

Central Administrative Tribunal  
Principal Bench: New Delhi

**OA 4724/2014**

Reserved on: 14.10.2015  
Pronounced on: 17.12.2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)**  
**Hon'ble Dr. B.K. Sinha, Member (A)**

Shri Rajiv Chaudhary  
S/o Late Sh. M.S. Chaudhary,  
Deputy Secretary, Govt. of India,  
Cabinet Secretariat, New Delhi.  
R/o D-II/196, Kidwai Nagar West,  
New Delhi.

...Applicant

(By Advocate: Ms. Jyoti Singh, Sr. Advocate with  
Mr. Sanjiv Joshi)

Versus

Union of India through Secretary,  
Cabinet Secretariat (R)  
B.1-B.2 Wing, 10<sup>th</sup> Floor,  
Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi – 110 003.

...Respondent

(By Advocate: Dr. Ch. Shamsuddin Khan)

**O R D E R**

**By Dr. B.K. Sinha, Member (A):**

The applicant has filed the instant OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the chargesheet dated 11.12.2013 served upon him.

2. The case of the applicant, in brief, is that while he was posted as Deputy Secretary, complaints dated 16.08.2011 and 15.09.2011 were filed by one Madhvi Bhardwaj, Senior Interpreter in the respondent organization alleging sexual

harassment by the applicant at the work place. The said complaints were accordingly referred to the Complaints Committee constituted in the office of the respondent-organization under the terms of decision of the Hon'ble Supreme Court in *Vishaka v State of Rajasthan* [1997 (6) SCC 241]. The Complaints Committee in its report dated 04.05.2012 arrived at the conclusion that though no case of sexual harassment has been proved against the applicant towards the complainant Madhvi Bhardwaj, but his attitude towards her caused considerable discomfort, embarrassment and humiliation as reflected in her ACRs which had been downgraded at the instance of the applicant. However, the Complaints Committee in para 12 mentioned that it was only reasonable assumption, but was not proved. The report of the Complaints Committee dated 04.05.2012 was furnished to the applicant asking him to show cause within fifteen days. The applicant submitted his representation on 01.10.2012. As no action had been forthcoming, the applicant moved OA No.3834/2013 before this Tribunal for setting aside the enquiry proceedings initiated against him by the Complaints Committee or in the alternative direct the respondents to take a final decision in the enquiry proceedings on the basis of the recommendations of the Complaints Committee. The applicant further submits that during the pendency of the said OA, the respondents issued

the impugned Charge Memo dated 11.12.2013 on the basis of the adverse observations in the report dated 04.05.2012, which was brought on record on 13.01.2014. The Tribunal disposed of OA No.3834/2013 vide order dated 07.02.2014 with a direction to the respondents to take a final decision upon the report of the Complaints Committee and the recommendations made therein.

3. It is the case of the applicant that the respondents instead of complying with the decision of the Tribunal dated 07.02.2014 moved RA No.169/2014. Therefore, the applicant filed a representation to the Inquiry Officer (R.K. Sharma) to keep the second enquiry proceedings in abeyance till the final outcome of his representation dated 20.12.2013, challenging the validity of the chargesheet dated 11.12.2013 and conducting second enquiry on the same set of charges, which have been thoroughly probed and consequently the applicant has been exonerated of the charges of sexual harassment by the Complaints Committee. However, the respondents issued a letter dated 29.09.2014 for continuing with the second enquiry proceedings on the same set of charges.

4. The applicant has adopted several grounds in support of his Application. In the first instance, it has been submitted that the Complaints Committee has considered all

the three charges and clearly exonerated the applicant of all the charges. Hence, there is no scope for conducting a fresh enquiry on the same set of charges. In the second instance, the applicant submits that the respondents have flouted the direction of this Tribunal passed in OA No. 3834/2013 to consider his representation submitted to the respondent authority as the charge memo dated 11.12.2013 issued to him was already on record. The applicant has, therefore, argued that the order of the Tribunal passed in OA No.3834/2013 had the nullifying effect upon the charge memo dated 11.12.2013 and the same cannot be re-issued and made the basis of departmental enquiry. The learned counsel for the applicant in this regard relied upon the decisions in *Vishaka v. State of Rajasthan* (supra), *Seema Lepcha v. State of Sikkim* [2013 (11) SCC 641] and *Medha Kotwal Lele v. Union of India* [2013 (1) SCC 297].

