

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.2755/2016
MA Nos.4011, 3641 & 4012/2018**

Reserved on : 25.09.2018
Pronounced on : 12.11.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Ashish Chandra Singh S/o late K. C. Singh,
Deputy Legal Advisor (DLA),
Directorate of Enforcement, Government of India,
Ministry of Finance, Department of Revenue,
6th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi-110001.
R/o A-6-A, MIG Flats, Vatika Apartments,
Mayapuri, New Delhi-110064.

... Applicant

(By Mr. S. Prabhakaran, Sr. Advocate and Dr. A. K. Gautam,
Advocate)

Versus

1. Union of India through Secretary (Revenue)
The Competent Disciplinary Authority,
Ministry of Finance, Government of India,
Department of Revenue, North Block,
New Delhi-110001.

2. Director,
Directorate of Enforcement,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110001.

3. Dr. Sonali Badhe, ALA,
Directorate of Enforcement,
Ahmedabad, Alsi Plots, Akola,
Maharashtra.

... Respondents

(By Mr. Avtar Singh Chauhan, for Respondents 1 and 2; Mr.
Sarthak Bhatia, for Respondent No.3, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

This OA is filed with a prayer to quash the order dated 21.06.2016 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, in the name of the President of India, through which the penalty of reduction to a lower stage in the time-scale of pay by three stages for a period of three years, is imposed upon the applicant, with a stipulation that he will not earn increments of pay during the period of such reduction, and that on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay. The consequential order dated 28.07.2016, through which the penalty was imposed, is also challenged.

2. The facts in brief are that the applicant was appointed as Deputy Legal Advisor (DLA) in the Directorate of Enforcement in the year 2007. The 3rd respondent joined the same organisation as Assistant Legal Advisor on 01.07.2010. Initially, the 3rd respondent worked at the office at Delhi, and thereafter was transferred to Mumbai.

3. It is stated that on 25.07.2012, Dr. Shamsuddin, Additional Director of Prosecution, New Delhi, visited the Zonal Office at Mumbai to enquire a complaint made by one Dr. T. C. Kaushik against the 3rd respondent, and at that time, the 3rd respondent is said to have complained to Dr. Shamsuddin that the applicant herein used to harass her when she worked under him. On the basis of the said oral complaint, the Director of Enforcement is said to have deputed Shri R. R. Upadhyay, Additional Director, to record the statement of the 3rd respondent, and independently the 3rd respondent submitted a formal complaint to the Director of Enforcement on 23.12.2012.

4. The matter was referred to the Internal Complaints Committee (ICC), Ministry of Finance on 27.12.2012. The Committee took the complaint on record on 28.01.2013, and gave the 3rd respondent opportunity to submit a detailed complaint in writing, as per Section 9 (i) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, Act 14 of 2013), and such a complaint has been submitted.

5. The applicant states that he has been summoned by the ICC on 25.06.2013, and was served a copy of the complaint filed by the 3rd respondent, granting him ten days' time to file his written reply. It is stated that the reply was submitted, and the inquiry was conducted by the ICC after it was re-constituted. During the course of the inquiry, six witnesses were examined on behalf of the Department, and five witnesses on behalf of the applicant. The ICC submitted its report on 31.01.2014 recommending imposition of major penalty upon the applicant, and awarding compensation of Rs.10,000/- to the 3rd respondent.

6. The applicant filed OA No.1072/2014 challenging the report dated 31.01.2014 submitted by the ICC. One of the contentions raised by him was that the Act 14 of 2013 came into effect with effect from 09.12.2013 by virtue of publication in the gazette, but the provisions thereof were invoked in his case with retrospective effect. It is stated that in the reply filed therein, the fact that the provisions of the Act 14 of 2013 were invoked, was admitted. The Tribunal granted stay of further proceedings in pursuance of the inquiry report dated 31.01.2014.

