

GAHC010119182023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3229/2023

RAVINDER DARAVATH
S/O- LATE HATCHYA DARAVATH ACIO-I (DOCUMENTS), CENTRAL
FORENSIC SCIENCE LABORATORY, KAMRUP, ASSAM, PERMANENT
RESIDENT OF HOUSE NO. 6/117, CHAPLA THANDA, , P.O. UYYALAWALA,
DORNAKAL, MAHABUBABAD, PIN- 50631, TELENGANA STATE,
PRESENTLY RESIDENT OF C/O MANJU DAS, THIRD FLOOR, NEAR SWAHID
BHAWAN, MIRZA, PIN- 781125, KAMRUP (RURAL) DISTRICT, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE ADDITIONAL SECRETARY, WOMEN SAFETY
DIVISION, ROOM NO. 172C, MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
CENTRAL SECRETARIAT, GOVERNMENT OF INDIA, NEW DELHI, PIN-
110001.

2:DIRECTORATE OF FORENSIC SCIENCE SERVICES
MINISTRY OF HOME AFFAIRS
BLOCK-09
8TH FLOOR
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003.

3:THE DIRECTOR CUM CHIEF FORENSIC SCIENTIST AND FIRST
APPELLATE AUTHORITY
DIRECTORATE OF FORENSIC SCIENCE SERVICES
HQS
BLOCK-09
8TH FLOOR
CGO COMPLEX
LODHI ROAD

NEW DELHI-110003.

4:CENTRAL FORENSIC SCIENCE LABORATORY
DIRECTORATE OF FORENSIC SCIENCE SERVICES
MINISTRY OF HOME AFFAIRS
VILLAGE- URPUT
URPUT KUMERIA ROAD
P.O. MANIARI TINIALI
P.S. PALASHBARI
KAMRUP(RURAL) DISTRICT
PIN- 781125
ASSAM

5:THE DIRECTOR AND SCIENTIST (E) AND DISCIPLINARY AUTHORITY
CENTRAL FORENSIC SCIENCE LABORATORY
DIRECTORATE OF FORENSIC SCIENCE SERVICES
MINISTRY OF HOME AFFAIRS
VILL.- URPUT
URPUT KUMERIA ROAD
P.O. MANIARI TINIALI
P.S. PALASHBARI
KAMRUP(RURAL) DISTRICT
PIN- 781125
ASSAM

6:THE INQUIRY OFFICER AND DEPUTY DIRECTOR
CENTRAL FORENSIC SCIENCE LABORATORY
DIRECTORATE OF FORENSIC SCIENCE SERVICES
MINISTRY OF HOME AFFAIRS
VILL.- URPUT
URPUT KUMERIA ROAD
P.O. MANIARI TINIALI
P.S. PALASHBARI
KAMRUP(RURAL) DISTRICT
PIN- 781125
ASSA

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 07-06-2023
(M. Zothankhuma, J)

Heard Mr. U.K. Nair, learned senior counsel assisted by Mr. S. Khound, learned counsel for the petitioner and Mr. P.S. Lahkar, learned CGC for the State respondents.

2. Mr. U.K. Nair, learned senior counsel submits that the impugned Order dated 07.12.2020 removing the petitioner from service while on probation and the impugned Order dated 21.03.2023 passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No. 040/00149/2021 should be set aside, inasmuch as, the learned Tribunal has failed to appreciate the fact that the impugned Penalty Order dated 07.12.2020 was a cumulative order relating to two Articles of Charge, though Article of Charge No. 2 could not be considered by the Disciplinary Authority. As such, the impugned Penalty Order dated 07.12.2020 passed by the Disciplinary Authority could have been passed only in relation to the finding of guilty in the Enquiry Report pertaining to Article of Charge No. 1.

3. The brief facts of the case is that the petitioner had joined the establishment of the Central Forensic Science Laboratory (CFSL) as Assistant Central Intelligence Officer Grade-1 (Documents) on 16.02.2016 at Hyderabad. He was on probation from 16.02.2016 and within a period of 3 (three) months, i.e., on 11/12.05.2016, a complaint of sexual harassment was lodged against him by one lady colleague. Thereafter, an Internal Committee was constituted

on 12.05.2016 under the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013', herein referred to as the '2013 Act'. The Committee took up conciliation proceedings in terms of Section 10 of the 2013 Act and recorded the settlement between the petitioner and the lady colleague, vide Report dated 27.05.2016.

