to the applicant. It is stated that since the lady officer was senior but the applicant was holding a more important position, hence on account of jealousy a pre-meditated complaint was lodged on 31.03.2007 for registering FIR in respect of an incident which allegedly took place on 30.03.2007 on the complaint of the said lady officer. The narration of the complaint against the applicant, as is evident from the FIR is noticed hereunder:

“.....There was an official dinner at Radisson hotel. I along with my colleagues, Mr. Saurabh Malik (mentioned above) Mr. Sushil Kumar Thakur, Director, NAAA, Mr. Deepak Kapoor, Director, NAAA returned

to NAAA at around 11-30 by car. The car was driven by staff car driver, Shri Raju. Sh. Thakur & Sh. Kapoor were dropped off at their residence (WILLOWS) first. Thereafter, Mr. Mallick & I proceeded to our Officers' Mess in the car driven by Shri Raju. 2. I am currently occupying Room No.21 on the first floor in GLEN. I proceeded towards my room, followed by Mr. Mallick, who was occupying Room No.11 in the same building on the ground floor. 3. Mr. Mallick followed me to my room and entered it forcibly. Inside, the room he said to me "I want you". He repeated this statement "I want you" at least four times. I replied "Saurabh, you have insulted me in the worst way that a man can insult a woman!". He replied to this by saying "Have I said anything wrong? Is it so unnatural?" I said "Mujhe kuchch pataa nahin, aap please mere room se baahar niklo". I have repeated this statement six (06) times. 4. Upon hearing this, he approached me and caught hold of my wrists (कलाईयां). He forced me in a sitting position on the bed. I pushed him back and shouted "Get out of here! Get out of my room!" 5. All this happened INSIDE ROOM NO.21 of GLEN Officers' Mess. We were all alone in the room. There was no one else on the entire first floor of GLEN. 6. Since Mr. Mallick was not listening to my shouts of "Get out of my room, all the while saying "Ma'am, I am sorry. I am sorry". I replied by saying "Aap ne mere saath bahut badi bad-tamizi ki hai". 7. I then went back to Room No.21. Mr. Mallick followed me there. However, I pushed him out of the room & locked the room & locked the door from inside. For 10 minutes after that, he kept knocking on my door saying "Ma'am, ek minute baahar aayiye. I am sorry". But I did not open the door. 8. I then called my colleagues, Mr. Deepak Kapoor, Mr. Sushil Kr. Thakur on our internal telephone. They both came together within a few minutes. 9. Thereafter, Mr. Mallick again tried to approach me & talk to me, I did not speak to him. I left GLEN Officers' Mess a few minutes after that with a small bag and spent the night of 30.3.07 in the house of my colleague, Miss Smita Gopal, Assistant Accountant General, Office of AG (HP) Shimla. 10. I may mention that I did not suffer any physical injury in this episode. However, I request you to take action against Mr. Saurabh Mallick, Director, NAAA on the basis of my complaint above..."

3. On the aforesaid complaint being registered, the applicant was placed under suspension vide order dated 03.05.2007. His headquarters was shifted to Lucknow. Vide letter dated 14.07.2007 the applicant was informed that he can engage defence assistant as per the CCS (CCA) Rules, 1965. He was further informed that he can take a legal practitioner to assist in his defence with the prior approval of the disciplinary authority. He was further informed that complaint made by the complainant (name not being disclosed) is deemed to be a charge-sheet and the applicant was given two weeks' time to submit his written defence, if any, by 30.07.2007. A copy of the complaint along with the supplementary complaint was enclosed with the aforesaid letter. It is stated that the list of witnesses and documents and the record of the fact-finding committee was not made available to him, the same fact-finding committee was converted into disciplinary committee, and the applicant was asked to file his response. The applicant filed OA No.1279/2007 before the Principal Bench of this Tribunal. This OA came to be disposed of vide judgment dated 09.10.2007 with the following observations:

“60. In the result, for the foregoing reasons, the interference in the inquiry at an interlocutory stage is not *prima facie* made out by the applicant. We do not find the inquiry being contrary to law and our above view is supported by the decision of the Apex Court in *Meerabai*¹ and *K.S. Swaminathan*² (*supra*). However,

insofar as the right of the applicant to be proceeded against in the complaint mechanism as per *Visakha's*³ case (supra), we reiterate that during the course of proceedings in the complaint mechanism, due procedure laid down under Rule 14 of Rules 1965 shall have to be followed by the respondents."