7. The 3rd respondent filed WP(C) No.4756/2014 in the Delhi High Court, challenging the interim order passed by the Tribunal in OA No.1072/2014. The writ petition was disposed of on 10.09.2015 vacating the interim order on the ground that the report of the ICC did not attain finality, as the disciplinary authority was still seized of the matter. It was also left open to the applicant to raise all the grounds before the disciplinary authority, and in case the final order is passed to his detriment, it shall be open to him to assail the same in accordance with law. In the light of this development, the applicant submitted his representation against the report of ICC on 27.11.2015, and thereafter withdrew OA No.1072/2014 on 11.03.2016. On being requested by the disciplinary authority, the UPSC gave its advice recommending imposition of the penalty of reduction to a lower stage in the time scale of pay by three stages for a period of three years.

8. Initially, the applicant filed WP(C) No.3472/2016 before the Delhi High Court, pleading *inter alia* that the Act 14 of 2013 has no retrospective effect. However, the writ petition was withdrawn, and the present OA is filed challenging the impugned order.

9. The applicant contends that the allegations made against him by the 3rd respondent were absolutely without any basis, and were made as an afterthought, on being instigated by some officials of the Department. He contends that the issue was referred to the ICC as provided for under rule 14 of the CCS (CCA) Rules, 1965, but neither any charges were framed nor the procedure contemplated under the said Rules was followed.

10. His principal contention is that the Act 14 of 2013 came into force from 09.12.2013, but the ICC invoked the provisions of that Act much before that, and in that view of the matter, the proceedings are patently illegal and without any legal basis. He submits that he raised a specific plea in this behalf before the ICC, the disciplinary authority and the UPSC, at various stages, and still the same was ignored, and the order of punishment was passed in a mechanical manner, and without application of mind.

11. On behalf of respondents 1 and 2, a detailed counter affidavit is filed. It is stated that the proceedings against the applicant were initiated strictly in accordance with law, and since the allegations made against him were found proved, the

punishment was imposed after obtaining the opinion of the UPSC.

12. Shri Prabhakaran, learned Senior Advocate, for the applicant submits that the very initiation of the proceedings against the applicant was not in accordance with the relevant provisions of law. He contends that even where the allegation against an employee is as to the harassment or other similar acts against a woman employee, the regular procedure prescribed under the CCS (CCA) Rules, 1965 needs to be followed, such as framing of charges and giving of opportunity to submit explanation, and the only difference in such cases is that instead of an inquiry, the Internal Complaints Committee (ICC), as contemplated under rule 14 of the CCS (CCA) Rules, would enquire into the matter. Learned Senior Advocate submits that the instant case was entrusted to the ICC without there being a charge-sheet, and the ICC in turn has chosen to follow the procedure prescribed under the Act 14 of 2013, even before the said enactment came into force. He contends that by no stretch of imagination the provisions of the Act could be invoked retrospectively, and a specific objection raised in this regard was rejected by the ICC as well as the disciplinary

authority without furnishing any valid reasons whatever. He made an attempt to point out certain other defects in the proceedings.

13. Shri Avtar Singh Chauhan, learned counsel for respondents 1 and 2, and Shri Sarthak Bhatia, learned counsel for respondent No.3, on the other hand, submit that the proceedings against the applicant were initiated strictly in accordance with law, and the objections raised at every stage were dealt with properly. It is stated that though reference was made to the Act 14 of 2013, the impugned order cannot be confined to that enactment alone. They submit that the charges against the applicant are grave in nature, and minor technicalities, if any, cannot be treated as a basis to relieve him from the consequences flowing from such acts of misconduct.

14. The applicant herein and the 3rd respondent worked in the same office for some time. Thereafter, the 3rd respondent was transferred to Mumbai. She did not submit any complaint against the applicant during her tenure at Delhi. An oral complaint against the applicant seems to have been made to the Additional Director by name Dr. Shamsuddin when he visited Mumbai. Thereafter, the issue was taken to the notice of the

Director of Enforcement, and he in turn deputed the Additional Director by name Shri R. R. Upadhyay, to record the statement of the 3rd respondent.

15. The mere fact that the 3rd respondent did not submit complaint when she was in Delhi, or that her statement was recorded at a later point of time, does not have much impact on the legality of the proceedings. In case she has been subjected to harassment by the applicant, she was entitled to make the complaint at any stage, and any forum.

