

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01636/2018

Date of hearing: 20.02.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Om Prakash Rawat,
Son of Late Bishwa Ram Rawat,
Aged about 57 years,
Residing at 73, East B. Park, Ishapur Estate,
Post Office – Ishapur-Nawabganj,
District – 24-Parganas (North),
Pin – 743 144
And working to the post of Additional General
Manager in Rifle Factory, Ishapore,
Post Office – Ishapore Nawabganj,
District – North 24-Parganas,
Pin 743 144.

..... Applicant.

Versus

1. Union of India
Service through the Secretary,
Ministry of Defence (Defence and Production),
Government of India, South Block,
New Delhi – 110 001
2. The Chairman-Cum-DGOF
Ordnance Factory Board,
Having his office at 10A,
Shaheed Khudiram Bose Road,
Kolkata – 700 001
3. The Senior General Manager,
Ordnance Factory,
Kalpi Road, Kanpur,
Uttar Pradesh,
Pin – 208 009.
4. The General Manager,
Ordnance Factory,
Kalpi Road, Kanpur,
Uttar Pradesh,
Pin – 208 009.
5. The Additional General Manager,
(Administration) Ordnance Factory,
Kalpi Road, Kanpur,
Uttar Pradesh,
Pin – 208 009.
6. The Deputy General Manager,

Rawat

(Administration) Ordnance Factory,
Kalpi Road, Kanpur,
Uttar Pradesh,
Pin – 208 009.

7. The Secretary,
Ordnance Factory Board,
Having his office at 10A,
Shaheed Khudiram Bose Road,
Kolkata – 700 001.

8. Mrs. Urmila Yadav,
Personnel No. 305404
Working as PA to Principal Medical Officer,
PMO/Incharge, Ordnance Factory Hospital,
Armapur Estate,
Kanpur, Pin – 208 009.

9. Mr. Rajneesh Kumar,
Joint General Manager/Administration,
Indian Ordnance Factories,
Ordnance Cable Factory,
Chandigarh, Pin 160 002.

For the Applicant

Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents

Mr. B.P. Manna, Counsel

Respondents

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal in the instant Original Application praying for the following relief:

(a) To quash and/or set aside the impugned complaint dated 15.04.2013 made by Mrs. Urmila Yadav the then Personal Assistant against the applicant in respect of using slang and unparliamentary languages which is not a complaint of sexual harassment being Annexure A-3 of this original application.

(b) To quash and/or set aside the impugned Enquiry Report dated 30.07.2014 submitted by Women Sexual Harassment Committee/OFC being Annexure A-16 of this original application.

(c) To quash and/or set aside the impugned penalty order of punishment dated 25th September, 2018 which was imposed against the applicant by the Under-Secretary, Government of India, Ministry of Defence, Department of Defence Production by which they have imposed of penalty of 'Reduction of pay by two stages for a period of one year with further directions that he will earn increments of pay during the period of such reduction and the reduction will not have effect of postponing the

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future increments of his pay, on the applicant which has been imposed without any due process of law and the aforesaid penalty order has been sent to the applicant vide office order dated 06.10.2018 and your applicant has received the same on 06.10.2018 being Annexure A-26 of this original application.

(d) To declare that the entire proceeding which has been initiated by the concerned department on the basis of the baseless complaint made by the private respondent against the applicant by applying the statutory act of the Sexual Harassment of Women at Workplace' (Prevention, Prohibition and Redressal) Act, 2013 is bad in law and illegal as because the said Act came into force with effect from 22.04.2013 as per Gazette Notification dated 22.04.2013 and before enactment of said Act in the Official Gazette, the said complaint was made by Mrs. Urmila Yadav on 15.04.2013 and the said Act is not applicable in the present applicant's case is concerned and on that ground alone the entire proceeding which was conducted on the basis of the said complaint may be liable to quashed and/or set aside and the applicant should be exonerated in respect of all charges.

(e) To quash an appropriate order directing the respondent authority to withdraw the impugned penalty order of punishment dated 25th September, 2018 which was imposed against the applicant by the Under-Secretary, Government of India, Ministry of Defence, Department of Defence Production being Annexure A-26 of this original application and to give all consequential benefits to the present applicant and also to impose cost at least Rs. 2,00,000/- (Rupees two lacs) against the private respondent for making baseless complaint against the applicant only to damage the service career of the applicant who has done no wrong on his part for advising the private respondent to come office timely and to maintain the duties in office hours by not absenting habitually."

