



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01339/2018

Date of order: 17.07.2019

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

Sujit Baran Mandal,
Son of Late Sushil Sekhar Mandal,
Aged about 47 years,
Working as Deputy Central Intelligence Officer/
Executive,
Subsidiary Intelligence Bureau,
Bureau of Immigration,
Kolkata,
Residing at 6G, Shanti Pally,
Near Sabuj Sangha Club,
P.O. & P.S. - Parnashree,
Kolkata - 700 060.

Applicant

VERSUS -

1. Union of India
Through the Secretary to the
Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.
2. The Joint Deputy Director /E,
Intelligence Bureau,
Government of India,
Ministry of Home Affairs,
35, Sardar Patel Marg,
Chanakya Puri,
New Delhi - 110 021.
3. Complaints Committee through its
Chairperson Smt. Sapna Tewari,
Joint Director,
Subsidiary Intelligence Bureau,
Bangalore,
Govt. of India,
Ministry of Home Affairs,
9 Infantry Road,
Sampangi,

hsh

Rama Nagar,
Bangalore,
Pin - 560 001.

4. Smt. Sapna Tewari,
Joint Director and
Chairperson of the Complaints Committee,
Subsidiary Intelligence Bureau,
Bangalore,
Government of India,
Ministry of Home Affairs,
9, Infantry Road,
Sampangi,
Rama Nagar
Bangalore,
Pin - 560 001.

.. Respondents

For the Applicant

Mr. S.K. Dutta, Counsel

For the Respondents

Mr. R. Halder, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

- a. An order quashing and/or setting aside the Memorandum of Charge Sheet dated 9.10.2017, the purported report and findings of the ICC dated 28.9.2016 as referred to in the Memorandum of Charge Sheet dated 9.10.2017.
- b. An order quashing and/or setting aside the order dated 19.1.2018 as well as the appointment of the Presenting Officer.
- c. An order quashing and/or setting aside the Memorandum dated 6.8.2018 and/or any further decision/communication regarding holding of inquiry.
- d. An order directing the respondents to produce/cause production of all relevant records.
- e. Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard Ld. Counsel for both sides, perused pleadings, documents and Rules under reference. Written notes of arguments have been filed by both sides.

hah

3. The applicant's submissions, as made through his Ld. Counsel, is that, the applicant is working as a Deputy Central Intelligence Officer under Subsidiary Intelligence Bureau and is presently posted in the Bureau of Immigration, Kolkata.

That, after a long delay after the occurrence of the alleged incident, one of his lady colleagues had made a complaint in which he was implicated along with others.

That, subsequent to the same, Inquiry committees were illegally constituted to enquire into the allegations against him and, that, most of his representations have either not been considered or have been rejected cryptically. Further, based on such faulty procedure, the applicant has been issued with a charge memorandum. Accordingly, being aggrieved, the applicant has approached the Tribunal for relief.

The applicant has advanced the following grounds in support of his claim:-

- (a) That the actions of the respondent authorities in initiating proceedings against him on the basis of an invalid report of ICC is unlawful and arbitrary in nature.
- (b) That, the applicant's representations were neither considered or were rejected without advancing any reasons thereof.
- (c) The inquiry committee was nominated unlawfully.
- (d) The report of the Internal Complaints Committee is not valid in terms of Rule 13(1) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.
- (e) And, that, there were no bonafide reasons to initiate a proceeding against the applicant under rules as the same was done in exclusively selecting the applicant amidst an array of

hsh

other employees so complained against, so as to subject him to disciplinary proceedings.

4. Per contra, the respondents have argued that, on 16.9.2015, a complaint was filed by one of the lady employees of RTC Kolkata, inter alia, against the applicant, in which it was alleged that the applicant had made several indecent proposals to her in 2014.

That, the complainant also alleged indecent behaviour of the applicant and a lady Steno-III in the said office.

That, after receiving such a complaint, the matter had to be referred to the Internal Complaints Committee (ICC), but the ICC at Kolkata at the material point of time, was headed by a lady Officer, who was junior in rank to the charged officers and was, therefore, unable to enquire into the allegations so made and, accordingly, the preliminary enquiry was delegated to the then Joint Director, Bhubaneswar, who headed the Complaints Committee.

