
(2022) 12 SHI CK 0131
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2883 Of 2020

Anil Dutt

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 30-12-2022

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 14(2), 14(3), 14(4), 14(5),
Central Civil Services (Conduct) Rules, 1964 — Section 3C

Citation : (2022) 12 SHI CK 0131

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Dilip Sharma, Manish Sharma, Desh Raj Thakur, Narender Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, the petitioner has prayed for the following substantive relief:-

“(i) That the impugned inquiry report dated 23.12.2016, Annexure P-4, the impugned order of compulsory retirement dated order dated 24.8.2018, Annexure P-9, as also order dated 19.12.2019, Annexure P-12, dismissing his revision petition, may kindly be quashed and set aside and the respondent department may kindly be directed to reinstate the petitioner in service, will all consequential benefits including arrears of salary, consideration for further promotion etc.”

2. Brief facts necessary for adjudication of the petition are that in the year 2016, petitioner was posted as Assistant Commandant, 1st IRBn, Bangarh, District Una. A complaint of sexual harassment was filed against him by a female official of Police Department. An inquiry was held by Internal Complaint Committee for Sexual Harassment of Women at work place (for short the “ICC”). The ICC vide

report dated 23.12.2016, expressed its view that the allegations against the petitioner were proved beyond doubt. Accordingly, the ICC recommended disciplinary action against the petitioner.

3. Taking cognizance of the report, submitted by the ICC, the Disciplinary Authority vide order dated 3.7.2017 proposed major penalty against the petitioner and afforded him an opportunity to explain as to why he should not be compulsorily retired from service. Petitioner submitted his representation against the order dated 3.7.2017. The Disciplinary Authority after considering the representation of the petitioner, imposed a penalty of compulsory retirement from service upon the petitioner vide order dated 24.8.2018. Petitioner assailed the order of Disciplinary Authority by filing a revision petition and also sought a legal remedy by filing O.A. before the erstwhile H.P. State Administrative Tribunal. The Tribunal directed the Revisional Authority to take a decision in the matter and held that the O.A. of the petitioner was not maintainable without final decision in the revision petition. Finally, the revision petition of the petitioner was also rejected by the competent authority vide order dated 19.12.2019.

4. I have heard the learned counsel for the parties and have also gone through the record carefully.

5. Mr. Dilip Sharma, learned Senior Advocate, assisted by Mr. Manish Sharma, Advocate, contended that the impugned order Annexure P-9 is illegal and arbitrary, having been passed without adoption of due procedure prescribed under law. He contended that no inquiry was held against the petitioner in terms of Rule 14 of the CCS (CCA), Rules 1965 (for short the "Rules") and in absence thereof, the order of compulsorily retirement of the petitioner from service is vitiated.

6. On the other hand Mr. Desh Raj Thakur, learned Additional Advocate General has contended that after amendment of Rule 14 (2) of the Rules, the ICC was to act as the Inquiry Authority appointed by the Disciplinary Authority, as such, there was due compliance of requirement of Rule 14 of the Rules in the case of petitioner.

7. It is made out from the record that on receipt of complaint of sexual harassment against petitioner, a preliminary inquiry was conducted by Commandant 6th IRBn Gariwala, District Sirmour. Thereafter, the complaint was entrusted to ICC, which after holding inquiry, had found the allegations proved against the petitioner and had recommended disciplinary action against him.

8. Indisputably, on the basis of the inquiry report submitted by ICC, the Disciplinary Authority had issued order dated 3.7.2017, requiring petitioner to show cause as to why he should not be compulsorily retired. Without holding any further proceedings, petitioner was compulsorily retired from service vide Annexure P-9 dated 24.8.2018, passed by the Disciplinary Authority.

9. Rule 14 (2) of the Rules, as amended after inclusion of a proviso, reads as

under:-

“(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof:

[“Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.”]

EXPLANATION 1.- Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the Disciplinary Authority.

EXPLANATION 2.- Where the Disciplinary Authority appoints a retired Government servant as inquiring authority, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) shall include such authority.”

10. A plain reading of aforesaid provision clearly spells that the Disciplinary Authority, when is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, will hold the inquiry itself or shall cause such inquiry to be held by any other authority to be appointed by the Disciplinary Authority under Rule 14 (2) or under the provisions of Public Servants (Inquiries) Act, 1850. The procedure so prescribed admits of no exception. The proviso to Rule 14 (2) only provides for any other authority as Inquiry Authority specifically to the cases of complaints of sexual harassment. Such an authority is ICC, established in each Ministerial Department or Office for inquiring into such complaints.

