

(2014) 09 DEL CK 0453

In the Delhi High Court

Case No : W.P.(C) 821/2014 and C.M. No. 1655 of 2014

Avinash Mishra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 215 DLT 714 : (2015) 144 FLR 777 : (2015) LabIC 2377

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : A.K. Behera and Ajesh Luthra, Advocates for the Appellant; Ajay Digpaul, CGSC and G. Rajeev, Under Secretary, Advocates for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by an order of the Central Administrative Tribunal (CAT) dated 15.1.2014 dismissing O.A. No. 3658/2013. In that application, the petitioner had challenged the proceedings which led to an inquiry into complaint of misconduct amounting to sexual harassment at the work place. The brief facts are that the Petitioner was working as Joint Advisor (Water Resources) in the Planning Commission and was in direct line for consideration to the promotional post of Advisor (Water Resources), which was due to fall vacant on 11.8.2013. He was considered and selected by the Departmental Promotion Committee (DPC) which met on 11.4.2013. Its recommendations had to be approved by the Appointments Committee of the Cabinet (ACC) prior to appointment. At that stage, a lady official, who had worked as Senior Research Officer when the petitioner was posted as Deputy Director (Water Resources), was promoted on ad hoc basis as Deputy Advisor (Water Resources) on 11.2.2013. She gave a written complaint on 27.2.2013 against the petitioner, alleging harassment at the work place. The petitioner contends that this allegation was made even before the order asking her to report to him was issued on 1.3.2013. The first complaint -- according to the petitioner -- was general and vague one but the second complaint dated 14.3.2013 sought to improve her initial complaint, citing instances of alleged

harassment.

2. The complaints were referred to the Complaints Committee on Sexual Harassment of Women at Work Place (hereafter referred to as "the Complaints Committee") set up in terms of the directions contained in the judgments of the Supreme Court reported as *Vishaka and others Vs. State of Rajasthan and Others*, , and the further directions made in *Medha Kotwal Lele v. UOI and Ors.*, [W.P.(C) 173-177/1999, decided on 26.4.2004]. The matter was referred to the Complaints Committee on 3.4.2013. The Committee sent a notice to the petitioner on 22.4.2013, referring to the two complaints of the lady official, and asked the petitioner to appear before it on 1.5.2013. He complied with the notice and duly attended the Committee and denied the allegations. He represented to the respondents to grant him Vigilance Clearance for promotion to the post of Advisor (Water Resources). The petitioner alleged that since there was lack of clarity, he approached the CAT by filing O.A. No. 1911/2013. During the pendency of proceedings, he represented to the Complaints Committee on 20.5.2013.

3. Before the CAT, the respondents contended that in terms of Rule 14(2) of the CCS (CCA) Rules, the Complaints Committee is constituted as the authority to inquire into the complaints of sexual harassment amounting to misconduct. Having regard to the totality and the materials placed before it, the Complaints Committee, after giving opportunity to the petitioner concluded its proceedings. The petitioner's grievance is that the proceedings conducted by the Complaints Committee were actually in the nature of preliminary inquiry and that a formal initiation of proceedings was mandated after due application of mind by the disciplinary authority, was denied.

4. The CAT, in its order took note of the decisions in *Medha Kotwal Lele v. Union of India*, 2013 (1) SCC 311 (decided on 26.4.2013) and *Vishaka* (supra) as well as the Protection of Women against Sexual Harassment at Work Place Act, which was brought into force on 23.4.2013. The CAT concluded that since the Act came into force after the complaint had been received, its provisions would not regulate the conduct of the proceedings. After taking into consideration the existing rules under CCS (CCA) Rules, the CAT concluded that the petitioner's contentions with regard to the requirement of prior sanction of the disciplinary authority being essential, was unmerited. It, therefore, dismissed the application.

5. Sh. A.K. Behera, learned Counsel for the petitioner submitted that the conclusions of CAT are based on erroneous understanding of the law. Highlighting that it is within the exclusive domain of the disciplinary authority to first decide whether to initiate a disciplinary proceedings, learned Counsel sought to highlight that in the present case, the reference to the Complaints Committee and its further proceedings cannot be characterized as departmental proceedings. Secondly, it was urged that for some reason, as a result of the decision in *Vishaka* (supra) and subsequently in *Medha* (supra), if it were to be assumed that the proceedings before the Complaints Committee itself amounted to an

inquiry, the procedure adopted of not allowing the opportunity to cross-examine the witnesses vitiated the entire inquiry itself. It was argued that the proceedings and all further action, including the report submitted in that regard has to be, therefore, quashed.

