

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH****ORIGINAL APPLICATION NO.170/00453/2016****DATED THIS THE 17th DAY OF APRIL, 2018****HON'BLE DR.K.B.SURESH, MEMBER (J)****HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)**

Dr.Arish M.K.Sherwani
S/o Dr.Ashfaq M.K.Sherwani
Aged about 39 years
Working as Reader & HOD
Tahaffuzi Wa Samaji Tib
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.
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Ranganath Regency, 2nd Main
12th Cross, RHCH Nagar
Bangalore-560 091.

...Applicant

(By Advocate Sri B.B.Bajentri)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Health & Family Welfare
Services, Government of India
New Delhi.
2. The Governing Body
Represented by its President
National Institute of Unani Medicine
Kattigepalya, Magadi Main Road
Bangalore-560 091.
3. The Director
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.
4. Ms.Umme Kulsoom
Aged Major
PG Scholar of Batch 2014-15
Department of Tahaffuzi wa Samaji Tib
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.
5. Dr.Zarnigar

Lecturer
Department of Tahaffuzi wa Samaji Tib
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.

6. Dr.Nasrin Jahan
Lecturer Department of Ilmuladvia (Pharmacology)
Member of Sexual Harassment Committee
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.

7. Dr.Wasim
Lecturer Department of Kuliyat
Member of Sexual Harassment Committee
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.

8. Dr.Shariq Shamsi
Lecturer Department of Ilmul Saidla
Member of Sexual Harassment Committee
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.

9. Ms.Nagarathna.R.
Advocate, Member of Sexual Harassment Committee
National Institute of Unani Medicine
Kottigepalya, Magadi Main Road
Bangalore-560 091.

...Respondents

(By Advocate Shri Veerendra Sharma)

ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant aggrieved by the imposition of penalty vide order dtd.14.03.2016 has filed the present OA seeking the quashing of the said order. According to the applicant, he joined the respondent institution as Lecturer on 18.08.2004 through a selection process under direct recruitment and he was promoted to the post of Reader in the Department Tahaffuz-wa.samaji Tib vide order dtd.22.3.2012(Annexure-A2). The 4th respondent is a Post Graduate Student doing her research under the applicant. She submitted two representations on 08.04.2015, one seeking change of the guide on the

ground that she is not comfortable with the applicant and she does not want to work under him and another making allegations of sexual harassment(Annexures-A6 & A7). The applicant was issued with a memorandum by the 3rd respondent on 13.4.2015(Annexure-A8) seeking comments on both the representations submitted by the 4th respondent. Accordingly, the applicant submitted his reply on 14.04.2015(Annexure-A9). The applicant states that the 3rd respondent, without considering the reply submitted by him proceeded to entrust the representations seeking change of guide to the Chairman of the Women Grievances Redressal Committee, treating as a complaint of sexual harassment. Thereafter, the Chairperson of the Committee issued a notice dtd.18.5.2015(Annexure-A10) asking the applicant to appear before the Committee on 25.5.2015. A further notice was issued asking the applicant to appear before the Committee on 3.6.2015(Annexure-A11). On 17.6.2015, the Chairperson of the Committee submitted a report to the 3rd respondent saying that the complaint is true. However the 4th respondent(complainant) does not want any action against the applicant and her request is only to change the guide. The guide having been changed, the applicant be let off with warning(Annexure-A12).

2. According to the applicant, the 3rd respondent issued a memorandum on 20.10.2015 enclosing copy of the report dtd.16.6.2015 along with the statement deposed by the complainant and the statement of applicant and directing him to submit his reply within 10 days. After seeking time and also requesting for certain documents to enable him to submit his reply, the applicant submitted a detailed reply on 29.10.2015. In his reply, he had contended that the Committee has not recommended any action against him. Further, the Committee so constituted was not proper as the Chairperson of the Committee is a junior working under him. The issue relating to change of

guide has been misinterpreted by the 3rd respondent as a complaint. The Committee has recorded the statement of the complainant without the presence of the applicant and no opportunity was provided to cross-examine the complainant etc. The applicant further contends that without considering the contention made by the applicant in his representation, the 2nd respondent vide impugned order dtd.14.3.2016(Annexure-A21) imposed a major penalty of reducing the pay of the applicant by three stages from Rs.32660/- to Rs.30600/- in the time scale of pay of Rs.15600-39100 for a period of five years with effect from 25.2.2016. Further he has been denied increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. Aggrieved by the said order, the applicant has filed the present OA seeking the following relief:

“Call for the records relating to the issue of the impugned order bearing No.R.3015/18/2015-NI(NIUM) dated 14.03.2016 passed by the 2nd respondent vide Annexure-A21 and after perusal set aside the same.”

3. The applicant in the OA has referred to Rule 14(2) of the CCS(CCA) Rules, 1965 saying that the said Committee should have held the enquiry in accordance with the procedure laid down in the said rules. He also referred to Section 13(3)(i) of the Sexual Harassment of Woman at workplace(Prevention, Prohibition and Redressal) Act, 2013 which stipulates that the Committee shall recommend to the employer or the District Officer to take action for sexual harassment as misconduct in accordance with service rules. He submitted that the Committee had come to the conclusion that the applicant may be warned by the Committee and let off and did not recommend for imposing any punishment. Therefore, imposition of a major punishment by the 2nd respondent based on the report is clearly arbitrary and unjustified. He further submitted that the Committee constituted by the 3rd

respondent was not as per rules. The Chairperson was junior to him and except an Advocate all the remaining members of the Committee were juniors to him. Therefore, the action initiated based on report of such a committee is vitiated. He further mentioned that the applicant was not permitted to cross-examine the complainant nor the deposition of the complainant was recorded in his presence. Therefore, he has been denied a reasonable opportunity for defending himself in the enquiry. He further mentioned that the complainant only sought change of guide, since she does not like the topic that was allotted by the Committee for research. Even before the Committee, the 4th respondent has suggested that she would be satisfied if the change of guide is accepted. Therefore, turning the matter in to a case of sexual harassment appears to be motivated.

4. The applicant has also mentioned that when he was denied promotion to the post of Professor though he was qualified and eligible as per rules, he had approached this Tribunal in OA.No.1324/2015 and the Tribunal in its order dtd.29.2.2016 had directed the 3rd respondent to fill up the post in accordance with recruitment rules. The Chairperson of the Committee, being one of the eligible candidate for selection under Direct Recruitment has submitted her report with the sole intention of victimizing the applicant so that by virtue of the proceedings, the applicant's chances for promotion as Professor is curtailed. Since by the impugned order of penalty, the applicant will be denied for promotion for five years, he prayed for granting the relief as sought by him.
5. The respondents in their reply statement raised a preliminary objection saying that the applicant has not exhausted the alternate remedy available to him. He could have filed an appeal before the appellate authority against the orders of the disciplinary authority. Therefore, in approaching the Tribunal without

exhausting the alternate remedy available to him should result in dismissal of the OA on this ground alone. The respondents further submitted that the 4th respondent(complainant) in her representation dtd.6.4.2015 sought to change the guide as well as alleged sexual harassment by the applicant. Thereafter a memorandum was issued on the applicant enclosing copies of both the representations. The applicant in his reply dtd.14.4.2015 did not deny the allegations made by the 4th respondent and simply mentioned it as a misinterpretation. Thereafter, the matter was referred to the Sexual Harassment Committee to conduct an enquiry and submit its report. The Chairperson vide letter dtd.3.6.2015 asked the applicant to appear before the Committee for enquiry. The applicant participated in the enquiry without a murmur or complaints regarding Members of the Committee. The Committee submitted its inquiry report which was duly forwarded by the Chairperson of the Committee confirming the charges levelled against the applicant as proved and also stating that the complainant does not want any action against the applicant and he be let off with a warning. During the process of enquiry, nowhere the applicant established that he has not involved in that act. In fact he has admitted that his remarks cannot be taken in that sense. The respondents further mentioned that the inquiry officer can submit its report either by proving the charges or holding it as not proved. The Committee does not enjoy any powers to suggest whether penalty is to be imposed/quantum of penalty. Based on the Committee's report, the competent authority has to take action as per rule. Thereafter the report along with statement of complainant was forwarded to the applicant asking for his representation on the same. The competent authority after examining the relevant records has imposed a major penalty. As per rule, the applicant could have preferred an appeal to the competent authority. But without following the same, the applicant rushed to

the Tribunal.

6. The respondents further mentioned that the applicant having appeared before the Committee cannot question the composition of the Committee. The Committee was constituted as per DOPT order dtd.21.7.2009. The law never stipulated that the Chairperson of the Committee or its members should have to be senior to the delinquent. The applicant was also given reasonable opportunity and there is no denial of natural justice in this case.
7. In regard to the issue raised by the applicant regarding inviting applications for various posts, the respondents submit that the last date for submission of applications was 19.4.2015. Even the Chairperson of the Committee has submitted her application on 17.4.2015. The 4th respondent has filed her representation prior to that on 6.4.2015. The applicant was aware that the Chairperson is also one of the candidate for the post of Professor. If he was aggrieved by this fact, he could have raised his objection at the earliest point of time or at least before participating in the inquiry. Therefore, making allegations that the Chairperson with a motivated intention has given the said report is untenable. The report in fact was given by a Committee consisting of four internal members and one person from the NGO and was an unanimous one. Hence the allegation made by the applicant against Chairperson is based on an afterthought. Therefore, the respondents contended that the applicant is not entitled to any relief.
8. The applicant has filed a rejoinder in which he contended that there is clear violation of the procedure prescribed under CCS(CCA) Rules, 1965 in conducting the enquiry. Except recording the statement of the applicant, no opportunity was given by the Committee and hence the procedure prescribed under the CCS(CCA) Rules, 1965 has not been followed. Further the

disciplinary authority having differed from the view of the finding of the enquiry, has proceeded to impose a major penalty without issuing any notice mentioning his disagreement with the views of the inquiry committee. Such being the case, exhausting the alternative remedy may not be required as held by the Hon'ble Apex Court in the judgment reported in *2014(1) SCC page 603 (CAT v/s Chabildas Agarwal)*. He further mentioned that in his reply to the original complaint, he clearly mentioned that the complaint is falsely misinterpreted and hence he had denied the charges. He further mentioned that only after attending the enquiry, he came to know about the composition of the Committee and since he was called only once to appear before the Committee to record his statement, he did not have any opportunity to know the constitution of Committee itself to object to the same. He raised the objection in his reply to the report of the Committee. He further submitted that the contention made by him in his detailed reply dtd.21.11.2015 was never considered while imposing the penalty and hence the impugned order can be stated as erroneous due to non-application of mind. He further mentioned that the 2nd respondent had forwarded the proposal for imposing the penalty to the 1st respondent and penalty was imposed on 14.3.2016. However, his reply dtd.21.11.2015 was never forwarded to the 1st respondent for consideration. Moreover, the appointing authority of the applicant is the governing body of the 2nd respondent. The imposition of major penalty on the applicant was approved by the governing body in its meeting held on 1.4.2016. Therefore, the impugned order of penalty imposed by the disciplinary authority without approval of the governing body is erroneous and is liable to be set aside.

9. The respondents have filed an additional reply statement in which they have reiterated most of the facts already made in the reply statement. They highlighted the fact that the applicant did not even on a single occasion deny

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the allegation made by the complainant against him. Therefore, he had impliedly accepted the statements made by the complainant. Hence turning around to claim that no opportunity was given to him is only an afterthought. Further the order dtd.14.5.2013 constituting the Committee was circulated by the Institute to all the members and also bears the signature of the applicant. Therefore, the contention that he is not aware of the constitution of committee is also incorrect. The applicant was provided all the opportunities to defend himself and counter the statement of the complainant. They further mentioned that the Committee has only investigative or fact finding powers. The result or the conclusion of the Committee is to be forwarded to the disciplinary authority to take action as per law. The Committee is not vested with the authority of advising or prescribing the punishment. Therefore, the recommendation of the Committee is not binding on the disciplinary authority who has to decide on the nature and quantum of the punishment to be imposed. They further mentioned that the appointing authority is the President of the Governing Body and not the Governing Body itself. Therefore, the President of the Governing Body being the appointing authority has imposed the penalty with the powers delegated to him. The question of obtaining the approval of the governing body does not arise. The Governing Body will be the Appellate Authority in the instant case. Therefore, there is no merit in the contention made by the applicant.

10. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while emphasising the points made in the OA and the rejoinder, highlighted the fact of the enquiry Committee was comprised of Members junior to the applicant and he was not also allowed an opportunity to cross-examine the complainant. Further, the recommendation of the Committee for closing the case with a warning and it also stated that the

intention of the complainant was only change of guide which was allowed. Hence the action of the disciplinary authority in imposing a major penalty is grossly unjustified.

11. The Learned Counsel for the respondents, on the other hand, while reiterating the submission made in the reply statement and the additional reply, submitted that the applicant has not exhausted the available remedies. He should have preferred an appeal if he was dissatisfied with the order of disciplinary authority rather than approaching the Tribunal straightaway. He further mentioned that the applicant had never questioned the authority of the Committee. He duly appeared before them and has also supported the recommendation of the committee for taking a lenient view. Therefore simultaneously questioning the composition of the Committee seems an afterthought only. If he was really aggrieved by the composition of the Committee, he should have raised the issue prior to appearing before the Committee and not after that. He further mentioned that the Committee is not authorised to make recommendation regarding the penalty and it is left to the disciplinary authority to take a final view. Since the committee held the complaint as proved, the disciplinary authority has imposed the penalty after considering the entire facts. Therefore, there is no violation of the procedure and a proper view was taken by the disciplinary authority in the matter.

12. We have carefully considered the facts of the case and submissions made by either side. It is clearly evident from the records that the respondent No.4 had made two representations, one seeking change of guide while saying that she is very much uncomfortable with the guide and do not want to work under him. In the other complaint regarding the guide, she has elaborated various instances which amount to a case of sexual harassment. Therefore, the action

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on the part of the 3rd respondent in obtaining comments of the applicant on the representations and thereafter making a reference to the Sexual Harassment Committee appears to us as justified. The main issue raised in this case whether proper enquiry was conducted by the Sexual Harassment Committee and whether all the required procedure was followed leading to the imposition of penalty by the disciplinary authority.

13. The applicant had raised an issue regarding composition of the Committee saying that the Chairperson and other official members except the Member of NGO are all junior to him and therefore, conduct of an enquiry by such a Committee is unjustified and in violation of the rules. It however appears from the records that the composition of Sexual Harassment Committee by the respondent institute vide OM dtd.14.5.2013 was circulated to all the Members and the applicant was aware of the same. Moreover the communication addressed to him asking him to appear before the Women's Grievances Redressal Committee for prevention of Sexual Harassment of Women at Work Place was issued by the Chairperson of the Committee who, according to the applicant, is junior to him. Pursuant to the said notice on 18.5.2015 and 3.6.2015, the applicant appeared before the Committee who recorded his evidence. If the applicant was really aggrieved by the composition of the Committee, he ought to have raised the issue immediately on receipt of the notice signed by the Chairperson of the Committee and prior to his appearing before the Committee. He cannot plead his ignorance about the composition of the Committee when he was aware of the order issued on composition of the Committee and was asked by the Chairperson of the Committee to appear before the said Committee. Therefore, the point raised by the applicant about the composition of the Committee and the allegation that the Chairperson might have vested interest does not appear to us as justified. It is also to be

noted that the applicant have made references to the report of the Committee specially its observation that the complainant does not want any action against the applicant and the applicant be warned. If the applicant was really aggrieved by the composition of the Committee and the enquiry itself then he should have questioned its report itself rather than relying on the recommendation in the report for taking a lenient view. Therefore, in our view the contention raised by the applicant against the composition of the Committee does not have any merit.

14. We note from the records that the Committee held three sittings for enquiry purpose and recorded statement of the complainant and the applicant separately and collected evidences relevant to the complaint. During the course of such enquiry, the statement of both the complainant and also the person complained against (applicant) should have been taken in presence of the other person. The applicant should have been given an opportunity to cross-examine the complainant. We have also gone through the statement of respondent No.4 and the applicant. It seems that there are other two research scholars under the applicant and one had completed research earlier. They could have also been examined by the Committee to ascertain the behaviour of the applicant and whether he made similar remarks to others. It also appears that the complainant had mentioned in her statement as having shared her experiences with her seniors but none of the seniors have been examined by the Committee to examine the veracity of the statement made by the complainant. The report of the Complaint Committee was also very cryptic and stated as follows:

Complainant

Umme Kulsoom

Respondent

Arish Mohd. Khan Sherwani

Procedure followed

1. Accepted the complaint.
2. Issued notice to the respondent.
3. Committee sittings: Three times for enquiry purpose.
4. Taken/recorded the statements of complainant and respondent.
5. Collected the evidence relevant to the complaint.

Action taken

- i. It is found by the committee that the complaint is true.
 - ii. Evidences proved the complaint. (biometric attendance proved the late going of both).
- iii. Responses of the respondent also revealed the same i.e. indirectly accepted.
 - iv. Since the complainant does not want any action against the respondent and her request is only to change the guide.
 - v. Accordingly the guide has been changed, also the respondent was warned by the committee if the same thing repeats, severe action will be taken against him in accordance with law.

Committee members

15. We are surprised to note that simply by taking recorded statement of the complainant and the person complained against (applicant), the Committee held the complaint as true without explaining as to how they arrived at such a conclusion. The complainant had made serious allegation referring to the remarks allegedly made by the applicant. Hence for the Committee to conclude that her request was only to change the guide also does not appear to have any basis. We also note that no opportunity was given to the applicant to cross-examine the complainant. Not providing an opportunity to the applicant to cross-examine would clearly amount to denial of natural justice. In all fairness, the Committee should have provided an opportunity to the applicant to cross-examine the complainant. Thereafter they should have analysed the evidences and the contentions made by both sides in detail in their report and elaborate the grounds/reasons to arrive at their conclusion. Therefore, we hold that the report of the inquiry Committee which is quite cryptic and does not cite any reasons for arriving at their finding is unjustified

and cannot be sustained.

16. The applicant had raised a contention that the disciplinary authority should have gone by the recommendation of the Committee or would have given a disagreement note about its recommendation if they intend to impose a major penalty. On this issue, we are inclined to accept the contention of the respondents that the inquiry committee is only to give its findings and has no authority to make any recommendation regarding any penalty. Any disagreement note is required to be given only if the disciplinary authority is in disagreement with the finding of the enquiry authority. The disciplinary authority has to take a final view regarding imposition of penalty based on the inquiry report and the response made thereto. Hence, the issue raised by the applicant regarding disagreement note by disciplinary authority has no basis. Similarly we note that the disciplinary authority has imposed the penalty. The approval of Governing Body is not required as rightly stated by the respondents.

17. The respondents have raised the contention that the applicant should have exhausted the available remedies like filing appeal to the appellate authority instead of approaching the Tribunal straightaway. It is true that the applicant could have availed the opportunity of filing appeal before the appellate authority but that does not bar the applicant to approach the Tribunal in case he is of the view that in the totality of circumstances, he may not get any justice.

18. In the light of the discussion made in the preceding paras and taking into consideration the fact that the applicant was not given an opportunity during the enquiry to cross-examine the complainant which amounts to denial of natural justice as well as the fact that the report of the inquiry Committee is

quite cryptic without any analysis and basis for arriving at their conclusion, we hold that the report of the inquiry Committee is erroneous and hence the same is quashed. Since the report of the Committee stands quashed, any penalty imposed based on the said report also cannot be sustained. Therefore, the order dtd.14.03.2016 issued by the disciplinary authority imposing a major penalty on the applicant is quashed and set aside. The respondents shall however be at liberty to get the matter enquired into afresh by the Women's Grievances Redressal Committee if they so decide. In that event, the Committee shall follow the required procedure and also hold the enquiry by giving full opportunity to the applicant to defend himself. The disciplinary authority can take further action thereafter in accordance with law.

19. The OA is accordingly allowed in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00453/2016

- Annexure A1: Copy of the appointment order dated 22.9.04
- Annexure A2: Copy of the memorandum dated 22.3.12
- Annexure A3: Copy of the order passed in 1324/15
- Annexure A4: Extract copy of the act
- Annexure A5: Copy of the official memorandum dated 27.11.2014
- Annexure A6: Copy of the representation
- Annexure A7: Copy of the complaint regarding change of guide dated 8.4.2015
- Annexure A8: Copy of the memorandum dated 13.4.15
- Annexure A9: Copy of the memorandum dated 24.4.15
- Annexure A10: Copy of the notice dated 18.5.2015
- Annexure A11: Copy of the notice dated 3.6.2015
- Annexure A12: Copy of the report dated 16.6.2015 with covering letter
- Annexure A13: Copy of the memorandum dated 20.10.2015
- Annexure A14: Copy of the deposition of the complainant
- Annexure A15: Copy of the deposition of the applicant

Annexure A16: Copy of the representation dated 29.10.2015
Annexure A17: Copy of the representation dated 3.11.15
Annexure A18: Copy of the memorandum dated 4.11.15
Annexure A19: Copy of the representation dated 21.11.15
Annexure A20: Copy of the reply dated 21.11.2015
Annexure A21: Copy of the impugned order dated 14.3.2016

Annexures with reply statement filed by R2 & 3:

Annexure-A: Copy of notice dtd.10.5.2016
Annexure-B: Copy of letter dtd.6.4.2015 by R4
Annexure-C: Copy of representation dtd.6.4.2015 by R4
Annexure-D: Copy of memorandum dtd.13.04.2015
Annexure-E: Copy of representation dtd.14.04.2015 of the applicant
Annexure-F: Copy of memorandum dtd.17.04.2015
Annexure-G: Copy of office memorandum dtd.14.05.2013
Annexure-H: Copy of statement of R4
Annexure-I: Copy of statement of applicant & Rules & Regulations & OM in regard
to dealing with harassment cases

Annexures with rejoinder:

Annexure-A22: A copy of the proceedings of the meeting of the Governing body
dated 01.04.2016

Annexures with reply to rejoinder:

-Nil-