That, the preliminary inquiry committee, vide their report dated 28.9.2016, came to the conclusion that the applicant had misbehaved with the complainant by advancing indecent proposals to her and, that, the conduct of the applicant with his lady Steno colleague, was highly improper, objectionable and against office decorum and discipline.

That, consequently, on the basis of the findings of the ICC, disciplinary proceedings, was initiated against the applicant vide charge memorandum dated 9.10.2017 for major penalty under Rule 14 of the CCS (CCA) Rules, 1965. The applicant had submitted his defence statement denying all charges and accordingly, an inquiry was mandated under Rule 14(2) of CCS (CCA) Rules, 1965. The ICC was appointed as the Inquiring authority to inquire into the charges against the applicant. Respondents would contend that, according to DOPT's OM dated

hch

16.7.2015, the Complaints Committee would normally be involved in two stages, firstly, at the time of initial investigation and secondly, when the Complaints Committee would act as the inquiry committee and, hence, the action taken by the respondents were as per CCS (CCA) Rules, 1965.

The respondents would further argue that the applicant was provided with the Inquiry report in August, 2018 and the copy of the complaint dated 16.9.2015 was also provided to him by the ICC. Hence, according to the respondents, the applicant's allegation against illegality of the procedure is denied and his claim is liable to be rejected.

5. The primary issue that requires to be adjudicated herein is whether there has been a violation of procedural provisions in acting against the applicant.

6.1. The foremost allegation that has been raised by the applicant against the respondent authorities is that the procedure laid down in Section 9(1) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 have been violated.

To examine this allegation, we would seek to examine the details of the complaint that has been made against the applicant by the complainant concerned.

"To
The Joint Director,
SIB, Kolkata

Sub: Complaint against acute mental harassment inflicted on the undersigned by Shri Jayanta Biswas (AD/Training, RTC Kolkata).

Respected Sir,

This is to bring to your kind notice that since last March, 2014 Shri Jayanta Biswas (AD) is frequently creating mental pressure and psychological harassment on me regarding establishment related matter. Though my transfer/posting is exclusively my personal matter apart from our establishment head, but Shri Jayanta Biswas, is no way connected with establishment matter, is continuously and indecently pressurizing me to ask for posting of another lady staff in our branch. Prior to that, Shri Jayanta Biswas also used to ask me whether I require precious gold ornaments (chain and bracelet etc) quite a number of times. I felt it as indecent proposal but I ignored it for the sake of peace. Neither me nor any of my senior colleagues in our branch is concerned about posting of another lady staff as we are all discharging duties peacefully and staying as a happy family. So why Shri Jayanta Biswas is so keen for the posting of lady official in our branch, and that

hsh

too of a certain age group, (young and good looking) is beyond my imagination. May be he is involved in some nefarious activities which require the involvement of beautiful young ladies. May be he is involved in such immoral activities that he is thinking of replacing me by somebody who will suit him.

On 1st September 2015 at around 16:30 hrs. Shri Chiranjit Mitra, the then AD/E, SIB, Kolkata (Presently JDD/E, SIB Kolkata) entered our branch and asked whether we have any establishment/accounts related matter to discuss with him. No one has expressed any problem regarding establishment/accounts matter but surprisingly he asked the question four (4) times while giving a glance to Shri Jayanta Biswas in between. Then Shri Jayanta Biswas, without taking any prior consent from me, told Shri Mitra in front of everybody that I require the posting of a lady staff in the branch as I am feeling uncomfortable. This is absolute lie but Shri Mitra caught his words and started telling me that as I am feeling uncomfortable in this branch so he can post me to other branches in Head Quarter or Nizam Palace.

Shri Sankar Mukherjee (Assistant) of our branch pushed the matter further by suggesting Shri Mitra to post me in Head Office. Shri Mukherjee stood up from his chair and made the suggestion so intensely and instantaneously that it seemed to me that he is also involved in this pre-planned conspiracy hatched by Shri Biswas and Shri Mitra.

The entire incident created tremendous mental pressure on me as the above mentioned persons were taking decision (Shri Mitra being AD/E is in an official position to take some stand) on such vital matter, i.e., my transfer/posting, in front of me without asking me for even once as to actually what I myself want.

