

**Central Administrative Tribunal
Principal Bench**

OA No.4226/2018

New Delhi, this the 15th day of February, 2019

**Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Sh. Mohd.Jamshed, Member (A)**

R. Rajasekaran, S/o Shri M. Rajamanickam
Officer on Compulsory Wait
West Bengal Police Directorate (WBPD)
C/o Manish Singh, Second Floor
No.61, ShriAurobindo Road, Salkia
Howrah-711106. ... Applicant

(By Advocates: Shri Satyam Sarasni Reddy, Senior Advocate and Shri Rayan Kumar Pandey, Shri Sandeep Bisht & Shri Anuj Tiwari along with him)

Vs.

1. The Union of India
present by the Secretary
Ministry of Home Affairs
North Block, New Delhi-110001.
2. The State of West Bengal
Though Addl. Chief Secretary
Department of Home
Nabanna, HRBC Building
13th Floor, 325, SaratChatterjee Road
Mandirtala, Shibpur
Howrah-711102
West Bengal.

3. The Director General of Police
West Bengal Police
Nabanna, HRBC Building
325, SaratChatterjee Road
Mandirtala, Shibpur, Howrah-711102.
West Bengal. ...Respondents

(By Advocates: Shri Rajeev Kumar, Raja Chatterjee,
Shri Abhinandini Yadav and Shri Vinod Sawant, Dy.
Commandant, Deptt. representative)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant is an IPS officer of West Bengal cadre 1997 batch. For a period of five years, he was on deputation to CRPF. A complaint was submitted by one of the lady officers on 17.01.2015 against the applicant and another officer by name, Sapan Suman, alleging certain acts of sexual harassment. The administration referred the matter to ICC formed for this purpose and ordered inquiry in terms of the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (For short the Act).

2. The proceedings progressed to a substantial extent. At one stage, the Support Service Officer(SSO) who was entrusted with the duty of providing

assistance to the complainant came forward with a proposal that the applicant herein is prepared to tender apology and that if it is agreeable for the complainant, the steps as contemplated under Section 10 of the Act can be initiated. On that, the Committee, at its meeting held on 24.11.2016 ascertained from the complainant as to whether she would be agreeable for not pressing the complaint if the applicant herein submits a written apology. When she agreed for that, the steps as required under law, were taken. The entire Committee, once again ascertained from the complainant as to whether she was satisfied with the written apology tendered by the applicant. When she agreed for that, the committee passed an order on 24.11.2016, deciding that no further proceedings in the inquiry are required and that the proceedings against the applicant shall stand closed.

3. In the meanwhile, the term of deputation of the applicant in CRPF expired and he was repatriated to the parent department on 22.06.2016. However, the Govt. of West Bengal, the second respondent herein, issued

order dated 29.07.2016 putting the applicant in the category of officers on compulsory wait.

4. This OA is filed with a prayer to direct the respondents to act on the recommendations of the ICC rendered in their order dated 24.11.2016 and to extend all the benefits to the applicant in the department including the one for empanelment as IG.

5. The applicant contends that whatever may have been the justification for the State of West Bengal in putting him under compulsory wait when the proceedings were pending, there was absolutely no basis to continue the same once the ICC passed an order dated 24.11.2016. He contends that with the order dated 24.11.2016, he came out without any blemish, the respondents need to extend all the benefits, which he is entitled in the service.

6. On behalf of respondents a counter affidavit is filed. It is stated that though the ICC passed an order dated 24.11.2016, the inquiry in relation to a complaint against Shri Sapan Suman is still pending and it is only after the inquiry is completed that a clear picture would

emerge and that the applicant cannot insist on being issued orders of posting till then. Other contentions are also raised.

7. We heard Shri S.S. Reddy, learned Senior Advocate on behalf of the applicant and Shri Rajeev Kumar, Shri Raja Chatterjee and Shri Abhinandini Yadav, learned counsel for the respondents.

8. The applicant was on deputation to CRPF and during that tenure a complaint was submitted by a lady officer against him on 17.01.2015. As required under the Act, proceedings were initiated and the matter was referred to the ICC. The proceedings have progressed to a certain extent. At that stage, a proposal emerged for conciliation contemplated under Section 10 of the Act, which reads as under:-

"10. Conciliation

1. The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

2. Where a settlement has been arrived at under

sub-section (I), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

3. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

4. Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be."

