

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00452/2015

Wednesday, this the 6th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Arun.A.K.,
S/o.S.Anilkumar,
SC No.10445,
Formerly Assistant,
VSSC Central School,
Currently serving as Assistant,
Main Accounts, Vikram Sarabhai Space Centre,
Thiruvananthapuram.
Residing at Geethanjali House,
Santhi Nagar, Sreekaryam P.O., Thiruvananthapuram.Applicant

(By Advocate – Mr.K.T.Shyam Kumar)

v e r s u s

1. The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapuram – 695 022.
2. The Chairperson,
Internal Complaints Committee,
Vikram Sarabhai Space Centre,
Thiruvananthapuram – 695 022.
3. The Senior Head PGA (Disciplinary Authority),
Vikram Sarabhai Space Centre,
Thiruvananthapuram – 695 022.
4. The Chief Controller/Appellate Authority,
Vikram Sarabhai Space Centre,
Thiruvananthapuram – 695 022.
5. Smt.Sandhya Sivaraj,
Staff Code No.27329,
Senior Assistant, MSA,
Vikram Sarabhai Space Centre,
Thiruvananthapuram.Respondents

**(By Advocates Mr.N.Anilkumar, SCGSC [R1-4]
& Mr.R.Rajasekharan Pillai [R5])**

This Original Application having been heard on 25th January 2019, the Tribunal on 6th February 2019 delivered the following :

O R D E R

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The O.A is filed by Shri.Arun.A.K., against Annexure A-3 Inquiry Report dated Nil founding him guilty of the charges under Section 2(n)(iv) of “The Sexual Harrassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”, Annexure A5 order dated 24.1.2014 of the Disciplinary Authority imposing a penalty of reduction to the lower stage in the time scale of pay which will have the effect of postponing his future increments, Annexure A-8 order dated 26.3.2014 of the Appellate Authority rejecting the appeals and Annexure A-10 order dated 8.7.2014 of the Revisionary Authority dismissing the revision petition. The reliefs sought by the applicant in the O.A are as follows :

1. Set aside Annexure A-3, Annexure A-5, Annexure A-8 and Annexure A-10 orders issued by the Respondent Nos.2, 3, 4 and 1 respectively.
2. Grant such other reliefs this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

2. The brief facts of the case leading to the case are : the applicant commenced his service as Assistant on 10.2.2011 in the Vikram Sarabhai Space Centre (VSSC) Central School at Thiruvananthapuram. While working so, on 31.5.2013 he was served with a Memorandum asking him to file explanation based on a complaint dated 5.3.2013 filed by his colleague, the 5th respondent herein, alleging that during February, 2013, he had loaded obscene photographs in the official computer allotted to the 5th respondent while she was working as Senior Assistant in VSSC Central School. Denying the same he has filed a detailed explanation dated 10.6.2013.

Thereafter on receipt of notice dated 31.10.2013 for hearing he appeared before the Committee on 7.11.2013 wherein recorded telephonic conversation of the applicant with a contract employer of VSSC Central School and an apology letter of the applicant dated 15.1.2013 addressed to the Principal of the VSSC Central School were produced. Even though the applicant again denied the allegations levelled against him, the Committee found him guilty and recommended that he should be denied computer accessibility and should be continuously monitored and be moved out of the school and posted in a non-sensitive area. In pursuance to the Inquiry Report disciplinary proceedings were initiated. After consideration of the Inquiry Report and the reply submitted by the applicant in response to the Inquiry Report, vide Annexure A-5 order dated 24.1.2014 the applicant was imposed with a punishment of penalty of reduction to the lower stage in the time scale of pay/pay band by one stage from Rs.8120/- to Rs.7810/- without altering the grade pay with immediate effect until he is found fit to be restored to the higher stage of Rs.8120/- after a period of two years from the date of issue of the order with further direction that he shall not earn increment of pay during the period of reduction and the reduction will have the effect of postponing his future increments. Against the Inquiry Report and Annexure A-5 order the applicant has filed separate appeals before the 4th respondent. But the 4th respondent after due consideration disposed of both the appeals through a common order finding that the penalty imposed would be appropriate and adequate and does not require to be toned down, reduced or enhanced, a copy of the order is available at Annexure A-8. Aggrieved by the disposal of the appeals which were filed under separate provisions of law, the applicant has preferred revision petition dated 23.6.2014 under Rule 26 of the Department of Space Employees

(Classification, Control and Appeal) Rules, 1976. But the same also met with the same fate vide order dated 8.7.2014 by confirming to the orders passed by the Disciplinary Authority and the Appellate Authority. It was held that the penalty imposed would be appropriate and deserving and does not require to be intervened.

3. As grounds the applicant submitted that Annexure A-11 apology letter is dated 15.1.2013. The incident alleging that the applicant had loaded the computer with objectionable materials took place in February, 2013. And the complaint against the applicant was filed by the 5th respondent on 5.3.2013. Thus his submission is Annexure A-11 could never be taken as an admission of guilt on the complaint filed subsequently and that the complaint is the result of an afterthought.

4. Notices were issued and respondents have filed their reply statement. In the reply statement it is submitted that being a model employer the respondent organization has put in place mechanism to inquiry into complaints of sexual harassment. Accordingly the 1st respondent has constituted an 'Internal Complaints Committee' in accordance with the Sexual Harrassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as Act, 2013), which has inquired into the complaint against the applicant after duly giving him reasonable opportunities to be heard. He was given adequate opportunity to produce his documents and witnesses before the Committee to prove his innocence, but he failed to produce any witnesses or documents before the Committee to defend the charge levelled against him.

