

(2015) 08 DEL CK 0303
In the Delhi High Court
Case No : W.P.(C) 7484/2012

Sanjeev Kumar

APPELLANT

Vs

All India Institute of Medical Sciences and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 354

Citation : (2015) 08 DEL CK 0303

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Sagar Saxena, Neeraj Bhardwaj, Himashi Saini and Aaquil Minhaj, Advocates, for the Appellant; R.K. Gupta, Advocate, for the Respondent

Judgement

G.S. Sistani, J.—Challenge in this writ petition, which has been filed by the petitioner under Article 226 of the Constitution of India, is to the Order dated 4.10.2012 passed by Central Administrative Tribunal (hereinafter referred to as the "Tribunal ") in O.A. No. 2351/2011.

2. The brief facts of the case, as per the petitioner, are that the petitioner joined respondent No. 1, All India Institute of Medical Sciences, as a Laboratory Technician, on 8.12.2004. A patient, namely, Ms. X., an outdoor patient, filed a Police complaint stating that on 19.1.2007 when she had come to respondent No. 1 for an ECG she was sexually molested by the petitioner while conducting the test. Based on her complaint, FIR No. 42/2007 under Section 354 of the Indian Penal Code was registered on 19.1.2007. After six days, Ms. X filed a complaint with respondent No. 1. On 25.1.2007, the complaint was entrusted to Professor Rani Kumar, Chairperson of Committee for Dealing with Complaints regarding Sexual Harassment of Women at Work Place at AIIMS for disciplinary proceedings. While exercising power under Sub-rule (1) of Rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the petitioner was suspended on 10.2.2007. While Ms. X addressed a communication dated

11.9.2007 to the Director, Administration and Chief Vigilance Officer, AIIMS, stating that she wished to withdraw the complaint against the petitioner, the Committee by its report dated 23.5.2008 recommended to the Department to initiate disciplinary proceedings against the petitioner and the co-accused, Sh. Ved Pal, ECG Technician. Based on the recommendations of the Committee, the Director and Disciplinary Authority of AIIMS served a charge sheet upon the petitioner on 29.8.2008 in relation to the complaint filed by Ms. X. The petitioner filed his reply on 8.9.2008 denying all the allegations levelled against him. The Director and Disciplinary Authority appointed one Sh. Inder Singh, retired Deputy Secretary/CDI, CVC, as an Inquiry Officer to enquire into the charges levelled against the petitioner. The Inquiry Officer submitted his enquiry report on 11.7.2009. In the said report, the Inquiry Officer held that based on documentary and oral evidence the charges against the petitioner had not been proved for lack of evidence. Another relevant fact, which may be noticed, is that on 21.8.2010, the Metropolitan Magistrate, Mahila Court (South), Patiala House Court, acquitted the petitioner for the offence punishable under Section 354 of the Indian Penal Code as the complainant had failed to appear and give evidence. The report of the Inquiry Officer was examined by the Deputy Director (Administration) and CVO, who disagreed with the report of the enquiry officer, issued a disagreement order dated 23.8.2010, which was served upon the petitioner along with a copy of the enquiry report, calling upon the petitioner to submit his representation along with supporting documents. A representation was made by the petitioner on 6.9.2010. Thereafter the disciplinary authority by an order dated 22.11.2010 held the petitioner guilty of trying to outrage the modesty of the complainant and imposed a penalty of dismissal from service, which rendered the petitioner herein disqualified for future employment with the Government. The petitioner, being aggrieved by the Order dated 22.11.2010, filed an appeal before the President And Appellate Authority, AIIMS, on 3.12.2010, which was also rejected on 19.5.2011, which led to the filing of an OA before the Central Administrative Tribunal. The Tribunal upon hearing the parties dismissed the O.A. filed by the petitioner on 4.10.2012. The petitioner, amongst others, has challenged the Order passed by the Tribunal, inter alia, on the following grounds:

"(i) That in the absence of the complainant, the complaint was rightly rejected by the enquiry officer;

(ii) The Tribunal has failed to take into consideration that the enquiry officer has rightly reached a conclusion that in the absence of the complainant and in the absence of an opportunity available to the petitioner to cross-examine the complainant seriously affected his Fundamental Rights and the principles of natural justice.

(iii) One Ms. Sumila Devi, who had accompanied Mx. X was asked as to whether the complainant had demanded money at which she had left the proceedings and, thus, it would show that the complainant was simply blackmailing the

petitioner."

