

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.8226/2007

Reserved on: 20th May, 2009.

% Pronounced on: 29th May, 2009.

Prof. Bidyug Chakraborty Petitioners

Through: Ms. Kiran Suri, Adv. with Mr. Deepak
Bhattacharya and Mr. Aparna Bhat,
Adv.

VERSUS

Delhi University & Ors. Respondent

Through: Rajesh Baneti, Advocate with Mr. Tarun
Walia, Advocate for respondents No. 4 to
8; Mr. Manish Srivastava with Mr.
Ashish Verma, Advocate for respondent
No. 9.

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE V.K.JAIN

1. Whether Reporters of Local newspapers may be
allowed to see the Judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the Judgment should be reported in the Digest? YES

V.K.Jain, J.

1. The petitioner who was Head of Department of Political Science in Delhi University, was appointed as Honorary Director of Gandhi Bhawan for a period of two years w.e.f. 01.08.2006. Dr. Anamika Sharma vide her complaint dated 04.04.2007, to the Vice Chancellor of Delhi University alleged sexual harassment by the petitioner. In terms of ordinance XV D of the University, the University had constituted committees including the Apex Complaint Committee to deal with the complaints of sexual harassments. Respondent No. 3 Dr. Anamika Sharma made a complaint to the Vice Chancellor of the University as well as to the Apex Committee, complaining of sexual harassment by the petitioner. Similar complaint was also sent by Anamika Sharma, to the Apex Committee. The Apex Committee, after perusal of the complaint, decided that prima facie a case of sexual harassment was made out and set up an Enquiry

Committee to investigate the case. The petitioner submitted to the jurisdiction of the committee, which submitted its report, holding the petitioner guilty of the charges of sexual harassment, as listed in the charge sheet given to him by the committee. The committee recommended the following disciplinary actions against the petitioner:

1. A letter of warning should be issued to him.
2. He should be asked to step down from the Directorship of Gandhi Bhawan.
3. He should be debarred from all administrative posts and supervisory duties in the University for a period of three years.

2. Vide two separate memorandums, both dated October 16, 2007, the executive council of the University, accepting the recommendations made by the committee, warned the petitioner and also debarred from holding any administrative post in the university for a period of three years from the date of the memorandum. The petitioner has, in this writ petition sought quashing of both these memorandum as well as the report of the committee. Since the university, vide another notification dated 15.10.2007, appointed one Professor Achin

Vanaik as Head of Department of Political Science and Dean of the Faculty of Social Sciences, the petitioner has also sought quashing of that notification. He is also seeking quashing of ordinance XV-D of Delhi University on the ground that it is violative of Article(s) 14, 16 and 311 of the Constitution as it gives unfettered, unguided and arbitrary powers to the Enquiry committee and does not contain sufficient safeguards for the person who is accused of sexual harassment and thus violates the principles of natural justice.

3. Ordinance XV-D, to the extent it is relevant provides as under:

Scope of the Ordinance :

This Ordinance shall be applicable to all complaints of sexual harassment made:

- (i) By a member of the University against any other member of the University irrespective of whether the harassment is alleged to have taken place within or outside the campus.
- (ii) By a resident against a member of the University or by a member against a resident irrespective of

whether the sexual harassment is alleged to have taken place within or outside the campus.

- (iii) By an outsider against a member of the university or by a member of the University against an outsider if the sexual harassment is alleged to have taken place within the campus.
- (iv) by a member of the university, against an outsider if the sexual harassment is alleged to have taken place outside the campus. In such cases the Committee shall recommend that the University college authorities initiate action by making a complaint with the appropriate authority. Further the committee will actively assist and provide available resources to the complainant in pursuing the complaint.

Complaint Mechanism:

Implementation of the University policy against sexual harassment shall be achieved through:

- (i) The Apex Complaints Committee, which shall be an apex regulatory and appellate body of the University of Delhi for redressal and resolution of complaints.
- (ii) University Units Complaints Committees, which shall be set up in clusters of University

Departments/Centres as complaints and redressal bodies.