11. The authorization of ICC as Inquiring Authority does not in any manner vest such authority to deviate from prescribed procedure. It is only provided that if separate procedure has not been prescribed for the ICC for holding the inquiry, the ICC shall inquire as far as practicable in accordance with the procedure laid down in the rules.

12. The case of respondents is not that the ICC constituted in State Police Department had been vested with any special procedure to hold disciplinary inquiry under Rule 14 of the Rules. In absence of any such vestment of powers, the ICC is bound to follow the principles for holding inquiry under Rule 14 of the Rules.

13. Sub-rule (3) of the Rules provides that in the cases where it is proposed to hold an inquiry against a government servant under Rule 14 of the Rules, the Disciplinary Authority shall frame a charge-sheet and under sub-rule (4) shall deliver or cause to be delivered to the government servant a copy of articles of charge, the statement of imputation of misconduct or misbehaviour and a list of documents and witnesses by which each articles of charge is proposed to be sustained. The government servant is then required to be afforded with an opportunity to submit his written statement of defence. The Disciplinary Authority is empowered to either hold inquiry itself or to appoint under sub-rule (2) an inquiring authority for the purpose.

14. Reverting to the facts of the case, the non-compliance of the provisions of sub-rules (2) to (5) of Rule 14 of the Rules is clearly visible. The Disciplinary Authority on receipt of inquiry report from ICC, without seeking the aid of provisions of Rule 14 of the Rules, directly proposed infliction of major penalty upon the petitioner and after receiving a representation against such proposal, proceeded to pass the impugned order Annexure P-9.

15. The petitioner was a gazetted State Police Service Officer, who for disciplinary purpose is governed by CCS (CCA) Rules. Dealing with the case of another gazetted State Police Service Officer, relating to a fact situation involving identical question, a Coordinate Bench of this Court vide its judgment dated 10.9.2021 in CWP No. 3318 of 2021 has held as under:-

8(iii) As per pleaded case of the respondents, the fact finding inquiry was conducted by the ICC on the complaint dated 11.05.2021. As per office memorandum dated 16.07.2015, issued by Government of India, which is also applicable to all the departments of the respondent-State as clarified by the respondent-State in the circular dated 26.06.2019, and also as per the provisions of Act of 2013, the committee, after completion of fact finding/ preliminary inquiry/investigation, if is of the opinion that the complaint has substance, then such investigation is to be sent to the disciplinary authority. In conducting the fact finding inquiry, the ICC recorded and examined statements of 8 police personnel. It, prima facie, found substance in the allegations levelled in the complaint. If that was so, then this would have been the end of first stage of the role of ICC. The ICC thereafter was required to send its fact finding report to the disciplinary authority. It was for the disciplinary authority to examine the fact finding report of the ICC and to decide whether to issue charge sheet to the petitioner under Rule 14 of the CCS(CA) Rules or not. In case the disciplinary authority decided to issue the charge sheet to the petitioner, then the same was to be issued as per Rule 14(3) of CCS (CCA) Rules. Reply was to be called from the petitioner. Upon consideration of petitioner's reply, disciplinary authority was to take the final decision whether to proceed with formal inquiry against the petitioner or not. In case the disciplinary authority decided to proceed with formal inquiry, then the matter was to be again sent to the ICC as the ICC is the Inquiring Authority in complaints of sexual harassment as per provisions of Act of

2013 and the O.M. dated 16.07.2015. It is at this stage that the ICC comes into picture once again. This is the second stage mentioned in O.M. dated 16.07.2015. The provisions regarding appointment of Presenting Officer and the Defence Assistant also become applicable. This is the only interpretation possible on combined reading of the O.M. dated 16.07.2015, Act of 2013 and the CCS (CCA) Rules. The Internal Committee does not have the power to proceed with formal/regular inquiry on its own. It will be appropriate to refer to (2020) 13 SCC 56, titled Nisha Priya Bhatia Vs. Union of India and another, wherein following was observed in respect of fact finding inquiry by the ICC followed by conduct of regular inquiry :-

"95. Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual harassment at workplace is well delineated by the enactment of The Sexual Harassment of Women at Workplace Act, 2013 (hereinafter "2013 Act") and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short, "the 2013 Rules"), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under the 2013 Act, the matter goes before the department for a departmental inquiry under the relevant departmental rules [CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental inquiry is in the nature of an in-house mechanism wherein the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the concerned department having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental inquiries, prosecution, penalties, proceedings, action on inquiry report, appeals etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further."

