

**Central Administrative Tribunal  
Principal Bench, New Delhi**

O.A. No.2341/2013

Tuesday, this the 11<sup>th</sup> day of September, 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)**  
**Hon'ble Mr. S.N. Terdal, Member (J)**

Smt. Sushila Dabas  
r/o B-86, Pushpanjali Enclave  
Pitampura, Delhi – 34

..Applicant

(Mr. U Srivastava and Ms. Neelima Rathore, Advocates)

Versus

1. Sh. M S Kawalia  
Deputy Education Officer (Retd.), MCD  
r/o village & PO Kanjhawala

2. Smt. Yashwanti  
Principal (Retd.)  
w/o Sh. Jagbir  
r/o Vill & Post Office  
Mangol Pur Kalan, Delhi

3. North Delhi Municipal Corporation  
(Through its Commissioner)  
Dr. Shyama Prasad Mukherjee  
Civic Center, Minto Road  
New Delhi - 110 002

..Respondents

(Ms. Alka Sharma, Advocate for respondent No.3 – *Nemo* for respondent Nos. 1 & 2)

**O R D E R (ORAL)**

**Mr. K.N. Shrivastava:**

The applicant, at the relevant point of time, was working as an Assistant Teacher at M.C. Primary School, F & G Block, Sector 3, Rohini, Delhi. She alleged that she has been sexually harassed by Mr. M.S. Kawalia,

DEO. Her allegation was inquired into by Internal Complaints Committee (ICC), who, vide its Annexure A-22 report (pp. 130 – 133), recommended as under:

“1. Rs. 25,000/- to be deducted from the arrears due to Shri M.S. Kawalia, DEO (Retd.)/Rohini Zone and paid to the complainant.

2. Inquiry be conducted against School Inspector Smt. Saroj and Principal, Smt. Yashwanti for their administrative lapses in the handling of the case of the complainant.”

2. Acting on the report of ICC, the disciplinary authority, namely, the Additional Deputy Commissioner (East), vide its Annexure A-23 order dated 24.11.2009, imposed the penalty of ₹25,000/- on Mr. M.S. Kawalia and directed that the said amount shall be paid to the applicant (Mrs. Sushila Dabas). The order reads as under:-

“On the recommendations of Sexual Harassment Complaint Committee and the approval of Commissioner, MCD dated 04.10.09, a fine of Rs.25000/- be deducted from the arrears due to Sh. M.S. Kawalia, DEO (Retd.), Rohini Zone as he was found guilty in sexual harassment case of Mrs. Sushila Dabas, Teacher, M.C. Primary School, F & G Block, Sector-3, Rohini. After deducting the said amount from the arrears of Sh. M.S. Kawalia, DEO (Retd.) Rohini Zone, the same will have to be paid immediately to Mrs. Sushila Dabas, Teacher, the complainant.”

3. Mr. M.S. Kawalia challenged the Annexure A-23 order of the disciplinary authority before the Tribunal in O.A. No.725/2010, in which he did not array the applicant as a party respondent. The sole respondent in the said O.A. was the Education Department of Municipal Corporation of Delhi (MCD). The Tribunal disposed of the *ibid* O.A. vide Annexure A-1 order dated 04.10.2010; the operative part of the order reads as under:-

“7. It is our considered view that the Respondent has acted very irresponsibly and the whole enquiry and the punishment has been in total violation of the principles of natural justice. The order of punishment is quashed and set aside. The report of the Complaints Committee is also hereby quashed. We direct that the Respondent shall reimburse the amount recovered from the Applicant with simple interest of six per cent per annum within six weeks of receipt of this order. The Applicant will be entitled to the cost of litigation which we compute to be Rs.10,000/-.”

4. After coming to know of Tribunal's order dated 04.10.2010, the applicant challenged the order of the Tribunal before Hon'ble Delhi High Court in W.P. (C) No.7409/2011, which was allowed to be withdrawn by the Hon'ble High Court vide order dated 10.10.2011 with some liberty.

The order of the Hon'ble High Court reads as under:

“1. After some arguments, learned counsel for the petitioner seeks to withdraw the writ petition with liberty to raise the issue before the appropriate Forum in accordance with law and without prejudice to the contentions raised in the present writ petition.

2. The writ petition is dismissed as withdrawn with the liberty as prayed for.”

5. Availing the liberty granted by the Hon'ble High Court, the applicant approached this Tribunal in R.A. No.13/2012 seeking review of the Annexure A-1 order of the Tribunal dated 04.10.2010. The Tribunal, however, dismissed the R.A. vide Annexure A-2 order dated 17.04.2013 on the ground of limitation.

6. Through the medium of this O.A., the applicant has challenged the Annexure A-1 order of the Tribunal and has prayed for the following reliefs:-

“a) To refer the matter to Full Bench of this Hon’ble Tribunal since the impugned order was passed by the Co-ordinate Bench of equal strength;

b) Withdraw/set-aside the impugned order dated 04.10.2010 passed by this Hon’ble Tribunal at the back of the applicant, for being violative to the principle of natural justice and equity;

c) Withdraw/set-aside the order dated 17.04.2013 passed by this Hon’ble Tribunal being not maintainable and sustainable in the eyes of law.

d) direct the respondent no.3, i.e. commissioner of North Delhi Municipal Corporation to make recovery of an amount to the tune of Rs. 5 lacs from the respondent no.1 and 2 as compensation to the irreparable injuries caused to the applicant.

Or/and

e) direct the respondent no.3 to initiate disciplinary proceeding under rule 9 of CCS (Pension) Rules 1972 against the respondent no.1 Sh. M.S. Kawalia, Dy. Education Officer (Retd.), MCD, as on the day he was in service.

f) direct the respondent no.3 to initiate Disciplinary proceedings against the respondent no.2 Smt. Yashwanti a retired Principal of MC Primary School F/G block Sector-3, Rohini for the vital role she played in joint commission of the offence of sexual harassment with the applicant at her work place and also in view of the recommendations made by complaint committee of MCD for initiating Disciplinary proceeding against her, while she was in service of MCD;”

7. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties.

8. Mr. U Shrivastava, learned counsel for applicant started his arguments. When a query was put to him by the Tribunal as to the provision of law under which this O.A. has been filed, he submitted that it has been filed under Section 19 of the Administrative Tribunals Act, 1985. After going through the said Section 19, we are of the view that the reliefs claimed cannot be granted by the Tribunal. Pertinent to note that the main

relief claimed is that the Annexure A-1 order of the Tribunal should be referred to the Full Bench of the Tribunal and that the Annexure A-1 should be withdrawn and set aside.

9. The right course for the applicant could have been to challenge the Annexures A-1 & A-2 orders of the Tribunal before the Hon'ble Delhi High Court. There is no provision under the Administrative Tribunals Act, 1985 whereby an order passed by the Tribunal can be heard in appeal by another Bench of the Tribunal.

10. In the conspectus, we do not find any merit in this O.A. It is accordingly dismissed. No costs.

**( S.N. Terdal )**  
**Member (J)**

**( K.N. Shrivastava )**  
**Member (A)**

**September 11, 2018**  
/sunil/