9. The committee examined the proposal with reference to the relevant provisions. Every precaution was taken to ensure that the complainant takes a decision free from any coercion or influence. The nature of steps taken by the ICC in this behalf, are as under:-

"The Defence Assistant to the Respondent submitted that there is a provision in the act under Section 10 for conciliation between the complainant and respondent. Under this provision, we would like to inform the committee that since this incident alleged in the petition had taken place in the office of the DIG North Srinagar, the respondent regrets and wishes to tender an apology for that. He also informed that Shri R. Rajasekaran has already conveyed his apology to the complainant, and he requested before the committee for conciliation of the matter if it is agreeable to the complainant Ms. Kanchan Yadav, AC 44 Bn.

On this the SSO submitted that the respondents has indeed tendered his verbal

apology but the complainant wishes to have a written apology enumerating apology containing facts mentioned in the complaint and pertaining to the respondent. Only after perusal of such written apology will the complainant be in a position to state whether she accepts the apology or not. The SSO also submitted that the complainant requires around one hour time to discuss the issue with her husband and parents and only after that will she be in a position to give her response.

The committee confirmed with the complainant whether she is in agreement with SSO as stated above. The Chairperson then read out the Section 10 of the SEXUAL HARRASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 in front of the complainant and the respondent and explained to them. The section consists of three main issues which are to be resolved before proceeding further.

1) Conciliation as per Section 10 is a step that can be taken before initiating an enquiry under Section 11.

2) Conciliation is to be considered at the request of the aggrieved woman.

3) No monetary settlement shall be made as a basis of conciliation.

With respect to the above points, the Chairperson confirmed from both parties that no monetary settlement is the basis for this request for conciliation. Further the enquiry is already under progress and the request for conciliation has been made from the respondent and not the aggrieved woman. Under such circumstances, it is to be decided whether conciliation can be considered –

(1)At any stage in the enquiry and

(2)At the behest of the respondents duly concurred by the aggrieved woman."

10. After personally ascertaining the views of the complainant, the Committee concluded the proceedings as under:-

"After due deliberations the Committee unanimously decided the following :-

- 1) The request made by the respondent referring to Section 10 of Sexual Harassment of Women at Workplace (Prevention, Prohibition &Redressal) Act 2013 was with respect to tendering an apology to the complainant which the complainant accepted willingly, without duress and without any monetary settlement. However, as the S.10 quoted refers to conciliation to be considered at the behest of the aggrieved woman and before the commencement of the enquiry, this request and acceptance thereof cannot be technically deemed to be under S.10 of the Act.
- 2) Going by the principles of natural justice and keeping in view the fact that the complainant has the option at any point of any enquiry to decide not to pursue her complaint against any individual further provided the decision is not under duress and does not entail any monetary settlement, this option or prerogative cannot be denied to her.
- 3) The Committee was satisfied after speaking to the complainant privately that she was not under duress and had taken her decision after consultation with her family.
- 4) The committee, therefore, decided no further proceedings in enquiry No.SH/04/2016 were

required and accordingly proceedings against Shri R. Rajasekaran stand closed."

This totally accords with Sec. 10 of the Act.

11. It was already mentioned that when these proceedings were pending, the applicant was repatriated to his parent department and there the second respondent passed an order as under:-

"The Governor is pleased to declare Shri R. Rajsekaran, IPS, (RR : 97), as an Officer-on-Compulsory waiting the rank of Superintendent of Police in West Bengal Police Directorate with effect from 22.06.2016 until a duty post is offered to him.

By order of the Governor,
-Sd/-"

12. When this order was passed, there was every justification to put the applicant on compulsory wait. However, once the ICC has dropped the proceedings against him through order dated 24.11.2016, the second and third respondents were under obligation to give him the posting, which he was otherwise entitled to. The view taken by the first respondent that since the inquiry against the other officer is pending, the one against the applicant, cannot be treated as final, is difficult to be accepted. It runs contrary to Section 10

of the Act. When the ICC which comprised of three senior officers has taken a decision to drop the proceedings, there is absolutely no basis for treating them as pending or otherwise continuing against the applicant.

13. We, therefore, allow the OA and direct that the applicant shall be given the posting and other benefits which he is otherwise entitled to in service. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/