5. The respondents have filed counter and additional counter affidavits. In the counter affidavit, the respondents have stated that on 01.10.2012 the reply submitted by the applicant to the report of the Complaints Committee had been received which along with the chargesheet had been submitted to the disciplinary authority on 18.03.2013. On 08.10.2013, final chargesheet was prepared in respect of the applicant and was submitted to the PMO which conveyed its

approval on 27.11.2013. Thus, the impugned chargesheet dated 11.12.2013 came to be issued against the applicant under sanction of the competent authority. They have also submitted that by an inadvertent error a submission had been made on behalf of the respondents in the OA No.3834/2013 that the applicant's representation was still under consideration whereas the decision had already been taken to initiate departmental proceedings against the applicant on account of the facts emerging against the applicant other than the charges of sexual harassment. The Complaints Committee in para no.12 of the report recommended as under:-

*“12. The Committee is of the view that while the complaint of Ms. Madhvi Bhardwaj does not clearly fall in the category of “unwelcome sexually determined behaviour” or other categories of sexual harassment as defined, Shri Rajiv Chaudhary’s conduct and personal comments, and the lengths to which he went in ensuring downgrading of Ms. Madhvi Bhardwaj’s ACR, certainly raise questions about his motives. Ms. Madhvi Bhardwaj’s sense of embarrassment and humiliation, and perhaps caution stemming from age, experience, maturity, and confidence, caused her to maintain a distance from her senior, Shri Rajiv Chaudhary, Deputy Secretary. This, and the fact, that she took a stand regarding submitting of a fresh ACR, perhaps prevented her from coming under further pressure from her senior Shri Rajiv Chaudhary. Had she not been cautious and maintained her distance, she may have faced more problems. However, it has to be admitted, that this is only a reasonable assumption, and cannot be proven in such cases.”*

Therefore, the facts were brought before this Tribunal in OA No.3834/2013, but the decision of this Bench was on account of inadvertent error made by the respondents in

their submissions that the representation of the applicant continued to be pending. The departmental action against the applicant has been initiated on the basis of collateral facts emerging from the enquiry report. The learned counsel for the respondents was emphatic in his argument that there is nothing in the judgment of *Vishaka v. State of Rajasthan* (supra) or in the subsequent judgments to the effect that no action can be taken on the basis of collateral or incidental facts pointing to misconduct emerging from the report of the Complaints Committee.

6. In the rejoinder application, the applicant reiterating the points taken in the OA stated that since similar set of article of charges had been examined by the Complaints Committee from every angle and found them unsubstantiated, there is no question of second chargesheet being issued on the same grounds. The disciplinary authority has also agreed to the findings of the Complaints Committee and, thus, the impugned second chargesheet issued to the applicant is totally in disregard of the law laid down by the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* (supra) and other decisions referred to above.

7. In their additional counter affidavit, the respondents have submitted that the issue in the departmental proceedings is not the one of 'unwelcome sexually

determined behaviour' or 'other categories of sexual harassment' but the disciplinary proceedings have been initiated against the applicant for his acts of omissions and commission i.e. disobedience of government directions pertaining to writing of APARs and, thus, acted in a manner which is highly unbecoming of a government servant. The impugned chargesheet relates to the conduct of the applicant being unbecoming of a government servant. It is an admitted fact that the enquiry conducted by the Complaints Committee in accordance with the decision in *Vishaka v. State of Rajasthan* (supra) takes the place of enquiry under Rule 14 of the CCS (CCA Rules, 1965. Had the charges of sexual harassment been substantiated in the enquiry conducted by the Complaints Committee, there would not have been any need for further enquiry and the disciplinary authority would have proceeded with the punishment. However, the enquiry conducted by the Complaints Committee and the present chargesheet are in respect of different charges. The Complaints Committee is mandated to probe the charges relating to sexual harassment, while the present chargesheet is based upon violation of set procedure and going out of the way to downgrade the ACRs of subordinate that being the complainant in the present case and also making remarks unbecoming of a government servant. Hence, the

departmental proceedings are under way and the applicant would get ample opportunities to prove his innocence. The respondents have also placed a copy of the order dated 26.12.2014 intimating the applicant that his representation dated 01.10.2012 had already been considered by the competent authority who has decided to initiate departmental proceedings against him but could not bring the same to the notice of this Bench of the Tribunal in OA No.3834/2013 for which a review petition has already been filed.

