

*Reserved*  
**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No. 200/00619/2014**

Jabalpur, this Thursday, the 1<sup>st</sup> day of February, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Satish Kumar Sharma, S/o Shri Ramlal Sharma,  
Aged about 56 years, Deputy Production Manager,  
Government Opium and Alkaloid Works,  
Neemuch (M.P.)-458441

**-Applicant**

(By Advocate –**Shri Manoj Sharma**)

**V e r s u s**

1. Union of India, Through the Secretary,  
Ministry of Finance, Department of Revenue,  
North Block, New Delhi-110001
  2. The Chief Controller, Government Opium and Alkaloid  
Factories, Jawahar Vyapar Bhawan, 19<sup>th</sup> Floor,  
Connaught place, New Delhi-110001
  3. The General Manager, Government Opium and  
Alkaloid Works, Neemuch (M.P.)-458441
  4. Internal Complaints Committee, through its Chairperson,  
Government Opium and Alkaloid Works,  
Neemuch (M.P.)-458441
- Respondents**

**(By Advocate –Shri S.K.Mishra)**

(Date of reserving the order:-27.10.2017)

**O R D E R**

**By Ramesh Singh Thakur, JM:-**

The instant Original Application is against the order dated 27/28.05.2014 (Annexure A-1), whereby the respondent No.4 has

recommended the action against the applicant as provided for in the section 13 (3) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act 2013') recommended under (a),(b),(c) as under:

(a) Shri Satish Sharma, Deputy Production Manager, GOAW Neemuch to be shifted out of GOAW Neemuch immediately to create a safer workplace for women.

(b) The Management to take necessary disciplinary action for misconduct of sexual harassment as appropriate under the service rules.

(c) To deduct a sum of Rs. 5000/- (rupees five thousand only) from salary of Shri Satish Sharma which has been determined in terms of the Section 15 of the Act ibid to be paid to Dr. Nidhi Sharma as compensation.

**2. The applicant has sought for the following relief in this**

**Original Application:-**

"8(i) Call for the entire material record pertaining to the instant controversy for its kind perusal.

(ii) Hold and declare that the impugned inquiry is void ab initio and patently illegal.

(iii) Quash and set aside the impugned inquiry report and recommendations as contained therein (Annexure A-1).

(iii-A) This Hon'ble Court be please to quash and set aside the impugned enquiry proceeding as initiated against applicant by the internal complaint committee, Government OPIUM and Alkaloid work Neemuch on the basis of complaint dated 23.10.2013 of Dr. Nidhi Sharma Pradhan against applicant and also set aside all the proceedings and enquiry report against applicant.

(iv) Command and direct the respondents not to take any action whatsoever against applicant in pursuance to the impugned inquiry report.

(v) Grant any other relief/s which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

(vi) Award the cost of the instant lis to applicant.”

3. Briefly the facts of the case are that the applicant is a graduate in Chemical Engineering and joined the respondent organization as Chemical Engineering and Design on 14.05.1990. One Dr. Nidhi Sharma Pradhan who was working as Medical Officer in respondent-dispensation at Neemuch for an incident on 23.10.2013 wherein applicant had gone to show his injured finger and was dealt with most casually and apathetically, which led to some altercation between the applicant and the said Dr. Pradhan, who lodged a police complaint against the applicant as also in the respondents/disposition. The Internal Complaints Committee (ICC) has recommended the penal action against the applicant. Hence this Original Application.

4. The applicant has challenged the proceedings conducted by the committee on the ground that the recommendation by the committee in violation of principle of natural justice is bad in law, the impugned enquiry report is bad in law and the committee has not followed the procedure prescribed under section 14 of the

Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as 'the 1965 Rules). So the impugned enquiry report is void ab-initio. Furthermore, the enquiry report is highly arbitrary, high handed and malafide exercise of powers and violation of fundamental right of the applicant as enshrined and granted under Article 14 and 16 of the Constitution. The impugned enquiry is vitiated on account of not following the procedure as prescribed under second proviso to section 11 (1) of the Act 2013.

5. The respondents in their reply has submitted that the complainant made complaint Annexure R-1 to the General Manager and on preliminary enquiry into the issue by the Manager, the truthfulness of the incident was reported to the General Manager. The issue was referred to the ICC, GOAW, Neemuch in terms of the provisions of the Act 2013 and consequent to the approval of Chief Controller of Factories (CCF) vide letter dated 28.11.2013 an ICC was constituted and the complaint of the aggrieved women was referred to the above said ICC for enquiry. After going through the complaint, the ICC summoned the complainant, the applicant and the witnesses of the incident and recorded their statements on 02<sup>nd</sup> and 3<sup>rd</sup> December 2013. The applicant was confronted by the ICC on 03.12.2013 with reference to the statement of other witnesses where he accepted his guilt and

demanded pardon for the same. The ICC found the complaint to be true and was also accepted by the applicant and concluded the enquiry and sent its report for further action, by the disciplinary authority.

