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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1332/2003

New Delhi, this the 22nd day of January, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

SI Mohinder Singh Parasher
s/o Late Sh. Parma Nand
r/o 1119, Timar Pur
Delhi.
... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India
through Commissioner of Police
Police Headquarters
IP Estate
New Delhi.

2. Joint Commissioner of Police
Special Cell
Police Headquarters
IP Estate
New Delhi.

3. Deputy Commissioner of Police
Special Branch
New Delhi.
... Respondents

(By Advocate: Mrs. Renu George)

O R D E R (Oral)

Justice V.S. Aggarwal:-

In the leading case of **Vishaka & Ors.** v. **State of Rajasthan & Ors.**, JT 1997(7) SC 384 the Supreme Court held that sexual harassment of the working women violates their fundamental rights. It requires effective redressal. Series of directions in this regard therefore were issued.

2. The decision was followed in the subsequent judgement in **Apparel Export Promotion Council** v. **A.K.Chopra**, JT 1999 (1) SC 61. The Supreme Court further held that in cases of sexual harassment, the scope of interference would be limited. It was further concluded that even though

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judicial review of an administrative action must remain flexible and its dimension should not be closed, yet the Court is not concerned with the correctness of the findings of fact on the basis of which orders are made so long as these findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities. The findings of the Supreme Court reads:

> "Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless if finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even in so far as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of aministrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the

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examination of the decision-making process. Lord Haltom in Chief Constable of the North Wales Police v. Evans, (1982) 3 AII ER 141, observed:

> The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court."

3. It is these findings that have to be kept in mind while scrutinising the facts of the present case.

4. The applicant had faced the disciplinary proceedings on the allegations that while he was posted in the IVth Battalion, DAP, one ASI (Min.) Kiran Yadav had made a complaint regarding sexual harassment on the part of the applicant. The matter was inquired into and the report had been received. The applicant was alleged to have made objectionable remarks which amounted to sexual harassment.

5. In the departmental inquiry, the inquiry officer recorded the findings that the charge is partly proved. Thereafter, a penalty order had been passed which was then upheld by the appellate authority.

6. OA 2483/2001 had been filed. On 31.10.2002, the said orders were quashed keeping in view the decision of the Delhi High Court in the case of **Shakti Singh** v. **Union of India & Others** (CWP No.2368/2000) decided on 17.9.2002. It is in pursuance of the said directions that the fresh order

had been passed by the disciplinary authority and the conduct of the applicant was 'censure'. The applicant preferred an appeal which has been dismissed.

7. By virtue of the present application, he seeks quashing of the orders passed by the disciplinary as well as appellate authority.

8. During the course of the submissions, learned counsel for the applicant has raised certain contentions but we are not delving into the same, the reason being that it was pointed further that the disciplinary authority itself found that there was no evidence against the applicant and even the appellate authority never reached to any such conclusion finally.

9. On that count, we find that the orders in question have to be quashed. The disciplinary authority recorded:

> "I have carefully considered the findings submitted by the E.O. in the light of the facts and circumstances of the case, the evidence on record, the representation of the defaulter & also heard SI (Min.) Mahender Singh No.D/449 in person on 13.1.2003. Though there is no evidence/witness in support of allegations levelled against him, gender harassment met out to the complainant by the defaulter can not be completely ruled out. I am therefore, inclined to take a lenient view by awarding the punishment of Censure upon SI (Min.) Mahender Singh No.D/449. Accordingly, the conduct of the defaulter is hereby censured."

10. In other words, it was found by the disciplinary authority that there was no evidence against the applicant.

11. In appeal, the appellate authority agreed with the findings of the inquiry officer and concluded that the possibility of the sexual harassment, at a work place, cannot be ruled out.

12. These findings show that there is no specific conclusion arrived at that there is a sexual harassment on the part of the applicant. It is true that in departmental proceedings, conclusion can be arrived on preponderance of probabilities but on preponderance of probability the finding has to be specific that there has been a gender harassment. That finding is absent.

13. It is these facts, which prompt us to conclude that there is no finding specifying the finding of the disciplinary authority by the appellate authority.

14. We are of the considered opinion that if there was gender harassment, penalty of censure may be improper but in the facts of the present case, keeping in view the sequence of events it cannot be permitted that the applicant could be awarded the censure in the absence of the evidence of the findings recorded. Thus, the impugned orders cannot be sustained. In face of the aforesaid, we are not delving into other controversies. Resultantly, we quash the impugned orders. No costs.

(S.A. Singh)
Member (A)

(V.S. Aggarwal)
Chairman

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