8. We have carefully gone through the pleadings of the rival parties, as also the documents adduced and decisions cited by them. We have also patiently heard the arguments advanced on behalf of the learned counsel on either side.

9. The only issue, to our mind, that needs to be determined is that once the Complaints Committee on Sexual Harassment constituted in accordance with the decision in *Vishaka v. State of Rajasthan* has exonerated the applicant on charges relating to sexual harassment, can the government authorities on collateral and other incidental charges emerging from the enquiry report pointing to misconduct proceed to take action under CCS (CCA) Rules, 1965.



10. In this regard, we have to look at the afore three decisions of the Hon'ble Supreme Court as also the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [hereinafter referred to as 2013 Act']. There is not the least doubt that the decision of the Hon'ble Supreme Court in *Vishaka v. State of Rajasthan* (supra) gave birth to the entire concept of protection of women at work place and to the enactment. We find that the fundamental rights of women to equality enshrined under Articles 14 & 15 of the Constitution form part of the right to life and to live with dignity, and to follow other fundamental rights of their choice under condition of general neutrality.

11. The judgment in *Vishaka v. State of Rajasthan* (supra) has been further developed by the Hon'ble Supreme Court in *Medha Kotwal Lele v Union of India* (supra) wherein it has been held that the enquiry report submitted by the Complaints Committee constituted under the terms of *Vishaka v. State of Rajasthan* is to be deemed to be an enquiry report under CCS (CCA) Rules, 1965. For the sake of clarity, we reproduce the relevant para 2 of the decision as under:-

*"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 : 1997 SCC (Cri) 932], SCC 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."*

12. In *Saurabh Kumar Mallic V/s. Comptroller & Auditor General of India & Anr.* [151 (2008) Delhi Law Times 261 (DB)], the petitioner was a member of the Indian Audit and Accounts Service, who was alleged to have made an attempt to sexually assault one of her senior officers Ms. Geetali Tare in Glen Mess. One of the grounds adopted by the petitioner was that Mess was not a work place and, hence, the decision in *Vishaka's* case would not be attracted as it deals with sexual harassment primarily at work place. Moreover, it could not be treated as misconduct as there was no casual connection between 'conduct' and 'favour' on account of the complainant being senior to the petitioner. Therefore, the provision of Rule 3(c) of the CCS (Conduct) Rules was not attracted. The Hon'ble High Court took note of the provision of Rule 3(c)(i) of the Rules *ibid* which mandates that a government servant should not indulge in any act of sexual harassment of any women at her work place. The Tribunal

held that the Mess is a part and parcel of the Academy Complex and observed that there was no definition of 'work place' provided either in the Conduct Rules or in the decision of the Apex Court in *Vishaka's case*. The Tribunal further opined that the definition of work place was not to be narrowed down and constructed in its applicability. The object of the decision was to protect working women from sexual harassment. Therefore, the Tribunal laid down the test with the proximity of the place of work and control of the management over such residence/mess provided such residence/mess has to be an extension or a contiguous part of the working place to come within the ambit of work place. The Tribunal was of the view that it was not necessary that a work place would be only a work place where the office work is performed but any extension of place of work or institution whether a hospital or mess where the control of the employer has control of the management would be treated as work place by giving wider connotation of the expression. The Hon'ble High Court also rejected the plea of the petitioner that as the complainant was senior to him, no misconduct was to be construed and held that this is not a necessary condition precedent for establishing the charge of sexual harassment at work place.

