

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the 21st day of December 2018

Original Application No. 330/00282 of 2008

Hon'ble Mr. Gokul Chandra Pati, Member – A

Hon'ble Mr. Rakesh Sagar Jain, Member - J

Smt. Sushila Devi, W/o late R.D. Vidyarathi, R/o 526 Dharampur (Puliya) Dhurehta, District Firozabad.

..... . .Applicant

V E R S U S

1. Joint Commissioner (Admn.) K.V.S. Head Quarter, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
4. Assistant Commissioner, KVS, RO, Patna.
5. Principal, Kendriya Vidyalaya Sangathan, N.T.P.C. Korba (C.G.).
6. Principal, Kendriya Vidyalaya, Deoria.

.... Respondents

Advocate for the applicant: Shri Vinod Kumar

Advocate for the respondents: Shri N.P.Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

This Original Application (in short OA) has been filed under section 19 of the Administrative Tribunals Act with prayer for the following reliefs:-

"i. set aside the Order dated 14.12.07 passed by the respondent No. 2, the Commissioner, Kendriya Vidyalaya Sangathan and Order dated 30.07.07 passed by respondent No. 3, the Joint Commissioner, Kendriya Vidyalaya Sangathan to secure ends of justice.

ii. issue an Order or direction to the respondents to reinstate the Applicant as usual prior to the removal from service.

iii. issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

iv. and award cost of the application in favour of the applicant."

2. The OA was initially filed by the applicant's husband and after his death during pendency of the OA, the applicant's name has been substituted as his legal heir. The applicant's husband, while working as Vice Principal of Kendriya Vidyalaya NTPC Korba (in short KV), faced with a complaint of sexual harassment by one primary school teacher in KV Km. Nidhi Singh (referred hereinafter as 'complainant'). After a preliminary inquiry, the disciplinary authority (respondent no. 1) constituted a three member committee to inquire into the matter. It is alleged in the OA that a copy of the said complaint was not supplied to the applicant's husband before the inquiry in spite of his requests on 24.08.2005 (Annexure No. I) and 09.08.2005 (Annexure No. I-A). Copy of the complaint dated 29.04.2004 (Annexure No. II) of the complainant was finally served upon the applicant alongwith the committee's inquiry report dated 30.8.2005. It is further stated in the OA that as per the statement of the complainant, the alleged incident took place on 27.04.2004, but the complainant complained on 29.04.2004 and as such, it appears that the complaint was concocted after 02 days of the alleged incident.

3. It is stated in OA that Mr. J.P.N. Dwivedi, Principal, Kendriya Vidyalaya COD, Jabalpur, Smt. Manjulata, Principal, Saint Xavier School, Kroba and Miss S.K. Sanhotra, Principal, Kendriya Vidyalaya, Vehicle Factory, Jabalpur were nominated as members of the inquiry committee constituted by the disciplinary authority (respondent no. 1) for inquiry into

the complaint of sexual harassment against the applicant's husband. The inquiry committee recorded the statement of 11 teaching staff of Kendriya Vidyalaya, N.T.P.C. Korba including the complainant and the applicant's husband and submitted its report dated 30.08.2005 (Annexure No. III) holding that there has been some moral aberration on the part of the applicant's husband towards the complainant. According to the OA, the committee's report is ambiguous about its findings on the complaint against the applicant's husband.

4. It is further stated in the OA that after receipt of the complaint, the applicant's husband was transferred on 1.7.2004 to a different station as a punishment, where he joined in compliance of the transfer order. He was again transferred to another station after about 2 months, which was also complied by the applicant's husband. Thereafter, he was suspended on 27.1.2005 and after receipt of the inquiry report on 30.8.2005, the matter was reviewed and the suspension order was revoked and the applicant's husband was reinstated in service vide order dated 31.1.2006 and he joined on 2.2.2006 in his post at Kendriya Vidyalaya, Deoria as Vice Principal.