My husband is posted in Assam, my daughter is studying in Bhubaneswar (Odisha). As a result I am staying alone in Kolkata as I have to meet some other family responsibilities here. Because of absence of my immediate family I always remain in mental stress. I have, therefore, no extra strength to cope up with this tremendous mental pressure inflicted by these few persons in the office.

In this circumstances, it is also to be mentioned here that Shri Sujit Mondal (DCIO/Training) and very close to Shri Jayanta Biswas, made several indecent proposals to me right back in 2014. He asked me whether I have caressed my own body part with another body part and whether I would love to dine in a Five Star hotel without my family. I was shocked and verbally complained about the incident to the then I/C Shri Shyamal Kanti Ghosh, retired AD/Training, who discouraged me to bring the matter to your notice. In this connection, it is to be further mentioned that earlier during the incharge ship of Shri S.K. Ghosh, Shri Sujit Mondal and Smt. Srijata Chatterjee (Steno-III then posted in RTG, Kolkata) used to frequently remain absent from branch for long period during office hour.

Shri Jayanta Biswas sometimes used to accompany them and sometimes he used to remain in the office only to convey them over phone as to what other senior officers and staff in the branch are observing about their long absence. Shri Biswas also used to frequently complete all pending official work of Smt. Chatterjee in order to prevent other senior officers from expressing their displeasure over non-performance of Smt. Chatterjee who could not concentrate on her office duty because of her other involvement.

Lastly, Shri R.S. Prashad (SO) of our branch sent me a very indecent SMS on 14th February, 2015 without my slightest provocation and this SMS ("MY SWEET HEART CHITRA HAPPY VALENTINE DAY") heavily disturbed my family peace. This time also Shri Shyamal Kanti Ghosh (former AD) prevented me from bringing the matter to your knowledge.

Sir, I have, therefore no other option but to submit a written complaint against these persons to you in anticipation of getting respite from such ill-treatment and mental harassment.

hch

I shall remain ever grateful to you for your kind necessary action in this regard.

Thanking you,

Yours faithfully,

Sd/-
(Chitralekha Dey)
UDC, RTC, Kolkata
PIS No. 123986

Dated: 16/9/2015"

Upon a perusal of the complaint, the following is inferred:-

- (a) That, the complainant had made allegations against a number of male colleagues of her office;
- (b) That, since March, 2014, the complainant has been subjected to mental pressure and psychological harassment regarding establishment relating matters spearheaded by one, Jayanta Biswas, AD and that the behavior of Shri Jayanta Biswas was loaded with sexual overtures.
- (c) That, during the visit of AD/E SIB, Kolkata on 1.9.2015, the said Jayanta Biswas along with one Sankar Mukherjee, Assistant, both started suggesting that another lady staff be posted in the said office as the complainant was feeling uncomfortable in the company of her male colleagues.
- (d) The complainant construed this behavior on the part of Shri Jayanta Biswas and Sankar Mukherjee as being instrumental to transfer her out of such office.
- (e) That, the applicant, according to the complainant, is very close to Shri Jayanta Biswas.
- (f) That, the applicant had made several indecent proposals to the applicant in 2014 but, although, she had verbally complained about the incident to the then IC, Shri Shyamal Kanti Ghosh,

hsh

Shri Ghosh had discouraged her to bring the matter to the notice of the senior authorities.

(g) And, that the applicant and one Smt. Srijata Chatterjee (Steno.

III) used to frequently remain absent from office during office hours consequent to which Smt. Sujata Chatterjee often left her work undone.

From the above, what is clearly established is that there was only one incident in 2014 during which the complainant had alleged indecent behaviour against the applicant in the form of objectionable proposals. Although the complainant refers to several indecent proposals, she could only mention two statements, which she had attributed to the applicant, namely, about her inclinations and her preference to dine out in a five star hotel without her family.

It is noted here that the complainant did not refer to any series of incidents against the applicant but only a couple of statements allegedly made by the applicant in the year 2014.