13. In *Seema Lepcha v State of Sikkim* (supra), the Hon'ble Court held as under:-

*“9. Having gone through the affidavits filed by the Chief Secretary of the State and Shri J.K. Rai, we are satisfied that the State Government has taken the steps necessary for implementing the guidelines and norms laid down by this Court in Vishaka's case and the directions given in Medha Kotwal's case. Therefore, the appeal is disposed of with the following directions:*

*(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in Vishaka's case and the directions given in Medha Kotwal's case by getting the same published in the newspapers having maximum circulation in the State after every two months.*

*(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case.*

*(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its agencies/ instrumentalities but also for the private companies.”*

14. Now, we start examining the report of the Complaints Committee which conducted enquiry into the charges of sexual harassment against the applicant. The Complaints Committee, on the basis of the depositions made by various witnesses and the evidence on record, held as under:-

*“16. Further, it stands proved through various depositions that Shri Rajiv Chaudhary, Deputy Secretary, had asked all the Linguists to re-write their ACRs for the year 2010-2011 as he wanted to initiate the same himself.*

The complaints committee further observed as under:-

*“33. It is on record that the ACR of Ms. Madhvi Bhardwaj was distorted, and every effort made to disturb the sanctity and objectivity of the report writing process which needed to be done with unbiased notions. No effort should be made by any officer in the ACR writing process to intrude into the objective assessment of another officer, who is vested with the onus of writing it with an independent mind.*

*34. It surprised the Committee to note that this was a proven case of “singling out one person and then later building up records of punctuality as an afterthought”.*

15. We have further taken note of the recommendations, which reads thus:

*“12. The Committee is of the view that while the complaint of Ms. Madhvi Bhardwaj does not clearly fall in the category of “unwelcome sexually determined behaviour” or other categories of sexual harassment as defined, Shri Rajiv Chaudhary’s conduct and personal comments, and the lengths to which he went in ensuring downgrading of Ms. Madhvi Bhardwaj’s ACR, certainly raise questions about his motives. Ms. Madhvi Bhardwaj’s sense of embarrassment and humiliation, and perhaps caution stemming from age, experience, maturity, and confidence, caused her to maintain a distance from her senior, Shri Rajiv Chaudhary, Deputy Secretary. This, and the fact, that she took a stand regarding submitting of a fresh ACR, perhaps prevented her from coming under further pressure from her senior Shri Rajiv Chaudhary. Had she not been cautious and maintained her distance, she may have faced more problems. However, it has to be admitted, that this is only a reasonable assumption, and cannot be proven in such cases.*

*13. The actions of Shri Sandeep Kumar not only in failing to maintain an objectivity on the matter, but also in subsequently putting pressure on Ms. Madhvi Bhardwan to withdraw her complaint against Shri Rajiv Chaudhary, and rather belatedly issuing her a Memo for punctuality after knowing that she had filed a complaint against him with this Committee, also causes concern. Given the fact that Ms. Madhvi Bhardwaj continues to remain under the control of Shri Sandeep Kumar as a subordinate official in his group, needs urgent administrative review, since this could lead to her securing an adverse ACR during reporting year 2011-12, as well. Her posting out of*

*the unit, and to the Language Branch, could be considered.*

*14. It is also submitted that while placing the Enquiry Report before the Competent Authority, the APAR of Ms. Madhvi Bhardwaj for reporting year 2010-2011 may be placed in original for perusal, since it clearly indicates distortions made at the effort and hands of Shri Rajiv Chaudhary, Deputy Secretary."*

16. We have also gone through the records of OA No.3834/2013 and found that the charge memo dated 11.12.2013 was indeed on record. This fact had also been brought in the averments. It was by mistake that an averment was made on behalf of the respondents that no decision had been taken on the representation of the applicant which has been acknowledged in the RA and also in this OA. We have also taken note of the fact that the file had travelled right upto the PMO in respect of disciplinary proceedings and thereafter a decision was taken to issue the charge memo to the applicant. As such, this is not a random consideration but a well examined consideration at the highest of level. The fact that incorrect submission had been made by the respondents to this Bench does not change the nature of the examination. To the contrary, the respondents have taken steps to place the correct facts on record by filing a RA. We also find that though the facts had been placed on record but were incorrectly submitted.