3. Learned counsel for the petitioner submits that the co-accused, Ved Pal, also filed an O.A. before the Tribunal, which was allowed by the Tribunal thereby exonerating him, and, thus, on the grounds of parity the OA filed by the petitioner should also have been allowed. Counsel further submits that in the criminal case, which was filed before the Mahilla Court, the petitioner was acquitted whereas the disciplinary authority and the Tribunal have failed to take this factor into consideration.

4. Mr. Gogna, learned counsel for respondent No. 2, submits that the Tribunal has rightly dismissed the OA filed by the petitioner. Counsel further submits that there is nothing on record, which shows that any prejudice was caused to the petitioner on account of the complainant not appearing in the matter. Mr. Gogna further submits that neither before the Sexual Harassment Committee nor before the enquiry officer the petitioner either sought leave to cross-examine any of the witness or protested about the absence of the complainant. It is also contended that merely because the complainant did not present herself for her examination or cross-examination, this by itself cannot be a reason to exonerate the petitioner as the surrounding circumstances, which have been proved and not disputed, were enough to prove the allegations against the petitioner.

5. Learned counsel for the respondents further contended that as per the report of the Sexual Harassment Committee the petitioner was called to the Police Station where the complainant had beaten up the petitioner in the presence of his wife and parents; the petitioner not only even offered to settle the matter by paying compensation but also tendered an apology. Learned counsel further contends that SI Iqbal, who registered the complainant of Ms. X., appeared before the Sexual Harassment Committee and before the enquiry officer, proved the complaint before the Sexual Harassment Committee, and clearly narrated the facts, which were not disputed, neither there was any cross-examination. Hence the presence of the complainant and the petitioner, the conducting of ECG test on the complainant, the lodging of the Police report, the presence of the petitioner is duly identified and the petitioner being beaten up by the complainant and then tendering an apology, all of which would establish that the incident took place and the molester stands identified. The admission of guilt by the petitioner stands proved by the letter of apology and, thus, the Sexual Harassment Committee rightly reached a conclusion, which was upheld by the disciplinary committee as well.

6. In support of this submission Mr. Gogna has placed strong reliance on B.C. Chaturvedi Vs. Union of India and others, ; State Bank of Patiala and others Vs. S.K. Sharma, ; Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, ; and Laxmi Devi Vs. State of Bihar and Others (to show the judgments relied upon by the petitioner are per incuriam). Additionally, Mr. Gupta has relied upon Union of India (UOI) Vs. Parma Nanda, ; State of A.P. v. K. Allabakash, reported at (2010) 10 Supreme Court 177.

7. In support of the submissions, sought to be relied upon, Mr. Gogna, learned counsel for respondent No. 1, has contended that no prejudice was caused to the petitioner on account of the absence of the complainant. Counsel further submits that the principles of natural justice are not a strait jacket formula and application of these principles would be dependent on the facts of each case.

8. While placing strong reliance in the case of State Bank of Patiala and others Vs. S.K. Sharma, , more particularly paragraphs 14 to 34, it is submitted by Mr. Gogna that even in the absence of opportunity of cross-examination, it cannot be said as a universal rule that the entire enquiry would stand vitiated.

9. We have heard learned counsel for the parties and given our thoughtful consideration to the matter. We have carefully examined the impugned judgment passed by the Tribunal and the entire record of the Tribunal, which has been filed. The Tribunal has dismissed the O.A. primarily on the ground that the scope of judicial review in a departmental proceeding is rather narrow. The following broad principles were culled out:

"6. The scope of judicial review in departmental proceedings has been considered by the Hon"ble Apex Court and the High Courts in a catena of judgments. Certain basic principles have emerged defining such scope. We find it appropriate to sum up the broad principles in this regard:

i) The power of punishment to an employee is within the discretion of the employers and ordinarily Courts do not interfere. The exceptions stipulated are where the enquiry proceeding or the punishment get vitiated because of non-observance of relevant rules or principles of natural justice or denial of reasonable opportunity to defend etc. or the punishment is found to be disproportionate to the proved misconduct (M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, }.

ii) While exercising jurisdiction under Articles 226 and 227 of the Constitution, Court cannot act as an appellate authority and substitute their findings for those of administrative authorities (Akhilesh Kumar Singh Vs. State of Jharkhand and Others, }.

iii) Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not that a particular decision is taken { B.C. Chaturvedi Vs. Union of India and others, }.

iv) The emphasis has been on substantive justice. While dealing with the impact of non-observance of the prescribed provisions, the Apex Court has distinguished the "substantive" from the "procedural" provisions. The theory of substantial compliance has been propounded in the former and the test of prejudice in the latter { State Bank of Patiala and others Vs. S.K. Sharma, }.