¹*Chairman-cum-M.D., T.N.C.S. Corporation Limited v. K. Meerabai*, (2006) 2 SCC 255

²*Deputy Inspector General of Police v. K.S. Swaminathan*, (1996) 11 SCC 498

³*Vishaka & others v. State of Rajasthan & others*, (1997) 6 SCC 241

4. It seems that in view of the observations of the Tribunal, the applicant was served with a charge memo dated 30.10.2007 seeking his response within ten days. The memorandum was accompanied with the statement of articles of charge, statement of imputation of misconduct along with list of documents and list of witnesses. The applicant did not file his response to the charge memo. A departmental inquiry committee was constituted. The inquiry committee submitted its report dated 26.12.2008, which was served upon the applicant. The disciplinary authority thereafter passed the impugned order dated 19.03.2009 imposing penalty upon the applicant, as noted hereinabove. The appeal preferred by the applicant against the impugned order before the President of India came to be dismissed vide order dated 11.02.2011. The applicant has filed the present OA seeking the following reliefs:

"A) Set-aside/Quash the Office order No. M-578/AC(P)/CPF/2007/Vol.V Dtd. 19.03.2009 and order dtd. 11.02.2011 passed by The President Of India imposing a major penalty of reduction from

petitioner's present grade of "selection grade of Junior Administrative Grade" (PB-4 Rs.37,400-67,000 with grade pay of Rs.8,700) to the lower grade of "Senior Time Scale" (PB-3 Rs.15600-39,100 with grade pay of Rs.6,600) until the petitioner is found fit for restoration to the next higher post and further restricting the petitioner from regaining his original seniority in the higher post on such restoration.

- B) Direct the respondent to exonerate the petitioner of the charges of sexual harassment levied by the respondent/complainant as a consequence of the quashing of the said impugned order dtd. 19.03.2009 and the impugned order dtd. 11.02.2011.
- C) Direct the respondent to reinstate the petitioner to his original seniority and grade and further direct the respondent to pay all the consequential financial and career progression benefits/arrears w.e.f. 01.07.2007 with interest @ 18% per annum.
- D) Pass any other order, which this Hon'ble Tribunal may deem fit and proper in favour of the petitioner and against the respondents."

5. Challenge to the impugned order is multi-pronged. The grounds of challenge are noticed hereunder:

- (1) No preliminary inquiry was held;
- (2) The FIR was delayed by 48 hours with the improvised version;
- (3) Defence witnesses of the applicant were not summoned by the inquiry committee;
- (4) The same sexual harassment committee was converted into inquiry committee and the committee acted with pre-

determined mind, applicant having been asked to engage defence assistant even before serving the charge-sheet, indicating pre-determined mind of the disciplinary authority;

- (5) Relevant documents were not supplied to the applicant;
- (6) Statement of the applicant recorded during the inquiry was not signed by him;
- (7) Applicant was not put to pre-charge notice;
- (8) Penalty imposed is uncertain.

6. The respondents have contested the plea of the applicant.

It is stated that the applicant was issued memorandum of charges under Rule 14 of the Rules, 1965 on 30.10.2007 for alleged misconduct of sexual harassment of a senior lady officer. The applicant did not file reply to the memorandum of charges as provided under Rule 14 (4) within the time allowed by the disciplinary authority. Receiving no response, the disciplinary authority appointed an inquiry committee under law to inquire into the charges. The inquiry committee comprised two lady members including a representative from NGO, and another senior male officer as per the requirements laid down in the judgment of *Vishaka & Others vs. State of Rajasthan & Others* [(1997) 6 SCC 241]. It is further stated that the applicant had initially challenged the departmental proceedings

before this Tribunal in OA No.1279/2007. This OA was disposed of by this Tribunal vide order dated 09.10.2007 observing that the inquiry committee was obliged to hold the inquiry by following the procedure as laid down in the Rules, 1965, and no irregularity was found in the procedure adopted by the respondents. A challenge to the said order before Hon'ble Delhi High Court also failed. The respondents have further stated that the applicant duly participated in the enquiry proceedings. One Shri Neerav Kumar Mallick, an officer of Customs and Central Excise was allowed to be the defence assistant. The applicant was provided opportunities and he, in fact, cross examined all the prosecution witnesses. The allegations of bias raised by the applicant during the course of inquiry proceedings were considered and rejected by the CAG as the Disciplinary Authority on 30.05.2008. Appeal to the President of India was also dismissed vide a reasoned order dated 05.08.2008 issued under the Ministry of Finance's No.C-14011/01/08-EG. The respondents have given details of the proceedings of the inquiry. It is further stated that the Presenting Officer submitted the written arguments on 12.09.2008 and the applicant submitted his written arguments on 27.09.2008. The Inquiry Committee submitted its report on 28.11.2008. The same was forwarded to the applicant on 26.12.2008 for his representation as required under Rule 15 (2) of the Rules, 1965. The applicant submitted his representation dated 14.01.2009. The CAG as