6. Learned Counsel relied upon the judgment of the learned Single Judge of this Court in Sandeep Khurana Vs. Delhi Transco Ltd. and Others, .

7. Before proceeding to consider and analyse the submissions made, it would be essential to notice that pursuant to the decision in Vishaka (supra), all the State agencies and authorities were mandated to frame sexual harassment prevention policies and especially set up complaints mechanism by way of formation of Committees. The composition of these Committees was also to be in terms of the directions in Vishaka (supra) in that there had to be representation of women and certain outside non-Governmental organizations/independent parties. As a follow-up to the law declared in Vishaka (supra), the order dated 26.4.2004 in Medha (supra) inter alia directed as follows:

"Several petitions had been filed before this Court by Women Organisations and on the basis of the note prepared by the Registrar General that in respect of Sexual harassment cases the Complaints Committees were not formed in accordance with the guidelines issued by this Court in Vishaka and others Vs. State of Rajasthan and Others, , and that these petitions fell under Clause (6) of the PIL Guidelines given by this Court, i.e. "Atrocities on Women" and in any event the Guidelines set out in Vishaka were not being followed. Thereupon, this Court treated the petitions as writ petitions filed in public interest.

Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing learned Attorney General for UOI and learned Counsel, we direct as follows -- Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka and others Vs. State of Rajasthan and Others, , will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules. Similar amendments shall also be carried out in the Industrial Employment (Standing Orders) Rules."

8. After the above order, Rule 14 of the CCS (CCA) Rules was amended; especially, a proviso to Rule 14(2) was inserted in the following terms:

"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 of 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."

9. The relevant part of Rule 14 reads as follows:

"PART VI

PROCEDURE FOR IMPOSING PENALTIES

14. Procedure for imposing major penalties--

(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(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 enquire into the truth thereof:

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3C 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 harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

Explanation.--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."

10. Section 3C of the CCS (Conduct) Rules, 1964 reads as follows:

"3C. Prohibition of sexual harassment of working women--

(1) No Government servant shall indulge in any act of sexual harassment of any women at her work place.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation.--For the purpose of this rule, "sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise, as--

- (a) physical contact and advances;
- (b) demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing any pornography; or
- (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

11. The main contention of the petitioner, as is evident from the above discussion, is two-fold. The first is that the disciplinary authority ought to have applied its mind before referring the complaint to the Complaints Committee and, secondly, the procedure followed by the Committee in not affording the basic principle of natural justice, violates Article 14 of the Constitution. He relied upon Sandeep Khurana (supra) for this proposition. Likewise, the judgment in Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and Others, has been relied on to say that the infirmity in not following the mandated procedure under Rule 14 strikes at the root of the entire proceeding which is liable to be quashed. He submits that fair opportunity was denied to him.

12. The concern of the Supreme Court in Vishaka (supra), and the subsequent rulings in Apparel Export Promotion Council Vs. A.K. Chopra, , and the interim order in Medha (supra) was the accountability of the State and its departments to ensure that work places are free from offensive behaviour, which amounts to sexual harassment. The public interest underlined in ensuring that such behavior is not tolerated is not only in regard to its being a misconduct vis-?-vis the employer, but also its ensuring accountability of the public employer to maintain the workplace and its environs secure and safe to all women employees. If one sees this issue from this perspective, what is immediately discernable is that upon receipt of a complaint which prima facie discloses allegations of sexual harassment, the disciplinary authority has little choice but to refer it to the Complaints Committee. The proviso to Rule 14(2) and Rule 3C of the CCS (Conduct) Rules, 1964 make it clear beyond a shadow of doubt that the procedure to be adopted thereafter has to be, as far as possible, akin to proceedings which can potentially culminate in imposition of major misconduct under Rule 14. The petitioner's contentions, therefore, that the disciplinary authority had a choice of either instituting or refusing to initiate disciplinary proceedings, therefore, has to fail.

13. The second contention urged was that in the absence of strict adherence to the procedure mandated under Rule 14, which requires the public employer to issue a charge-sheet, detailing the Articles of Charges, Statement of Imputations and list out the witnesses and documents proposed to be relied upon and conduct the proceedings, the entire disciplinary proceedings were vitiated. This Court is of the opinion that having regard to the very nature of the proceedings which is mandated on account of the kind of allegations leveled, the disciplinary

authority is empowered to hold an inquiry "as far as practicable in accordance with the procedure laid down" in the Rules. This expression "as far as practicable", in the opinion of the Court, clothes the Complaints Committee with the discretion not to follow, in letter, the entirety of the procedure. Consequently, so long as the allegations of sexual harassment are fairly disclosed to the official charged with it and he is made aware of the materials proposed to be used against him in the inquiry, during the course of which he is afforded adequate opportunity to explain such adverse material, the entire procedure and the initiation of proceedings cannot be declared invalid.