16. The Hon'ble Supreme Court expressed its concern for the dignity and safety of the women, particularly those in employment, and issued several directions in its judgment in *Vishaka and others v State of Rajasthan and others* [(1997) 6 SCC 241], and subsequent judgments. One of the directions was that an Internal Complaints Committee shall be constituted to look into these aspects, and the report submitted by such Committee shall be accorded the status of inquiry report in the departmental proceedings. In the light of this, rule 14 of the CCS (CCA) Rules, 1965 was amended and the ICC constituted in every department is conferred with the status of the inquiry officer. However, the requirement to frame charges under rule

15 of the CCS (CCA) Rules was not dispensed with. In the instant case, the matter was entrusted to the ICC, but the record does not disclose that any specific charges were framed against the applicant. That, however, is a different aspect, and it is also not seriously canvassed.

17. Once the ICC was entrusted with the inquiry, it recorded the statement of the 3rd respondent, and thereafter the applicant was also given opportunity to respond. It was at that stage that the Parliament enacted Act 14 of 2013. A special procedure is prescribed under this Act, to deal with the cases of harassment to women at workplaces, and different punishments are also provided. The Act was published in the gazette on 22.04.2013. It appears that the ICC proceeded on the assumption that the Act came into force with the publication in the gazette. The Committee was also re-constituted in accordance with the requirements of the Act. It completed the inquiry and submitted its report on 31.01.2014. The report is comprehensive in nature. It took note of the guidelines framed by the Hon'ble Supreme Court in *Vishaka's* case (*supra*). Apart from that, it invoked the provisions of the Act 14 of 2013. This is evident from the heading of the report, which reads as under:

“INQUIRY REPORT OF THE INTERNAL COMPLAINTS COMMITTEE CONSTITUTED UNDER THE PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013 IN THE CASE OF COMPLAINT OF SEXUAL HARASSMENT FILED BY DR. SONALI BADHE (Assistant Legal Advisor)”

Apart from this, the ICC also referred to the provisions of the Act at various places in the report. The Committee was also re-constituted to be in accordance with the requirements under the Act. In page 3 of the report, the Committee observed as under:

“Accordingly, Dr. Sonali Badhe was summoned before the ICC on 15.05.2013 and after hearing her complaint, she was given the opportunity to give her detailed complaint in writing as per Rule 9(1) of the Prevention of Sexual Harassment of Women at Workplace Act, 2005, within 20 days’ time. Her detailed written statement dated 7/6/2013 was taken on record by the ICC on 11.06.2013 and a Notice was issued to Shri A. C. Singh, DLA to appear before the ICC on 25.06.2013. The complaint of Dr. Sonali was considered to be the Article of Charges and the same was served to Shri A. C. Singh when he appeared before the ICC on 25.06.2013. Shri A. C. Singh was granted 10 days for filing his written rejoinder to the complaint of Dr. Sonali, which was received by the ICC on 5/7/2013. After examining the re-joinder of Shri A. C. Singh, the ICC summoned him on 10/7/2013 and recorded his statement.”

The concluding paragraph of the report reads as under:

“Dr. Sonali successfully proved that Mr. A. C. Singh sexually harassed her from July 2010 onwards, on various occasions, till she filed a complaint. Mr. Singh harassed Dr. Sonali by indulging in unwelcome physical, verbal and non-verbal conduct of sexual nature. The act of the respondent was unbecoming of good conduct and behavior expected from a senior officer of the ED. The facts and circumstances of the case warrants deterrent punishment and infliction of appropriate major penalty as may be appropriately decided by the Disciplinary Authority. Although no monetary sum can compensate the mental pain and suffering of Dr. Sonali, still the Committee is of the opinion that award of some monetary compensation in favour of Dr. Sonali will serve the cause of justice. As per Section 13(3)(ii) of the Act an amount of Rs.10,000/- is ordered to be deducted from the salary of Mr. Singh and be paid to Dr. Sonali, the aggrieved woman to compensate mental trauma, paid, suffering and emotional distress caused to her.”

Though the report was submitted on 31.01.2014, the examination of witnesses and hearing was concluded much before the Act 14 of 2013 came into force.

18. It is not necessary to mention here once again the various steps that ensued before this Tribunal and the High Court, after the ICC submitted its report. Suffice it to say that the applicant was permitted to raise his objection before the disciplinary authority.