6. In terms of provision of the 1965 Rules, a copy of the enquiry report was supplied to the complainant and the respondents (applicant) vide memo dated 27/28.05.2014 with a direction to make representation if any to the disciplinary authority within 15 days of receipt of the same. The applicant preferred a representation to the CCF, New Delhi which has been forwarded to the Ministry of Finance, who are the appointing authority of the case of Group 'A' Officers.

7. In the main reply the respondents have denied the contention of the applicant as false and misleading. It is submitted by the respondents that the ICC had conducted the enquiry in a fair and transparent manner and concluding the same in very short time does not mean that they have violated any laid down norms. Moreover, the applicant vide its statement dated 03.12.2013 has accepted his misconduct which has also been narrated by other witnesses in their statement and the ICC had found the contents of the complaint to be true and have accordingly recommended action as per law. It is submitted that on 2<sup>nd</sup> and 3<sup>rd</sup> December 2013 when

ICC conducted the enquiry all the witnesses besides the complainant and respondent were present and their statements were recorded. It is further submitted that ICC had confronted the applicant on 03.12.2013 with the statement of witnesses and he had admitted the guilt in his statement dated 03.12.2013 and there was no need of further examination of witnesses. The averments of the applicant that he had given the statement dated 03.12.2013 as a part of conciliation is misleading in terms of the Section 10(1) of the Act of 2013. On the contrary, the aggrieved women in her statement dated 02.12.2013 to the ICC had clearly indicated that she does not want a compromise with the applicant.

8. The replying respondents have further submitted that during the course of enquiry when the charged officer was confronted by the ICC, he had an opportunity to refute the charges and also to make demand for cross examination of witnesses but he did not do so and had accepted his guilt. It is further submitted that the statements have been signed by the Chairman of the ICC and the 3<sup>rd</sup> party member (Member from NGO) who are the independent members. So the misconduct by the applicant has been found to be proved by the ICC which considered all the facts and circumstances of the case, including the admission of the guilt by the applicant, while recommending the action in their report. It is

also submitted that having a good past record and career does not grant anybody right to outrage modesty of a woman in front of others which has been found to be true by the ICC. So it is highly improper to seek leniency for misconduct merely on the ground of good past record and career and that could have given a weightage while preparing the enquiry report.

**9.** Therefore, the replying respondents found the applicant guilty of misconduct by the ICC and had recommended action against the applicant as provided under section 13 of the Act 2013. The gravity of misconduct demands a stern action to set an example for others to create a safer workplace for woman and the replying respondents prayed for dismissal of the O.A.

**10.** We have heard the counsel for both the parties and have also perused the available records annexed with the pleadings.

**11.** The counsel for the applicant has raised the question of law in view of the fact that the respondent department has appointed the ICC to investigate the complaint of the complainant. As per rule 3(C) of the Central Civil Services (Conduct) Rules, 1964 which is for Prohibition of Sexual Harassment of working women the Complaints Committee established in each Ministry or Department or office for inquiring into complaints of sexual harassment shall be deemed to be the Inquiring Authority

appointed by the Disciplinary Authority and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into such complaints, the inquiry, as far as practicable in accordance with the procedure laid down in these rules.

**12.** As per Gazette Notification dated 23.04.2013 (Annexure A-4) a separate act namely The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal), Act 2013 has came into existence and under Chapter IV procedure for dealing with the complaint of the sexual harassment has been prescribed.

**13.** As per clause 10 (1) of Chapter IV of the Act 2013 the internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.

**14.** Chapter IV clause 11 of the Act 2013 held as under:-

**“11(1)** Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an Inquiry into the complaint or, as the case may be, forward the complaint to the police.

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

**15.** So it is clear as per clause 11(1) that the internal committee or the local committee, as the case may be, shall proceed to make an inquiry into the complaint in accordance with the provisions of the rules as applicable.

**16.** As per Annexure-A attached to Annexure A-1 in the Original Application, the compliant has been moved by the complainant to the General Manager, Govt. Opium & Alkaloid Works, Neemuch on 23.10.2013 and as per Annexure-B attached with the complaint the summon has been issued by the Chairperson ICC to the complainant and also to the applicant on 02.12.2013 alongwith other Annexures. From these Annexures it is itself clear that date for hearing was fixed on 02.12.2013 and summon has been issued on the same date. In the Original Application it has been specifically stated by the applicant that on telephone he was