5. It is further averred in the OA that, when some of his juniors were promoted to the post of Principal ignoring the case of the applicant, he submitted representation on 20.9.2006 and then filed an application under RTI Act on this issue on 3.11.2006. It is stated in para 4.26 of the OA that the respondents, being aggrieved by his representations, issued the memorandum dated 13.11.2006 (Annexure No. IV) to the applicant's husband for showing cause as to why he will not be removed from service within 15 days. The applicant's husband submitted the reply to the memorandum dated 13.11.2006 vide his letter dated 27.11.2006 (Annexure No. V). It is stated in the OA that after receipt of the letter dated 27.11.2006 from the applicant's husband, the respondent no. 3 removed the applicant's

husband from service vide the order dated 30.7.2007 (Annexure No. VI), which is impugned in this OA.

6. The applicant's husband, after his removal from service, moved an appeal dated 29.8.2007 (Annexure VII) and as the said appeal was not decided, the applicant's husband moved a reminder dated 06.11.2007 (Annexure No. VIII) for deciding the appeal before respondent No. 2. The respondent No. 2 dismissed the appeal vide order dated 14.12.2007 (Annexure No. X), which is also impugned in this OA.

7. It is stated in the OA that the applicant's husband had been asked on 29.06.2004 to give his statement / explanation against the complaint dated 29.7.2004 by the Education officer, Shri S.C. Khajuria, Jabalpur Region, Jabalpur. The applicant requested to supply of a copy of the complaint dated 29.04.2004 against which his statement was required, but the same was denied by the Education Officer. However, having no other option, the applicant's husband submitted his reply before the Education Officer in respect of the alleged incident dated 27.04.2007 and denied the allegation against him.

8. The respondents have filed their counter affidavit (in short CA) in which it is submitted that while functioning as Vice Principal in Kendriya Vidyalaya NTPC, Korba during the period from 2004 – 05, unwelcome sexually determined behaviour towards the complainant on 27.04.2004 was alleged against him. On that date, the Prize Distribution ceremony of the school was organized between 8:30 am to 12:30 pm. The Principal, Vice-Principal, Headmaster and PGTs were present on the occasion. The applicant's husband was given the responsibility to distribute the prizes. But he left the function and followed the complainant and entered in the Primary staff room and taking advantage of her being alone there, he attempted to outrage her modesty. The Assistant Commissioner, Kendriya Vidyalaya

Sangathan, Regional Office, Jabalpur got the matter investigated through the inquiry committee, which prima-facie established the allegation of sexual harassment against him and he was placed under suspension vide order dated 27.01.2005. The Disciplinary Authority after taking into account the findings of the inquiry committee, decided to get the matter inquired through Compliant Redressal Committee (in short CRC). Accordingly, Assistant Commissioner was instructed to get the matter inquired into through the complaint redressal committee for sexual harassment vide letter dated 09.02.2005. It is stated in the CA that as per the findings of the CRC report, the applicant's husband was found guilty of moral aberration. The Disciplinary Authority, being fully satisfied that Rule 3-C of CCS (Conduct) Rules, 1964 has been violated by the applicant's husband and after considering the report of the CRC, the he was issued a show cause notice (vide memorandum dated 13.11.2006) by which the inquiry report alongwith complaint dated 29.4.2004 and copy of the statements of witnesses were sent to him for making representation.

9. It is stated in the CA that the applicant's husband had earlier filed OA No. 834 of 2006 before Jabalpur Bench of this Tribunal challenging the impugned show cause notice dated 13.11.2006 and also challenged the constitution of the CRC. Jabalpur Bench of this Tribunal vide order dated 29.11.2006 directed the respondents not to act upon show cause notice until disposal of said OA, which was finally disposed of vide order dated 18.05.2007 with the following directions:-

"In the result, we find that the Constitution of the CRC is legally and valid and the impugned memorandum does not suffer from any legal infirmity. Although the applicant has represented (vide annexure-A-4) to the Commissioner, Kendriya Vidyalaya Sangathan, against the impugned memorandum, he has not submitted any reply to the disciplinary authority {Joint Commissioner (Admn)}. In the interest of justice we give the applicant liberty to submit a detailed reply to the disciplinary authority within a period of one months from the date of receipt of a copy of this order and the disciplinary authority shall take appropriate action therein conformity with the provisions of the CCS [CCA] Rules, 1965. With these directions, the OA is

dismissed and the interim order passed on 29.11.2006 stands vacated."