8(iv) The SOP cannot override either the CCS (CCA) Rules or the provisions of Act of 2013 or the Office Memorandum issued by Government of India on 16.05.2015, which is also applicable to the respondents in terms of Circular dated 26.06.2019. Under the Act, the inquiry by ICC is to be completed within a period of 90 days. Formal inquiry/regular inquiry can be conducted after the issuance of charge sheet by the disciplinary authority under Rule 14 of CCS (CCA) Rules. In case the procedure laid down in para 7(a) of the SOP is followed in terms of interpretation given by the respondents, then in case of State Gazetted Police Service Officer, the disciplinary authority will come into picture only after completion of formal inquiry by the ICC, which would be in absolute

derogation to the provisions of not only the Act of 2013, but also CCS(CCA) Rules and the detailed guidelines dated 16.07.2015 issued by Government of India. It is not the case of the respondents that they can conduct the inquiry against the petitioner into the complaint dehors the provisions of CCS(CCA) Rules, Act of 2013, the Office Memorandum dated 16.07.2015 and the Circular dated 26.06.2019. It is not and even otherwise also cannot be the case of the respondents that after conclusion of the present formal inquiry being conducted against the petitioner by the ICC, the matter will go to the disciplinary authority and that the disciplinary authority will then direct issuance of charge sheet to the petitioner followed by another regular departmental inquiry. This is because as per para 7 (a) (xix) and para 4 of SOP, after conclusion of inquiry by the ICC, the matter goes to disciplinary authority for awarding punishment. A conjoint and holistic reading of the Act of 2013, the CCS(CCA) Rules, 1965, the O.M. dated 16.07.2015 issued by Government of India, the Circular dated 26.06.2019 issued by respondent-State and the SOP leads to only one conclusion that the ICC has no authority to issue the impugned memorandum dated 28.05.2021 to the petitioner. In case the ICC has not completed the fact finding inquiry, then it is entitled to complete the same but in accordance with law. However, in case the ICC has already concluded the fact finding inquiry against the petitioner, then it is required to send the fact finding inquiry report to the disciplinary authority. It is for the disciplinary authority to examine the fact finding report to decide whether to issue charge sheet to the petitioner or not. It is the disciplinary authority which can issue the charge sheet to the petitioner under Rule 14 of CCS (CCA) Rules. After examining the reply of the petitioner to the charge sheet, it is for the disciplinary authority to decide whether to proceed with formal inquiry against the petitioner. The ICC will come into picture once again only if disciplinary authority decides to hold formal inquiry against the petitioner. If that course is adopted by the disciplinary authority, then the matter will be once again referred to the ICC which is the inquiring authority in terms of Act of 2013, CCS(CCA) Rules and the O.M. dated 16.07.2015. The ICC at this second stage of coming into picture will hold the inquiry as per provisions of CCS (CCA) Rules as the petitioner is a Gazetted State Police Service Officer governed by CCS (CCA) Rules, 1965 for disciplinary purposes.”

16. This Court finds no reason to take a different view than the view taken by a Coordinate Bench in aforesaid judgment. The Disciplinary Authority on receipt of inquiry report submitted by the ICC was under legal obligation to form an opinion as to whether the grounds for inquiring into truth of any imputation of misconduct or misbehaviour existed against the petitioner and after holding in favour of such existence, he was to draw the charges and serve the same upon the petitioner in terms of sub-rule (4) of rule 14 of the Rules. The written statement of defence was to be sought from the petitioner and thereafter in case of contest being raised by petitioner, the ICC should have been asked to hold the inquiry keeping in view the mandate of Rule 14 (supra).

17. In absence of the adoption of due procedure of law, the infliction of

punishment upon petitioner vide Annexure P-9 is wholly unsustainable in law and thus deserves to be quashed and set aside. Similarly, the order Annexure P-12, passed by the Revisional Authority without considering the above noted legal aspect of the matter also deserves to be quashed and set aside. In fact the proceedings drawn by the Disciplinary Authority vide Annexure P-7 dated 3.7.2017 itself was against the mandate of law.

18. In result, the petition is allowed. Orders Annexure P-7 dated 3.7.2017, Annexure P-9 dated 14.8.2018 and Annexure P-12 dated 19.12.2019 are quashed and set aside. The infliction of punishment of compulsory retirement from service upon petitioner is held to be bad in law. Accordingly, the respondents are directed to reinstate the petitioner in service with all consequential benefits. It is however clarified that this judgment will not preclude the respondents from initiating disciplinary action against the petitioner, if so advised, strictly in accordance with law. The petition is accordingly disposed of. Pending applications, if any, also stand disposed of.