2. In addition, the applicant has sought interim relief as follows:-
 - a) To stay of operation of the impugned penalty order of punishment dated 25th September, 2018 which was imposed against the applicant by the Under-Secretary, Government of India, Ministry of Defence, Department of Defence Production being Annexure A-26 of this original application in any manner whatsoever till the disposal of this original application;
 - b) Restraining the respondents from giving any effect and/or further effect to the impugned penalty order of punishment dated 25th September, 2018 which was imposed against the applicant by the Under-Secretary, Government of India, Ministry of Defence, Department of Defence Production being Annexure A-26 of this original application in any manner whatsoever till the disposal of this original application;"
3. This matter is taken up for issue of orders with respect to the interim relief as prayed for by the applicant.
4. Heard both Id. Counsel, examined documents on record and short reply furnished by respondents in compliance to directions of the Tribunal.
5. The applicant's case, in brief, is as follows:-

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That, while the applicant was serving as Additional General Manager/QC in the Indian Ordnance Factory, Kalpi Road, Kanpur, a lady PA was attached to him. That, the said PA, who is the private respondent No. 8 in the instant ~~original~~ Application, was a habitual late comer and, accordingly, the applicant had recommended disciplinary action against her as despite several requests, the private respondent No. 8 failed to attend office on time. That, at the request of the applicant, the said respondent No. 8 was relieved as his PA on 22.4.2013 and a replacement PA was posted with the applicant.

That on 15.4.2013, the said respondent No. 8 made baseless complaints against the applicant and there was no reference to sexual harassment in the said complaint. Nevertheless, the respondent authorities treated the complaint of respondent No. 8 as that of sexual harassment and referred it to a committee notified for this purpose. The applicant thereafter moved the Allahabad Bench of the Tribunal questioning the composition of the committee, which, according to him was composed entirely with officers junior to him and also on account of the fact that although the complaint was lodged, on 15.4.2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into effect on 22.4.2013 and, hence, the applicant could not have fallen within the purview of the said Act. The Allahabad Bench of the Tribunal disposed of the matter by directing as follows:-

"Taking into account the submission made by the applicant as well as the provisions of the Rule 3C Clause 25A, we are convinced that the committee which has been asked to enquire against the applicant in relation to the complaint of Smt. Urmila Yadav is not the consistent with relevant Rules applicable on the subject. Therefore, the respondent No. 4 is directed that any enquiry to be conducted against the applicant should be undertaken by the committee by the committee which is constituted in accordance with Rule 2C Clause 25A. Respondents may take action accordingly."

Further in response to a Review Application filed by the respondent authorities, the Tribunal directed as follows:-

"Taking all these facts into account, we feel that the committee constituted by the respondents in accordance with the provisions of the Act, Rules and guidelines. Therefore, there is no reason why the applicant should not participated in the inquiry to be conducted by the duly constituted committee. Accordingly we do not find any merit in the OA. Hence dismissed. No costs."

The applicant thereafter participated in the inquiry despite the fact that the supporting relied upon documents were not furnished to him. He was denied of

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his rights to natural justice, access to documents as well as scope of cross-examination and, that, on receipt of the inquiry report communicated to him on 29.6.2016, replied against the same but to no effect, as the penalty of "Reduction of pay by two stages for a period of one year with further directions that he will earn increments of pay during the period of such reduction and the reduction will not have effect of postponing the future increments of his pay" was imposed on him.

Hence, being aggrieved, the applicant has approached the Tribunal in the instant O.A. and, in particular, has sought an interim relief for stay of operation of the penalty order of punishment dated 25.9.2018, as impugned, and for not giving any further effect to the same.

6. The matter for adjudication before us is whether Section 24 of the Administrative Tribunals Act, 1985, may be invoked to grant the interim relief, as prayed for by the applicant.

(i) At the outset, the order of the disciplinary authority is examined and, in particular, the preamble thereto is extracted as under:

"WHEREAS disciplinary proceedings were initiated against Shri O. P. Rawat, AGM/OFC (now AGM/RFI, Kolkata on the complaint of Sexual harassment by Smt. Urmila Yadav, PA/DEC (the then PA to the CO). Based on the complaint dated 15.04.2013 made by Ms. Urmila Yadav, PA, Committee on sexual harassment was constituted in OF-Kanpur. The Committee inquired into the allegations and concluded that the allegation of sexual harassment is established by virtue of evidences on record.

2. AND WHEREAS the Competent Disciplinary Authority in MoD has accepted the Inquiry Report and a copy of the Inquiry Report was forwarded to Shri O.P. Rawat for his defence submission on 13.06.2016. Shri O.P. Rawat has submitted his representation against the Inquiry Report on 09.12.2016.

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(ii) Next, we refer to Rule 13(3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which reads as follows:-

"Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be-

- (i) To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
- (ii) To deduct, notwithstanding anything in the service rules applicable to the respondent from the salary or wages of the respondent such sum as it may consider appropriate to be paid to aggrieved woman or to her legal heirs, as it may determine in accordance with the provisions of Section 15"

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Accordingly, the employer can only take cognizance of the misconduct with respect to an employee alleged to have committed sexual harassment if the internal committee or the local committee, as the case may be, arrives at the conclusion that the allegation against the allegedly delinquent employee has been proved and that a specific recommendation is made to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of service rules as applicable.