the Disciplinary Authority after careful consideration of the report of the Inquiry Committee, comments of the charged officer and complete record pertaining to the departmental inquiry agreed, to the findings of the Inquiry Committee and imposed the penalty. Applicant's appeal to the President of India challenging the penalty order was considered by the competent authority and after obtaining the advice of the UPSC, was rejected vide order dated 11.02.2011. It is further submitted that the penalty has been imposed in accordance with unamended rules 11 (vi) of the Rules, 1965 as the amendment to the rules was notified on 02.02.2010. The respondents have further submitted that the applicant is guilty of sexual harassment of a women employee. The scope of judicial review is very limited.

7. In *Vishaka & Others vs. State of Rajasthan & Others* (*supra*), the Hon'ble Supreme Court having been apprised of the allegations of sexual harassment of women at work places, took cognizance of the public interest litigation and issued guidelines. After defining the duty of the employer or other responsible person in work place etc. and laying down the broader definition of sexual harassment, the Apex Court also prescribed the nature of proceedings to be initiated. In para 4 of the guidelines, criminal proceedings were suggested where the conduct amounts to specific offence under the Indian Penal Code or any other law, and in other

cases disciplinary action. The relevant guidelines are reproduced hereunder:

"5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. *Awareness:*

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. *Third-party harassment:*

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector."

After the above guidelines were laid down, some women organizations again approached the Hon'ble Supreme Court alleging non-compliance of the guidelines, whereupon the Apex Court passed the following order in *Medha Kotwal Lele & others v Union of India & others* [(2013) 1 SCC 311]:

"Several petitions had been filed before this Court by women organisations and on the basis of the note prepared by the Registrar General that in respect of sexual harassment cases the Complaints Committees were not formed in accordance with the guidelines issued by this Court in *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241] and that these petitions fell under clause (6) of the PIL Guidelines given by this Court i.e. "Atrocities on Women" and in any event the Guidelines set out in *Vishaka* were not being followed.

Thereupon, this Court treated the petitions as writ petitions filed in public interest.

2. Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:

“Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka case* (1997) 6 SCC 241 at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.”

8. The first contention of the learned counsel for the applicant is that no preliminary inquiry was held before proceeding against the applicant. In support of his contention he has relied upon the information received by his wife Mr. Rachna Mallick under the RTI Act. Relevant information reads as under:

“1. **Para 3 to 8** of the desired information relate to statements, if any, of various officers during the preliminary inquiry or before the disciplinary authority in connection with the alleged charges of sexual harassment against Shri S. K. Mallick, IA&AS.

In this case, no preliminary inquiry was conducted. Thus, there is no statement to have been given by any officer during preliminary inquiry. On 5.4.2007, a Committee was constituted to look into the allegation of sexual harassment and recommend whether a *prima facie* case of sexual harassment had been established. But, this Committee stood discontinued midway, and only a statement of Ms. ...

(name withheld) was recorded by this Committee on 23.4.2007. A copy of the said statement is enclosed."

The applicant has not referred to any rule or procedure or any other guidelines, including the guidelines issued in *Visakha*'s case (supra), that any preliminary inquiry is required before proceeding on the complaint of sexual harassment. Therefore, the contention has no relevance.

9. The second contention is that FIR against the applicant was delayed by 48 hours with the improvised version. Suffice it to say that the delay in lodging FIR and whether the version was improvised or not, may be relevant for purposes of criminal proceedings where the standard of proof is different. In departmental proceedings one has to establish the bias or prejudice on account of delay, which is only 48 hours in the present case. The argument is not supported by any specific averment in this regard. In any case, the complainant appeared as a witness during the course of inquiry as PW-3. The applicant cross examined her and the applicant had full opportunity of challenging the veracity of the complaint on the improvised version and on the question of delay in lodging the FIR. It was for the inquiry officer to appreciate such factors while considering the evidence of the complainant and the cross examination conducted by the charged officer. This *per se*

cannot be a ground for interference in the inquiry and the disciplinary proceedings.

