

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 040/00028/2015

Date of Order: This, the 05<sup>th</sup> day of April 2019

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER  
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER**

Shri Bishnu Prasad Rabha  
Presently working as Upper Division Clerk  
Kendriya Vidyalaya, NEIST (RRL), Jorhat  
Jorhat – 785006 (Assam).

**...Applicant**

By Advocates: Mr. S.N. Tamuli & Ms. A. Begum

-VERSUS-

1. Kendriya Vidyalaya Sangathan  
Through the Joint Commissioner  
(Administration)  
18 Institutional Area, Saheed Jeet  
Singh Marg, New Delhi – 110016.
2. The Commissioner  
Kendriya Vidyalaya Sangathan  
18 Institutional Area, Saheed Jeet  
Singh Marg, New Delhi – 110016.
3. Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office, Silchar, Captain NM Gupta Sarani  
P.O. – Silchar, Dist – Cachar (Assam)  
Pin – 788001.
4. Shri Somit Shrivastav  
Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office, Silchar  
Captain NM Gupta Sarani, P.O. – Silchar,  
Dist – Cachar (Assam), Pin – 788001.

5. Ajay Pant, Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office, Tinsukia  
Campus of Kendriya Vidyalaya  
Duliajan, P.O. – Duliajan  
Dist – Dibrugarh (Assam), Pin – 786602.
6. Shri M. Manoharan, Principal  
Kendriya Vidyalaya No. 1, Tezpur  
P.O. – Dekargaon, Dist – Sonitpur (Assam)  
Pin – 784501.
7. Smti. Shikha Gogoi, PGT (English)  
Kendriya Vidyalaya, NEIST (RRL) Jorhat  
Jorhat – 785006 (Assam).
8. Shri MH Mazumdar, TGT (Work Experience)  
Kendriya Vidyalaya, NEIST (RRL) Jorhat  
Jorhat – 785006 (Assam).

**... Respondents**

By Advocate: Mr. M.K. Majumdar, KVS SC

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**O R D E R**

**NEKKHOMANG NEIHSIAL, MEMBER (A):**

By this O.A., applicant makes a prayer for setting aside the impugned memorandum dated 26.12.2014 and 13.01.2015.

2. Heard Mr. S.N. Tamuli, learned counsel or the applicant and Mr. M.K. Majumadr, learned KVS standing counsel for the respondents.

3. Mr. S.N. Tamuli, learned counsel appearing on behalf of the applicant submitted that the applicant was serving as Upper Division Clerk in Kendriya Vidyalaya, NEIST (RRL), Jorhat, Assam. He was accused of sexual harassment by two lady teachers, namely: Mrs. Nidhi Mishra, Ex-PRT Music and Ms. Rima Paul, Contractual Teachers. The enquiry committee was constituted for the purpose of redressal of complaints of sexual harassment under order of Deputy Commissioner, KVS RO Tinsukia office order No. F.42061/2014-15/KVS(RO)/TSK/Admn./2693-99 dated 09.07.2014. The enquiry committee consisted of Dr. AK Sharma, Assistant Commissioner, KVS RO Tinsukia, Assam as Chairman and four other members out of which three of them were women including Dr. (Mrs.) Bina Baruah from an NGO. The scope of the enquiry as stated in the Inquiry Report was as under:-

**Scope of the Enquiry:**

1. Whether Shri B. P. Rabha, UDC, Kendriya Vidyalaya, NEIST (RRL) Jorhat caught the hands with dirty intention and tried to abuse sexually Smt. Nidhi Mishra, PRT (Music) Kendriya Vidyalaya, NEIST (RRL) Jorhat on 1<sup>st</sup> Nov, 2003 at 10.40 AM?
2. Whether Shri B. P. Rabha, UDC, Kendriya Vidyalaya, NEIST (RRL) Jorhat tried to misbehave with Smt Nidhi Mishra, PRT (Music) Kendriya Vidyalaya, NEIST (RRL) Jorhat on 1<sup>st</sup> Feb, 2014 in 4<sup>th</sup> period when she went to toilet for attending natural's call?
3. Whether Shri B. P. Rabha, UDC, Kendriya Vidyalaya, NEIST (RRL) Jorhat wants sexual favour from Smt Nidhi Mishra, PRT (Music) Kendriya Vidyalaya, NEIST (RRL) Jorhat for releasing TTA Advance?