10. In pursuance of the order of Jabalpur Bench of this Tribunal, the applicant's husband submitted a representation on 27.11.2006 before Joint Commissioner (Admin). The Disciplinary Authority, after examining the records, came to the conclusion that the points adduced by him in his representation do not negate the facts on record and concluded that the applicant's husband was guilty of outraging the modesty of a primary teacher and, accordingly, he was removed from service vide order dated 30.07.2007 of the disciplinary authority. Thereafter, the applicant's husband filed a Writ Petition No. 7129/2007 before Hon'ble Jabalpur High Court against the impugned show cause notice dated 30.11.2006 and order dated 15.08.2007 passed in OA No. 834 of 2006 and also filed TA No. 6657 of 2007 against the order of removal from service dated 30.07.2007 which was finally disposed of vide order dated 22.08.2007. In pursuance of the direction of Hon'ble High Court, the applicant's husband filed an appeal dated 28.08.2007 before the Commissioner, Kendriya Vidyalaya Sangathan against the impugned order dated 30.07.2007. The Commissioner, being the Appellate Authority, after perusal of records of the case and considering his submissions made in the appeal, concluded that these submissions in the appeal do not negate the facts on record and he upheld the order of removal of service passed by the Disciplinary Authority and rejected the appeal by a speaking order and reasoned order dated 14.12.2007.

11. The applicant's husband has filed Rejoinder Affidavit broadly reiterating the averments in the OA.

12. At the time of oral submissions, learned counsel for the applicant stressed on the following grounds/arguments :-

i. Punishment of removal from service has been imposed on the applicant's husband after receipt of his explanation

without conducting any inquiry. Hence, the procedure as laid down under the CCS (CCA) Rules, 1965 has been violated.

- ii. Copy of the initial complaint dated 29.4.2004 against the applicant's husband regarding sexual harassment of the complainant was not supplied to the applicant till the inquiry was completed by the CRC. He was supplied with a copy of the complaint alongwith the inquiry report dated 30.08.2005.
- iii. The findings of the Inquiry report dated 30.08.2005 was ambiguous with no clear finding as to whether the charge against the applicant's husband has been established. No action was taken immediately by the respondents after receipt of the complaint against the applicant's husband, except transferring the applicant to a different station.
- iv. The applicant's husband was first placed under suspension and then reinstated after receipt of the Inquiry report. When the applicant submitted the representation for his promotion after his case was overlooked by the respondents, then the action was taken by the respondents to issue the show-cause notice dated 13.11.2006 and then the punishment of removal from service was imposed.
- v. It is stated by the applicant's counsel that the before submission of the reply to the notice dated 13.11.2006, the order of removal was issued by the disciplinary authority.
- vi. The appellate authority did not consider all these points before passing the order dated 14.12.2007 (Annexure No. X) dismissing the appeal of the applicant's husband.

13. Learned counsel for the respondents submitted that the preliminary objection was raised by the respondents regarding the jurisdiction of this Bench, since the posting the applicant's husband was under the jurisdiction of Jabalpur Bench of this Tribunal. He further submitted that the respondents have adhered to the rules and came to the conclusion based on the inquiry report that there is serious allegation of

sexual harassment against the applicant's husband for which the punishment imposed after following due procedure.

14. Learned counsel for the applicant clarified that after the applicant's husband was removed from service, he was residing at his place of residence which is within the jurisdiction under Allahabad Bench. Hence, the objection regarding the jurisdiction was misplaced.

15. We have considered the materials available on record as well as the submissions of the learned counsels for both the parties. One of the questions to be decided in this case is whether there is any violation of CCS (CA) Rules 1965 (in short rules) as stated in the OA and submitted by the applicant's counsel. The next question to be decided is whether the findings of the authorities are based on evidence on record and whether appellate authority has passed the order after considering the defence / appeal submitted by the applicant's husband.