- (iii) College complaints committees, which shall be set up in each college of the University of Delhi as complaints and redressal bodies.
- (iv) Central Pool complaints committees, which shall be complaints and redressal bodies (one each for the North and South Campuses) for those units that are not affiliated to any College/ Department/ Institution and have not been included in either CCC or UUCC.

Procedure for Registering Complaints:

1. All complaints must be brought by the complainant in person. The exception for this will be in cases of forced confinement of the person. In such a case, brought by another person on behalf of the complainant, the committee will examine whether an investigation, intervention or some other assistance is needed.
2. If the complainant wishes she/he can be accompanied by a representative.
3. Employees not covered by UUCC, CCC and CPCC can approach the ACC directly.
4. The vice Chancellor can refer any complaint to any of the Committees including the Apex Committee.

5. A complainant can go directly to the Apex Committee. However, in such cases, which should be exceptional, the complainant should give reasons for doing so. In such a case, it is open to the ACC to refer the complaint back to the appropriate CCC/UUCC/CPCC.

Enquiry Procedures:

4. After the report has been finalised, confidentiality should be maintained, if the complainant so desires, by withholding the complainant's name and other particulars that would identify her. (Revealing the identity either in exceptional cases such as stalking may put the complainant at greater risk or as a result of social prejudices the complainant may face additional adverse effects as a result of public circulation of the finished report.)

9. The sub committee must inform the accused in writing about the charges made against him/her and she/he should be given a period of five days from the date of receipt of the notification to respond to the charges.

10. During the enquiry procedure, the complainant and the accused will be called separately so as to ensure freedom of expression and an atmosphere

free of intimidation. The complainant will be allowed to be accompanied by one representative during the enquiry.

11.The sub committee must submit its report to the larger committee not later than 15 working days. The larger committee will discuss the report and make recommendations for punitive action if required.

12.The entire process of enquiry should be completed within one month.

13.The complainant or the accused may appeal to the Apex Committee if they are dissatisfied with the decision of the CCU/UUCC/CPCC.

Note: A complainant has the right to go public if she/he so desires. Going public before giving in the complaint to the committee by the complainant should not prejudice the committee members. Once a complaint has been given to the committee, the complainant should preferably not go public till the enquiry is completed unless required.

Redressal:

3. The head of the institution upon receipt of the enquiry report, shall refer the same to the Governing Body/ Executive Council (EC) and

institute disciplinary action on the basis of the recommendations of the Complaint Committee under relevant service rules.

Disciplinary Action:

4.The disciplinary action will be commensurate with the nature of the violation.

A. In the case of University/College employees, disciplinary action could be in the form of :

- (i) Warning
- (ii) Written apology
- (iii) Bond of good behaviour
- (iv) Adverse remarks in the Confidential Report
- (v) Debarring from supervisory duties
- (vi) Denial of re-employment
- (vii) Stopping of increments/promotion
- (viii) Reverting, demotion
- (ix) Dismissal
- (x) Any other relevant mechanism.

4. It is an admitted fact that though the report of the committee was supplied to the petitioner, copy of annexures/appendices to the report were not supplied to him and no opportunity was given to him to make representation against the report. It is also an admitted position that the petitioner was not given an opportunity for verbal cross examination of the witnesses examined by the committee and the copies of their statements were not supplied to him. It is also not disputed that after conclusion of examination of witnesses, no opportunity, at that stage was given to the petitioner to produce defence witnesses , though at the time of supplying charge sheet to him, he was given opportunity to give names of the witnesses, that he wanted to be examined by the committee. It is also an accepted position that no appeal is envisaged under the Ordinance against the findings of the Apex Committee.

5. In Medha Kotwal Lele & Ors. Vs. Union of India & Ors. WP(C) No. 173-177 of 1999 decided on 26.4.04, the Hon'ble Supreme Court, referring to its earlier decision in Vishaka &

Others Vs. State of Rajasthan & Ors. (1997) 6 SCC 241 held as under:

“Complaints committee as envisaged by the Supreme Court in its judgement in Vishaka’s case, 1997(6) SCC 241 at 253, will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 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.”

6. Rule 14 of CCS/CCA rules prescribes the procedure for imposing major penalty and to the extent it is relevant, the rule reads as under:

“(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross

examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(16) when the case for Disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross – examination, re-examination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.