informed to appear before the ICC on 02.12.2013 itself in the evening. So it is clear from the documents and submissions made in the Original Application that summon has been issued and served to the applicant at the same time. So averments/submissions of the applicant are believable to the fact that he was called and intimated on telephone to appear before the ICC on 02.12.2013 and service has been effected in the meeting itself. As per Annexure J attached to Annexure A-1 in the Original Application, the statement of the complainant as recorded and the statement recorded before the ICC is totally different regarding the allegations made in the complaint. The complaint submitted to the General Manager on 23.10.2013, we find very abusive language against the complainant but the statement made before the ICC we do not find any such type of words. So there is much contradiction between the complaint and the statement recorded by the ICC. On 02.12.2013 the statement of Mrs. Roshan Massey and Shri Bijendar Singh has been recorded alongwith other so called witnesses. It is pertinent to mention that the whole proceeding regarding the summoning of the applicant and recording of the statements has been done by the ICC on the two dates i.e. on 02.12.2013 & 03.12.2013. From the facts itself it is clear that the enquiry done by the ICC is a hasty step and has been done without

following the procedure as laid down in the CCS (CCA), Rules 1965 which is applicable to the applicant. No opportunity has been given to the applicant to prepare and submit his defence as per ICC. No reasonable time has been given to the applicant and no opportunity for engaging the defence assistance has been given. It is clear from the facts itself that there is flagrant violation of the provisions of CCS (CCA) Rules, 1965. From the record itself the proceeding is completed within two days alongwith the various steps which are to be taken by the ICC before submitting the report to the disciplinary authority.

17. After receiving Annexure A-1 office memorandum dated 27/28.05.2014, the applicant has submitted a representation to The Chief Controller Govt. Opium & Alkaloid Factories and a detail ground has been submitted in the application, but no proper action has been taken by the respondent department. As per provision of the Act 2013 under Chapter IV Clause 10, the local committee may, before initiating any enquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation. In this regard also there is violation of the act itself. From the record itself it is clear that the applicant has been called before the ICC on 02.12.2013 and summon has been provided to him and the

statement of witnesses has been recorded immediately. So the act of the ICC is totally against the rules provided under the said act.

**18.** It is clear from the record that there is a contradiction in the complaint dated 23.12.2013 and the statement of the complainant dated 02.12.2013. Besides this as per statement of other witnesses before the committee and the statement made earlier are contradictory. Moreover, the competent court has acquitted the applicant, wherein the witnesses are same which are before the ICC. So from the record it is clear that the ICC has not complied with Section 14 of the 1965 Rules. No documents and the list of the witnesses has been supplied to the applicant before proceeding and regarding the statement of witnesses as the whole proceedings has been completed in two days. There is a violation of Rule 11(1) of the Act 2013. From the record itself as per Annexure-S attached with (Annexure A/1), the complainant has made the statement before the ICC that after the transfer of the applicant she can think for conciliation. This statement has been recorded on 03.12.2013. However, the enquiry has started on 02.12.2013. This shows the clear violation of rule 11 of the above said act. Moreover the statement of the witnesses has been recorded by two members whereas there are six members in the committee. So there is

flagrant and sheer violation of the 1965 Rules, which should have been complied with by the ICC.

**19.** Moreover, FIR was lodged against the applicant and as per Document A annexed with the Misc. Application No. 200/01107/2015 the judgment of the competent magistrate has been placed on record. The accused has been acquitted with charges under section 354-K, 294, 506 Part (2) and 509 of the IPC. The charges are not proved beyond reasonable doubt so it is clear that the prosecution has failed to prove the charges against the applicant, as witness in the criminal case and in the enquiry before the ICC are common.

**20.** So relying upon the order passed by this Tribunal in Original Application No. 194/2012 dated 28.07.2014 the Tribunal while relying on the judgment passed by the Hon'ble Apex Court in the matters of **Capt. M. Paul Anthony vs. Bharat Coal Mines Ltd. and another**, 1993 (3) SCC 679, and in the matters of **G.M. Tank vs. State of Gujrat & Others**, 2006(5) SCC 446, has observed that the employee acquitted during pendency of proceedings, finding to contrary recorded in departmental proceeding in such case held unjust, unfair and oppressive.

**21.** In the instant Original Application the applicant has already been acquitted by the competent court of law as the prosecution has

failed to prove the case beyond reasonable doubt. So in our view, the applicant has been acquitted honorably. On the other side as observed earlier, the enquiry report submitted by the ICC is based on proceedings, which is void-ab-initio as it is contrary to provisions of the 1965 Rules, and due to which the applicant has been prejudiced.

**22.** It is pertinent to mention that the enquiry has been conducted in a haste manner and without compliance of provisions of the 1965 Rules and the Act of 2013.

**23.** In view of the above, the enquiry report is illegal and unlawful. Hence, this Original Application is allowed and the enquiry report dated 27/28.05.2014 (Annexure A-1) is quashed and set aside. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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