10. The third ground on which much emphasis has been laid is that the defence witnesses were not summoned by the inquiry officer. It is contended on behalf of the applicant that he submitted a list of 13 defence witnesses to be summoned during the course of inquiry, but the inquiry officer summoned only few of them. The applicant has accordingly claimed violation of principles of natural justice. He has also placed reliance upon the judgment of the Apex Court in *Hardwari Lal v State of Uttar Pradesh & others* [(1999) 8 SCC 582]. One of the grounds raised by the charged official in the said case was refusal of the inquiring authority to examine some of the witnesses. The Tribunal and the High Court found that there was no violation of principles of natural justice. The Hon'ble Supreme Court reversing the findings of both the courts below held as under:

“3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the

condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

From the record of inquiry, we find that out of the 13 witnesses cited by the charged officer, the inquiry committee found relevancy of only four witnesses listed at serial numbers 4, 8, 9 and 13 with their remarks, which read as under:

1.	ADAI - Sh. B. S. Gill	Not admissible as charge is not connected with the dinner on the 30 th March. Charge is specific to alleged misconduct at Glen.
2.	Smt. Suman Saxena	-do-
3.	Mr. B. D. Lath	-do-
4.	Chowkidar	Admissible. The specific name of the Chowkidar has to be given by the CO.
5.	Mess Staff	Not admissible as they are not relevant to the charge.
6.	Academy's Driver	-do-
7.	Mr. Raju	-do-
8.	Ms. Rachna Mallick	Allowed
9.	Mr. Nandu Lohar	Allowed
10.	All Casual Labour	Not relevant to the charges under circumstances and the Inquiry is not on administrative irregularities.
11.	Secy. to AG	Not relevant to the charges under the circumstances.
12.	Sh. C. V. Awadhani	Not relevant to the charges
13.	Mr. Saurabh Mallick	In terms of Rule 14 (17) of CCS (CCA) Rules, the CO has a right to examine himself if he so prefers. Can be admitted.

The inquiry committee refused to summon other witnesses. It is pertinent to mention that the list of defence witnesses was furnished by the charged officer vide his letter dated 05.05.2008 to the inquiry committee. He has also given remarks regarding the relevancy of the witnesses. The relevancy with the names of the witnesses is also noticed in the inquiry report at page 327 of the paper-book. The relevancy shown by the applicant in his application against each witness is reproduced hereunder:

S. No.	Name	Relevancy
1.	Mr. B. S. Gill	Was present in the dinner of 30 th March 2007 held at Radisson Hotel, Shimla.
2.	Ms. Suman Saxena	Was present in the dinner of 30 th March 2007 held at Radisson Hotel, Shimla.
3.	Mr. B. D. Lath	Was present in the dinner of 30 th March 2007 held at Radisson Hotel, Shimla and handled the payment of the hotel bill. Also, a key witness with respect to administrative irregularities.
4.	Chowkidars on duty in NAAA on night of 30 th March 2007	Witness to arrival of charged officer & complainant in Yarrows Complex.
5.	Mess staff on duty in NAAA on night of 30 th March 2007	Witness to arrival of charged officer & complainant in Yarrows Complex.
6.	Academy's Qualis driver on duty in NAAA on night of 30 th March 2007	Was present on 30 th March 2007 at Radisson Hotel, Shimla
7.	Mr. Jamuna Das alias Raju, driver	Key witness. Drove the car that transported the charged

		officer, complainant and the other two Directors from Radisson Hotel back to Willows Yarrows Complex.
8.	Mrs. Rachna Mallick	Eye witness to the movements of the charged officer after his arrival at Glen Hostel.
9.	Nandu Lohar	Eye witness to the movements of the charged officer after his arrival at Glen Hostel.
10.	All casuals at NAAA Shimla	Needed by the defence to prove charges of administrative irregularities.
11.	Secretary to DG, NAAA, Shimla	Handled the complaint of Ms. Geetali Tare and other correspondence.
12.	Mr. C.V. Avdhani	Needed by the defence to prove its case of bias,
13.	Saurabh Malliak	Charged officer exercising his right to be a witness.

It is admitted case of the parties that the dinner was hosted in Radisson Hotel, Shimla, whereas the incident occurred in Yarrows Complex post-dinner on 30.03.2007. The committee found that such of the witnesses who were present during the dinner at Hotel Radisson, i.e., prior to the incident, are not relevant and thus declined to summon them by passing a speaking order in the meeting of the committee on 08.05.2008. The order reads as under:

"A meeting of the Inquiring Committee met on the 8th May 2008 to scrutinize the List of witnesses and documents as submitted by the Charged Official vide his letter dated 5th May 2008.