16. Since the place of residence of the applicant is within jurisdiction of Allahabad Bench, the OA filed after the applicant's husband was removed from service, is not beyond the jurisdiction of Allahabad Bench and objection of the respondents in this regard has no force. The facts of the case would show that the copy of the complaint was not submitted by the applicant before he faced the inquiry by the CRC and the copy of complaint was given to the applicant's husband alongwith the Inquiry report dated 30.08.2004, this contention in this regard has not been contradicted by the respondents in their pleadings. This point has been highlighted by the applicant's husband in paragraph 4.17 of the OA. The seriousness of the allegations can only be decided on the basis of the complaint dated 29.04.2004 since no eyewitness to the incident was there. Non-supply of the copy of the complaint has been a disadvantage for the applicant's husband as stated by him in the OA and this has created

difficulties for the applicant to properly defend the serious allegation of sexual harassment made against him. Hence, the inquiry committee had recorded the finding on the allegations / complaint against the applicant's husband without providing adequate opportunity to him for properly defending himself against the charges before the CRC as stated in para 4.17 of the OA.

17. The inquiry committee report dated 30.08.2005 has been enclosed at Annexure No. 3 to the OA. The relevant findings of the inquiry committee in its report are as under:-

"9. However there on eye witness to the event of Ms. Nidhi Singh being molested by Shri R.D. Vidyarathi on 27.04.2004 during school hours in the Primary Teacher Staff room but this fact that they met in the staff room is fully established by the statement of Mrs. Lakra, Mrs. V. Das, Mrs. Rao and the complainant Ms. Nidhi Singh & accused Mr. R.D. Vidyarathi himself.

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11. It is true that a lady cannot lie at the cost of her won dignity and self-respect but some questions are haunting.

a. She kept quiet just after the incident which seems a bit strange. She could have told the incident to some lady teachers at once.

b. A meeting was called by Mrs. Hemlata Rajan, Ex PPL KV NTPC (Hindi) where Mr. A.S. Khan Librarian was called alongwith Ms. Nidhi & Ms. Babita. Where as there were lady PGTs, who were not involved in the preliminary investigations.

c. The Complaint was written by Ms. Nidhi Singh PRT at the resident of Shri I.M. Tripathi on 29.04.04 as stated by him.

d. The principal didn't ask any thing about the incident from Shri R.D. Vidyarathi either orally or in writing.

e. The Chairman VMC could have been involved in the investigation because it was a matter related to the Vice Principal, and the reputation of the Vidyalaya.

12. In the end it can be concluded that there has been some moral aberration on the part of Shri R.D. Vidyyarathi Vice Principal, toward Ms. Nidhi Singh but the absence of any eyewitness and the clandestine manner of handling the case by the ex-Principal leaves some scope for rethinking."

18. From the above findings of the inquiry committee it is clear that there is no definite finding as to whether the complaint against the applicant's husband has been clearly established or not. The committee has also commented on the clandestine manner of handling the case by the then Principal leave some scope for rethinking as stated in para 12 of the report as quoted above. But the respondent No. 1 in his memorandum dated 13.11.2006 (Annexure No. IV to the OA) has ignored these observations/findings of the Committee and has proceeded with assumption the misconduct has been established during the enquiry and it is stated in paragraphs 9 and 10 as under : -

"9. The misconduct of sexual harassment committee by Shri R.D. Vidyarathi falls under this rules which has been prima facie established in both the inquiries as stated above. The undersigned has decided to take action on the reports of Inquiry committee in terms of directive of Supreme Court ibid.

10. Shri R.D. Vidyarathi is hereby called upon the explain as to why he should be removed from service based on the findings of the inquiry report. He is also given opportunity to make representation / submission on the inquiry report within 15 days of the receipt of this memorandum for consideration of the undersigned falling which it will presumed that he has nothing to say and order will be passed ex parte."

It is clear that the disciplinary authority had made up his mind while forwarding a copy of the inquiry report to obtain the representation/reply of the charged employee and had decided tentatively to impose the penalty of removal from service. As per the Rule 14, the disciplinary authority should have considered the reply/representation of the applicant's husband before deciding on the penalty to be imposed.

19. The averments at para 4.22 of the OA stated that after receipt of the inquiry report, the suspension order against the applicant's husband was revoked vide order dated 31.01.2006. Such averment of the applicant's husband has not been contradicted by the respondents. The OA at para 4.27 has also stated that the disciplinary authority issued the punishment order dated 30.07.2007 without considering the points raised

by him in his detail reply 27.11.2006 (Annexure No. V). This letter dated 27.11.2006 has stated the following important points:-

"10. It is respectfully submitted here that I was not provided with the complaint, which was lodged against me by Ku. Nidhi Singh Primary Teacher prior to the enquiry or during the course of the enquiry, therefore, I could not defend myself effectively.

