

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 234 of 2016

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

Golak Chandra Mohanty, aged about 59 years, S/o Late Braja Kishore MOhanty, vill – Astapraharajpuur, PO – Mirichandpur, PS/Dist. – Jajpur, presently working as Deputy Manager, Postal Printing Press, Bhubaneswar, Odisha, Dist. –Khurda, (under orders of disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965).

.....Applicant

VERSUS

1. Union of India represented through the Secretary to Govt. of India, Ministry of Communications & IT, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Director General, Department of Posts, Government of India, parliament Street, Dak Bhawan, New Delhi-1.
3. The Chief Postmaster General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist.- Khurda, Pin-751001.
4. Postmaster General, Berhampur Region, Berhampur (Ganjam), Odisha.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 8.7.2019

Order on : 7.8.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(i) To quash memorandum No.ST/18-7/2014 dtd. 18.3.2016 (Annex.A/3) issued by the Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. Khurda, (Resp. No.2) holding the same is without authority;

- (ii) To declare (Annex.A/3) as illegal, arbitrary non est in the eye of law;
- (iii) To extend the consequential relief to the applicant and pass any other order/orders as deemed fit and proper;
- (iv) To allow this OA with costs."

2. The applicant, while working as Superintendent of Post Offices in Cuttack North Division, was faced with a complaint of sexual harassment of one lady Gramin Dak Sevak (in short GDS) namely Smt. Binodini Dehury. Based on the complaint of Smt Dehury, the respondent No. 3 issued a charge-sheet dated 18.3.2016 (Annexure-A/3) to the applicant under the rule 14 of the CCS (CCA) Rules, 1965 (in short 'rule') for major penalty.

3. The applicant challenged the initiation of the disciplinary proceeding at the threshold on the ground that the respondent No. 3 is not the competent authority to issue the said charge-sheet for major penalty against him since no approval of the appointing authority of the applicant was taken prior to issue of the charge-sheet. Another ground taken to challenge the charge-sheet is that the Committee constituted by the respondents to inquire into the charges, has not been constituted in accordance with the provisions of the section 4(2) (b) & (c) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (referred hereinafter as "Act, 2013") and some of the members of the Committee are juniors to the applicant. It is also averred in the OA that the respondents are utilizing the statements made by the witnesses behind the back of the applicant, which is not permissible under law.

4. The respondents have filed their counter opposing the OA stating that the respondent No.3 who has issued the charge sheet vide order dated 18.3.2016 (Annexure A/3) is competent to issue the charge sheet under Rule 14 in view of the provisions under Rule 13(2) of CCS (CCA) Rules, 1965, since the respondent No.3 is the disciplinary authority in respect of the applicant who can impose any of the penalty specified under Clause (i) to (iv) of Rule 11 of the above rules. The circular of DG at Annexure R/2 also clarifies that position. Hence the charge memo dated 18.3.2016 (A/3) is issued by the competent authority. It is also averred that no action has been

taken by the respondents in this matter beyond the provisions of law. It is stated that the Internal Complaint Committee has been entrusted with the enquiry into the complaint of sexual harassment against the applicant and the said committee has submitted the enquiry report dated 9.9.2015 based on which the charge-memo has been issued. It is further stated that the application for leave of the applicant on medical ground should have been accompanied by a medical certificate from a Government Medical Practitioner which has not been done by him. Regarding the stand that some of the members of the committee are junior to the applicant, it is stated that under the section 4(2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 provides for constitution of Internal Complaint Committee without mentioning the rank of the members. It is stated that the said committee has been constituted as per gazette notification dated 23.4.2013. It is also stated that the committee has been constituted in accordance with the above provisions and reasonable opportunity was provided to the applicant to defend himself during the enquiry. It is further stated that no biased action has been taken by the enquiry committee during the enquiry. The applicant was given 10 days time for submission of written statement of defence after receipt of the charge memo along with the findings and recommendations of Internal Complaint Committee. He was also given chance to be heard in person if he wants.

5. The applicant has filed his rejoinder and stated that the complainant had made the complaint of sexual harassment against him anticipating departmental action against her and to extract undue service benefits through him. It is averred that the Internal Complaint Committee did not consider the same and enquired into the complaint in a perfunctory manner. It is further stated that the Internal Complaint Committee has been constituted illegally since some of the members of the Committee are junior to the applicant. The applicant had proceeded on sanctioned leave on medical ground on 8.4.2016 for which he had requested for further time for submission of his representation, but his prayer was turned down by

respondent No.3 vide memo dated 26.4.2014. The applicant has also referred to the Rule 71 of the Postal Manual Vol. 3 which states that the disciplinary proceeding should be kept pending if the charged officer is on leave on medical ground. It is alleged in the Rejoinder that such procedure/practice was not followed by the respondent authorities. He also reiterates the point that the charge sheet was not valid because it was issued by the respondent No.3 without obtaining the approval of the appointing authority.

