

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00003/2018

DATED THIS THE 3rd DAY OF SEPTEMBER, 2018

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

CK.Chavan,
S/o Kheerappa Chavan,
Aged about 49 years,
working as Inspector Posts,
Indi Sub-Division,
Indi 586 209,
Residing at
C/o SM.Pattanshetti,
Extension Area, Sindgi Road,
Indi 586 209,

APPLICANT

(By Shri AR.Holla..... Advocate)

vs.

1.Union of India,
By Secretary,
Department of Posts,
Dak Bhavan,
New Delhi – 110 001.

2.The Chief Post Master General,
Karnataka Circle,
Bengalore 560 001

3.The Director of Postal Services,
Office of the Postmaster General,
N K Region,
Dharwad-580 001.

3.The Senior Superintendent of Post Offices,
Kalaburgi Division,
Kalaburgi 585 101.

RESPONDENTS

(By Shri VN.Holla ... Sr. Panel Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

1. Heard. After the Vishaka case of the Hon'ble Apex Court, the sexual harassment at work place became a vocal part of the issue. We have handled this issue in many cases and found that at least in some cases victimization cannot be ruled out. The way in which these rules are formulated had ignored the provisions of Article 20(3) and had created a platform for acute victimization against the accused in sexual harassment complaint. In this case we may quote from page 15 of the Committee report in which at clause 6 the version of Ms.Kanchana, the complainant is recorded. We quote from it fully:-

“(6)Ms.Kanchana, BPM, Devatkal Bo a/w
Kumbarpet SO (The complainant)

The complainant appeared before the committee for the first time on 25.9.2013 at Gulbarga and deposed her statement and narrated the whole incidents of her case. She informed the committee that due to societal and family pressure she could not attend the previous enquiries held by the committee at Bangalore. The committee observed that the complainant was in disturbed mood and scared of Shri Chavan. But she answered to the queries raised by the committee members with firm mind. She produced before the committee all the available documents with her like hospitalization bills, Doctor's prescription, official records etc., to prove that allegations made by her against Shri Chavan are true. She also showed the injury marks on her body caused during the day of incident. The committee did not notice any reason to suspect that the complainant has lodged a false complaint and it is a concocted story. The reason put forth by the complainant for withdrawing the police case appears to be genuine. As she is a young unmarried girl, there must have been pressure on her from family and society not to pursue the case further. As the

complainant belongs to a respectable family, she did not digest the shame she had undergone because of this incident, she withdrew the complaint given to the Police and insisted the committee not to pursue the case further. At the same time, she requested the committee to bestow her justice in the case and reimbursement of all the medical expenses she incurred due to her hospitalisation.”

2. The next one of note is in clause 7 & 8 of the report which we quote below:-

“(7) Shri Chavan,IP Sedam Sub division

Shri Chavan appeared before the committee during sitting held at Bangalore on 11.12.12 and also at Gulbarga on 25.9.2013. He explained that due to threat calls from outsiders after filing of police complaint against him by the complainant, he went absconding. The respondent stated that he visited Budihal BO on 30.5.2012 at around 11.30 AM in c/w enquiry into a RPLI claim case and since the BO was locked and the party was not in station he left Budihal BO at around 12.30/1.PM. He denied to have visited the Devatkal BO on 30.5.2012 and 1.6.2012. In his opinion the complainant might have filed complaint against him due to political and service union's pressure. He also stated that there was a proposal for revision of mail arrangement of the area and Devatkal BO has less workload. On knowing about this proposal for revision of mail arrangement she might have filed a false complaint against him as a blackmail tactics. The main contention of the respondent in the case is that there is no entry of his visit to Devatkal BO on 30.5.2012 and 1.6.2012 in his fortnightly diary and he wants to take Shelter of this to deny his involvement in the case. But, the fact is that he could not produce any documentary evidence to prove his visit to Budihal BO on 30.5.2012. Moreover the fortnightly diary is prepared by the officer himself and to cover up his Devatkal BO he must have shown his movements to Budihal on the said date. For his visit to Budihal BO he has not produced any evidence like settlement of claim case or visit report etc. Hence visiting Devatkal BO purely on personal reasons on 30.5.2012 and

1.6.2012 cannot be ruled out. His contention that this complaint is filed to prevent him from him implementing the new mail arrangement does not have any support or ground. If that is the case, then why the complainant went to the extent of consuming poison? The committee cannot believe that a lady will consume poison and put her life into risk just to avoid extra work load. The fact of her getting admitted into hospital for poisoning is proved beyond doubt. It is also true that a Police case was registered about this case even though it was withdrawn later. The committee is not convinced with the explanation offered by the respondent for not visiting the hospital when one of his BPMs was hospitalised for suicidal attempt. He also could not put forth any convincing reason for absconding after filing Police complaint against him. If he is innocent in the case, he would have behaved more responsibly after filing complaint against him. His act of putting pressure on the witnesses to turn hostile in the case proves that there is truth in the claim of the complainant.