11. Those, during the course of the enquiry the statement of witnesses were recorded behind my back. I have not been given any opportunity to cross-examine the witnesses. The relevant questions were not asked from the witness, the complaint committee has conducted the enquiry with predetermined and biased mind. The department has grossly violated the principle of natural justice."

20. The impugned order of punishment passed by the respondent no. 1 has not examined or considered the specific contentions of the applicant's husband at para 10 and 11 of his letter dated 27.11.2006 as quoted above in view of the following observations/findings recorded in punishment order dated 30.7.2007:-

*"i. The allegation of immoral behaviour toward Km. Nidhi was got investigated though Committee by the Assistant Commissioner. The Inquiry Committee by the Assistant Commissioner. The Inquiry Committee conducted the Inquiry on 25th and 26th June 2004 and preliminary inquiry recorded the statements of Km. Nidhi and 7 teachers including the accused Shri R.D. Vidyarathi. As per finding in the inquiry report submitted by the inquiry Committee, Shri R.D. Vidyarathi was found *prima facie* guilty of the Charge. It was considered necessary by the undersigned to refer the case to Assistant Commissioner, Jabalpur for conducting inquiry through the Complaint Redressal Committee being constituted in accordance with guidelines of Supreme Court. The inquiry was got conducted through Complaint Redressal Committee. The Inquiry Committee conducted the Inquiry on 29th & 30th Aug, 2005. Shri R.D. Vidyarathi was found *prima facie* guilty of sexual harassment to a lady teacher as per findings in the report submitted by compliant committee. Therefore, the averment of the applicant that complaint is frivolous is far from truth.*

ii. On record, it is evident from the letter dated 9.6.2004 of Principal that Km. Nidhi wanted to narrate the incident of sexual harassment to Principal on the day when incident occurred on 27.4.2004 but due to busy schedule of the Principal she could not lodge the complaint and made the complaint on 29.4.2004. The Principal herself made spot inquiry and found element of sexual harassment made by Shri R.D. Vidyarathi. He himself admitted in his statement during inquiry that he met her by chance in staff

room on 27.4.2007 during the period of prize distribution. His absence from place of prize distribution itself indicates that he had done something wrong with Smt. Nidhi, a primary teacher. Moreover, a lady teacher quite junior cannot stoop lows to make false allegation about sexual harassment. Moreover, the allegation of moral scruples stood substantiated during both the inquiries. The averment of Shri R.D. Vidyarathi that she cooked up the story is not correct based on corollary of facts.

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iii. *Matter of record.* Initially the Assistant Commissioner got conducted the inquiry through a Committee other than the Complaint redressal Committee. This inquiry Committee after preliminary inquiry established the allegation of sexual harassment made in the compliant by Km. Nidhi. The undersigned taking prima facie serious view of on the proved misconduct on sexual harassment decided to refer the case to Assistant Commissioner, Jabalpur for conducting inquiry through the Complaint Redressal Committee constituted as per Supreme Court's guidelines in the case of *Vishaka vs. State of Rajasthan* vide letter dated 9.02.2005. The Assistant Commissioner got conducted the inquiry into alleged incident of sexual harassment duly constituted Complaint Redressal Committee as per guidelines of Supreme Court. The constitution of this Inquiry Committee had been upheld by Hon'ble Tribunal vide its order dated 15.5.2007 in OA No. 834/2006. Hence the averment of Shri R.D. Vidyarathi is not cogent."

Hence, there is force in the averments of the applicant's husband that the points raised by him in his defence had not been considered by the disciplinary authority, while passing the impugned punishment order dated 30.7.2007 removing him from service.