4. Whether Shri B. P. Rabha, UDC, Kendriya Vidyalaya, NEIST (RRL) Jorhat passes unwanted comments on Smt. Nidhi Mishra, PRT (Music) Kendriya Vidyalaya, NEIST (RRL) Jorhat and other lady teachers?
5. Whether, Shri B. P. Rabha, UDC, Kendriya Vidyalaya, NEIST (RRL) Jorhat caught the hand of Ms. Rima Paul, TGT (Eng) contractual Kendriya Vidyalaya, NEIST (RRL) Jorhat with bad intention on 3<sup>rd</sup> Feb, 2014 at 10.45 AM?

4. The enquiry was conducted on 26.07.2004 and from 04.08.2014 to 05.08.2014 by the Constituted Committee. As per the record of the enquiry committee against five points of charges/allegations against the applicant, the committee found the last 5<sup>th</sup> charge 'proved to be correct'. On the basis of the findings of the Enquiry Committee and also after giving his own points of views and disagreement, the Disciplinary Authority vide Memorandum No. 29062/2014/KVS(SR) dated 13.01.2015 issued a notice to the applicant to make representation, if any, on his proposal, to impose a penalty of "removal from service". This Memorandum dated 13.01.2015 has been challenged by the applicant in this Court vide this instant O.A.

5. On interim prayer, this Tribunal vide order dated 29.01.2015 have stayed the operation of the Memorandum dated 26.12.2014 and 20.01.2015 (13.01.2015). Thereafter, the case came up for hearing from time to time. The hearing was concluded on 14.12.2018 and kept reserved the O.A. for orders.

6. While going through the case, it was observed that the applicant has challenged the disciplinary proceedings on the ground that the copies of the enquiry report along with copies of all written statements given by the complainants/witnesses were not supplied to him. From the records, it was also observed that the respondent authorities vide their Memorandum no. 29062/2014-KVS(SR) dated 26.12.2014 have denied this request on the ground that supplying copies of individual statements of witnesses/complainants may expose vulnerabilities of the lady teachers. In this context, in order to adjudicate the case properly, it was felt that the Tribunal have to go through entire records of the enquiry report. Accordingly, the case was heard again on 08.02.2019 wherein the learned counsel for KVS (the respondents) Mr. M.K. Majumdar was directed to obtain and supply the complete set of the enquiry report. Accordingly, the learned counsel for the respondents had submitted complete report of the Enquiry Committee on 21.02.2019 and the hearing was concluded. In the meantime, as allowed by the Tribunal on 14.12.2018, the learned counsel for the applicant had submitted written argument in addition to the O.A. In the written argument, the learned counsel has put forth the following arguments:-

### **Part A**

- a. The inquiry report mentioned about 37 documents and same were referred in the Inquiry Report, but none of the same was supplied to the applicant.
- b. So-called allegations of sexual harassment is the result of a conspiracy implanted by the Ex-principal of k.V., RRL, Jorhat, Assam, as the applicant has raised his voice against the misdeeds and corruptions of the Ex- Principal (Respondent No. 6 of the instant case) by lodging complaints and also by putting official notes in office files etc. He has also refused to keep mum despite of severe pressure and threatening from the Ex-Principal.
- c. The Complaint lodged against the applicant by Smt. Rima Paul is false and she has lodged the same at the instance of the Ex-Principal i.e. Respondent No. 6. For lodging false complaint she got benefited by way of Re-Appointment. Applicant has stated that Rima Paul was re-appointed vide letter dated 07.07.2014 after her termination on 14.05.2014. Aforesaid re-appointment was offered to her, by ignoring more suitable candidates in panel.
- d. The applicant has also alleged that the complaint lodged by Miss Rima Paul was typed by another teacher at the instance of the applicant.
- e. The applicant has not touched the hand of the so-called victim Rima Paul with intention to molest her.
- f. he has also stated that fact finding inquiry committee without issuing charge-sheet as per the procedure of Rule 14 of the CCS(CCA) Rules 1965 has submitted inquiry report holding that the charges against the applicant are proved.