To examine the matter further, we refer to the fact finding investigation report on the complaint, annexed at Annexure R-2 of the reply. Relevant findings are reproduced below:

"Para-6 & 7: "In this circumstance, it is also to be mentioned that Shri Sujit Mondal..... Smt. Chatterjee, who could not concentrate on her office duty because of her other involvement."

In these paragraphs, Smt. Chitralekha Dey has made a serious charge against Shri Sujit Baran Mondal, DCIO/Exe, RTC of making highly inappropriate and objectionable statements to her, while she was alone with him in the office. The incident itself took place sometime in the month of June, 2014 while a training course for LDC was being conducted, but the complainant could not recall the exact date. However, she remembered that it was during the second fortnight of June, 2016.

Comments: The incident took place sometime in June, 2014. At the time of its occurrence, Smt. Chitralekha Dey and Shri Mondal were alone in the office room, as a class was being conducted in the next room. According to the statement of the complainant, it was late in the afternoon and she immediately rushed out of the office. She informed Shri Shyamal Kanti Ghosh, AD, RTC over phone about the incident in the evening and next day complained to him verbally. He, however, prevented her from informing JD, SIB, Kolkata on the pretext that it would create a bad name for RTC and assured that he would ensure that it would not happen in future.

hch

It is important to note that in such incidents, there would obviously be no witness to corroborate the actual statement, gesture or act that transpired between the complainant and the accused. The Committee has to draw inferences from circumstantial evidence following the incident. The fact that favours Smt. Chitralekha Dey's complaint against Shri S.B. Mondal is that most witnesses corroborated the strained official relationship between her and Shri S.B. Mondal. Her only justification for reporting late is that she tolerated the humiliation in order to continue to work in the RTC in the hope that she would be able to move closer to her residence as RTC was to shift to Patalu shortly. The fact of her having communicated the same to Shri Shyamal Kanti Ghosh could not be corroborated, as Shri Ghosh denied knowing anything about the alleged incident. He also stated that he would have advised her to submit the same in writing. He said that he came to know about the incident much later when Smt. Chitralekha Dey complained to his sister when he was hospitalized. Shri Shankar Mukherjee, ASO in his deposition observed that some indirect angry words were usually being exchanged between Smt. Chitralekha Dey and Shri Mondal in the office. Shri Anindya Hore, DCIO, RTC during his deposition, stated that he learnt about the misbehavior of Shri Mondal with Smt. Dey on the day after the incident. He said that she went to Shri Shyamal Kanti Ghosh, the then AD, but he did not know what they discussed. Shri S.K. Lala, AD, RTC stated that during the second half of 2014, he was on leave and when he returned, he found the atmosphere of RTC quite gloomy. Officers were not speaking to other colleagues freely as they used to earlier. During the first week of July, 2014, Smt. Chitralekha Dey divulged to him the alleged misbehavior of Shri Mondal. Shri Lala advised her not to stay in office alone. He could not intervene further as she had already apprised the matter to Shri Shyamal Kanti Ghosh, the then AD, RTC. Shri Jyoti Ranjan Sinha, AD, RTC confirmed that the allegations leveled in the complaint were true in entirety. He said that Shri Shyamal Kanti Ghosh, the then AD, RTC was always trying to avoid the responsibility on the pretext of his physical ailments. Shri Saroj Kr. Das, peon stated that he had heard about Shri Mondal having said something objectionable to Smt. Chitralekha Dey. Shri Durga Prasad Mishra, AD, RTC admitted that there was some tension between Shri Mondal and Smt. Chitralekha Dey. Shri Sanat Kumar Dey, JIO-I/WT (husband of Smt. Chitralekha Dey) admitted that he was aware of the allegations leveled by his wife, as she used to keep him updated about the latest development. Since he was away from Kolkata, he advised her to bring all things to the notice of her immediate superiors.

Though there are no witnesses to the actual statement having been made to Smt. Chitralekha Dey, several witnesses mentioned above have confirmed that an incident did take place in June, 2014, which created uneasy work environment in RTC, Kolkata. It is also corroborated by a few witnesses that Smt. Chitralekha Dey was upset about Shri Mondal's behavior and had complained about it to Shri Shyamal Kanti Ghosh, the then AD/Training and In-Charge of RTC, Kolkata. Since Shri Ghosh did not inform his subordinate officials and Smt. Chitralekha Dey also did not make the complaint in writing to senior officials, this incident was not reported in the official channels.