21. In the matter of disciplinary proceedings, the settled position of law is that unless there is violation of the principles of natural justice or of the statutory rules or the findings of the authorities are not based on evidence on record, the Court/Tribunal cannot judicially review the orders passed by the competent authority in disciplinary proceedings. In the case of **State Of U.P. Through Principal Secretary P.W.D. & Anr. vs. Santosh Kumar Saran in Service Bench case no. 1067/2011**, Hon'ble Allahabad High Court in the judgment dated 28.4.2017 has reviewed the case laws in this regard and observed as under:-

"5. In *Meenglas Tea Estate v. The workmen.*, AIR 1963 SC 1719, the Supreme Court observed

"It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way to cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

6. *In State of U.P. v. C. S. Sharma, AIR 1968 SC 158*, Court held that omission to give opportunity to the officer to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to crossexamine these witnesses and to lead evidence in his defence.

7. *In Punjab National Bank v. A.I.P.N.B.E. Federation, AIR 1960 SC 160*, (vide para 66), Court held that in such enquiries evidence must be recorded in the presence of the chargesheeted employee and he must be given an opportunity to rebut the said evidence. The same view was taken in *A.C.C. Ltd. v. Their Workmen*, (1963) II LLJ. 396, and in *Tata Oil Mills Co. Ltd. v. Their Workmen*, (1963) II LLJ. 78 (SC).

8. *In S.C. Girotra v. United Commercial Bank 1995 Supp. (3) SCC 212*, Court set aside a dismissal order which was passed without giving employee an opportunity of cross-examination.

9. *This Court in Subhas Chandra Sharma v. Managing Director and another, 2000(1) UPLBEC 541*, said: "In our opinion after the petitioner replied to the chargesheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the chargesheet he was given a show cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice."

(emphasis added)

10. The above judgment was followed by a Division Bench in *Subhash Chandra Sharma v. U.P. Cooperative Spinning Mills and others (supra)* the Court held thus:

"In cases where a major punishment proposed to be imposed an oral enquiry is a must, whether the employee request, for it

or not. For this it is necessary to issue a notice to the employee concerned intimating him date, time and place of the enquiry as held by the Division Bench of this Court in *Subhash Chandra Sharma v. Managing Director*, (2000) 1 UPLBEC 541, against which SLP has been dismissed by the Supreme Court on 1682000."

(emphasis added)

11. In the *State of Uttar Pradesh v. Saroj Kumar Sinha* reported (2010) 2 SCC 772 Court held that :

"An inquiry officer acting in a quasijudicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

(emphasis added)

12. Similar view was taken in *Roop Singh Negi v. Punjab National Bank*, (2009) 2 SCC 570 as under:

"Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

(emphasis added)

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14. In another case in *Subhash Chandra Gupta v. State of U.P.*, 2012 (1) UPLBEC 166 the Division Bench of this Court after survey of law on this issue observed as under:

*"It is well settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any outcome inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us find support from the judgement of the Apex Court in *State of U.P. & another Vs. T.P.Lal Srivastava*, 1997 (1) LLJ 831 as well as by a Division Bench of this Court in *Subash Chandra Sharma Vs. Managing Director & another*, 2000 (1) U.P.L.B.E.C. 541.*

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17. Recently the entire law on the subject has been reviewed and reiterated in *Chamoli District Cooperative Bank Ltd. Vs. Raghunath Singh Rana and others*, AIR 2016 SC 2510 and Court has culled out certain principles as under:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross examine the witnesses of the employer. Only thereafter, the workman / delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

22. In the case of **Pragyesh Misra Versus State of U.P. and others** in the Writ Petition No. 1126 of 2011 (S/B), Hon'ble Allahabad High Court has held as under:-

"Whenever an inquiry Officer is appointed the disciplinary authority shall supply record which would include a list of documents as well as list of witnesses by whom the articles of charges are proposed to be substantiated. The note appended thereto says that documents may not be forwarded simultaneously but that does not mean that the documents shall not be forwarded in a reasonable manner and time so as to provide adequate opportunity of defence to the delinquent employee for inspection and reliance thereon. This is something to be done by disciplinary authority vis a vis inquiry authority and is mandatory."

23. The rule 14 of the CCA (CCA) Rules, 1965 states as under:-

"14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

EXPLANATION - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed 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 misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour 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.*

(4) 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 misbehaviour 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.

.....

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence :

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);*
- (ii) submit a list of witnesses to be examined on his behalf;*

NOTE

If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

- (iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).*

NOTE

The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government."