(8)A confronting enquiry was also held between the complainant and the respondent on 25.9.2013. Both the complainant and the respondent stuck to the statements given earlier. The respondent denied to have visited the Devatkal BO on 30.5.2012 and 1.6.2012. The respondent contended that there is no entry in his fortnightly diary for having visited Devatkal BO on 30.5.2012 or 1.6.2012. The complainant contended that Shri CK.Chavan visited Devatkal BO on 30.5.2012 and 1.6.2012 and harassed her for sexual favour, injured her with cigarette butt and administered poison to her on 1.6.2012. The respondent denied all the allegations. Both admitted that they used to contact each other over mobile phone/SMS for official purpose. Shri CK.Chavan contended that as there was a proposal for revising the mail conveyance arrangement of Devatkal BO, this complaint might have been filed. The complainant replied that, the revised mail arrangement has been implemented very recently and this aspect has nothing to do with her case. Shri CK.Chavan contended that due to personal reason she might have consumed poison and some people might have instigated her to file complaint against him and named MR. D.Kalyan

Rao, the then SSPO Gulbarga is behind the complaint. The complainant denied the above allegations. The complainant expressed that she is no more interested in continuing with the case and requested the committee to ensure that she is not harassed further by Shri CK.Chavan in future.

The committee observed that both the complainant and respondent stuck to their statement given individually and not ready to reveal any new facts in the case. After much persuasion, the respondent brought in the name of Shri D.Kalyan Rao, the then SSPOs Gulbarga division as the conspirator in the case. But this allegation is not supported by any evidence, which seems to be an afterthought by the respondent to cover up his mistakes. He is not supposed to interfere in the personal life of his subordinates.”

3. This in fact is the crux of the story. Therefore, what is the fundamental duty of the adjudicator? Relating to the amendment required in the criminal jurisdiction a Committee under Hon'ble Justice VS.Mallimath was appointed and the Committee had considered this issue in its all aspects. **The fundamental duty of the adjudicator is to find the Truth.** That being so what is our duty. We will come to that at a later stage.

4. At this point of time a serious technical issue is raised by Shri AR.Holla that the Committee was headed by a Post Master General. But then we find that under rules a woman has to head the Committee. We have held in other cases that what may be the source of information to the Disciplinary Authority , the Disciplinary Authority is an independent person and has to take decision accordingly. But, Shri AR.Holla would submit that the Disciplinary Authority being only Superintendent of Post Offices he will not be in a position to ignore the

findings of the Committee headed by such a person. He also raises another thing that one of the Directors of the Postal service was also Member of the Committee and he in another position as an Appellate Authority had enhanced the punishment. Therefore, it is submitted that he lacks objectivity when he sat as the Appellate Authority. Therefore, we had gone with anxious eyes into the complaint, the revelations, admissions and conflicts in evidence. We find that even though the applicant contents that the complaint against him had been withdrawn, the reason for such withdrawal is not that there is a factual infirmity but being a member of a respectable family the lady is unable to go ahead with charges as this. We find nothing untoward in this and no gain for the applicant.

5. We have also carefully gone through the contents raised by the applicant in his defence in paragraph 7 & 8 of the Committee Report. An allegation has been made that for political enmity and service Union rivalry such a complaint is made. In some instances we have found it is also possible and we find that applicant had given the name of one person on whose instance this issue was generated. The name of Shri D.Kalyan Rao, the then SSPOs Gulbarga division is given as the conspirator and that an opportunity arose for the applicant to examine him and bring out contradictory evidence which he did not of course avail. When you create an alibi for yourself, it is apparent on you the burden of proving it, once you have made it, to prove it as an adverse perception has to be a necessary burden on you again and

again. **That being so the allegation against the applicant, notwithstanding the withdrawal by the complainant stands substantiated** and there is nothing more in the Committee's findings other than the substantiation which was initiated by the original complainant. By mere withdrawal the right of the employer is not diminished on that infraction has more effect on governance than on the victim.

6. Therefore, what will be status of the technical lacune ? The admission and the alibi which was unable to be proven by the applicant had created new relevance for the original complaint against him. Therefore, the sexual harassment committee's findings are not vitiated in any manner because applicant had been given appropriate and adequate opportunity which he tried to avail but could not establish. That being so the charges against the applicant stands proved. In the light of the charges being proven, the issue of quantum of punishment was examined. We find that much more sterner and stringent punishment could have been imposed on the applicant by the respondents. But for some reason or the other they have not done so. We do not want to go into whether the punishment could have been enhanced or not at this juncture. If it is the failure on the part of the respondents, let it be so. But the current punishment imposed on the applicant is adequate as it is imposed by the Appellate Authority. Even though under the rules and niceties of adjudication the punishment

ought to have been more also. Therefore, we hold that there is no cause for the applicant. No merit in the OA. OA dismissed. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the Applicant in OA.No.3/2018

Annexure A-1: Copy of letter dated 5.11.2013 with proceedings dated 25.9.2013

Annexure A-2: Copy of enquiry report dated 14.2.2014.

Annexure A-3: Copy of letter dated 18.6.2014.

Annexure A-4: Copy of representation dated 12.7.2014.

Annexure A-5: Copy of Order dated 19.8.2014.

Annexure A-6: Copy of notice dated 13.12.2014.

Annexure A-7: Copy of letter dated 29.12.2014.

Annexure A-8: Copy of representation dated 12.1.2015.

Annexure A-9: Copy of Order dated 30.3.2015

Annexure A-10: Copy of applicant's revision petition dated 15.10.2015.

Annexure A-11: Copy of Order dated 13.11.2017

Annexures referred to by the Respondents in the Reply Statement

Annexure R-1: Copy of complaint dated 11.6.2012.

Annexure R-2: Copy of Preliminary enquiry report

Annexure R-3: Copy of committee dated 29.4.2018.

Annexures referred in rejoinder

Annexure RA-4: Copy of DOPT letter dated 31.1.2018.

Annexure RA-5: Copy of PAO (IRLA)s letter dated 8.2.2018.

Annexure RA-6: Copy of CAT Bangalore Order dated 4.1.2018 in CP.54/2017

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