In the said settlement report, the actions to be taken against the petitioner was specified in the recommendation of the Internal Committee in terms of Section 10(2) of the 2013 Act, which was to the effect that the petitioner should be transferred from CFSL, Hyderabad to any other Directorate of Forensic Science Services (DFSS) and his probation period should be extended. Consequently, the petitioner was transferred from CFSL, Hyderabad to CFSL, Guwahati vide Office Order dated 10.08.2016. Further, the probation period of the petitioner was also extended.

4. Besides the above facts relating to the settlement of the charge of sexual harassment against the petitioner and the consequent action taken in pursuance to the recommendation made by the Internal Committee, the petitioner was involved in another issue, regarding giving of wrong information while applying for a Passport. In the application for issuance of a Passport, the petitioner had given a false declaration and false information, by declaring himself as a private employee, while being a Government employee on probation, as, at that relevant point of time, he was working as an Assistant Central Intelligence Officer Grade-1 (Documents) in the CFSL, Kamrup, Guwahati on probation.

5. Consequent to the above facts, the respondent authorities issued a Memorandum of Charge to the petitioner, framing 2 (two) Articles of Charge.

Article-1 pertains to the petitioner having declared himself as a private employee while applying for a Passport, though he was working in the CFSL, Guwahati on probation. Article-2 pertains to the sexual harassment complaint made by the petitioner's colleague under the 2013 Act. Article of Charge Nos. 1 & 2 are as follows:-

“Article-1

That Sh. Ravinder Daravath, while functioning as Assistant Central Intelligence Officer Gr.1 (Documents) had applied for Tatkal Passport on 10.07.2017 to the Passport Office at Secunderabad by declaring himself as 'Private employee' though as on 10.07.2017 he was working as Assistant Central Intelligence Officer Gr.1 (Documents) in CFSL under DFSS, MHA, Government of India. Hence, he had deliberately submitted false information to the Passport Office.

Article-II

That while functioning as Assistant Central Intelligence Officer Gr.1 (Documents) at Central Forensic Science Laboratory, Hyderabad, a complaint was submitted by Ms. TS Shruti, Assistant Central Intelligence Officer Gr.1 (Documents) of CFSL, Hyderabad against Sh. Ravinder Daravath, ACIO-1 (Doc) alleging of her sexual harassment under the provision of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. After examination of the matter by the Preliminary Enquiry Committee at CFSL, Hyderabad, Sh. Ravinder Daravath, ACIO-1 (Doc) was found guilty.”

6. The petitioner submitted his written statement of defence to the two Articles of Charge and after considering all the evidences in the Enquiry initiated against the petitioner, the petitioner was found guilty of the 2 (two) Charges framed against him. Consequently, vide the impugned Order dated 07.12.2020,

the Disciplinary Authority, in exercise of Rule 11 of the CCS (CCA) Rules, 1965, removed the petitioner from service w.e.f. 07.12.2020.

7. The petitioner thereafter filed an appeal before the Appellate Authority and the Appellate Authority, vide Order dated 14.06.2021 dismissed the appeal.

8. Being aggrieved, the petitioner approached the learned Tribunal vide O.A. dated 040/00149/2021. The learned Tribunal after hearing the parties, dismissed the petitioner's case, by holding that the impugned order of removing the petitioner from service was a well reasoned and speaking order, wherein principles of natural justice had been applied. Further, there being no traces of any malafide, perversity, arbitrariness or capriciousness, the petitioner's case before the learned Tribunal was found to be without any merit and the same was accordingly dismissed, vide Order dated 21.03.2023.

9. Mr. U.K. Nair, learned senior counsel for the petitioner submits that once a conciliation had been effected between the parties under the 2013 Act and the settlement recorded by the Internal Committee, the employers/respondent authorities can only act upon the recommendations made by the Internal Committee in pursuance to the settlement recorded under the 2013 Act. He submits that the respondent authorities do not have the power to go beyond the provisions laid down in the 2013 Act and make a separate enquiry under Article 311 of the Constitution.