In view of above provisions of the rule 14, it is required on the part of the disciplinary authority to supply a copy of the list of the documents and witnesses by which the charges are proposed to be established and there is no provision for exception in case of the allegations of sexual harassment, where the complaint committee constituted for inquiry into the charges of sexual harassment will be deemed to be the inquiry authority appointed by the disciplinary authority under these rules as stipulated under the proviso to the sub-rule (2) of the rule 14. Rest of the procedure laid down under the rule 14 is required to be followed by the disciplinary authority before passing order for imposing major penalty.

24. From the facts of the case, it is clear that the copy of the statement of the complainant dated 29.4.2004 based on which the inquiry committee had conducted the inquiry, was not supplied to the applicant during the inquiry as required under the sub-rule (11) of the rule 14 of the CCS (CCA) Rules, 1965. Clearly, non-supply of the relevant documents including a copy of the complaint dated 29.4.2004, is a major violation of the rule 14 of the CCS (CCA) Rules, 1965 and this fact has been ignored by the disciplinary authority before passing the impugned order imposing the penalty of removal from service on the applicant's husband. This fact has also been ignored by the appellate authority while considering the appeal dated 29.08.2007 (Annexure No. VII) submitted by the applicant's husband in spite of the fact it has been specifically mentioned in the appeal filed by the applicant.

25. The rule 27 of the CCS (CCA) Rules, 1965 regarding the manner of consideration of appeal states as under:-

"27. Consideration of appeal

(1) *In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*

(2) *In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-*

(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

....."

From above, it is mandatory on the part of the appellate authority to take into consideration in case there is a violation of the rules in the manner in which the inquiry was conducted and the manner in which the disciplinary authority has ignored this fact in spite of the fact that it was pointed out by the applicant in his reply/representations to the authorities. Hence, there is violation of the rules by the appellate authority for which the appeal order dated 14.12.2007 cannot be sustained.

26. Learned counsel for the respondents in his written submissions has cited the judgment of Hon'ble Apex Court in the case of *Medha Kotwal Lele & Ors vs. UOI & others* in which it is held that the Complaints Committee constituted for inquiry into the allegations of sexual harassment will be deemed to be the inquiry authority for the purpose of the CCS (CCA) Rules, 1965. Following this judgment, the rule 14 has been amended and neither the cited judgment nor the amended rule 14 waives or exempts the

competent authority from other provisions of the rule 14 of the CCS (CCA) Rules, 1965 as discussed in para 23 above. Hence, the report of the CRC was rightly treated as the report of the inquiry authority. But there are major violations of the rules in the manner in which the disciplinary proceeding against the applicant was finalized, as discussed earlier. Hence, the cited judgment will not be helpful for the respondents.

27. Learned counsel for the respondents has cited the judgment of Kolkata Bench of this Tribunal in the case of Amitava Sarkar vs. Union of India in which it was held that if an applicant does not exhaust the Revision forum in a disciplinary proceeding before approaching the Tribunal, then it will be considered to have not exhausted alternative remedy and such OA will not be maintainable under section 20 of the Administrative Tribunals Act, 1985. It is seen that this judgment of the Tribunal has been reversed by Hon'ble Calcutta High Court vide order dated 14.6.2017 in the case of **Amitava Sarkar vs. Union of India & Ors in W.P.C.T. No. 27 of 2017** (indiankanoon.org/doc/11123445), in which it is held as under:-

"The subject matter of challenge in the present writ petition is an order dated 23rd December, 2016 passed by the learned Judicial Member, Central Administrative Tribunal, Calcutta Bench, in original application being O.A. 350/01093/ 2016.

.....

It is well settled that the rule of exhaustion of alternative remedy, being a rule of discretion rather than a rule of compulsion, in an appropriate case, the Court would be justified in exercising its discretion. The learned first Judicial Member exercised such discretion upon arriving at a finding that there had been a violation of the principle of natural justice as the appellate authority did not indicate the penalty that he proposed to inflict as enhanced penalty. Such finding could not be negated by the learned Administrative Member and the learned third Member.