### **Part B**

On being aggrieved by such action of the Respondents, the applicant has filed the instant O.A. before the Hon'ble Tribunal praying for quashing and setting aside of Memorandum dated 26.12.15 (ANNEXURE -14, Page No. 61 of the O.A.) & 13.01.15 (ANNEXURE-16, Page 67, of the O.A.) mainly on the following grounds:-

- i. Aforesaid Memorandums were issued without affording any "**opportunity of heard**" i.e. right to defend himself, to the applicant, in violation of Article 21 of the Constitution of India.
- ii. Vide Memorandum dated 13.01.15 (date of the memorandum was wrongly typed as 20.01.2015 in the O.A.) Respondent No. 3 seeks to impose major penalty without

issuing any Charge Sheet alleging misconduct and without conducting any Disciplinary Proceeding.

- iii. Impugned memorandums were illegal as the same were issued in violation of Rule 14 of CCS(CCA) Rules 1965 and also in violation of Principles of Natural justice.
- iv. The fact finding inquiry cannot substitute Disciplinary Inquiry and as such major penalty cannot be imposed without holding Disciplinary Inquiry.
- v. The applicant has been deprived of the right to defend in the fact finding inquiry as the relied upon documents and the statements given by the witnesses and complaints were not supplied to the applicant.

### **Part C**

#### **FAILURE TO COMPLY WITH PROVISIONS OF THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT-2013:**

- B. The respondents have failed to follow the provision of Sec. 4 of the Act, which provides the procedure to be followed at the time of constitution of internal complaints committee. **Sec. 4 (2) (a)** mandates that the Presiding Officer of the committee should be a woman, but in the instant case the committee was headed by Dr. A. K. Sarmah, Assistant Commissioner, KVS RO, Tinsukia.
- c. The respondents have also failed to follow the mandated of Sec. 9 (1) while dealing with the complaints against the applicant. This section provides that the complaints should be filed within a period of **three (3) months from the date of incident** and in case of a series of incident within a period of three (3) months from the date of last incident. Proviso to this section empowers the committee to extend the time limit by another (three) 3 months, but in such cases the committee must record the reason for granting such extension in writing. There is no provision for extension of time of filling a complaint beyond that.

In the instant case, one of the complainant, Smti Nidhi Mishra, PRT (Music) KVS, NEIST (PRL) has lodged complaint dated 23.06.2014, before the Principal KV NEIST (RRL), Jorhat, alleging of an incident of sexual harassment by the applicant that took place on 1<sup>st</sup> Nov, 2013 i.e. an incident which is more than 6 (Six) months old on the date of lodging the complaint. But the committee took cognizance of the same ignoring the bar of time limit as prescribed under sec. 9(1) of the Act.

Similarly, the complainant, Rima Paul has lodged complaint dated 27.06.2014, alleging an incident that according to her took place on 03.02.2014, i.e. an incident which is more than three (3) months old on the date of lodging the complaint. The committee has accepted the complaint without assigning any reason in writing, as such has violated the procedure prescribed. This is illegal as the same has violated the mandates of Section 9(1) of the Act. Hence entire inquiry is illegal.

- d. That the Respondents have also violated procedure prescribed under Rule (2) (4) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules-2013. The procedure prescribed in the above Rules prescribes that on receipt of the complaint, the Committee (Internal Committee) shall send a copy of the complaint to the person concerned (Respondent) within a period of (Seven) 7 working days. But in the instant case the copies of the complaints were never forwarded to the applicant. Till date, the applicant has not been provided with the copies of the complaints of sexual harassment made by complainants namely, Nidhi Mishra & Rima Paul. Both the Inquiry Committee and the Disciplinary Committee has failed to supply of the complaints to the applicant causing serious prejudice to the applicant. As such the Committee and the Disciplinary authority has violated the procedure prescribed under the Rules.
- e. That the Respondents have also violated the provisions of Rules 7 (4) of the Act. Aforesaid Rule mandates observance of "**Principles of Natural Justice**" while dealing with the complaints of sexual harassment. But in the instant case the Respondents have refused to supply the copies of the complaints, statements of the witness & victims. Further, no opportunity was provided to the applicant to cross examine the witnesses (either directly or by supplying questioners) in order to testify the authenticity of their statements. Hence, inquiry committee has failed to comply with the principles of natural justice. On this ground alone Inquiry Report submitted by the inquiry committee deserves to be quashed.