On the official relationship between Smt. Srijata Chatterjee, Steno - III, RTC and Shri Mondal, almost all witnesses examined during the course of fact-finding inquiry have corroborated that their interactions were seen to be highly objectionable and inappropriate in the office environment. The fact of Shri Jayanta Biswas being supporter of both of them was also corroborated by a few witnesses. Silence of Shri Shyamal Kanti Ghosh on these happenings in the office premises is also proved by witnesses.

It may be noted that Smt. Srijata Chatterjee was transferred from RTC, Kolkata to SIB Hqrs., Kolkata in August, 2014 and was finally relieved in December, 2014. Shri Shyamal Kanti Ghosh retired on March 31, 2015 and Shri Lala took charge as Head of RTC on 1st April, 2015.

Findings: The allegations made against Shri Sujit Baran Mandal were proved to an extent though what exactly transpired between him and Smt Dey could not be proved. While on the one hand the silence of the supervisory officer Shri S.K. Ghosh is not explainable, it is also not

hnd

convincing as to why Smt. Dey did not report the matter to senior officers when Shri S.K. Ghosh did not encourage her to make a written complaint.

The perception that the relationship between Shri S.B. Mondal and Smt. S. Chatterjee was not strictly official was proved by witnesses. Without going into the nature of their relationship it is placed on record that they did not observe official protocol and discipline and were perceived by many members of the branch to be indulging in inappropriate behavior in the office premises."

The Fact Finding Committee found as follows:-

- (a) That, the complainant could not remember the exact date of the alleged misbehaviour of the applicant except that it was during the 2nd fortnight of June, 2014 (perhaps wrongly noted as June, 16 in the Fact Finding Committee report).
- (b) The complainant had averred that she had informed Shri Shyamal Kanti Ghosh, AD, RTC telephonically about the incident in the evening and complained to him verbally on the next date. It is noted here, however, that Shri Shyamal Kanti Ghosh had denied any knowledge of the alleged incident. Consequently, the complainant's averments that the matter was actually reported to her senior officer on the very day of the incident and on the next day remains uncorroborated.

The Fact Finding Committee has made a very interesting observation in the context of the complainant's delayed reporting of the alleged incident and this is extracted below as under:-

"While assessing the findings of the Complaints Committee, Disciplinary Authority may consider that the complainant has submitted a written narration of the facts, spanning more than a year from March 2014 to September 2014, only when she apprehended that some officers were conspiring to transfer her from RTC. In the interest of protection of women working in official environment fearlessly and independently, it is imperative that they also make it a point not to tolerate any inappropriate behavior for the sake of their personal interest regarding postings and work profile. It compromises their allegations, when made subsequently, as it ascribes a motive to the silence prior to the complaint having been made. It is equally important for women officers that such gestures and overtures are nipped in the bud by making their reservations and views public in the first instance and warning colleagues not to cross the boundaries of decent behaviour at work place. Otherwise, the silence or delay in reporting does cast a shadow on the motive of the complainant subsequently."

Hence the ICC which is set up to look into grievances of women allegedly victimized and sexually harassed, themselves questioned the

hsh

motive of the complainant in delayed reporting and only when she felt threatened by a possible transfer.

Section 9(1) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 lays down as follows:-

"Complaint of sexual harassment.- (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee, if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident."

Section 9(1) clearly lays down that aggrieved woman employer has to mandatorily register her complaint within a period of three months from the date of the incident and, in this instant matter, the complainant's allegations had to be registered within September, 2014 as that was the requisite time line for filing of complaint. The respondents have tried to justify that the complainant had referred to a series of incidents, but, as stated above, there is absolutely no reference to any series of incidents and, even, if the several incidents referred to by the complainant is taken into account, it is undisputed that such incidents had not have recurred after June, 2014.