10. The learned senior counsel submits that as the impugned order of removal has been made by the respondent authorities, by also taking into account the complaint made against the petitioner under the 2013 Act, the said impugned

order will have to be set aside, as the penalty to be imposed upon the petitioner, if any, would have to be considered only in respect to Article of Charge No. 1, i.e., giving a false declaration while applying for a transport.

11. The learned senior counsel submits that there has been no illegality or infirmity in the procedure followed in the enquiry proceedings held by the State respondents and his grievance is only with regard to the imposition of penalty, by taking into consideration the findings on both the Articles of Charge.

12. Mr. P.S. Lahkar, learned CGC submits that he does not have any quarrel with the submission made by the learned senior counsel for the petitioner and that the penalty to be imposed upon the petitioner on the basis of the Memorandum of Charge, could have been made only on the basis of Article of Charge No. 1, as the recommendations made in terms of Section 10 of the 2013 Act by the Internal Committee in relation to the sexual harassment complaint, had already been acted upon by the respondent authorities, by transferring the petitioner from CFSL, Hyderabad to CFSL, Guwahati and also by extending the petitioner's probation period.

13. We have heard the learned counsels for the parties.

14. A perusal of the 2013 Act shows that once the complaint of sexual harassment has been referred for conciliation and the Internal Committee has settled the matter between the parties, the said recorded settlement has to be sent to the employer or District Officer along with the action to be taken as specified in recommendations made by the Internal Committee, as per Section 10 (2) of the 2013 Act. In terms of Sections 10 to 13 of the 2013 Act, the

respondent authorities can only act upon the actions specified in the recommendations made by the Internal Committee in the settlement recorded by the Internal/Local Committee.

15. Section 10 of the 2013 Act states as follows:-

“10. Conciliation.—

(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation: Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.”

16. The recommendation of the Internal Committee to transfer the petitioner outside CFSL, Hyderabad and to extend the probation period having been acted upon, the same issue could not have been made a part of a subsequent Enquiry under Article 311, when the issue was settled under Section 10 of the 2013 Act. As the respondent authorities had acted upon the recommendations made by

the Internal Committee and transferred the petitioner to CFSL, Guwahati and also extended his probation period, the issue with regard to the sexual harassment complaint was to have come to an end. No further action could have been taken beyond the settlement recorded and the proposed actions in the recommendations made by the Internal Committee, as the same would amount to double jeopardy. Once the probation period was extended, the question of removal of service does not arise. In that view of the matter, the impugned Order dated 07.12.2020, removing the petitioner from service by taking into account the finding of guilt against the petitioner, in terms of both the Article Nos. 1 & 2 of the Memorandum of Charge dated 19.08.2019 is arbitrary and is not sustainable. Accordingly, the impugned Order dated 07.12.2020 is set aside. The Disciplinary Authority has the power and discretion to impose a penalty only on the basis of the findings in Article-I only and not on the findings on both the Articles of Charge.

17. The respondent authorities/Disciplinary Authorities are accordingly given the liberty to re-consider the case of the petitioner, from the stage of taking a decision in the Enquiry proceedings, as to whether any penalty should be imposed upon the petitioner, in terms of the finding of guilt against the petitioner pertaining to Article No. 1 of the Memorandum of Charge dated 19.08.2019. Consequently, the Order dated 14.06.2021 issued by the Appellate Authority and the impugned Order dated 21.03.2023 passed by the learned Tribunal in O.A. No. 040/00149/2021 are hereby set aside also.

18. The Disciplinary Authority shall take a decision as to what penalty is to be imposed, if any, in respect of the finding of the Enquiry Officer, in respect of Article of Charge No. 1 of the Memorandum of Charge, within a period of 1

(one) month from the date of receipt of a certified copy of this order. The question of reinstatement of the petitioner into service will depend upon the decision to be taken by the Disciplinary Authority.

19. The writ petition is accordingly disposed off.

JUDGE

JUDGE

Comparing Assistant