7. The respondent authorities in their written statement filed on 24.03.2015 among others have contested as follows:-

- (i) That on the basis of the aforesaid challenge and related contentions made by the Applicant, a basic question would obviously arise as to whether the aforesaid CCS(CCA) Rules 1965 is imperative on the Disciplinary Authorities the instant case in view of the decision of the Apex Court in Visaka-Vs-State of Rajasthan 1997 – 6 Sec 241. In that regard a further question would obviously arise so the

whether in the event of non-application of the aforesaid rules 1965 in case of any offence of sexual harassment being committed by the Government Servant in view of the aforesaid decision of the Apex Court in case of Visaka (Supra), what would be the appropriate procedure to be followed by the Disciplinary authority in order to take any Disciplinary action against the said govt. servant.

(ii) That before proceeding to answer aforesaid question it may be relevant on the part of the respondent authorities at the outset that once the question pertaining to applicability of the aforesaid CCS(CCA) Rules 1965 in a given situation was already answered by the Apex Court by laying down the law in the case of Vishaka – v – State of Rajasthan (Supra), the Applicant cannot under any circumstance take the recourse of the said rules as a shield so as to challenge the legality or otherwise of the said decision of the Respondent Authority and make any prayer before any court or Tribunal for setting at naught the said decision as honest simply because of non-observance of the procedure prescribed under the said rules or for non-initiating any department proceeding in conformity with the said rules.

8. As highlighted in the foregoing paras and since the applicant has contested the denial of the some documents submitted as a part of the enquiry report, the Tribunal was duty bound to go into the details of the enquiry report. This is particularly imperative since the disciplinary proceeding against the applicant is of allegation of sexual harassment.

9. We have carefully gone through the submissions made by both the parties and the arguments thereon. It is observed from the submission of the applicant that apart from denying the charge/allegation, most of the points relate to the procedure aspect. Applicant contention is that the Committee should have been presided over by a woman. But there is also provision that in case a senior level woman employee is not available, the Presiding Officer

shall be nominated from other offices or Administrative Units. Accordingly, respondents have nominated Dr. A.K. Sharma, Assistant Commissioner, KVS (RO), Tinsukia. As regards to the delay of complaint of more than three months, this has been squarely covered by the Committee in questionnaires and answers got from the main complainer namely Ms. Rima Paul. As regards to other aspects, the issues have been squarely covered by the decision of the Hon'ble Apex Court in the case of **Visaka-Vs-State of Rajasthan 1997 6 Sec 241.**

10. On careful perusal of the enquiry report submitted by the constituted Committee under the Chairmanship of Assistant Commissioner, RO, Tinsukia, it is observed that the Committee has done very thorough and professional job in conducting the enquiry. Apart from other aspects, the Committee have put/raised as many as 43 questions/supplementary questions to the Principal, KV, RRL in connection with the allegations leveled against him by the applicant. On careful perusal of those questions and answers, it is observed that most of the allegations by the applicant against the school Principal has been covered. Similarly, the Committee has also put and got answers of as many as 24 questions and 3 supplementary questions from Miss Rima Paul, the main complainant against the applicant. These questions and answers have covered

the delay aspects of the complaints submitted by the complainant. The Committee also apart from written statement from the applicant, put and got answers of 34 questions. On going through questions and answers of the applicant, at question No. 29, it was recorded as here under:-

"Question: You have stated that you told "sorry" to Miss Rima Paul. Why did you say so and what had actually happened on that day i.e. 03.02.2014?"

Answer of the applicant: I touched her hand and it was my mistake. I should not do so. Therefore, I apologized her for the mistake"

The statement was of dated 26.07.2014 of the applicant i.e. Shri B.P. Rabha.

11. After carefully going through the submissions made by the respondent authority as highlighted above and the enquiry report submitted by the Enquiry Committee vide their report No. 42061/2014-15/KVS (TSK)/Admn dated 06.08.2014, it is observed that inspite of the vehement denial of the misconduct by the applicant in regard of the charge of sexual harassment and also some of the alleged infirmities in the procedure adopted, the applicant has not particularly suffered from denial of principles of natural justice. We therefore, find that the O.A. is liable to be dismissed on the ground of merit of the case.

12. Accordingly, the O.A. stands dismissed. Interim stay order granted by this Tribunal on 29.01.2015 against the impugned Memorandums dated 26.12.2014 and 20.01.2015 (13.01.2015) is hereby vacated.

13. No order as to costs.

**(NEKKHOMANG NEIHSIAL)  
MEMBER (A)**

**(MANJULA DAS)  
MEMBER (J)**

**PB**