Herein, the disciplinary authority has proceeded against the applicant under CCS (CCA) Rules, 1965 and it is not disputed that the said service rules apply to the applicant.

The enquiry report of the Internal Complaint Committee dated 30.7.2014 has been produced before us by the respondent authorities. It is seen that the Internal Complaints Committee was composed with the following terms of reference.

“Terms of Reference”

1. To inquire into the statements of imputation of Smt. Urmila Yadav, PA/Establishment against Sri O.P. Rawat, Additional General Manager/QC.
2. To find out the circumstances/cause of the case.
3. To inquire into the statements of imputation of reversion and other threats by Sri O.P. Rawat, Additional General Manager/QC to Smt. Urmila Yadav, PA/Establishment.
4. To inquire into the obscene and un parliamentary language used by Sri O.P. Rawat, Additional General Manager/QC in presence of Smt. Urmila Yadav, PA/Establishment.
5. Any other significant point in the matter that surfaced during the inquiry but in view of the committee does not cover in the Terms of Reference.
6. Pointing out remedial measures so as to prevent recurrence of such incidents.”

The conclusions of the Internal Complaints Committee on the terms of reference are reproduced below in verbatim:-

Confidential
Inquiry Report

No. WSHCC/OHA/95/2014
Dated : 30-07-2014

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1. To inquire into the statements of imputation of Smt. Urmila Yadav, PA/Establishment against Sri O.P. Rawat, Additional General Manager/QC.

During the inquiry Smt. Urmila Yadav stated that after having talked to anybody in the office or received any phone call, he used to abuse and resorted

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to obscene language to the visitor when he was gone or the caller when call was over. She specifically stated the obscene words used by him which, not to mention before a woman, would have been highly objectionable even before any man and it really amounts contrary to the Office dignity.

Shri OP Rawat turned a deaf ear on Smt. Urmila Yadav's request to refrain from such unparliamentary words and after using abusive words, he used to observe her expression so as to show his reaction. Smt. Urmila Yadav's request to resist using abusive word seems to have aroused the ego of Sri OP Rawat and he started showing her limits of PA, saying that you are a PA, better live in limits of a PA. You don't know that I am an AGM and liason Officer of SC/ST too.

Sri OP Rawat stated that I have spoken nothing. None has complained against being abused by him. Urmila Yadav is not a leader that she is complaining on others being abused. In case any such complaint regarding mine abusing to a third party is received during the presence of Smt. Urmila yadav in my office, please let me know about it.

It appears from the statements of Sri OP Rawat that his abusing to anyone is not at all a serious business. His statement is Smt. Urmila Yadav a leader that she is complaining on abusing others, prove that he is habitual of using abusive words during or after discourse in office. It is also proved that despite he has directly not addressed her with abusive words, he has no hesitation using obscene words for others in her presence. So far as my complaint of the third party in this regard is concerned, Smt. Urmila Yadav herself has stated that after the phone call or departure of the visitor, he used to abuse him/her. Obviously, How can a man know and lodge complain of being abused when phone call is over and of he/she has departed from his office.

Smt. Urmila Yadav, being his PA and present almost all the time in his office, could hear Sri OP Rawat abusing others but it does not seem that Smt. Urmila Yadav would not have asked him to resist from using obscene words but there was no change in his habit. She, being a lady, bore such habits of Sri Rawat for a period of 6 months.

Hon'ble Supreme Court in its order dated 20.1.1999 in Apparel Export Promotion Council vs. A.K. Chopra has instructed, "A conduct which is against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances. Such an action on the part of the respondents would be squarely covered by the term sexual harassment."

Thus, it is apparent that using abusive language in her presence and looking at her expression while using, cut rightly show that he not only mentally harassed Smt. Urmila Yadav but also his acts fall under the category of sexual harassment.

2. To find out the circumstances/causes of the case.

Working together with a lady PA, how much distance should be maintained, what types of statements should be given, which acts violate the dignity and decency of conduct; these decorum seem lacking in the attitude of Shri O.P. Rawat. On inquiring the leave detail of Smt. Urmila Yadav, it is found that during her posting to Sri O.P. Rawat, she had availed 06 CL, 47 CCL, 3 EL, 27 CML and all of these are pre-sanctioned. Smt. Urmila Yadav would have taken those leaves due to indecent conduct of Shri O.P. Rawat. However, the leaves are taken as per the prescribed rules. There is no proof of complaint available against Smt. Urmila Yadav by the officers under whom she has worked so far. When the Chairperson of the Committee verbally gathered the information from the officers under whom Smt. Urmila Yadav had worked, it was found that they had never complained whatsoever against Smt. Urmila Yadav. Her performance under their tenure was very good. Therefore, insensitive and indecent attitude of Sri OP Rawat seem to be the cause of the situation.