(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

7. Rules 15 of CCS/CCA Rules which deals with actions on the inquiry report inter alia provides as under:

“(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4)”

8. Admittedly, annexures/appendices to the inquiry report were not supplied to the petitioner, by the committee. Supplying copy of the inquiry report, without supplying copies of all its annexures/appendices does not serve the

desired purposes and does not fulfil the legal obligation of the Disciplinary Authority in this regard. The annexures/appendices constitute an integral part of the Enquiry Report and cannot be separated from it. Supply of enquiry report without supplying all its annexures / appendices would therefore amount to not supplying the copy of the Enquiry Report itself.

9. Mere supply of the report is meaningless unless the delinquent is given an opportunity to make representation against it and if made, such a representation is considered by the Disciplinary Authority before recording its findings. Had the Disciplinary Authority given such an opportunity to the petitioner, he had a right to represent that he was not guilty of the charges and that the findings recorded against him were wrong. The object is to enable the employee to satisfy the Disciplinary Authority that he is innocent of the charges framed against him.

10. It is true that Ordinance XV-D does not contain any provision identical to sub rule (2) and (2-A) of Rule 15 of

CCS/CCA Rules, but, in keeping with the requirements of principles of natural justice, this court has to necessarily read such an obligation on the part of the Disciplinary Authority. If such an obligation is not read into the Ordinance, it may be liable to be struck down, being violative of the principles of natural justice.

11. As held by Hon'ble Supreme Court in **A.K.Kraipak & Others Vs. UOI & Ors; AIR 1970 SC 150**; through rules of natural justice are not embodied rules, their aim is to secure justice and prevent miscarriage of justice and therefore, there was no reason why they should not be made applicable to administrative proceedings. It was also noted that an unjust decision in an administrative inquiry may have a far more reaching effect than a decision in a quasi judicial inquiry.

12. The findings recorded by the Enquiry Officer forms an important material before the Disciplinary Authority which along with the evidence recorded during the inquiry is taken into consideration by it to come to its conclusion. In a given case the Enquiry Officer may have recorded its findings

without considering the relevant evidence on record or by mis construing it or the findings may not be supported by any evidence available on record. The principles of natural justice, therefore, require that the delinquent should get a fair opportunity to meet, explain and controvert the findings recorded by the Enquiry Officer.

13. The Hon'ble Supreme Court in **Managing Director, ECIL Vs. B. Karunakar** case; **AIR 1994 SC 1074** *inter alia* observed as under :

“It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it.”

.....Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.....

.....The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.....

.....Since the penalty is to be proposed after the Inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.....

Therefore right to make representation to the Disciplinary Authority against the findings recorded by the Enquiry Officer is an integral part of the opportunity to defend against the charges and if such an opportunity is denied, it will amount to breach of principles of natural justice.

14. As noted earlier, no opportunity was given to the petitioner for verbal cross examination of the complainant. A perusal of the inquiry report shows that the committee informed the petitioner that he could cross examine the

complainant by giving written questions to the committee. In our opinion, mere permission to give written questions to the committee for cross examination of the complainant does not fulfil the legal requirement on the part of the Inquiring Authority, to give opportunity to the delinquent to cross examine her. Cross examination by giving written questions to the inquiring authority can never be as effective as verbal cross examination and cannot be its proper substitute. While putting questions to a witness the examiner does not know what answer the witness would give to the questions put to him/her. It is, therefore, not possible for him to formulate the next question without taking into consideration the answer given by the witness. The answer given by the witness to one question may lead to further questions from the examiner on the same line, in order to elicit truth from the witness and to impeach his/her trustworthiness. Moreover, asking the petitioner to give written questions for cross examination was confined in respect of the complainant alone. No opportunity was given to the petitioner even to give written questions for cross examination of other witnesses

examined by the committee. It was imperative on the part of the Inquiring Authority to give opportunity to the petitioner for her cross examination not only of the complainant but also of the other witnesses examined by it. Denial of opportunity to cross examine the complainant and other witnesses examined by the committee constitutes gross violation of principles of natural justice.