17. Insofar as the instant OA is concerned, we find that a charge memo has been submitted on the facts and incidental

issues emerging out of the enquiry report of the Complaints Committee in two respects i.e. (i) going out of the way against the procedure established for recording APARs to down grade the ACRs of the complainant Ms. Madhvi Bhardwaj and putting pressures on others for the same and (ii) to use language which is unbecoming of a government servant. Hence, we do not find any duality in the chargesheet. We have also gone through the Act of 2013, the very objective of which is to provide protection against sexual harassment of women at work place and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

18. There appears a discrepancy between the findings of the Complaints Committee and scope of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. 'Sexual harassment' has been defined in Section 2(n) of the Act *ibid*, which reads thus:-

*“(n) “Sexual harassment” includes any one or more of the following unwelcome acts or behaviour (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 or non-verbal conduct of sexual nature.”*

We have already taken note of the findings of the Complaints Committee in para no.15 of this order. It is incorrect on part

of the applicant to contend that the Complaints Committee has exonerated him of all charges. The Complainant Ms. Madhvi Bhardwaj had levelled charges of sexual harassment against the applicant on two occasions i.e. on 16.08.2011 (page 46 of the paper book) and 15.09.2011 (page 49 of the paper book). For the sake of brevity, we do not reproduce the charges as the same have been enumerated in the report of the Complaints Committee and have also been annexed in the form of Annexures thereto. Suffices it to say that the charges levelled by the complainant relate to sexual harassment and denigration in the form of intimidation, hostile work environment of insulting and offensive remarks about her person, causing injury to her self-esteem, as also anguish. The Complainant has also given instances of such harassment, e.g., when on pretext of discussing the papers, the applicant used to call her in late hours and made her to sit without any work for long durations and talked about everything but work. She has also given examples of rejection of her casual leave at the last moment and abusive and sexiest remarks about her eye ailment. The complainant further recorded about applicant's endeavour to make her to re-submit ACR form from a back date. For the sake of clarity, we extract the relevant portion of the complaint as under:-



*“(vii) He called her on 19.07.2011 and coerced her to re-write her ACR form a back date so that he himself could initiate it despite her already having submitted the same to her controlling Under Secretary on 14.5.2011. Shri Rajiv Chaudhary asked her to resubmit the ACR saying that he was capable of justifying her work, and that others had no capability and capacity to do it and if she failed to do so, she would face the consequences soon. She politely refused to re-write the ACR. Since then, she states that she was under constant fear as he could downgrade all the hard work she had done during the whole year.*

*(viii) She said she met Joint Secretary (AR), Shri Abhijit Chakraverty, the next day on 20.07.2011 and told him about Shri Rajiv Chaudhary’s insistence that she submit a fresh ACR. She also said she told him about Shri Rajiv Chaudhary’s overtures and hostile behaviour towards her. He assured her that he would look into the matter.”*

The Complaints Committee had examined a number of witnesses including R.D. Kaushal, Under Secretary, Mrs. Indrani Chatterjee, Sr. Interpreter, A.R. Mukhopadhyay, Sr. Interpreter, Mrs. Prachi Nigam, Under Secretary, Ram Kumar Sharma, Interpreter, Sandeep Kumar, Joint Secretary, G.R. Ravi, Director (Language), Alok Kumar, Joint Secretary and Abhijit Chakraverty, Joint Secretary and made summary of their depositions. The Complaints Committee has clearly held on the basis thereof that pressure had been brought on G.R. Ravi, the then Director (Language) to introduce punctuality aspect of the complainant Ms. Madhvi Bhardwaj though she was not under his direct supervisory control. The applicant and one Sandeep Kumar, Joint Secretary visited the room of said G.R. Ravi in order to persuade him to downgrade her APAR.

The findings of the Complaints Committee are categorical in this regard which we reproduce as under:-

*“33. It is on record that the ACR of Ms. Madhvi Bhardwaj was distorted, and every effort made to disturb the sanctity and objectivity of the report writing process which needed to be done with unbiased notions. No effort should be made by any officer in the ACR writing process to intrude into the objective assessment of another officer, who is vested with the onus of writing it with an independent mind.*

*34. It surprised the Committee to note that this was a proven case of “singling out one person and then later building up records of punctuality as an afterthought.*

