

(2017) 12 DEL CK 0376

In the Delhi High Court

Case No : Civil Writ Petition No. 6207 Of 2017

Sonali Badhe, A.L.A. Directorate Of Enforcement, Ahmedabad	APPELLANT
Vs	
Ashish Chandra Singh DLA, New Delhi & Anr	RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14
Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal)
Act, 2013 — Section 13, 18

Citation : (2017) 12 DEL CK 0376

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : Sarthak Bhatia, Syed Ahmed Saud Uzmi Jameel Husain, Mrinalini Sen, Shatrajit Banerji

Final Decision : Allowed

Judgement

1. The present petition has been filed by the petitioner assailing an interim order dated 09.03.2017, passed by the Central Administrative Tribunal in

O.A. No.2755/2016, filed by the respondent No.1, who is aggrieved by the order dated 21.06.2016, passed by the respondent No.2/Department of

Revenue, Ministry of Finance, the Disciplinary Authority, imposing upon him a penalty of reduction in the time scale of pay by three stages, for a

period of three years with a further direction that during such period of reduction, he shall not earn increments of pay and after expiry of such period,

the said reduction will have the effect of postponing his future increments.

2. Mr. Bhatia, learned counsel for the petitioner submits that the order of penalty imposed by the Disciplinary Authority on the respondent No.1

emanates from a written complaint of sexual harassment filed by the petitioner, working on the post of an Assistant Legal Advisor, against the

respondent No.1, working as the Deputy Legal Advisor. The Internal Complaints Committee constituted by the respondent No.2/Department had conducted an inquiry and published its report on 31.01.2014, under Section 13 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the "Act"), holding the respondent No.1 as guilty of sexually harassing the petitioner and had recommended imposition of a major penalty on him along with compensation of Rs.10,000/-, to be paid to the petitioner. Aggrieved by the findings in the inquiry report dated 31.01.2014, the respondent No.1 had filed an appeal before the Central Administrative Tribunal under Section 18 of the Act (O.A. No.1072/2014) and vide order dated 30.05.2014, the Tribunal had stayed the proceedings before the Disciplinary Authority.

3. Aggrieved by the interim order granted by the Tribunal staying the proceedings before the Disciplinary Authority, the petitioner had approached the High Court by filing W.P.(C) No.4756/2014. The said petition was allowed by the Division Bench vide judgment dated 10.09.2015, whereby the interim order dated 30.05.2014, passed by the Tribunal was vacated on the ground that the report of the ICC had not acquired finality as the Disciplinary Authority was still seized of the matter. Further, the respondent No.1 was granted a period of two weeks to submit a representation before the Disciplinary Authority and the Disciplinary Authority was directed to pass a final order within 4 weeks. In compliance of the said order, the respondent No.1 had submitted a representation before the Disciplinary Authority on which the order dated 21.06.2016, referred to hereinabove, was passed.

4. Aggrieved by the order passed by the Disciplinary Authority, the respondent No.1 had approached the Tribunal for relief. The limited grievance raised by the petitioner before this Court is that though the enquiry and the disciplinary proceedings were initiated against the respondent No.1 on the basis of a complaint made by her, he had deliberately failed to implead her as a co-respondent in the appeal filed before the Tribunal and when she did file an application for impleadment in the said proceedings, the Tribunal proceeded to dismiss the same on the ground that service jurisprudence does not permit a right of audience to the petitioner.

5. Pursuant to a notice to show cause issued in the present petition, learned counsel for the respondent No.1 has entered appearance and he states

that he has filed a brief affidavit in opposition. He submits that there is an urgency in the present matter as the proceedings before the Tribunal have

been stayed vide order dated 17.08.2017 and the respondent is due to superannuate in the beginning of the year 2019. It is the stand of the respondent

No.1 that the petitioner has filed an application for impleadment before the Tribunal only to delay the said proceedings.

6. Learned counsel for the petitioner however vehemently refutes the said submission and asserts that the petitioner has no such intention of delaying

the proceedings before the Tribunal and that she only wishes to participate in the said proceedings for the reason that in the event, the respondent

No.2/Department does not contest the said case effectively, her absence before the Tribunal shall be entirely to her detriment and if present there, she

shall also be able to place the relevant facts before the Tribunal in the correct perspective.

7. We have heard the arguments advanced by learned counsels for the parties and examined the documents referred to by both sides. The only issue

that arises for our consideration is as to whether the petitioner, on whose complaint the Internal Complaints Committee constituted by the respondent

No.2/Department under Section 13 of the Act, had conducted the inquiry proceedings, followed by the orders passed by the Disciplinary Authority,

impugned in the petition filed by the respondent No.1, ought to have a right of audience before the Tribunal.