15. Rule 14 (16) of CCS/ CCA rules mandates the Disciplinary Authority to ask the delinquent to state his defence which is to be recorded unless it is a written statement. Clause 17 of this rule requires the Inquiring Authority to then call upon the delinquent to produce his evidence. He may, if he chooses so, examine himself in his defence. In the present case, though at the time of serving charge sheet upon the petitioner, the committee asked him to give list of witnesses whom he wanted to be examined by the committee, no such opportunity was given to him after the committee had examined the complainant and other witnesses in support of the complaint. The committee was required not only to give an opportunity to the petitioner to

produce his witnesses but those witnesses were to be cross examined by the petitioner and not by the committee, though, it would have been open to the committee to examine them after they had been examined by the petitioner and had also been subjected to cross examination.

16. It is true that Ordinance XV-D which prescribes the procedure for inquiry does not contain provisions identical to Clause (16) & (17) of Rule 14 of CCS/CCA Rules. But, since the Hon'ble Supreme Court has held in the case of Megha Kotwal Lele and Ors. Vs. UOI and Ors (**Supra**) that the Complaints committee envisaged by it in its judgement in Vishaka's case will be deemed to be an Inquiry Authority for the purposes of CCS/CCA Rules, 1964 and the report of the complaints committee shall be deemed to be an inquiry report under the CCS rules. We feel, that it was obligatory on the part of the Apex Committee, which inquired into the matter, to at least follow the fundamental norms for conducting inquiry. If we do not read such a requirement to be implicit in Ordinance XV-D, it may not be possible for us to sustain the validity of the inquiry procedure prescribed

therein. The inquiry conducted without giving an opportunity to the delinquent to cross examine the witnesses and without giving him an opportunity to produce witnesses in his defence, would not confirm to the basic principles of natural justice and a procedure which does not contain even these minimum safeguards for the delinquent cannot be said to be a fair and reasonable procedure for conducting an inquiry.

17. For the reasons given in the preceding paragraphs, we are of the view that the inquiry against the petitioner was conducted in gross violation of the principles of natural justice as neither the petitioner was given an opportunity to cross examine the complainant and other witnesses nor was he asked to state his defence and produce witnesses in his defence. The findings recorded by the Apex Committee, therefore, got vitiated on this account alone. Disciplinary action taken against the petitioner on the basis of the findings recorded in an inquiry which was conducted in gross violation of principles of natural justice cannot be sustained. Yet, another reason why the disciplinary action taken against

the petitioner cannot be maintained is that neither annexures /appendices to the inquiry report were supplied to him nor was he given an opportunity to make representation against the findings recorded by the Apex Committee.

18. It is true that no major penalty, as such, has been imposed upon the petitioner, nevertheless, we cannot lose sight of the fact that the action taken against him constitutes disciplinary action as specified in Ordinance XV-D and entails serious civil consequences for him. Therefore, the action taken against the petitioner without following even the basic principles of natural justice is liable to be struck down.

19. In view of the above, we set aside the office memorandum (Ref. No. SPA/R/2007/2530) dated 16.10.2007 and memorandum (Ref. No. SPA/R/2007/2531) dated 16.10.2007 whereby the petitioner was warned against his conduct after concluding that he was guilty of charges of sexual harassment and was debarred from holding any administrative post in the university for a period of three years, on this ground alone. However, we are not inclined to

quash notification No. C-I/4/2/553 dated 15.10.2007 whereby Professor Achin Vanaik was appointed as Head of Department of Political Science and Dean of the Faculty of Social Sciences, as, we feel that such appointments are prerogative of the University and the petitioner cannot challenge the same. It will be open to the respondents to resume the inquiry held against the petitioner from appropriate stage, conclude it in the light of the observations made and the view taken in this order and thereafter take appropriate disciplinary action against him in accordance with law. Since we have read the requirements of complying with fundamental principles of natural justice as implicit in the inquiry procedure, we need not strike down the relevant provisions of Ordinance XV-D of the University of Delhi.

The writ petition stands disposed of.

(V.K. JAIN)
JUDGE

(A.K. SIKRI)
JUDGE

May 29, 2009.

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