v) While reiterating the proposition of law that observance of principles of natural justice is a sine qua non in disciplinary proceedings, the Apex Court clarified that

rules of natural justice cannot be straight jacketed. Speaking for the apex court, Hon'ble Justice Thakker had emphasized the change of trend from the earlier position in English Law i.e. from instead of non-observance of natural justice rendering a decision void to whether the same had caused prejudice to the applicant { Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, }.

vi) Distinguishing departmental enquiry from criminal proceedings, the Hon'ble Apex Court elaborated that whereas crime is an act of commission in violation of law or omission of public duty; departmental enquiry is to maintain discipline in service and efficiency of public service (Noida Entrepreneurs Association v. Noida & Ors {(2007) 10 SCC 385}.

vii) The settled legal proposition is that the standard of proof in a disciplinary proceeding is different from that in a criminal proceeding. While in the former it is "preponderance of probability"; in the latter it is "proof beyond reasonable doubt". Further, complicated principles and procedures laid down in the Civil Procedure Code and the Evidence Act do not apply in departmental enquiries (U.P. State Road Transport Corporation Vs. Suresh Chand Sharma,).

viii) While dealing with the standard of proof in a disciplinary proceeding, it was observed by the Hon'ble Apex Court: The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept { North West Karnataka Road Transport Corpn. Vs. H.H. Pujar, State of Haryana v. Rattan Singh - (1997) SCC (L&S) 298}.

ix) Dealing with the impact of acquittal in a criminal case of penalty in disciplinary proceedings, the view taken was that where enquiry is independent of criminal proceedings, acquittal in a criminal court is of no help since the standard of proof in the two are different { The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, }."

10. We have also examined the original file, which has been produced before us. During the course of hearing, we had pointed out to learned counsel for the parties, more particularly learned counsel for the respondents, who had, during the course of hearing, placed strong reliance on the report of Sexual Harassment Committee, that this report of the Committee did not form part of the enquiry, which was conducted. The articles of charge including the list of witnesses and other documents show that there is no reference to the report of the Committee.

11. Having regard to the fact that there is no reference to the report of the Committee, the same cannot be relied upon, but the matter cannot rest at this stage for the reason that the Sexual Harassment committee was formed based on the guidelines framed in the case of Vishaka and others Vs. State of Rajasthan and Others,).

12. We may also notice that after the directions passed by the Supreme Court in the case of Vishaka & Ors. (supra) there was an amendment in the CCS (CCA) Rules, whereby Rule 14 was amended and the following proviso was incorporated to it:

"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."

13. In our view, the respondents have failed to follow the directions in the case of Vishaka & Ors. (supra), and the proviso, which was introduced in Rule 14.

14. A reading of the amendment to Rule 14 would show that in case a complaint of sexual harassment is made the committee enquiring into such complaint shall be deemed to be the enquiry authority appointed by the disciplinary authority. The effect of which would be that the appointment of an enquiry committee by respondent No. 1 would be illegal and without any authority of law and the findings of this enquiry report cannot be looked into by the disciplinary authority. The respondent No. 1 has also failed to follow the procedure laid down and ignored the report of the sexual harassment committee, which report was to be placed before the disciplinary authority and thereupon the disciplinary authority was to consider the same and either agree or reject the same.

15. We are strengthened, in our view, by the decision rendered by the Apex Court in the case of Medha Kotwal Lele and Others Vs. Union of India (UOI) and Others, , wherein it has been held that the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in enquiry into misconduct of a delinquent.

16. Leaving all grounds, as raised by both the parties open, we dispose of the present writ petition with the following directions:

"(i) the report of the Inquiry Officer shall be quashed being illegal and having no force of law in view of the mandate of the Supreme Court of India in the case of Vishaka & Ors. (supra) and in view of the law laid down in the case of Medha Kotwal Lele (supra);

(ii) the report of the Sexual Harassment Committee shall be placed before the disciplinary authority within a period of fifteen days from today;

(iii) the disciplinary authority will form its own opinion in accordance with law;

(iv) respondent No. 1 should ensure that the order passed today is brought to the notice of all the concerned officers so that in future valuable time is not wasted and the dictate of the Supreme Court is followed in letter and spirit;

(v) the consequence of the enquiry report being quashed would be that the petitioner would continue to remain suspended;

(vi) rights of all the parties are kept open to be pressed in the appropriate stage."

17. Learned counsel for the petitioner submits that the petitioner would make an application to the concerned authorities praying that suspension allowance should be granted to him. The disciplinary authority is directed to pass an appropriate order in accordance with law within six weeks from the date of submission of the application by the petitioner.

CM APPL. 19079/2012

18. Application stands disposed of in view of the order passed in the writ petition.