19. The applicant submitted his representation before the respondents on 24.11.2015, and the same was received on 30.11.2015. The report of the ICC itself runs into 57 pages, and the explanation submitted by the applicant is almost of the same size. He dealt with the evidence of various witnesses and made an attempt to point out certain discrepancies.

20. The applicant submitted another representation dated 09.05.2016 to the disciplinary authority. This was mostly devoted to the advice given by the UPSC. A specific plea was raised in this, to the effect that the Act 14 of 2013 came into force w.e.f. 09.12.2013, but it was invoked to an incident which took place much prior to that. The grounds raised by him in that representation in para 4 read as under:

- “i) that the incidents of the alleged sexual harassment had occurred during the period July 2010 to July 2012; oral complaint of sexual harassment was made before Dr. Shamsuddin, Addl. Director (Prosecution) in Mumbai Zonal Office of Enforcement Directorate on 25.07.2012; statement of Complainant was recorded by Shri R. P. Upadhyay, the then Addl. Director of Enforcement Directorate on 23.08.2012; the complainant sent an e-mail to Director of Enforcement requesting him to take cognizance of her complaint on 23.11.2012 followed by another letter dated 27.12.2012; the ICC constituted under Rule 14(2) of CCS

(CCA) Rules, 1965 took on record the complaints of sexual harassment on 28.01.2013;

- ii) that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on 09.12.2013 vide S.O. No.3606(E), dated 9th December, 2013, published in the Gazette of India, Extra., Pt. II, Sec. 3 (ii), No.2733, dated 9th December, 2013 whereas the sexual harassment had occurred during the period July 2010 to July 2012 i.e. 17 months prior to the date of coming into force of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- iii) that since the incidents of sexual harassment as alleged in the Complaint had occurred 17 months prior to the date of coming into force of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the sexual harassment complaint involving Government employees was required to be enquired into in accordance with the provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, "CCS (CCA) Rules, 1965"); in compliance with the directions of the Hon'ble Supreme Court in Visaka and others v. State of Rajasthan on 13.08.1997 in W.P. (Criminal) Nos.666-70 of 1992, the Proviso to sub-rule (2) of Rule 14 was inserted by the Central Government, vide Govt. of India, Dept. of Personnel & Training Notification No.11012/5/2001-Estt.(A) dated 1st July 2014 published as GSR 225 in the Gazette of India, dated 10th July, 2004.
- iv) That the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Act, 2013 can only be applied prospectively as the law does not provide retrospective application to the cases of sexual harassment of women at workplace whereas while stating that as notified in the CCS (CCA) Rules, 1965, an inquiry in the case of sexual harassment is to be conducted as per rule 14, i.e. 'Procedure of Inquiry for Imposing Major Penalties', the ICC started examining the issue on 15.05.2013 and observed that as per provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the enquiry should have completed in 90 days.

- v) That the ICC summoned the complainant before it on 15.05.2013 and gave the complainant an opportunity to file a fresh detailed complaint in writing as per Rule 9(1) of the Prevention of Sexual Harassment of Women at Workplace Act, 2005 within 20 days' time (sic) and did not conduct the inquiry on the basis of statement of the complainant recorded on 23.08.2012 before Shri R. P. Upadhyay, Addl. Director.
- vi) That on conclusion of the inquiry proceedings the ICC while recommending major penalty, also held as follows:

“...As per Section 13(3)(ii) of the Act an amount of Rs.10,000/- is ordered to be deducted from the salary of Mr. Singh and be paid to Dr. Sonali, the aggrieved woman to compensate mental trauma, paid, suffering and emotional distress caused to her.”
- vii) That in view of the foregoing, it is submitted that the ICC has applied the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 retrospectively to the sexual

harassment complaint incidents of which had occurred 17 months prior to the Act coming into force.

viii) That as appearing from the above the ICC acted without jurisdiction as the Rule 14(2) CCS (CCA) Rules do not confer authority on the Inquiring Authority (ICC) to award monetary compensation of Rs.10,000/- on the complainant deductible from the salary of the CO."

