

**Central Administrative Tribunal
Principal Bench**

OA No.4403/2012

New Delhi, this the 28th day of November, 2018

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

Sh. S. K. Srivastava
Aged 48 years,
S/o Late B. S. Bhaskar
R/o CRD-II/9, Pandara Park,
New Delhi 110 003. ... Applicant.

(Applicant in person)
Vs.

Union of India through:

1. Secretary
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi 110 001.
2. Chief Commissioner of Income Tax (CCA),
C.R. Building, I.P. Estate,
New Delhi 110 002.
3. Director General of Income Tax
(Human Resources Development)
Department of Revenue,
Ministry of Finance,
Vasant Kunj, New Delhi 110 070.
4. The Complaint Committee of
Sexual Harassment through its
Member, Secretary
C/o DGIT (HRD), CBDT,
Dept. of Revenue, Delhi.
5. Sh. S. S. Rana
C/o Member (P&V)
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi 110 001.

6. Ms. Archana Ranjan
C/o Director General of Income Tax
(Human Resources Development)
Department of Revenue,
Ministry of Finance,
New Delhi 110 001.
7. Sh. B. K. Jha
C/o DIT (HRD),
C/o Director General of Income Tax
(Human Resources Development),
Department of Revenue,
Ministry of Finance,
Vasant Kunj, New Delhi 110 070.
8. Ms. Ashima Neb
C/o Addl. Director of Income Tax
(Human Resources Development),
Department of Revenue,
Ministry of Finance,
Vasant Kunj, New Delhi 110 070.
9. Ms. Sumana Sen
C/o CCIT (CCA)
New Delhi 110 002.
10. Sh. S. N. Kaul
C/o Asstt. Director of Income Tax (HRD)
(Human Resources Development),
Department of Revenue,
Ministry of Finance,
Vasant Kunj, New Delhi 110 070. Respondents.

(By Advocate : Shri Gyanendra Singh)

: O R D E R :

Justice L. Narasimha Reddy, Chairman:

The applicant is an officer of Indian Revenue Service. Disciplinary proceedings were initiated against him alleging acts of sexual harassment. As required under the amended Rule 9 of CCS (CCA) Rules, 1965, the matter was entrusted for inquiry to an Internal Complaints Committee (for short,

ICC). Here itself, needs to be mentioned that the inquiry against the applicant became the subject matter of several OAs, writ petitions and even SLPs. Ultimately, the ICC submitted a report holding that the allegations against the applicant as to sexual harassment is not proved.

2. In the context of taking further steps, an order was passed on 07.12.2012 wherein it was mentioned that the Disciplinary Authority has rejected the report of ICC which was forwarded by the Chief Commissioner of Income Tax (for short, CCIT), CCA, Delhi. In view of that development, the existing ICC constituted by the CCIT, CCA, Delhi was reconstituted and it was directed that the said ICC shall inquire into the complaints of sexual harassment against the applicant, referred to in para 1 of the order, in a time bound manner. It was also directed that the ICC shall perform its function as per the rules and the guidelines issued by the Hon'ble Supreme Court in its judgment in ***Vishaka & Ors. vs. State of Rajasthan & Ors.*** [(1997) 6 SCC 241] and ***Medha Kotwal Lele & Ors. vs. Union of India & Ors.*** [(2013) 1 SCC 297] as well as the National Commission for Women. Other directions were also issued to the ICC and the Presenting Officer. The applicant challenges the order dated 07.12.2012.

3. The applicant contends that during his tenure as Officer in the Inspection Division of CBDT, he investigated various misdeeds, referable to respondent Nos.8 & 9, who too are officers of Income Tax, and pointed out huge financial implications involved therein. He contends that the Delhi High Court took note of the same and as a counter blast to that, respondent Nos.8 & 9 made baseless and false allegations of sexual harassment, assault and molestation against him. He furnished the details of the proceedings commencing from the submission of the complaint in 2006 till the submission of the report by the ICC, and stated that the ICC has conducted a detailed inquiry and submitted the report holding that the allegation is not proved. The applicant further contends that in case the Disciplinary Authority was not satisfied with the report, it was competent for him, either to disagree, or to take further steps in accordance with Rule 15 of CCS (CCA) Rules, 1965, but it was not open for him to reject the report and then to entrust the matter for fresh inquiry to a newly constituted committee.