*35. ‘Shri G.R. Ravi, Director (Language), was carefully manipulated and provoked by Shri Rajiv Chaudhary, Deputy Secretary and Shri Sandeep Kumar, and played into their hands in re-writing and downgrading the ACR. However, during the deposition before the Committee, Shri Ravi thumpingly vouched for the fact that Ms. Madhvi Bhardwaj was an official who deserved an ‘Outstanding’ grading and that, if the matter is brought to him again, he was ready to change his view and give her ‘Outstanding’.”*

The Complaints Committee is also categorical in its conclusion that the complaint of the complainant Ms. Madhvi Bhardwaj did not fall into the category of ‘unwelcome sexually determined behaviour’ or other categories of sexual harassment as defined, but the applicant’s conduct, his personal comments and the length to which he went to downgrade the ACRs of the complainant certainly raise questions about his motives. The Complaints Committee has applauded the complainant Ms. Madhvi Bhardwaj in not succumbing to the pressure of submitting fresh ACR form. It was this which prevented her from coming under further

pressure of the applicant. The Complaints Committee was quick to add that this was only an assumption and could not be proven in such cases. However, this is only in respect to the remarks about complainant's coming under further pressure of the applicant. There are clear evidence forthcoming from the statement of witnesses qua the efforts made by the applicant in connivance with Sandeep Kumar to get complainant's ACR downgraded. The applicant's remarks regarding complainant's eye ailment etc. have also emerged clearly in the enquiry report. We state at the cost of repetition that allegations regarding remarks and downgrading of ACRs have not been found to be false. They appear to have emerged clearly during the course of the enquiry from the statements of witnesses. What the Complaints Committee did not find was that these remarks and actions fall within the ambit of sexual harassment. It is to be noted that the action under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to be distinguished from the liability incurred under the CCS (CCA) Rules, 1965. Proviso (2) of Rule 14 of the Rules *ibid* reads thus:-

To be quoted

However, a special procedure has been laid down in respect of charges of sexual harassment where a shorter procedure has been provided. The report of the Complaints Committee

takes the place of enquiry under Rule 14 of the CCS (CCA) Rules, 1965 where it is not necessary that the provisions of Rule 14 should be followed in detail. This legal provision has also been enumerated in *Medha Kotwal Lele v. Union of India* (supra), had the Complaints Committee found that the action of the applicant fell within the realm of sexual harassment, there would not have been any need for further enquiry under Rule 14 of the CCS (CCA) Rules, 1965 and the disciplinary authority could have proceeded to award punishment upon the applicant. However, it is also a fact that certain points have emerged which relate to misconduct of a different nature. It has already been discussed that the report of the Complaints Committee is deemed to be an Enquiry report under CCS (CCA) Rules, 1965 in respect of allegations of sexual harassment at work place. However, if any collateral or incidental facts or issues emerge from the enquiry report pointing to misconduct, the same needs to be gone through the rigmarole of departmental proceedings under CCS (CCA) Rules, 1965 before they can be established. Thus, we find that there are no two chargesheets but the facts are the same. We have found nothing either in the judgments cited or in *Visaka's* case which prevents the employer from taking action against the applicant on collateral/incidental issues pointing to

misconduct emerging from the report of the Complaints Committee.

19. We are fully conscious of the fact that the RA is pending before another Bench of this Tribunal and, therefore, we are constrained from passing any order on the merits of the RA. However, in the instant case, we find that there had been a complaint filed by the complainant Madhvi Bhardwaj against the applicant in two transactions, which were enquired into by the Complaints Committee on the charges of sexual harassment at work place; complaints were not found to fall within the ambit insofar as the charge of sexual harassments is concerned; sufficient evidence has been forthcoming to the effect that the applicant had gone out of the way and violated the well set procedure to get the APARs of the complainant downgraded; evidence is also there to the effect that the applicant had passed remarks against the complainant which were unbecoming of a government servant as it appears from the report of the Complaints Committee; there is nothing in the Act or in the judgments cited which prevent the employer from issuing regular departmental proceedings following the rules prescribed under CCS (CCA) Rules against the applicant on the facts/incidental issues emerging from the report of the Complaints Committee. Hence, we find that the instant OA

is misconceived and the same is, therefore, dismissed with no order as to costs.

**(Dr. B.K. Sinha)**  
Member (A)

**(A.K. Bhardwaj)**  
Member (J)

*/AhujA/*