For the reasons discussed above, we are of the opinion that the impugned order dated 23rd December, 2016 is not sustainable in law and the same is accordingly set aside and the writ petition is disposed of remitting the original application to the learned Tribunal for fresh consideration on merit."

Hence, the ground of non-exhaustion of alternative remedy by the applicant as stated in the written submissions of the learned counsel for the respondents is not tenable.

28. Learned counsel for the respondents has cited the case of Dileep Kumar Gaur vs. Union of India decided by the Principal Bench of the Tribunal in OA No. 1363/2013 vide order dated 20.5.2015, in which it was mentioned in the head note that non-compliance of the rule 14 will not vitiate the enquiry proceedings in a case of sexual harassment. Perusal of the order dated 20.5.2015 reveals that the inquiry to be conducted by the complaint committee shall be deemed to be the inquiry by the inquiry authority under the Rule 14.

There is nothing in the order dated 20.5.2015 to imply that other provisions of the rule 14, except relating to the inquiry authority and inquiry report, will not apply to a case of disciplinary proceeding on allegation of sexual harassment. In the instant OA, the report of the CRC has been treated to be the report of the inquiry authority. But for the deficiencies like non-furnishing of a copy of the complaint to the applicant before or during the inquiry and non-consideration of this ground by the appellate authority, cannot be justified taking help of the cited judgment.

29. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of **State of U.P. & Ors. v. Saroj Kumar Sinha JT 2010 (1) SC 618** and vide the judgment dated 2.2.2010, it was held as under:-

"28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a

judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

29. The affect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is *prima facie* unfairness, irrespective of whether the material in question arose before, during or after the hearing."

The ratio of the above judgment is applicable to the present OA before us, since the copy of the statement of the complainant/complaint being a vital document on which the inquiry was based, was not supplied to the applicant before or during the inquiry in spite of his repeated requests. Such ground taken by the applicant in his appeal was not considered by the appellate authority.

30. It is noticed that after receipt of the inquiry report dated 30.08.2005 of the CRC, the applicant's husband was reinstated in service vide order dated 31.1.2006 as stated in para 4.22 of the OA and these averments have not been specifically contradicted by the respondents. The reason for keeping the matter pending for more than a year from the date of receipt of the inquiry report of the CRC and for delaying the issue of show cause notice dated 13.11.2006, has not been explained by the respondents. We also notice that the CRC vide the inquiry report, has not held the applicant's husband clearly guilty of the charge and instead, it commented that there is scope for re-thinking in this case due to the fact that there is no eye witness and clandestine manner of handling the case by ex-Principal. Perusal of the show cause notice dated 13.11.2006 reveals that the disciplinary authority had made up his mind to impose the penalty of removal from service at the time of issuing the said show cause notice.

31. In view of above discussions, we are of the considered opinion that there are major violations of the CCS (CCA) Rules, 1965 by the respondents

in the matter, due to which the impugned order of punishment dated 30.07.2007 and 14.12.2007 cannot be sustained in law. Further, in view of the findings of the inquiry committee as discussed earlier in this order, the punishment of removal from service imposed on the applicant is considered to be shockingly disproportionate to the charge established as per the inquiry report dated 30.8.2005. Accordingly, the OA is allowed and the order dated 23.07.2007 (Annexure No. VI to the OA) of the disciplinary authority and order dated 14.12.2007 (Annexure No. X to the OA) of the appellate authority are set aside and quashed. Since the applicant's husband has expired, the relief of reinstatement in the service has become infructuous in this case. The respondents are, therefore, directed to sanction the pensionary benefits to which the applicant, being the wife and legal heir of the deceased employee is entitled to as per the rules, treating the applicant's husband to have continued in service till his date of his superannuation. However, no arrear salary for the period for which the applicants' husband was out of service due to the impugned order dated 30.7.2007 will not be payable in view of the principle of 'no work no pay'. The pensionary benefits shall be sanctioned based on notional fixation of pay, treating the applicant's husband to have remained in service till his date of superannuation after quashing of the impugned orders as above. This order shall be complied with by the respondents within four months from the date of receipt of a certified copy of this order. The OA is allowed accordingly, with no order for costs.

(RAKESH SAGAR JAIN)
MEMBER (J)

(GOKUL CHANDRA PATI)