6. The applicant's prayer for interim relief was considered by this Tribunal on 20.4.2016 at the time of admission and following order was passed:

"10. For the discussions made above, a prima facie case having been made out, this OA is admitted. Issue notice to the respondents returnable within four weeks. Counter to be filed within a further period of four weeks therefrom.

11. So far as interim prayer is concerned, it is directed that proceeding pursuant to charge sheet under Annexure A/3 shall not continue without leave of this Tribunal. However, the respondents are at liberty to approach this Tribunal for modification/recalling of the order."

7. Learned counsel for the applicant was heard, He also submitted a written note of arguments enclosing a copy of the judgment of Hon'ble Apex Court in the case of State Bank of Patiala & Ors. vs. S.K. Sharma, 1996(1) SCSLJ 440. He stressed mainly on the report of the Internal Committee, entrusted with the inquiry into the complaint against the applicant on two points. His first point was on the constitution of the Committee, which contained some of the members junior to the applicant, which is not in accordance with the Government of India's instructions-17 after the rule 14. His second point was on the procedure adopted by the Committee, which is stated to be in violation of the provisions of the service rules because of a number of deficiencies like non-supply of a copy of the complaint to the applicant, conduct of inquiry when he was on medical leave and no opportunity to the applicant to cross-examine the witnesses.

8. We heard learned counsel for the respondents, who submitted that the report of the Committee is the preliminary inquiry report, copy of which

has been forwarded to the applicant. He submitted that the procedure as laid down under the rule 14 will be followed in the matter.

9. The ground of competency of the respondent no. 3 to issue the impugned charge-sheet was highlighted in the pleadings of the applicant with reference to the judgment in the case of Union of India vs. B.V. Gopinath, reported in (2014) 1 SCC (L&S) 161. The respondents have resisted that averment on the ground that the rule 13 (2) of the CCS (CCA) Rules, 1965 provides for the issue of the charge-sheet under the rule 14 by a disciplinary authority competent to impose minor penalty, but not major penalty vide para 5,6 and 7 of the Counter. It is stated in the Counter that the respondent no. 3 is competent to impose minor penalty on the applicant and hence, he was competent to issue the impugned charge-memo under the rule 14. In reply, no specific denial is there in the Rejoinder in respect of the contention in the Counter that the respondent no. 3 is a disciplinary authority for the applicant to impose minor penalty and hence, he was competent to issue the impugned charge-memo under the rule 14, except reiterating the averment in the OA that the charge-memo has not been approved by the appointing authority before issue.

10. We have gone through the judgment in the case of B.V. Gopinath (supra) cited by the applicant in the Rejoinder. In that case, the authority issuing the charge-memo was not shown to be a disciplinary authority for imposition of minor penalty. The argument of the Union of India in that case was that since approval of the competent disciplinary authority was obtained for initiation of the proceeding, no separate approval of the charge-memo was required and it can be issued by the delegated authority. Rejecting such argument, it was held by Hon'ble Apex Court as under:-

"45. Much was sought to be made by Ms. Indira Jaising on clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by the CVO. According to the learned Addl. Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a Satisfaction Memo prepared by the CVO. This satisfaction memo is submitted to the Member

(P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings.....

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47. Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which provides that the charge memo shall be issued only after the approval is granted by the Finance Minister."

11. It is clear that the ratio of the judgment in the case of B.V. Gopinath (supra) is inapplicable to the facts of the present OA since the respondent no. 3 is the competent disciplinary authority for imposing minor penalty, for which he was competent to issue the charge-memo for major penalty under the rule 13(2) of the CCS (CCA) Rules, 1965. Hence, the ground of competency of the respondent no. 3 to issue the impugned charge-memo is not tenable.

12. The arguments of learned counsel for the applicant regarding improper constitution of the Internal Committee and non-adherence of the Committee to the procedure and deficiencies in the inquiry report. It can only be stated that the aforesaid report of the Committee is the report on preliminary inquiry, based on which the charge-memo has been issued under the rule 14. No where the respondents have claimed the report to be the report of the inquiry officer on the charges framed against the applicant as per the rules. After issue of charge-memo, the applicant will have opportunity to file his reply in which he can raise the deficiencies in the Internal Committee's report and other deficiencies of the report. There is nothing on record to show that the concerns to be raised by the applicant will not be considered as per the provisions of law. Hence, we are of the view that no prejudice of the applicant has been shown to have been caused to the applicant at this stage.

13. The judgment in the case of S.K. Sharma (supra) is of no assistance to the applicant since the inquiry referred to in that judgment related to the inquiry under the rules applicable for disciplinary proceedings against the

employee. It is not applicable to the applicant's case since in this OA, no inquiry under the provisions of the rule 14 of the CCS (CCA) Rules, 1965 has been conducted by the respondents as per the materials available on record. The report of the Committee referred by the applicant in the OA is the preliminary inquiry report after which the charges have been framed against the applicant under the rule 14.

14. In view of the facts and circumstances as discussed above, we do not find any merit in the OA to justify interference with the impugned charge-memo at this stage. The OA is dismissed accordingly and the interim order dated 20.4.2016 is vacated. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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