After scrutiny of the list of 112 (one hundred and twelve) documents it was found that only 6 (six) documents enumerated at Sl. Nos. 26, 27, 36, 56, 76 and 77 are relevant to the subject matter of the Inquiry.

The IC has forwarded a requisition of the six relevant documents to the custodians to be made available to it on or before the 13th May 2008.

The IC after scrutiny of the list of witnesses numbering 13 (thirteen), found that only the witnesses enumerated at Sl. Nos. 4 (whose name is to be specified by the defence), 8, 9 and 13 are relevant to the subject matter of the Inquiry."

Learned counsel for the applicant has not pointed out that any witness was relevant and could depose regarding the incident complained of, but not summoned. It goes without saying that it is not necessary for the inquiry committee to summon each and every witness as the charged officer could attempt to delay the proceedings by giving a long list of witnesses, whether relevant or not, and thus it is within the domain of the inquiry committee to find out the relevancy of the witnesses. The charged officer in his application himself mentioned the relevancy giving the purpose of the witness in the last column under the caption 'Relevancy', and all those witnesses who were said to be present through the dinner prior to the alleged occurrence were not summoned by the committee. We are of the opinion that this action of the inquiry committee cannot be faulted with. All witnesses who were relevant were summoned. Thus, there was no violation of principles of natural justice on this count.

11. The next contention on behalf of the applicant is that the same sexual harassment committee constituted by the department was converted into the inquiry committee and the inquiry committee acted with pre-determined mind. His further contention is that even before serving the charge-sheet the applicant was asked to name his defence assistant, which demonstrates that the committee had already decided to proceed in the inquiry even without considering the representation/reply of the applicant to the charge-sheet. In this regard, the applicant has referred to communication dated 14.07.2007 (Annexure P-6) from the chairperson, sexual harassment complaints committee, whereby the applicant was informed that he could engage a defence assistant as per the CCS (CCA) Rules, 1965, and also to take in a legal practitioner to assist him in his defence, if he so wished, with prior approval of the disciplinary authority. He was also informed that the complaint made by the complainant had been deemed to be the charge-sheet, and the applicant was given two weeks' time to submit his written defence. Based upon this communication, it is stated that even before the formal charge-sheet could be served upon the applicant, the inquiry committee had already made up its mind to proceed in the inquiry against the applicant even without considering his representation/reply. It is on record that the first complaint was made on (undated) (Annexure P-5) and the second complaint was made on 12.04.2007. FIR was

registered against the applicant on 31.03.2007. The applicant was placed under suspension on 03.05.2007 on the basis of the aforementioned two complaints and FIR registered against him. The Hon'ble Supreme Court in its order dated 26.04.2004 in *Medha Kotwal Lele* (*supra*) post-*Visakha* noticed hereinabove, directed that the complaints committee envisaged in the *Visakha*'s judgment will be deemed to be inquiring authority for purposes of CCS (CCA) Rules, 1965, and the report of the complaints committee shall be deemed to be an inquiry report under the aforesaid Rules. Not only this, even rule 14 (2) of the Rules has been amended consequent upon the directions in *Visakha*'s case and directions in *Medha Kotwal Lele* (*supra*), vide Government of India, Department of Personnel & Training notification No.11012/5/2001-Estt.(A) dated 01.07.2004.

The amended rule sub-rule (2) of rule 14 reads as under:

“(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."

No doubt, the applicant was informed vide letter dated 14.07.2007 that he may engage a defence assistant as per CCS (CCA) Rules, 1965. He was also communicated that the complaint is deemed to be the charge-sheet. His response to the complaint was also sought. Letter/order dated 14.07.2007 was challenged by the applicant before this Tribunal in OA No.1279/2007 on the ground that the conversion of the complaints committee as the inquiry committee is bad in law. This OA was disposed of vide judgment dated 09.10.2007 with the directions as quoted hereinabove. Under the directions of the Tribunal, the respondents were directed to proceed in the complaint mechanism in accordance with the due procedure laid down under rule 14 of the CCS (CCA) Rules, 1965. It is pursuant to the aforesaid direction that the charge-sheet came to be issued on 30.10.2007 for initiating major penalty proceedings under rule 14 asking the applicant to submit his reply within ten days. It is pertinent to note that rule 14 was amended by incorporation of proviso to sub-rule (2) vide notification dated 01.07.2004 so as to treat the complaints

