

**Central Administrative Tribunal
Principal Bench**

OA No.4067/2018

New Delhi, this the 25th day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Shri S.K. Tanwar
S/o Late Shri R.K. Tanwar
R/o RZ 29 C-Block, Old Roshan Pura, Najafgarh
New Delhi-110043.
Aged about 52 years
(Working as the Under Secretary in
M/o Health & Family Welfare
Nirman Bhawan, New Delhi, Group 'A') ...Applicant

(By Advocate: Shri Kumar Onkareshwar)

Versus

1. Union of India through the Secretary
Ministry of Defence
South Block, New Delhi.
2. DoP&T through the Secretary
DOP&T, North Block, New Delhi. ..Respondents

(By Advocate: Shri Hanu Bhaskar)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was working as Under Secretary in the Ministry of Defence in the year 2015. On 07.10.2015 an employee by name Ms. Priya Yadav, working in the same office, where the applicant was working submitted a complaint alleging acts of sexual

harassment against the applicant. Taking note of that, the competent authority caused a preliminary inquiry, through the Internal Complaints Committee(ICC) of the Ministry. The Committee submitted its report in December, 2015 expressing the view that the applicant had resorted to certain acts of misconduct. Taking note of the same, the President, the appointing authority of the applicant, constituted the ICC afresh, enabling it to act as the Inquiring Authority, on 06.02.2016. This was followed by issuance of a memo of charge dated 06.07.2016 wherein two articles of charge were framed. The Presenting Officer was appointed through order dated 06.07.2017. The applicant was issued a notice on 26.09.2018 to appear before the inquiring authority. This OA is filed challenging all the proceedings mentioned above.

2. The applicant contends that in its report submitted in December, 2015, the ICC has already arrived at the conclusion and further inquiry which is now being taken up, is a sheer formality. It is also stated that the prescribed procedure was not followed and the proceedings are issued in contravention of the relevant rules.

3. We heard Shri Kumar Onkareshwar, learned counsel for the applicant and Shri Hanu Bhaskar, learned counsel for the respondents at the stage of admission.

4. In the context of inquiring into the allegations of sexual harassment against an employee in any establishment or organization, a different procedure is adopted. In the light of the judgment in ***Vishaka v. State of Rajasthan & Ors.*** [(1997) 6 SCC 241] an agency known as 'Internal Complaints Committee' i.e. ICC is constituted in every department and that in turn is conferred with the status of the Inquiring Authority. Rule 14 of the CCS (CCA) Rules was also amended to that effect.

5. In the instant case, though it was competent for them to straightaway initiate disciplinary proceedings, on receipt of a complaint from a woman employee, the respondents have chosen to get the matter inquired in a preliminary manner, to be fair to him. The very fact that no witnesses were examined and only some technical verification was undertaken, discloses that the exercise was purely preliminary in nature. May be on

account of lack of experience, the members of ICC have drawn the conclusion indicating as though it is final. At the most, the report of December, 2015 can be treated as a preliminary one, without having any impact on the future course of the disciplinary proceedings.

6. The constitution of the ICC is not something which is specific to the case of the applicant. It is a continuous body. Further, the constitution of an inquiring authority before the issuance of charge sheet cannot be said to be illegal. From the sequences mentioned in Rule 14, it becomes clear that an inquiry officer can be appointed whenever the disciplinary authority proposes to initiate action against an employee and that is to be followed by the issuance of a charge memo. In the instant case, this is exactly what has happened.

7. The apprehension of the applicant that the ICC which gave the preliminary report in December, 2015 may hold the same view, is virtually alleviated on account of the fact that the ICC which is now constituted in the year 2016 is of a total different

composition. Not a single member who was part of ICC of the year 2015 is a member in the present ICC.

8. We do not find any illegality in the proceedings assailed in the OA. However, we dispose of this OA directing that no observation, made in the preliminary report of the ICC submitted in 2015 shall be treated as final and the matter shall be decided on its own merits, afresh. There shall be no order as to costs.

(Pradeep Kumar)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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