Hence, it is established that the complaint made against the applicant by the complainant was violative of the provisions of Section 9(1) of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

The applicant in his various representations, namely, those dated 30.8.2016, 2.11.2017, 2.2.2018 as well as 27.4.2018, had repeatedly referred to the fact that the complaint was beyond the period of limitation prescribed under Section 9(1) of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 as well as Para 7 of the guide on steps for conduct of inquiry in complaint of Sexual Harassment as under DOP&Ts O.M. dated 16.7.2015. The applicant had

hsh

correctly pointed out that it was beyond the jurisdiction of the ICC to proceed on such a stale matter in violation of the statutory provisions and the proceedings of the ICC became nonest in the eye of law. Most surprisingly, although addressed to the disciplinary authority, no cognizance was taken of the applicant's representations to this effect nor was any advice issued to the ICC. The respondents have failed to defend their actions in this regard.

6.2. The complaint made against the applicant had referred to certain close proximity between one, Shri Jayanta Biswas and the applicant. This, under no circumstances, can be taken to be an act of sexual harassment. Furthermore, the complainant's allegations of the improper conduct of the applicant with Steno III, Smt. Srijita Chatterjee, is out of context. Section 9(1) categorically states that an aggrieved women may make in writing a complaint of sexual harassment at work place. The act does not provide for third party complaints. Hence, when Smt. Srijita Chatterjee, Steno, RTC had not made any complaint of sexual harassment against the applicant, it is not known why the complainant, being a third party, was aggrieved by Srijita Chatterjee's apparent proximity with the applicant. It is equally surprising to note why the ICC took note of a third party complaint against Srijita Chatterjee and the applicant. The actions of the ICC in taking cognizance of a third party complaint, is hence beyond the mandate that governs their jurisdiction and scope of cognizance.

6.3. The applicant has averred that he had received the copy of the complaint only after the formation of the ICC and this is borne out by Annexure A-2 to the O.A. where the applicant had prayed to the Chairperson of the Complaints Committee for a copy of the complaint. Herein, we refer to Rule 7 of the Sexual Harassment of Women at Work

hsh

Place (Prevention, Prohibition and Redressal) Act, 2013. Rule 7(2) states that the Complaints Committee is to send a copy of the complaint to the respondent(s) within 7 working days. The complaint was admittedly given to the respondent (applicant in this O.A.) much after the period stipulated in the rules and that too without allowing him to file his reply along with list of documents, names and addresses of witnesses within a period not exceeding 10 working days from the date of receipt of complaint, as provided under Rule 7(3). This again, is a clear violation of the rule prescribed under the Act.

6.4 The applicant has also alleged violation of procedure in Section 13(1) of the Act but the respondents have clarified the same in stating that the ICC at Kolkata could not enquire in the applicant's matter as because the head of such Committee was junior to the charged officials and hence, the Joint Director of the Unit had to be declared as the Head of the Committee. The respondents have also explained that the ICC would function in two capacities, firstly, as the primary Fact Finding Committee and thereafter as the Complaint Committee and, hence, there are no procedural violations in this regard.

6.5. The applicant has also alleged violation of Section 13(4) of the Act when the employer did not act upon the recommendations within 60 days of the receipt of the report dated 16.9.2016 but instead issued him charge memorandum on 9.10.2017 i.e. after a lapse of more than a year, clearly establishing violation of prescribed time line by the disciplinary authority..

6.6. The Fact Finding investigation concluded in their report dated 28.9.2016 as follows:

"Allegations made against Shri S.B. Mondal have been corroborated to quite an extent by statements of the complainant and the witnesses. Disciplinary authority may take a view, as deemed fit, in this regard."

hsh

When we look at the memorandum of charges, however, we find that the statement of imputation of misconduct at Article I reads as follows:-

"Statement of imputation of misconduct on which action is proposed to be taken against Shri S.B. Mandal, DCIO, Bol Kolkata"

Article - I

That the said Shri S.B. Mandal, DCIO while posted at RTC Kolkata made several indecent proposals to Smt. Chitralekha Dey, UDC during June, 2014. He once asked her, "Whether she caressed her own body part with another body part" and "Whether she would love to dine in a Five Star hotel without her family." She was shocked and verbally complained to the then I/C Shri S.K. Ghosh, Retired AD/Training.

Shri Anindya Hore, DCIO in his statement dt. 24.8.16 stated that Smt. Dey told him about misbehavior of Shri Mandal with her next day after the incident. She also went to Shri S.K. Ghosh, the then AD, but did not know what they discussed.