committee established for inquiring into the complaints of sexual harassment to be deemed as inquiring authority appointed by the disciplinary authority. Thus, it was under aforesaid circumstances and in view of the directions of the Tribunal dated 09.10.2007 in OA No.1279/2007 filed by the applicant himself that a fresh charge-sheet was issued vide memorandum dated 30.10.2007. The said memorandum was accompanied with the statement of articles of charge (Annexure-I), statement of imputation of misconduct in support of the articles of charge (Annexure-II) and list of documents (Annexure-III) as also the list of witnesses (Annexure-IV). The list of documents included the complaint dated 01.04.2007 made by the complainant against the applicant.

12. The applicant has heavily relied upon the judgment of the Hon'ble High Court of Delhi in *Sandeep Khurana v Delhi Transco Limited & others* [Writ Petition (Civil) No.7849/2006, decided on 17.11.2006 : reported as (2006) 135 DLT 346] to challenge the procedure adopted for holding the inquiry. We have carefully examined the said judgment. The facts in the said case are totally different. In the said case the procedure prescribed under rule 14 was not adopted as the charged official was not served with copy of the complaint or report or any memorandum or any statement of articles of charge. He was also not provided the right to file

representation. Relevant observations on the allegations in the said writ petition are noticed in para 6 of the aforesaid judgment, which reads as under:

“6. Conspicuously the copy of this order was not sent to the petitioner. The Committee issued a notice to the petitioner on 24.11.2004 No copy of any complaint or report or any memorandum or any statement of articles of charges was enclosed with this notice. It was simply one sentence notice asking the petitioner to appear before the Departmental Inquiry Committee on the stipulated date and time. No written reply to the complaint of respondent No. 2 was taken from the petitioner. However, during the inquiry he made a statement before the Committee which was taken down. The Committee in its inquiry examined witnesses and took the statements of the petitioner and of respondent no. 2. However, there was no cross-examination of these witnesses. The Committee returned a finding in December, 2004 holding that the incident of 1.11.2004 was not a case of sexual harassment and was a case of scuffle between respondent No. 2 and the petitioner in regard to their personal matters. It appears from the report that the statements were not taken in the sequence in which the statements are taken in a departmental enquiry, i.e., witnesses of the department first, followed by the statement of the charged officer in his defence, followed by defence witnesses.”

The Hon’ble High Court on examination of the entire gamut of the factual as well as the legal aspects in the light of *Vishakha’s* case (supra) and rule 14 of the CCS (CCA) Rules, 1965, including its amendment, observed as under:

“30. When the rules are amended to say that the Complaint Committee as envisaged in the *Vishaka’s* case (Supra) would be deemed to be Inquiry Authority

for the purpose of CCS (CCA) Rules it is imperative that the Complaint Committee proceeds according to CCS Rules and in the manner in which an Inquiry Authority conducts its proceedings under the said Rules. The Supreme Court never meant that the Complaint Committees which were to function as Inquiry Authority under the CCS (CCA) Rules could return a finding of guilt against a Government servant without ever adopting the procedure of Rule 14 *ibid*, i.e., giving him a charge-sheet, a memorandum delineating the allegations on which the charges are framed along with other articles like list of witnesses and the documents relied upon and then proceeding in the manner prescribed under Rule 14 of *ibid*. The responsibility of the Complaint Committee, by virtue of the judgment in *Medha Kotwal Lele* (Supra) case, has immensely increased as it is now no more a fact finding Committee. It has been converted into an Inquiring Authority and, therefore, has to follow the procedure prescribed by Rule 14. The action taken cannot be supported on the plea that although Rules are ignored the principles of natural justice has been followed.”

In the present case, the disciplinary authority though initially constituted the complaints committee in accordance with *Vishakha's* judgment, however, when the applicant approached this Tribunal in OA No.1279/2007 and the said OA was disposed of with the direction to adhere to the mandate of law, the disciplinary authority realising non-observance of the prescribed procedure, particularly in view of the directions in *Medha Kotwal Lele* (supra) and amendment of rule 3-C of the CCS (Conduct) Rules, 1964 and rule 14 (2) of the CCS (CCA) Rules, 1965, issued a proper charge-sheet in consonance with rule 14. In terms of the amendment to rule 14, the complaints committee was to act as a deemed inquiring authority and thus the