14. In the present case, the petitioner's complaint is that his explanations to the allegations levelled were not considered and that the witnesses examined by the Complaints Committee were in his absence. He also argues that the copies of the statements of those witnesses were not furnished to him and most importantly, he was denied the right of cross-examination.

15. There is no doubt that sexual harassment at the work place is a serious misbehaviour and if found to be true, dealt with severely. At the same time, the procedure adopted in arriving at a finding -- considering the likely adverse finding of a charged official in a given case -- has to be fair, and the materials also should be considered in a fair, reasonable and dispassionate manner. Barring rare instances where the security of the witness or the victim would be in peril, (probably the only kind of exception recognized in terms of the declaration of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, , the cross-examination of witnesses ought not to be denied. In this regard, this Court recollects the earlier Division Bench ruling in *Pushkar Saxena v. Govt. of NCT of Delhi*, [W.P.(C) 7592/2001, decided on 16.5.2012], where the Court balanced the two interests -- of the sensitivity and sensibility of the witnesses who depose in such proceedings, with the public interest in affording the charged official with fair opportunity. The Court had in that instance, indicated that the procedure to be adopted may be suitably modified. The directions made in that decision were to the following effect:

"16. xxx xxx xxx

2. (iii) Further inquiry in the matter would begin from the stage of cross-examination of the witnesses. The petitioner would be entitled to cross examine the witnesses who were earlier examined by the Inquiry Officer, through a female defence Assistance of his choice. He would, however, not be present at the time of their cross-examination. If the petitioner does not avail the services of a female Defence Assistant, he will submit a questionnaire, giving the questions he wants the witnesses to answer, and the answers to the questions will be obtained by the Inquiry Committee. The petitioner will not be present at that time."

16. In the present case, the respondents do not deny that the opportunity of cross-examination or cross-examining of witnesses who deposed before the Complaints Committee was not given to the petitioner. Equally, it is not known

whether those witnesses had submitted any material or documents which contained any material implicating the petitioner, or adverse to him. In these circumstances, it was proposed to the learned Counsel for the parties that an approach as indicated in Pushkar Saxena (*supra*) would be adopted in the present case; at the same time, unlike in that case -- the need to keep away the petitioner from the inquiry was not shown. The facts there were that the victims were young students; here the complainant is a fairly senior officer, holding the rank of Joint Advisor. Therefore, the petitioner can be present in the course of inquiry during cross-examination of witnesses. Learned Counsel for the petitioner did not object to it, but at the same time stressed that the proceedings should be concluded at the earliest opportunity and that the respondents should not pass any orders prejudicing the petitioner's right to be appointed to the post of Advisor (Water Resources), particularly in view of his selection by the DPC. Learned Counsel for the respondents did not object to the suggestion of the Court.

17. In view of the above discussion, the inquiry report made by the Complaints Committee is hereby set aside.

18. The Complaints Committee shall now take-up the matter for further inquiry in terms of the following directions:

"(a) The respondents shall ensure that copies of all material which had not been furnished to the petitioner till date and which contain anything adverse to him shall be supplied within a week from today. The petitioner's written response/representation in respect of these shall be given within a week thereafter.

(b) The further inquiry into the matter would begin from the stage of cross-examination of witnesses. The petitioner would be entitled to cross-examine all witnesses who were examined earlier by the Committee and in respect of whom cross-examination was not permitted. Such cross-examination shall be conducted through a female defence assistant of the petitioner's choice failing which by a male defence assistant of his choice. In case the petitioner does not avail of the services of defence assistant, he can submit a questionnaire giving the questions which he wishes the witnesses to answer; the answers to such questions will be obtained by the inquiry committee."

19. The Complaints Committee shall complete the inquiry and forward its report to the disciplinary authority; a copy of the report shall be given to the petitioner who may forward his comments/recommendations within four days of receipt. The consequential orders or decision of the disciplinary authority shall be passed within a week thereafter. The entire process of holding further proceedings, finalizing the report of the decision of the disciplinary authority after considering the comments of the petitioner (if the report is adverse) shall be completed at the earliest convenience of the respondents and in any event not later than 15.11.2014. The respondents shall also endeavour to ensure that the petitioner's claim for promotion to the post of Advisor (Water Resources) --

which has been kept pending all this while is considered in the light of the final orders of the disciplinary authority. The writ petition is disposed of in the above terms along with the pending application.