Shri S.K. Lala, AD, stated before the Internal Complaints Committee (ICC) that during the second half of 2014, when he returned from leave, he found the atmosphere of the RTC gloomy. Officers were not speaking to colleagues freely as they used to. During the first week of July, 2014, when Smt. Dey divulged him the alleged misbehavior of Shri Mandal, he advised her not to stay in office alone. He did not intervene further as she had already apprised the matter to Shri S.K. Ghosh, the then AD.

Shri J.R. Sinha, AD in his statement dt. 25.8.16 confirmed that the allegations leveled in the complaint of Smt. Dey were true in entirety.

Shri S.K. Kumar Das, Peon, stated before the ICC that he had heard about Shri Mandal having said something objectionable to Smt. Dey.

Shri D.P. Mishra, AD stated before the ICC admitted that there was some tension between Smt. Dey and Shri Mandal.

Shri Shankar Mukherjee, ASO stated before the ICC that some indirect angry words were usually being exchanged between Smt. Dey and Shri Mandal in the office.

Shri Sanat Kumar Dey, JIO-I/WT (Husband of Smt. Dey) stated before the ICC that he was aware of the allegations leveled by his wife and had advised her to bring all things to the notice of her senior officers.

Thus, by indulging in an act of sexual harassment of a woman Shri S.B. Mandal, DCIO, violated Rule 3-C of the CCS (Conduct) Rules, 1964.

Article-II

That the said Shri S.B. Mandal, DCIO while posted at RTC Kolkata failed to observe proper official decorum and discipline in connection with his relationship with Smt. Srijata Chatterjee, Steno, which was highly inappropriate and objectionable.

As per the report dt. 28.9.16 of the ICC, the relationship between Shri S.B. Mandal and Smt. Chatterjee was not strictly official and they did not observe official protocol and discipline. All witnesses (Smt. Chitralekha Dey, UDC; Anindya Hore, DCIO; S/Shri J.R. Sinha, AD; S.K. Lala, AD; Subrata Banerjee, JIO-I/MT; S.K. Barik, CCWC; Amit Paswan, ASA; Shri R.K. Bera, CCWC; Mohan Das, CCWC; and Subasish Das, Peon) examined during the course of inquiry by ICC corroborated that interactions of Shri Mandal and Smt.

Wh

Chatterjee were highly objectionable and inappropriate in the office environment and they were found indulging in inappropriate behavior in the office premises.

Thus, Shri S.B. Mandal, DCIO exhibited conduct unbecoming of a Govt. servant and violated Rule 3 of the CCS (Conduct) Rules, 1964."

Upon a close reading of such statement of imputation, it is seen that most of the deposition recorded in Article I of the statement is subjective in nature and are largely based on hearsay. Article II of the charges is even more questionable as it is based on a third party complaint, which, under no circumstances, the ICC had the jurisdiction to entertain.

6.7. DOP&T, vide their O.M. dated 22.12.2016 has laid down that enquiries in case of sexual harassment should be conducted as per the prescribed procedure.

We find in the instant matter, there are clear violations of Section 9(1) and Section 13(4) as well as Rule 7(3) of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

In **State Bank of Patiala v. S.K. Sharma AIR 1996 SC 1669** the Hon'ble Apex Court had held as follows:-

"(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. Take a case where there is a provision expressly providing that after the evidence of the employer/Government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is

42h

only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle".

In the case of the applicant, fair hearing was denied to him. It is also established that the mandatory provisions have been violated. As urged by the Ld. Counsel to the applicant, when the very initiation of proceedings is bad-in-law, the consequent action by way of initiation of proceeding by issuing chargesheet is also bad-in-law and is not sustainable.

7. In our considered view, procedural provisions have been violated causing prejudice to the applicant. Hence, OA succeeds on merit as the allegations of the applicant stand substantiated by facts as well as in law. The report of the ICC dated 28.9.2016, so far as it relates to the applicants, the memorandum of chargesheet dated 9.10.2017, and the consequent appointment of Presenting Officer dated 19.1.2019 are hereby quashed and set aside.

8. The OA is allowed. There will be no order on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP