
(2008) 07 DEL CK 0119

In the Delhi High Court

Case No : Writ Petition (C) 7935 of 2003 and CM No's. 6630 and 8228 of 2008

Mr. Y.R. Midha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1), 3C(1), 3C(2)

Citation : (2008) 154 DLT 692 : (2009) 1 ILR Delhi 501

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Gaurang Kanth and Rahul Kumar and R. Srinivasa, Director (Legal), CAG, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The Petitioner has filed the present writ petition seeking quashing and setting aside of the judgment and order dated 11th July, 2003 passed by the Central Administrative Tribunal (for short ?Tribunal?) in OA No. 3462/2001 as well as his dismissal order dated 27th September, 2001 passed by Respondent No. 1. The Petitioner has further prayed for his reinstatement in service and for payment of all consequential and connected service benefits as well as grant of monetary compensation of rupees one lakh and disciplinary action against members of Staff Association who had agitated against the Petitioner on 18th August, 1999.

2. The material facts of this case are that Ms. Deepa Sharma, a Stenographer working in the office of Petitioner, who was posted as Principal Director of Audit (SD), filed two complaints of sexual harassment against the Petitioner. The English translation of the said two complaints dated 18th and 23rd August, 1999 are reproduced hereinbelow:

From the day Principal Director of Audit (SD) Dr. Y.R. Midha has posted me with himself, he is troubling me in different ways. Yesterday he asked me to go out

with him. When I refused, he abused me in different ways. He said you are a bitch, a prostitute, of which I made a mention to my friend also.

For last one week, he has been troubling me too much. He said it is my challenge that before February you will leave your everything and come to me. He said to me you make me long for you by sitting in front of me and do not let me touch you. When I started going out of room in anger, he said I would blame that for getting posting in PDA secretariat, you give me kisses.

Sometimes he used to sit on computer near me on the excuse of working on computer. I said you sit on my chair otherwise I will go, he threatened that if you get up I will catch you. In this position I cannot work at this place for a single minute.

Sd/-

Deepa

18.8.99

Stenographer

O/o PDA SD

To

The C&AG

Sir,

Dr. Y.R. Midha called me on 30th October 1998 and posted me to his secretariat. He used to give me special treatment. For example he used to say you need not knock the door before entering my room, this is your room. Don't think you are a steno, you are not steno, you are only Deepa and I am PDA (SD) for the whole office but not for you, for you I am Yogesh, you should call me by my name. This car is yours, you take it home. I heard him but never took advantage of his car or any other thing. He made my horoscope on computer and said that I will not stay at my house for more than a year or year and a half because the man to whom I have been married, he is not my partner of my births and period between births, somebody else is the partner of my births and period between births and when he will meet me I will leave everything (my house, husband and child) and go with him. I did not pay any attention to his talks and said that if my separation had to take place, it would have taken place in the first year of my marriage when there was tension in my house. Now it is five years and my life is quite normal. In this way, one day he said I love you to me and said that I should also say I love you to him. I refused and said that in CAG office you had said similar things to your steno in CAG Office. Your work is only this. Then he said who is Yashoda, I don't know. After some time he remembered that Yashoda was a steno. I had no affair with her. You should trust me. When I did not trust him and said that I am not concerned with this whether you had any

affair or not and I have nothing to give or take from you. Then he stopped calling me. And after one month he posted me with new Director Punam Pandey saying that you have hurt my sentiments too much.

For one and a half month I worked with Director Madam comfortably. After one and a half month, one day suddenly he called me again for dictation. He gave me dictation in a very comfortable manner and when I asked him how have you called me now then he said I am sorry to me. After that he used to call me for some work or the other. One and a half month passed and he posted me with himself saying that except you there is no other steno who is capable of working. I have to get a confidential work done from you. CAG has given adverse remarks in my C.R., I will take him to court. I will file a court case against him in October and for that I have to give you dictation. For many days he continued giving dictation to me very seriously. There were 5 or 6 points against CAG on which I used to get dictation and I used to type on the computer inside on his computer. After sufficient work was finished, he started troubling me again. Sometimes he used to say that I am your partner of your births and period in between births. You were destined to marry me only. I cannot live without you. I told him that I am married and I also have a child. You should not talk such things to me. I kept telling him in a comfortable manner thinking that by refusing he will himself back out. He also said all the things in a comfortable manner in the beginning. So much so that on 13th August, 1999 (Friday) he sent the Peon and Driver for getting the medicine for my mother-in-law. They went to take medicine at 5 PM and at half past five I told him that I will miss my bus. I am leaving, he said today you go in the car. When I refused he caught my hand and said build up confidence. Taking away my hand I said I do not have to develop any such confidence. He said loudly You are Mrs. Deepa. You are my wife. I said loudly, what is this wife, wife, wife, wife. By that time Driver came up: told him drop the madam. I told him to drop me at ISBT, no need to drop me home. From that day his behavior changed.

On Monday he called me and rebuked me badly saying that you were misbehaving on Friday, I was giving you respect. I was making you my wife and you were shouting. I am still giving you time, think it over now, will talk to you after 10 days. Listening to this, I wept and quietly sat in the secretariat. I kept thinking what to do because in between he used to threaten me that he will eliminate me from service. Next day he came to office at 3 PM and I went to tell him and said sir, I have received 4-5 phone for you. Telling this I went out. He called me again and said that if you have to go out with me and if you are ready to leave your family, keep your hand on my hand, otherwise go out from the door. When I was about to leave he started abusing me with bad abuses.

Even then I listened to his bad abuses quietly and went out of the room. He said sit down here and listen, from tomorrow, do not show me your face, do not pick up my phones. Sit outside quietly. I went home and told my husband and told some office friends also.

Husband said I would ring him right now and rebuke him. I prevented him saying that today the matter is over He will never call me again. Nothing is required to be done now.

On Wednesday at 10.00 AM, he called me again and gave dictation. Two A.O.s were preset in his room at that time. After they left, he started abusing me again. Now this was out of my tolerance. I came out and told the people that PDA was misbehaving with me.

I was always afraid of him and kept quiet. I kept thinking that a person who does not spare the CAG, what can?t he do to a steno.

This is a detail of my first statement.

Strict action should be taken against him. If such people are left open they will give mental tension to many other girls.

Sd/-

Deepa

23.8.99

Stenographer

O/o PDA (SD)

New Delhi

3. Keeping in view the judgments of the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, as well as the Apparel Export Promotion Council Vs. A.K. Chopra, as well as the OM of the Ministry of Personnel, Public Grievances and Pensions, Government of India dated 13th February, 1998, the Comptroller and Auditor General of India constituted a Preliminary Enquiry Committee to look into the above mentioned complaints of alleged sexual harassment. The three member Preliminary Enquiry Committee headed by Dr. (Mrs.) Lata Singh, a retired Secretary to the Ministry of Women and Child Welfare, Government of India, unanimously recommended in its report dated 19th November, 1999 as under:

...the Committee is of the considered view that a prima facie case of sexual harassment of Smt. Deepa Sharma stands established against Shri Midha. The Committee would also like to observe that whereas it was Shri Midha?s duty as the Head of the Office to prevent sexual and other kinds of harassment to any woman employee in his office he was himself indulging in it with subordinate staff who had no recourse to protection. Such conduct on the part of the highest official in an office is reprehensible.

4. In view of the aforesaid findings a charge-sheet memo dated 6th December, 1999 was issued to the Petitioner and Mr. A.K. Garde, a retired Secretary to the Central Vigilance Commission was appointed as the Enquiry Officer. The

memorandum of charges read as under:

Article I

That Shri Yogesh Raj Midha, while functioning as Principal Director of Audit, Scientific Departments, New Delhi, sexually harassed Smt. Deepa Sharma, Stenographer in the office of Principal Director of Audit, Scientific Departments, New Delhi.

That Shri. Y.R. Midha, by his act committed the misconduct of sexual harassment, thereby contravening Rule 3-C(1) of the Central Civil Services (Conduct) Rules, 1964. Further, his conduct is also unbecoming of a Government Servant, thereby contravening Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article II

The Shri Y.R. Midha, while functioning as Head of Office, instead of taking steps to prevent sexual harassment of women in the office, himself indulged in such activity, and sexually harassed Smt. Deepa Sharma, Stenographer in the Office of Principal Director of Audit, Scientific Departments, New Delhi.

That Shri Y.R. Midha, by his above acts contravened Rule 3-C(2) of Central Civil Services (Conduct) Rules, 1964. Further, his conduct is also unbecoming of a Government Servant, thereby contravening Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964.

5. After a detailed enquiry Mr. Garde concluded that various allegations in Article 1, except allegation No. 6 as stated in paragraph No. 23 of his report were established, but Article 2 was not established. Though the Petitioner submitted a representation against the Enquiry Report but the disciplinary authority after concluding that Article 1 of the charge stood proved, recommended Petitioner's dismissal from service. Thereafter advice of the Union Public Service Commission (UPSC) was sought.

6. After detailed examination of all material on record, UPSC concluded that ends of justice would be met if penalty of dismissal from service was imposed upon the Petitioner. Consequently, the Petitioner was dismissed from service vide dismissal order dated 2nd September, 2001 which was challenged in the Tribunal and which has led to the impugned judgment of the Tribunal dated 11th July 2003.

7. The Petitioner, appearing in person, contends that as per the judgment in the case of Vishaka (supra) and in particular paragraph 7, the alternate to a Non-government Organization (NGO) has to be a "body" akin to a non-government and the nomination of Dr. Lata Singh, a former Secretary in the Ministry of Women and Child Welfare could not be said to have fulfilled the said requirements as she was only a person and not a nominee/representative of an Organization/Body. He further submitted that being a retired government servant, she had close contacts with respondent No. 4, against whom the

allegation of malafide has been made and hence she could not be said to be an independent, outside agency lending objectivity to the findings of the Tribunal.

8. The relevant provision of guidelines by the Hon'ble Supreme Court in paragraph 18 of its judgment in Vishaka's case relating to Complaints Committee reads as follows:

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the report of the Complaints Committee to the Government department.

(emphasis supplied)

9. While there may be some merit in the plea of the petitioner that an individual even though well conversant with the issues of service cannot replace a NGO or any other body which may be the alternate to the NGO, we are of the view that this need not be gone into in this writ petition in greater detail because we have ourselves gone through the relevant portions of the evidence pointed out by the appellant and the respondent. Even if the transgression as averred by the petitioner is accepted it is not of such a nature so as to vitiate the findings of the Complaints Committee. In the present case, having gone through the evidence and the complaint and the attendant circumstances, we are satisfied that the finding of the Complaints Committee is unassailable. This, however, is in no manner meant to belittle the participation of Dr. Lata Singh, who obviously having been the Secretary in the Ministry of Women and Child Welfare, Government of India, would otherwise have been competent to deal with the issues of gender justice.

10. The Petitioner has further contended that the complaints of Ms. Deepa Sharma were motivated as they were firstly at the behest of Respondent No. 4 who was the over all in charge of the organisation in which both the Petitioner and complainant worked and secondly the complaints were a counterblast to the Petitioner's complaint which was prior in time. According to the Petitioner, he had seen the complainant in an indecent posture with an office boy on 16th

August and, therefore, the Petitioners complaint was prior in time.

11. According to us this argument of the Petitioner is misconceived on facts and untenable in law. It is pertinent to mention that in an earlier Writ Petition No. 7344/1999 the Petitioner had submitted that the Respondent No. 4 with malicious intention dismissed the Petitioner as he had pointed out that the said Respondent had given a contract of Rs. 17 Crores to a Swiss Company, without following relevant rules and instructions issued by the Government of India, where Respondent No 4's son was working. The said writ petition was dismissed by a Coordinate Bench of this Court after observing as under:

From the aforesaid chronology of events it is obvious that the petitioner filed the writ petition only after being charge sheeted in connection with the case of sexual harassment.

In case the petitioner had any genuine grievance with regard to the appointment of SGS to verify the stocks of food grains of the FCI on the ground of the fourth respondent's son being an employee of the SGS or on the ground that the fourth respondent had shown a favourable bias towards the SGS in entrusting the work to it, a question arises why did the petitioner wait for so long for filing the writ petition after he took over the charge as MAB-IV. It is not claimed that the petitioner did not know about the employment of fourth respondent's son with the SGS and as soon as he came to know about the relationship he filed the writ petition. Rather, it appears that till March 20, 1998 the petitioner was of the view that SGS was appointed as it was a well-known and reputed firm of stock verifiers. The change in the attitude appears to have taken place after the petitioner was charge sheeted even though he was not satisfied with the execution of the work by the SGS as is apparent from the letter of the petitioner dated December 22, 1997 to the seventh respondent (which is at page 74 of the paper boo)...

...In the instant case since the petitioner has come up only after he was charge sheeted it is difficult to accept the theory that the petitioner filed the instant petition because he was driven by public interest. The petition, therefore, does not fulfill the criteria for filing the public interest litigation as laid down in Srinivas's case (supra). It is hard to believe that the petitioner filed the instant public interest petition bona fide for the purpose only of serving the public interest...

...In case a court finds that in the garb of a public interest litigation actually an individual's own interest is sought to be advanced or protected, it would be the bounden duty of the court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated. Public interest litigation is in fact a litigation in which a person is not aggrieved personally but brings as action on behalf of the downtrodden or suffering masses for the redressal of their grievances. Applying the principles laid down by the Supreme Court it cannot be said that the instant petition has been filed by a person who is

not aggrieved personally or who has no axe of his own to grind. Obviously, the petitioner has a personal interest in the litigation because of the disciplinary action initiated against him.

In the light of the aforesaid discussion, we consider it appropriate to dismiss the writ petition with the aforesaid observations and in terms of the conclusions reached by us.

12. Consequently, Petitioner's allegation of victimization at the hands of Respondent No. 4 is baseless. We are also not impressed by the allegation that complainant's complaint was a counterblast. Records show that the Petitioner's first written complaint was dated 20th August, 1999 at page No. 184, Volume No. 2, that is two days after a complaint had been filed by the complainant. However, the Petitioner has referred to a statement of Mr. P.K. Jena wherein it has been recorded that on the morning of 18th August, 1999 around 09.05 AM the Petitioner had telephoned Mr. Jena to request him to transfer Mr. Deepa Sharma as well as a peon from his office as they had been found in a compromising position. The official noting at page No. 1115 shows that a large delegation of employees belonging to the Petitioner's department had on 18th August, 1999 met Mr. R.S. Prashad, Principal Director to handover a copy of the complainant's complaint. The aforesaid delegation comprised of a number of office bearers of the Staff Association. It is inconceivable that the Petitioner would have got a prior information of the complaint being filed against him. In any event, it does not stand to reason as to why the Petitioner did not take action against the complainant on 16th August itself, when the alleged incident is supposed to have taken place, especially when he himself was the authority to transfer employees working under him which included the complainant and the office peon.

13. We are also of the view that two reasons given by the Petitioner for the complaints being motivated against him are mutually contradictory inasmuch the Petitioner alleges on the one hand that the complainant was making allegations at the behest of Respondent No. 4 and on the other hand the Petitioner alleges that the complainant had an independent 'score' to settle with him.

14. The Petitioner has further contended that findings of the Enquiry Officer are perverse inasmuch as his evidence of innocence has been ignored and despite there being no direct witness, his words have been disbelieved. In this context, the Petitioner contends that out of the two incidents referred to by the complainant, the Enquiry Officer has himself absolved the Petitioner of the second incident dated 18th August, 1999, but has held him guilty only of the first incident dated 13th August, 1999 and that too on the ground that the Petitioner had prepared a horoscope of the complainant and had sent his driver to get homeopathic medicine for the mother-in-law of the complainant.

15. We do not agree with the aforesaid submission of the Petitioner. We are in respectful agreement with the conclusion reached by the Enquiry Officer in

paragraph Nos. 29 and 30 of his report wherein it has been concluded that the Petitioner was sexually harassing the complainant. Just to satisfy the court's conscience we had also perused the evidence of the parties. In our view the complainant in her evidence has confirmed the incident of 13th August, 1999. Also Mrs. Neelima Bhalla, another employee working with the complainant, in her evidence has deposed that the complainant had been contemporaneously sharing her problems with her colleagues. Consequently, we have no manner of doubt that the findings recorded by the Enquiry Officer are perfectly legal. In any event, the Apex Court in a catena of cases has held that High Court in writ jurisdiction would not normally interfere with findings unless it finds that they are based either on no evidence or the said findings are wholly perverse and illegal. In this connection, we may refer to the judgment of the Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra, wherein it has been held,

16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. 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 it 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 insofar 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 administrative 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 examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* 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 or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

16. The Petitioner has lastly contended that he was not given adequate opportunity to defend himself as he had not been given a full opportunity to cross examine the complainant and the Comptroller and Auditor General of India office had not given the Petitioner the addresses of the witnesses that he wanted to cross examine.

17. From a perusal of the record we find that the Petitioner had cross examined the complainant at length in the preliminary enquiry and thereafter during the main enquiry he had cross examined her for more than ten hours. It is pertinent to mention that it was a departmental enquiry and not a criminal trial that was being held against the Petitioner and the findings were to be reached on the basis of preponderance of probability and not on the basis of guilt conclusively established beyond reasonable doubt. In any event, we have perused the order sheet dated 29th September, 2000 of the Enquiry Officer wherein he has specifically recorded that in the enquiry a large number of irrelevant question were being put by the Petitioner to the complainant. The Petitioner has further made a grievance with regard to the methodology adopted by the Enquiry Officer of recording the cross examination in his own handwriting. We are not impressed by this contention of the Petitioner as it shows the sensitivity of the Enquiry Officer. Moreover a cross examination of complainant in a sexual harassment case cannot be used to harass and outrage her modesty further.

18. As far as denial of addresses of Petitioner's witnesses is concerned, we find that the Petitioner had asked for addresses of mother-in-law of Ms. Deepa Sharma and husband of Ms. Meenakshi Malviya -- neither of whom were working in the office of Comptroller and Auditor General of India. Consequently, it was not possible for Comptroller and Auditor General of India's office to give either the name or the address of the mother-in-law of Ms. Deepa Sharma or husband of Ms. Meenakshi Malviya. If the Petitioner was interested in finding out their names and addresses, he could have sought this information during the cross examination of Ms. Deepa Sharma and Ms. Meenakshi Malviya.

19. Consequently, the present Writ Petition being devoid of merit is dismissed but with no order as to costs.