

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 716 of 2015

**Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)**

Kshama Sil Bagh, aged about 53 years, S/o Late Gokul Bagh, At-Laikara, PO-Kalamegha, Via-Sargipalli, Dist.- Sundargarh-770021.

.....Applicant

VERSUS

1. Union of India, represented through Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Member (Personnel) Postal Services board, Dak Bhawan, Sansad Marg, New Delhi – 110116.
3. Chief Postmaster General, Odisha Circle, Bhubaneswar.
4. Supdt. Of Post Offices, Sambalpur Division, Sambalpur.

.....Respondents.

For the applicant : Mr.A.K.Sahoo, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 29.7.2019

Order on : 27.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

"In view of the facts stated in paragraph 4 of this application the Hon'ble Tribunal may be graciously pleased to pass the following reliefs :

1. Direction/directions may be issued for quashing annexure-I and annexure-II
2. Direction/directions may be issued as deemed fit and proper so as to give complete relief to the applicant."

2. The facts in brief are that the applicant, while working as Assistant Superintendent of Posts (in short ASPO) in Sambalpur, was charged with the allegation of sexual harassment of a lady GDS branch Post Master (in short GDSBPM), Smt. Susmita Senapati, who joined Sindurpank Branch Office under the applicant's jurisdiction on transfer on 17.5.2012. When the applicant found that the said office remained closed, he asked for explanation of the GDSBPM on 25.3.2013 for unauthorized absence. It is stated in the OA that after the receipt of letter dated 25.3.2013 (Annexure-A/2 of the OA), calling for her explanation, she lodged the false complaint of sexual harassment against him on the next day i.e. on 26.5.2013, based on which the

respondent No. 4 examined the applicant and then a Committee was constituted with order of the respondent No. 3 to inquire into the allegations of sexual harassment.

3. It is stated that the applicant had requested for some relevant documents on 8.11.2013 (Annexure-A/4), on which no action was taken. It is stated that due to non-supply of the documents, the applicant had to appear before the Committee on 20.11.2013 and 21.11.2013 without being all relevant documents. It is also stated that no charge-sheet was served and no document connected with the case was supplied and he was not allowed to cross-examine the witnesses who deposed before the Committee and hence, the Govt. of India instructions dated 16.7.2015 was violated. It was stated that the Committee was not as per the Directorate instructions dated 24.6.1998 and out of five members, two were junior to the applicant. It is also stated that the Committee did not follow the procedure as laid down under the rule 14 of the CCS (CCA) Rules, 1965 (in short 'Rules') like examining some witnesses behind his back and it did not allow reasonable opportunity to the applicant. He also requested for some documents on receipt of the inquiry report, which was refused.

4. It is further stated in the OA that the respondent no. 4 acted as a judge of his own cause as after conducting the fact finding inquiry, he deposed before the Committee and his evidence was taken as independent witness. It is also stated that when the applicant filed the appeal, it was rejected without any valid reasons. The action of the respondent No. 2 and 3 are stated to be arbitrary and whimsical, resulting in failure of justice.

5. Counter has been filed without disputing the facts and defending the procedure adopted in the case, which is claimed to be in accordance with the rules. In reply to the claim in the OA that no charge-sheet was served on the applicant, it is stated in para 13 of the Counter that the applicant has been given the opportunity by the Internal Complaint Committee as per the provisions of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short 'Act, 2013'). It is stated that a copy of the inquiry report was supplied to the applicant and there is no violation of the rule 14. It is also stated that the authorities have followed the rules and the applicant was provided reasonable opportunity in this case.

6. The Rejoinder has been filed by the applicant broadly reiterating the contentions in the OA and denying the averments in the Counter. Copy of the DOPT OM dated 16.7.2015 and Directorate letter dated 24.6.1998 have been enclosed with the Rejoinder as Annexure- A/12 and A/13 respectively. It is the applicant's case that the instructions in these two letters have been violated in this case.

7. We have heard learned counsel for the applicant, who also filed a copy of the judgment of Hon'ble High Court in the case of Union of India & Ors. vs. Bishnu Charan Mallick, reported in 2018 (II) ILR-CUT-32. Learned counsel for the respondents filed a written notes of argument in which it is stated that the procedure as per the DOPT OM dated 16.7.2015 (Annexure-A/12) was not followed in this case as the applicant's case was finalized as per the provisions of the Act, 2013.

8. Having due regard to the pleadings on record and the submissions of learned counsels, we identify the relevant issue to be decided in this case is whether the procedure followed by the Internal Complaint Committee in this case is in accordance with the provisions of the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013.

9. The section 11(1) of the Act, 2013 deals with the subject of the inquiry into the complaint by the complaint committee and it states as under:-

"11. (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the finding shall be made available to both the parties enabling them to make representation against the findings before the Committee."

10. It is clear from the provision of the section 11 of the Act, 2013 that the Complaint Committee or Local Committee was required to conduct the inquiry into the complaint against the applicant in accordance with the provisions of the service rules i.e. under the CCS (CCA) Rules, 1965 and when no such rules exist, the procedure of inquiry will be as per the rules to be prescribed under the Act, 2013. Since admittedly the CCS (CCA) Rules, 1965 is applicable for the applicant's disciplinary proceedings, the section 11 of the Act, 2013 mandates that the inquiry into the complaint will be in accordance with the CCS (CCA) Rules, 1965, under which it is required to serve a charge-sheet explaining the allegations against the applicant.

11. From the pleadings on record, it appears that the respondents have issued no charge-sheet to the applicant as required under the provisions of the CCS (CCA) Rules, 1965. In fact the DOPT in its OM dated 16.7.2015 has reiterated this procedure and the respondents cannot take the plea that since the applicant's case was finalized prior to 16.7.2015, this OM was not applicable. We are not able to accept such a contention of learned counsel for the respondents in his written note of submissions, since prior to 16.7.2015, the section 11 of the Act, 2013 also stipulated that the inquiry will be in accordance with the CCS (CCA) Rules, 1965. It is not explained by the respondents in their pleadings under which provision of the Act, 2013, the procedure of inquiry as specified under the CCS (CCA) Rules, 1965 was not required to be followed.

12. The judgment in the case of Bishnu Charan Mallick (*supra*), cited by the applicant's counsel does not relate to the disciplinary proceeding on account of sexual harassment complaint and hence, the judgment is not applicable for this OA.

13. In view of the above, we are of the opinion that the impugned orders are not in accordance with the provisions of the CCS (CCA) Rules, 1965 and are bad in law. Accordingly, the impugned order dated 8.10.2014 (Annexure-A/1) passed by the disciplinary authority and the order dated 9.4.2015 (Annexure-A/11) are set aside and quashed and the matter is remitted to the disciplinary authority (respondent No. 3) to reconsider the matter from the stage of conduct of the inquiry into the complaint of sexual harassment against the applicant in accordance with the provisions of law and to conclude the matter within a period of four months from the date of receipt of a copy of this order.

14. The OA is allowed accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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