

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00459/2016  
With  
MA/050/00221/2017

Date of Order: 05.09.2019

**CORAM**

**HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Upendra Kumar, S/o Sri Nand Kishor Prasad, resident of Village & P.O.-  
Bahadurpur, P.S.- Rajauli, District- Nawada.

..... Applicant.

- By Advocate: Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary, Ministry of Labour & Employment, Government of India, New Delhi.
2. The Director General (Hq.), Employees' State Insurance Corporation, Panchdeep Bhawan, C.I.G. Road, New Delhi.
3. The Insurance Commissioner Incharge (P&A), Headquarters Office, Employees' State Insurance Corporation, Panchdeep Bhawan, C.I.G. Marg, New Delhi.
4. The Medical Superintendent, ESIC Model Hospital, Bharat Nagar, Ludhiana.
5. The Medical Superintendent, ESIC Model Hospital, Phulwarisharif, Patna.
6. The Deputy Director (Admin), ESIC Model Hospital, Phulwarisharif.

..... Respondents.

- By Advocate: None

**ORDER**  
**[ORAL]**

**Per Dinesh Sharma, A.M.:** - In the instant OA, the applicant has prayed  
for quashing the order of the Disciplinary Authority dated 13.01.2015

imposing a penalty of reduction of one stage in the time scale of pay for a period of three years during which he will not be earning any increments, without postponing future increments. He has also requested for quashing the order of appellate authority dated 09.03.2016 by which the penalty of applicant was reduced from three years to one year. His argument is that the charge of sexual harassment against him was not proved before the Internal Complaint Committee. He has also argued that in a proved case of sexual misconduct an employee cannot be imposed one of the minor punishments. The fact that a minor penalty was imposed and that too reduced on appeal proves that it was not a case of sexual misconduct.

2. The respondents have filed written statement stating that the OA is not maintainable and fit to be dismissed since every action taken by the ESIC is within the purview of law and strictly in accordance with applicable rules and regulations. Both the orders of the Disciplinary Authority and the Appellate Authority are well reasoned orders and fit to be sustained. The Internal Complaint Committee did find that the applicant had misbehaved with the aggrieved woman (pulled her cheeks and touched her back).

3. Heard the learned counsel for the applicant. We find that the punishment imposed upon the applicant is relatively minor taking into account the guilt which was found to be proved against him by the Internal Complaint Committee. The Committee Members observe that the applicant had misbehaved with the aggrieved woman and had admitted his misconduct as well as apologized before the Member and the Chairperson

and also the aggrieved woman for his misconduct. However, it appears that a lenient view has been taken because the aggrieved woman herself had filed a written statement stating that the complaint should not be reported to the police and further action should be taken only if the applicant repeats similar behaviour. Thus, it is apparently a case where leniency has been shown and the applicant wants to take advantage of that leniency and allege that it is a sign of lack of proof about his misbehaviour. We do not agree with this argument of the applicant. We are also informed by the learned counsel for the applicant that he has already resigned and left the job. The OA totally lacks merit and is, therefore, dismissed. Consequently, MA/050/00221/17, which is filed by the applicant for directing the respondents to make available the required records/documents relating to the applicant, is also dismissed. No costs.

**[Dinesh Sharma]/M[A]**

**[J.V. Bhairavia ]/M[J]**

**Srk.**