

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00291/2017

Chandigarh, this the 30th day of January, 2018

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Dr. Parmod Kumar Gupta son of Sh. Nirmal Kumar Gupta, aged 42 years, Associate Professor, Department of Biostatistics, PGIMER, Chandigarh

.....APPLICANT

Argued by: Mr. Surjeet Singh, Sr. Advocate with Ms. Rajni Paul, Advocate

VERSUS

1. Post Graduate Institute of Medical Education & Research, Chandigarh through its Director.
2. Director, Post Graduate Institute of Medical Education & Research, Chandigarh.

....RESPONDENTS

Argued by: Mr. D.R. Sharma, Advocate

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in the instant Original Application (O.A.), instituted by applicant Dr. Parmod Kumar Gupta, s/o Sh. Nirmal Kumar Gupta, Associate Professor, Department of Biostatistics, PGIMER, Chandigarh is to the impugned Memorandums/Articles of Charges dated 11.2.2017 (Annexure A-1) and 25.02.2017 (Annexure A-1A), whereby he was charge-sheeted and a regular department enquiry was proposed to be held, by the Director, PGIMER, Chandigarh.

2. The matrix of the facts and material, culminating in the commencement of, relevant for disposal of the core controversy, involved in the instant O.A., and expository from the record, is that the applicant is working as an Associate Professor in the

Department of Biostatistics, Post Graduate Institute of Medical Science and Research (for brevity PGIMER) Chandigarh. He is stated to be due for promotion to the post of Additional Professor. Certain contractual members were stated to have made complaints with regard to mis-behaviour and mis-conduct on his part. A preliminary inquiry was conducted by a committee headed by Professor A. Rajwanshi, HOD Cytology. The committee came to the conclusion that the allegations of the complaint made against the applicant are true, and recommended proper inquiry, under Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter to be referred as CCS(CCA) Rules). As a consequence thereof, the applicant was charge-sheeted, vide the impugned Memorandums/Articles of Charge dated 11.02.2017 and 25.02.2017(Annexure A-1 and A-1A), in the following manner:-

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Annexure -I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST DR. PRAMOD KUMAR GUPTA, ASSOCIATE PROFESSOR, DEPARTMENT OF BIOSTATISTICS, PGIMER, CHANDIGARH.

Dr. Pramod Kumar Gupta while functioning as Associate Professor, Department of Biostatistics, PGIMER, Chandigarh has misconducted himself by using abusive and vulgar language with female staff of the department of Biostatistics. As per provision of CCS (Conduct) Rules, 1964, every Government servant shall at all times maintain devotion to duty; do nothing which is unbecoming of a Government servant, shall not act in a discourteous manner; shall not indulge in any act of sexual harassment of any woman at her work place and any other unwell physical, verbal, non verbal conduct of a sexual nature.

By acting in such a manner, he has, thus, failed to maintain devotion to duty and acting in a manner unbecoming of a Government servant. His conduct is thereby in contravention to the provisions of Rule 3(1) (iii), 3A(a) and 3C(1) of CCS (Conduct) Rules, 1964.

ANNEXURE -II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST DR. PRAMOD KUMAR GUPTA, ASSOCIATE PROFESSOR, DEPARTMENT OF BIOSTATISTICS, PGIMER, CHANDIGARH

Prof. Rakesh Sehgal, HOD, Biostatistics vide his letter No.16/14, CID No. 000023 dated 02.01.2016 and No. Parasit/16/227 CID No. 000219 dated 06.02.2016 has forwarded the complaints dated 17.12.2015 & 06.02.2016 made by Ms. Preeti Bhatnagar, LDC, Ms.

Jaspreet Kaur, Stenographer, Mr. Pradeep Toki, LDC (all working on contract) and also the complaint dated 27.01.2016 of Mrs. Chinu Sachdeva, Data Entry Operator, Department of Biostatistics against Dr. Pramod K. Gupta. They all have stated that Dr. P.K. Gupta has mentally harassed them and used abusive and vulgar language with female staff of the department and requested to investigate the matter and transfer them from the Department of Biostatistics. The H.O.D., Biostatistics vide letter No. Biostat/PGI/16/31 dated 15.02.2016 has again forwarded the complaints dated 15.02.2016 made by the above staff regarding locking of rooms and harassing the staff of the department and not allowing them to work in the department. A fact finding committee under the Chairmanship of Prof. A. Rajwanshi, Head, Department of Cytology was constituted to inquire into the complaints made by the contractual staff against Dr. P.K. Gupta vide office order dated 08.02.2016. The Chairman of the Committee vide his letter No. C&G PATH/364 dated 04.11.2016 has submitted the inquiry report with the following conclusion:

“After giving thoughtful and due consideration to the available facts and documents, the Committee is of the collective opinion that the complaints made against Dr. Pramod K. Gupta are found true and the Committee recommended a proper inquiry under CCS rules.”

By acting in such a manner, he has, thus, failed to maintain devotion to duty; acting in a manner unbecoming of a responsible government servant, in the performance of his official duties, acted in a discourteous manner, and indulged in act of sexual harassment of woman at her work place. His conduct is thereby in contravention to the provisions of Rule 3(1) (iii), 3A (a) and 3 C(1) of CCS (Conduct) Rules 1964.”

3. Aggrieved thereby, the applicant has filed the instant Original Application (O.A.), challenging the impugned Memorandum/Articles of charge dated 11.02.2017 and 25.02.2017 (Annexures A-1 and A-1A respectively), on the various grounds, mentioned therein, including the main ground that since the Governing Body is the appointing authority of the applicant, so the serving of charge-sheet and initiation of enquiry proceedings by the Director, PGIMER, Chandigarh, is not only arbitrary, but illegal as well. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned charge-sheets, in the manner, indicated hereinabove.

4. On the contrary, the respondents have refuted the claim of the applicant, and filed the written statement, wherein they have not specifically denied that the Governing Body is the Appointing/

Competent Authority in case of the applicant. Instead of reproducing the entire contents of the reply and in order to avoid the repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of the impugned charge-sheets, the respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal.

5. Controverting the allegations in written statement, filed by the respondents, and reiterating the grounds, contained in the O.A., the applicant filed replication.

6. At the very outset, the learned Senior Counsel for the applicant has contended, with some amount of vehemence, that all the allegations of sexual harassment, contained in the complaint, were earlier also inquired into by the Sexual Harassment Committee, wherein it was concluded that the incident of physical touch, as per complaint of the complainant, and attendance of both the parties in office, are *prima facie* not in consonance, and hence, the complaint of physical touch, was not proved. The argument is that since the Governing Body is the appointing authority of the applicant, so the serving of charge-sheet and initiation of departmental inquiry by the Director, PGIMER Chandigarh, are arbitrary, vitiated and illegal.

7. On the other end, learned counsel for the respondents has fairly acknowledged that the Governing Body of the Institute is the competent authority in case of the applicant.

8. Having heard learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter and legal position, we are of the firm

view that the present O.A. deserves to be allowed for the reasons mentioned herein below.

9. As depicted hereinabove, the facts of the case are neither intricate nor much disputed, and fall within a narrow compass, to decide the real controversy between the parties, in the instant case.

10. Such being the position on record, now the short and significant question, that arises for our consideration, in this case, is as to whether the impugned charge-sheets, which admittedly, were not served by the Governing Body of Institute (Competent Authority in case of applicant) are illegal and vitiated in the given peculiar facts and circumstances of the case or not?

11. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must, obviously, be in the affirmative, in this regard.

12. What cannot possibly be disputed here, and even acknowledged by learned counsel for the respondents, is that the Governing body of the Institute so the competent authority in case of the applicant (being Associate Professor), however, he was charge-sheeted and a regular departmental enquiry was ordered against him by the Director, PGIMER, Chandigarh, which is not the competent authority in his case. Rules 14(3) of the CCS (CC&A) Rules posits that where the disciplinary authority propose to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up (i) the substance of the imputations of misconduct or mis-behaviour into definite and distinct articles of charge, (ii) a statement of the imputations of misconduct or mis-behaviour in support of each article of charge, which shall contain-

- (a) a statement of all relevant facts including any admission or confession made by the Government servant;
- (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

13. Sequelly, the Rule 14(4) further posits that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or mis-behaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person or not. Rules 14 and 15 are mandatory in nature.

14. Thus, a conjoint and meaningful reading of these provisions would reveal that it was statutory duty of the Governing Body (Competent Authority) to draw up and deliver the Memorandum/Articles of charge to the delinquent officer/official. It is also not a matter of dispute that the impugned charge-sheets were issued by the Director, who was not competent authority in the case of the applicant. Thus, the entire impugned proceedings are vitiated and without jurisdiction. This matter is no more *res integra* and is now well settled.

15. An identical question came to be decided in the case of **Union of India Vs B. Gopinath** 2014 (1) SCC (L&S) 161, wherein the Hon'ble Apex Court, after interpreting Article 311(2) of the Constitution of India and Rule 14(3) and 14(4) of CCS (CCA) Rules, 1965 has held that it was the statutory duty of the competent authority to draw, approve and deliver the charge-sheet. If it has not been done so by the pointed competent authority, the

departmental enquiry proceedings are arbitrary, illegal and violative of protective provisions contained in Article 311(2) of the Constitution.

16. Therefore, it is held that since the impugned charge-sheets (Annexure A-1 and A-1A), have been issued to the applicant by the Director, and not by the competent authority (Governing Body), so the same cannot legally be sustained, in the obtaining circumstances of the case. The ratio of law laid down by the Hon'ble Supreme Court in B.V. Gopinath's case (supra) is *mutatis mutandis* applicable to the instant controversy and is a complete answer to the problem in hand.

17. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid reasons, and without commenting further anything on merits, lest it may prejudice the case of either side at any subsequent stage, the instant O.A. is hereby accepted, in the manner and terms, indicated herein above. As a consequence thereof, the impugned Memorandums (Annexure A-1 and A-1A) are hereby set aside. However, the parties are left to bear their own costs.

Needless to mention, the Competent Authority would be at liberty to take appropriate action, if any, in the matter, in this regard, if it so desires.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 30.01.2018

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