committee proceeded further in the inquiry in accordance with the procedure prescribed under rule 14, and, therefore, the grievance of the applicant that the complaints committee having been converted into inquiring authority has acted in a pre-determined manner, cannot be accepted unless any action of the committee is established to be biased or actuated with *mala fides*. The committee to act as the inquiring authority is the mandate of proviso to sub-rule (2) of rule 14 as also the directions in *Vishakha*'s case (supra) read with *Medha Kotwal Lele* (supra). The amendment to the rules is not in question before us. There may be apprehension of the applicant that the same complaints committee acting as the inquiring authority may act in a pre-determined and biased manner. The bias could be personal; the bias could be official as well. One cannot rule out such apprehensions, but in view of the dictum of the judgment in *Vishakha* (supra) read with *Medha Kotwal Lele* (supra) and the consequential amendment in rule 14 by addition of the proviso below sub-rule (2), the prescribed procedure clearly provides for treating the complaints committee as the inquiring authority, and thus this Tribunal is unable to redress the grievance of the applicant even if it exists. Of course, if the applicant is able to establish any specific instance of bias, the Tribunal may consider the same, but that is independent of the nature of the exercise of jurisdiction by the

deemed inquiring authority. We do not find this to be a valid basis for interference in the inquiry report on that count.

13. It is contended that the relevant documents asked for by the applicant were not supplied to him, resulting in violation of principles of natural justice. The applicant has made averments in this regard in para 4.7 of the OA. Para 4.7 reads as under:

“4.7 That petitioner during suspension period was asked to produce his defence before the fact finding committee without providing the list of witnesses or any document, records of the fact finding committee were not made available, the same fact finding committee was converted in to a disciplinary committee and repeatedly the notice of Appearance was given to the petitioner without providing the list of witnesses or charge memorandum etc. in total defiance of rules/procedure. Aggrieved by such irregularities, the petitioner approached the Central Administrative Tribunal against deemed charge in violation of specific CCA Rule 14 and under the direction of Hon’ble CAT a fresh charge sheet was issued dtd. 30.10.2007. True copy of charge sheet dtd. 30.10.2007 of Disciplinary committee is annexed as Annexure P-7 (Colly) and copy of order of Hon’ble CAT dtd. 09.10.2007 is annexed as an Annexure P-8.”

Except this, no other specific averment as to the nature of documents, their relevancy and the prejudice on account of non-supply thereof has been made in the OA. The applicant has relied upon the judgment of the Apex Court in *State of Uttar Pradesh & others v Saroj Kumar Sinha* [(2010) 2 SCC 772]. In this case the Hon’ble Supreme Court observed as under:

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

The inquiring committee vide a speaking order dated 08.05.2008 reproduced in para 10 hereinabove, noticed that after scrutiny of list of 112 documents, it was found that only six documents enumerated at serial numbers 26, 27, 36, 56, 76 and 77 were relevant to the subject matter of the inquiry. Accordingly, a direction was issued to the custodian of the documents to make the said documents available to the applicant. This fact has not been denied by the applicant. He has also not pleaded that any other document relevant to the subject matter of the inquiry was denied to him causing him any prejudice or denial of opportunity to disprove or rebut the charge against him. In absence of there being any specific allegations/averments, bare allegation of non-supply of documents leads to no conclusion of violation of principles of natural justice. This contention also deserves to be rejected.

14. The next contention is that the statement of the applicant recorded during the inquiry was not signed by him. It is admitted case of the parties that the applicant made statement before the inquiring committee. His contention is that the said statement was not signed by him. From the entire averments in the OA, we find that neither the applicant has disputed the statement recorded by the inquiring committee nor has alleged that any tempering has been made in his statement. Merely non-signing of the statement without disputing its contents and any averment regarding its tempering, this argument is not sustainable.

15. The next contention of the applicant is that he was not put to pre-charge notice. No such rule or law has been brought to notice that any pre-charge notice was required, though in the present case copy of the complaint of the victim woman was supplied to him. Besides, there was a criminal charge-sheet against him. He was provided full opportunity to respond to the charge memorandum, though he did not file any response within the prescribed, including extended, time.