4. The respondents filed counter affidavit opposing the OA. They submit that certain procedural irregularities have been noticed in the proceedings of the ICC and the same warranted rejection of the report of the ICC by the

Disciplinary Authority. It is stated that no prejudice can be said to have been caused to the applicant since he would be provided adequate opportunity to defend himself.

5. We heard the applicant who argued his case in person and Shri Gyanendra Singh, learned counsel for the respondents.

6. The proceedings that were initiated against the applicant on the basis of the complaints submitted by respondent Nos.8 & 9 assumed several dimensions. The record discloses that the initiation itself was preceded by several instructions and directions from various authorities, and once they were initiated, respondent nos.8 & 9 approached the Delhi High Court complaining that they are not being proceeded with the required amount of pace. Specific directions were issued by the Delhi High Court and ultimately, the report was submitted. At one stage, the matter has drawn the attention of the Hon'ble Supreme Court also, so much so, independent efforts were made therein to verify whether any lapses have taken place in the proceedings. Passing through all these tests and filters, the ICC submitted its report.

7. A proviso is added to Rule 14 (2) of the CCS (CCA) Rules, 1965, in the year 2004 to the effect that if there

exists any complaint of sexual harassment against a government servant, the ICC established by each Ministry for enquiring into such complaints shall be deemed to be Inquiring Authority, and the report submitted by it would be the Inquiry Report, in the disciplinary proceedings.

8. Certain steps that are referred to in the impugned order need to be taken note of. It was on the direction by the CCIT, CCA through letter dated 17.10.2012 that the ICC submitted a preliminary report on 09.10.2012. The ICC named its report as 'preliminary' as desired. On realizing that there was no necessity of any preliminary report, another letter was addressed by CCIT, CCA, requiring the ICC to submit the final report. Since they did not have anything further to add, a letter was addressed by the ICC stating that the report submitted by it can be treated as final. This very unnecessary intrusion and unlawful interference by the CCIT was cited as a ground to frustrate the report of the ICC, which in fact was submitted under the lens of Delhi High Court and Supreme Court. Exercise of the power, wherever it exists, must be justified by furnishing adequate reasons.

9. Rule 15 of the Rules of 1965 empowers the disciplinary authority to disagree with the report of the Inquiry Officer, duly issuing a note of disagreement to the

employee concerned. The final decision in that behalf can be taken only after considering the explanation which the employee may offer. Another circumstance is where the Disciplinary Authority can remit the matter to the Inquiring Authority for further inquiry. In such an event, the report already submitted would remain in tact, and depending on the outcome of the further inquiry, further steps may be taken. The rejection of the report of the Inquiry Officer is totally unknown to the very Scheme under Rule 15. The letters placed before us, which are in the form of internal communication, hardly constitute any basis to sustain an otherwise untenable act.

10. It is fairly well settled that where law requires a thing to be done in a particular manner, it must be done in that manner, or not at all. Another facet is that an order passed by an authority conferred with the powers to do so, has to be sustained on the basis of the reasons contained therein, and it cannot be supplemented, either through a counter affidavit or through note on file. In his inimitable style Justice Vivian Bose held in **Commissioner Of Police, Bombay vs Gordhandas Bhanji** AIR 1952 SC 16, as under:-

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his

mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed' they must be construed objectively with reference to the language used in the order itself."

This was reiterated by the Hon'ble Supreme Court in its judgment in ***Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*** (AIR 1979 SC 851).

11. We, therefore, allow the OA and set aside the impugned order. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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