3. To inquire into the statement of imputation of reversion and other threats by Sri OP Rawat, Additional General Manager/QC to Smt. Urmila Yadav, PA/Establishment

It may be that Smt. Urmila Yadav was on probation and Sri Rawat, being displeased, would have threatened to revert her. The prejudiced view of Sri OP Rawat against Smt. Urmila Yadav is apparent through his letter dated 06.5.2013 addressed to Sr. GM. In the said letter Sri Rawat has mentioned the unauthorized access to computer and has named Smt. Urmila Yadav, as a slip of Rs. 10,000/- addressed to in favour of Javed Ahmad Paktoon, at Srinagar branch, was found on the scanner of his computer. According to Sri OP Rawat, Smt. Urmila alone knew the password of his computer and was found using

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internet on the computer on some occasions and she was also orally warned against that. Sri OP Rawat apprehended that some objectionable material might have been loaded on his computer and that should be investigated.

Later on, Sri Subhash Chandra, Works Manager/QC, informed through his letter dated 7.5.2013 that he had used the computer of Sri OP Rawat for the above purpose.

That above fact shows that despite Smt. Urmila Yadav being transferred from the factory, Sri OP Rawat involved her name in one complaint or the other. It is noteworthy that Smt. Urmila Yadav was transferred from Sri OP Rawat to PMO, In charge/OHA on 22.4.2013 ad he had complained 'Unauthorized access to computer" against her through his letter dated 6.5.2013. All these show that Sri OP Rawat had malicious attitude toward Smt. Urmila Yadav.

Sri OP Rawat ad written several letters to administration seeking disciplinary action against her for taking leave on health grounds and unauthorized leaves. Sri OP Rawat has not submitted any proof regarding her unauthorized leave taking, arriving late to the office or her performance being inefficient. It appears that the complaint of Smt. Urmila Yadav, regarding Sri OP Rawat's threatening to revert her, is true.

4. To inquire into the obscene and un parliamentary language used by Sri O.P. Rawat, Additional General Manager/QC in presence of Smt. Urmila Yadav, PA/Establishment

It appears from the statements of Sri OP Rawat, recorded during inquiry, that his abusing to anyone is not at all a serious business. His statement is Smt. Urmila Yadav a leader that she is complaining on his abusing to others, proves that he is habitual of using abusive words during or after discourse in office. Although he had not directly addressed her with abusive words, he has no hesitation using obscene words for others in her presence.

5. Any other significant point in the matter that surfaced during the inquiry but in view of the committee does not cover in the Terms of Reference.

During the proceeding, another letter of complaint of Smt. Kajal Sharma/Examiner against Sri OP Rawat/AGM, was received to the Committee. In that she has complained against Sri OP Rawat, which is under proceeding.

Sd/
Surabhi Vashishta
Member

Sd/-

I have a different view not
agreed with the report

Sd/-
Ranjita Rashmi
Member Chairperson

Sd/
Sudha Rani

Hari Shankar
Member

6. Pointing out remedial measures, as to prevent recurrence of such incidents.

The higher authorities or officials should have decent attitude towards the staff under them. Imparting education regarding this is very essential.

Sd/
(Surabhi Vashishta)
JWM/FTI
Member

I have a different view not
agreed with the report
Sd/
(Hari Shankar)
JWM/Standard Cell
Member

Sd/ 30.7.2014
(Ranjita Rashmi)
DGM/Admin
Member

Sd/ 30.7.2014
(Dr. Sudha Rani)
Specialist Medical Officer
Chairperson/Women Sexual Harassment Complain Committee."

It is seen that no conclusion has been arrived at by the Internal Complaint Committee specifically asserting that the applicant was guilty of misconduct and, further, no recommendations have been made under Rule 13(3)(i) of the Sexual

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Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Without such recommendations, the employer is not authorised to take up the matter of alleged misconduct of the employee and to proceed against the delinquent employee under the said service rules.

7. Accordingly, we find that the balance of convenience lies in favour of the applicant and, accordingly, we deem it fit to stay the operation of the penalty order of punishment dated 25.9.2018 as impugned and to direct the respondent authorities not to give any further effect on the same till the next date of listing. The respondent authorities, however, are at liberty to pray for modification/vacation of the interim relief granted herein.

With these directions, the prayer for interim relief is disposed of.

8. List this matter on 4.3.2019.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Batherjee)
Judicial Member

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प्राप्ति अधिकारी