5. As per Section 13 of the Act, 2013 based on Inquiry Report the employer shall take action for sexual harassment as a misconduct in accordance with the provisions of service rules applicable. The service rules applicable is Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 which depicts as per proviso to Rule 11(2) that where there is a complaint of sexual harassment, the Complaints Committee established in the Department for inquiring into such complaint shall be deemed to be the Inquiring Authority. Further, as per guidelines issued by the Department of Personnel and Training the report of the Complaints Committee should be treated as an Inquiry Report against the accused Government servant. It is pertinent to note that as per Department of Space Employees' (Classification, Control and Appeal) Rules, 1976 there is no facility available to a charged Government servant to make an appeal against the Inquiry Report and the available provision is to challenge the order of the Disciplinary Authority before the Appellate Authority by preferring an appeal.

6. It is submitted that the guilt by the applicant has been established based on the evidences on record. The act of loading obscene photographs in the Office PC allotted to a female colleague, is a very serious offence. As per Rule 3-C of the CCS (Conduct) Rules, showing pornography is an act of sexual harassment of woman at her workplace. It is submitted that though the applicant deserves much severe penalty, considering all aspects in mind, especially the fact that he is in the beginning stages of his career and also taking into consideration of his family, with a view of giving him an opportunity to amend himself, the Disciplinary Authority has inclined to take a lenient view and avoided extreme penalties against him.

Subsequently appeal petition and revision petition submitted by the applicant were also disposed of by the respective competent authorities in accordance with Rules.

7. It is a well settled principle of law that the standard of proof required in criminal trial and departmental proceedings is quite different. In the criminal trial the standard of proof is proof beyond all reasonable doubt, whereas in the departmental proceedings it is preponderance of probability. Departmental inquiry is a quasi-judicial process wherein an independent and impartial authority is appointed to inquire into the allegation, in which reasonable opportunity is given to the charged officer to defend his side. The code of conduct as set out in the CCS (Conduct) Rules, 1964 clearly indicates the conduct expected of a member of the service and good conduct and discipline are inseparable from the functioning of every employee.

8. We have heard Shri.K.T.Shyam Kumar, learned counsel for the applicant, Shri.N.Anilkumar, learned SCGSC for the Respondent Nos.1-4 and Shri.R.Rajasekharan Pillai, learned counsel for the Respondent No.5. We have gone through the pleadings and documents available on record. There are two evidences against the applicant. First is an apology letter of the applicant dated 15.1.2013 addressed to the Principal of the School and the second is the recorded telephonic conversation of the applicant with a contract employee of VSSC School. It is seen that though the apology letter submitted by the applicant to the Principal is dated 15.1.2013, going by the submissions in the letter it can be clearly concluded that the applicant was not only aware of the content in the drive in the computer but had also added movies, music, ebooks by himself. Lastly, while admitting that he fell

short of his responsibility to erase the obscene files from the office system, he promised in the letter that he will erase all the files which were already there. But the 5th respondent even during February, 2013 found her computer flooded with obscene photographs. It implies that the applicant was not only fell short on his responsibility but also not kept his promise. With regard to telephonic conversation it is stated that voice in the telephonic conversation was identified by the Principal as that of the applicant.

9. In the light of the above, we found that there was a preponderance of the probability that the applicant himself using the drive which was password protected to hide files. The competent authorities taking cognizance of the serious misconduct had only taken a lenient view and avoided extreme penalties against the applicant. Hence we find no reasons to interfere with the impugned orders passed. The O.A is accordingly dismissed. No order as to costs.

(Dated ts the 6th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00452/2015

1. **Annexure A1** - A true copy of the Memorandum dated 31.5.2013.
2. **Annexure A2** – A true copy of the explanation dated 10.6.2013 submitted by the applicant.
3. **Annexure A3** – A true copy of the report of the Inquiry Committee dated Nil.
4. **Annexure A4** - A true copy of the reply dated 30.12.2013 filed by the applicant before the 3rd respondent.
5. **Annexure A5** - A true copy of the order dated 24.1.2014 issued by the 3rd respondent.
6. **Annexure A6** - A true copy of the appeal dated 13.3.2014 filed by the applicant before the 4th respondent.
7. **Annexure A7** – A true copy of the appeal dated 17.2.2014 filed by the applicant under the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 and the Industrial Employment (Standing Orders) Act, 1946.
8. **Annexure A8** – A true copy of the order dated 26.3.2014 issued by the 4th respondent.
9. **Annexure A9** - A true copy of the Revision Petition dated 23.6.2014 filed by the Petitioner before the 1st respondent.
10. **Annexure A10** - A true copy of the order dated 8.7.2014 issued by the 1st respondent on the Revision Petition filed by the applicant.
11. **Annexure A11** - True copy of the letter dated 15.1.2013 submitted by the applicant to the Principal of the school.
12. **Annexure R1(a)** - True copy of the communication dated 15.11.2013.
13. **Annexure R1(b)** - True copy of the Memorandum dated 17.12.2013 of the Disciplinary Authority providing him the copies of documents.
14. **Annexure R1(c)** - True copy of the letter dated 31.1.2013 submitted by the applicant.