21. The disciplinary authority did notice the plea raised by the applicant in relation to the applicability of the Act 14 of 2013, and mentioned the same in para 22 of its order. In the next paragraph, the objection was dealt with. The two paragraphs read as under:

"22. It was further observed that Shri A. C. Singh in his representation dated 9.5.2016 at point No.4(iv) submitted that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 can only be applied prospectively as the law does not provide retrospective application to the cases of sexual harassment of women at workplace while stating that as notified in the CCS (CCA) Rules, 1965, an inquiry in the case of sexual harassment is to be conducted as per rule 14 i.e. "Procedure of inquiry for imposing Major Penalty", the ICC examined the issue on 15.5.2013 and observed that as per provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the enquiry should have completed in 90 days.

23. With regard to the above contention of Shri Singh, it is noticed that the Hon'ble Supreme

Court of India in its judgment dated 19.10.2012 in the case of Medha Kotwal Lele and others Vs. Union of India had held as under:-

“6. In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows:

“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka’s case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called 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.”

From a perusal of these paragraphs, it becomes clear that the specific contention that the proceedings were conducted by the ICC by applying the provisions of the Act 14 of 2013 much before it came into force, has not been either denied or disputed. The reference to the judgment of the Supreme Court in *Medha Kotwal Lele & others v Union of India & others* [AIR 2013 SC 93 : (2013) 1 SCC 297], was not enough to meet the specific legal contention raised by the applicant.

22. Article 311 of the Constitution of India provides adequate protection to the civil servants. Any proceedings

leading to punishment against an employee must accord with the relevant provisions of law. In exercise of power under Article 311, the Government framed the CCS (CCA) Rules, 1965, prescribing the procedure to be followed before any disciplinary action is taken against an employee. Recognising that there exists a necessity to evolve a special procedure for dealing with the cases where allegations of harassment to women employees are made, rule 14 of the CCS (CCA) Rules was amended, conferring the power of the inquiry officer upon the ICC, and that of the inquiry report, on the report submitted by the ICC. Though in the instant case the matter was entrusted to the ICC, it proceeded as though it was constituted under the Act 14 of 2013. At every stage, the provisions of that Act were referred to, and even the report was submitted under the provisions of that Act.

23. Assuming that the provisions of the Act 14 of 2013 can be followed by the ICC without there being any amendment to the CCS (CCA) Rules, that would be possible only as regards the incidents that have taken place after the Act came into force. The ICC in the instant case, however, invoked the provisions of the Act, and applied them at every stage,

much before the Act came into force. It appears that the ICC proceeded under the assumption that the publication of the Act in the gazette would make its provisions enforceable. Subsection (3) of Section 1 thereof makes it abundantly clear that it shall come into force on such date as the Central Government may, by notification in the official gazette, appoint. It was through S.O. No.3603(E) dated 09.12.2013 that the Central Government appointed the date of its enforcement. The said S.O. was published in the gazette on 09.12.2013 and the Act came into force from that date itself.

24. It is fairly well settled principle of law that a legislation would operate prospectively unless there is any clear indication to the contrary. Another principle is that a punitive enactment can never be retrospective in its operation. Even the occasion to apply the provisions of an Act retrospectively will arise only after it comes into force. This is a rare instance where the provisions of the Act were applied to a case or proceedings even before the Act came into force. Though the allegation may be serious in nature, an employee cannot be subjected to punishment, contrary to law.

25. It is not as if the allegation against the applicant gets wiped away if the impugned order is set aside on account of the reasons mentioned above. In *Managing Director, ECIL, Hyderabad v B. Karunakar* [(1993) 4 SCC 727], the Apex Court indicated that wherever a serious lapse in the disciplinary proceedings is noticed, it is not necessary that the entire proceedings should be set aside. It was directed that such part of the disciplinary proceedings as are found to be in contravention of law need to be set aside, leaving it open to the disciplinary authority to continue and resume the proceedings from that stage onwards.

26. We, therefore, allow the OA, and set aside the report of the Internal Complaints Committee dated 31.01.2014, and the consequential orders of punishment dated 21.06.2016 and 28.07.2016. We leave it open to the ICC to resume its proceedings without reference to the provisions of the Act 14 of 2013. This order shall not be construed as expressing any view on the truth or otherwise of the allegations made by the 3rd respondent against the applicant. The proceedings shall be resumed within four weeks from the date of receipt of this

order, and concluded within three months thereafter. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/