8. Strictly speaking, the present case cannot be straight jacketed in the category of a conventional service matter where once the employer receives a

complaint against the employee from another employee and disciplinary proceedings are initiated, the role of the complainant ceases and thereafter,

the matter rests between the employer and the accused employee. This is a case where the petitioner has levelled allegations of sexual harassment

against the respondent No.1 and it was at her instance that an inquiry has been conducted by the employer. In such circumstances, the petitioner

cannot be termed as a "busy body" or a rank outsider, for shutting the door on her face.

9. Much water has flown under the bridge after the declaration of law as expounded by the Supreme Court in the case of Vishakha vs. State of

Rajasthan reported as AIR 1997 SC 3011 and in Apparel Export Promotion Council vs. A.K. Chopra reported as AIR 1999 SC 62.5 In fact the

genesis of the Act lies in the elaborate guidelines laid down by the Supreme Court in the aforesaid landmark decisions. The only person aggrieved in

cases of sexual harassment at the workplace is the complainant employee, like the petitioner herein, at whose instance disciplinary proceedings were

initiated by the employer/respondent No.2/Department against the respondent No.1. It would therefore be a travesty of justice if the

petitioner/complainant is denied audience in a case arising out of proceedings based on a complaint made by her against the wrong doer.

10. In such like matters, the concept of locus standi must be given a wide amplitude and offered an expansive meaning to take in its stride, the

complainant on whose complaint the disciplinary action was initiated in the first instance. One is left wondering as to who else would be aggrieved if

the employer fails to take any action against the wrong doer on receiving a complaint of sexual harassment, if not the female employee, or if the

employer drags its feet on receiving such a complaint or acts in a casual and disinterested manner, thereby demoralizing the entire female force of

employees, due to sheer lack of prompt and adequate action on its part. To that extent, a case based on a complaint of sexual harassment has a strong

facet of public interest involved therein since an employer is legally bound to offer a safe and secure working environment to its female employees, in

every respect and failure on its part to do so, would be violative of the fundamental rights of a female employee.

11. While passing the impugned order, the Tribunal seems to have overlooked a critical fact which is that the entire enquiry proceedings were set into

motion against the respondent No.1 only on the petitioner submitting a complaint of sexual harassment against him to the employer, respondent

No.2/Department. The Internal Complaints Committee established to examine a complaint of sexual harassment is deemed to be the Inquiring

Authority appointed by the Disciplinary Authority within the meaning of Rule 14 of the CCS(CCA) Rules. In the present case, it was only on receiving

the recommendations of the Inquiring Authority did the Disciplinary Authority impose a major penalty on the respondent No.1. Given the above facts

and circumstances, there is no question of treating the petitioner as a trouble maker on a nosey parker, for declining her request to participate in the

proceedings pending before the Tribunal.

12. On the contrary, we are of the opinion that it was incumbent for the respondent No.1 to have impleaded the petitioner as a co-respondent in the proceedings filed by him before the Tribunal as she has a direct and vital interest in the outcome of the said petition, in the capacity of a victim of sexual harassment at the workplace. She is therefore not only a proper party, but also a necessary party to the proceedings pending before the Tribunal.

13. In view of the discussion above, this court is firmly of the view that the petitioner has the locus standi to file an application for impleadment in the O.A. filed by the respondent No.1 before the Tribunal. Accordingly, the impugned order dated 9.03.2017, in so far as it has dismissed M.A. No. 3046/2016, filed by the petitioner for impleadment in the said proceedings, is quashed and set aside and the respondent No.1 is directed to file an amended memo of parties by impleading the petitioner as a co-respondent.

14. The respondent No.1 shall furnish a complete set of the O.A. to the learned counsel for the petitioner within one week from today. The petitioner shall be at liberty to file a reply affidavit within three weeks therefrom with a copy to the learned counsel for the respondents. Rejoinder thereto shall be filed by the respondent No.1 within two weeks thereafter.

15. At this stage, learned counsel for the respondent No.1 states that in view of the fact that the proceedings before the Tribunal have been stayed by this Court vide order dated 17.08.2017 and the Tribunal had adjourned the matter sin die, an actual date may be fixed for the parties to appear before the Tribunal.

16. The parties shall appear before the Tribunal on 02.02.2018, for an actual date to be fixed for hearing the matter on merits.

17. The petition is allowed and disposed of while leaving the parties to bear their own expenses.