16. Learned counsel for the applicant has also attempted to mention certain allegations of bias and *mala fides* against Ms. Sumitha Sridharan, member of the inquiring committee (representative of NGO). The said member of the committee is not a party respondent,

and in her absence the allegations of bias and *mala fides* cannot be gone into. Otherwise also, the disciplinary authority has already disposed of representations in regard to *mala fides*/bias against the said member of the inquiring committee, as referred to hereinabove. Learned counsel has also referred to various representations collectively on record as Annexure P-11. The sum and substance of the various representations is on two counts – (i) alleged violation of principles of natural justice, and (ii) for keeping in abeyance the disciplinary proceedings till the criminal case against the applicant is decided. In view of our findings on the observance of principles of natural justice and other related issues, we are of the opinion that these submissions will have no impact on the outcome of this OA.

17. Lastly, the contention of the applicant is that the penalty awarded to him is uncertain and not prescribed under law. Vide the impugned order dated 19.03.2009 the applicant has been awarded following punishment:

“....Charged officer is imposed with a major penalty of reduction from his present grade of “Selection Grade of Junior Administrative Grade” (PB-4: Rs.37,400-67,000 with grade pay of Rs.8,700) to the lower grade of “Senior Time Scale” (PB-3: Rs.15,600-39,100 with grade pay of Rs.6,600) until he is found fit for restoration to the next higher post. The charged officer shall not regain his original seniority in the higher post on such restoration. His pay on such reduction shall be fixed at Rs.35,000 with grade pay of Rs.6,600 in Pay Band-3 (Rs.15,600-39,100 with grade pay of Rs.6,600). He shall however earn increments in the lower post as

per rules. Accordingly, the above penalty is imposed on Shri Saurabh Kumar Mallick with immediate effect."

The main grievance of the applicant is in respect to the following condition in the penalty order:

"until he is found fit for restoration to the next higher post"

It is accordingly submitted that the penalty of reduction from Selection Grade of Junior Administrative Grade to the lower grade of Senior Time Scale is not for any specified period and the above condition not only makes the reduction uncertain but leaves the applicant at the mercy and whims of the disciplinary authority as to when such authority decides to restore the applicant to the next higher post, even though his conduct may be found to be good. In answer to the aforesaid challenge, it is submitted on behalf of the respondents that the punishment was imposed upon the applicant on 19.03.2009, and at the relevant time un-amended rule 11 (vi) of the CCS (CCA) Rules, 1965 was applicable, which *inter alia* prescribed following penalty:

"(vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his

seniority and pay on such restoration to that grade, post or Service;"

In the backdrop of the aforesaid rule, it is argued that the rule not only prescribes reduction to lower time-scale of pay, grade, post or service, but also empowered the disciplinary authority to issue further directions regarding conditions of restoration to the grade or post or service from which the government servant concerned was reduced, and his seniority and pay on such restoration. It is argued by Mr. Anuj Aggarwal, learned counsel appearing on behalf of the respondents that it was under the aforesaid un-amended rule which was applicable at the time of imposition of penalty that the condition of restoration, i.e., "until he is found fit for restoration to the next higher post" was incorporated. Assuming that the disciplinary authority had the power to impose a condition regarding restoration to the higher grade from which a public servant under penalty order would have been reduced to a lower time-scale of pay, grade, post etc. However, the condition which is uncertain and can be abused is in the nature of absolutely arbitrary condition, and such uncertain condition in the penalty order which is capable of being abused or is prone to be abused, is against the public policy. No person can be kept under sword for uncertain period. Notwithstanding the fact that the rule empowered the disciplinary authority to impose a condition for restoration, the condition imposed which is absolutely

uncertain and arbitrary, is liable to be set aside. The fact that such arbitrary exercise of power by the disciplinary authority has been fraught with unhealthy and arbitrary approach, the Government has itself amended the aforesaid provision contained under rule 11 of the CCS (CCA) Rules, 1965 vide notification F.No.11012/2/2005-Estt.(A) dated 02.02.2010 published in Gazette of India vide GSR No.55(E), with the following amendment:

“(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

- (a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and
- (b) the Government servant shall regain his original seniority in the higher time-scale of pay, grade, post or service.”

Under the amended provision it is mandated that the disciplinary authority will specify the period of reduction to the lower time-scale of pay, grade, post etc. The amendment signifies that the earlier provision authorized arbitrary exercise of power by the disciplinary authority. In this view of the matter, the condition, “until he is found fit for restoration to the next higher post”, in the impugned order

dated 19.03.2009 is hereby quashed and the matter is remitted back to the disciplinary authority to specify the period for which the penalty of reduction shall remain in operation. Other contentions of the applicant challenging the disciplinary proceedings and the penalty order are rejected.

18. The OA is partially allowed to the extent of direction in the preceding paragraph. No costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/