

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

% *Judgment Reserved on: April 09,2015*
Judgment Delivered on: April 17,2015

+ **W.P.(C) 2420/2012**

VIBHA KUMARI Petitioner

Represented by: Mr.Kunwar Arish Ali,
Advocate.

Versus

UNION OF INDIA, THROUGH SECRETARY,
MINISTRY OF HOME AFFAIRS AND ORS. Respondents

Represented by: Ms.Monica Arora, CGSC with
Mr.Harsh Ahuja and Mr.Rohit
Arora, Advocates for R-1 to
R-5.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The writ petitioner Vibha Kumari is enrolled as Sub-Inspector in CRPF. Aggrieved by imposition of penalty of stoppage of two increments on her indictment in the disciplinary proceedings, she has filed this writ petitioner with the following prayers:

- (i) To quash the order dated August 13, 2008 passed by Disciplinary Authority, order dated April 09, 2009 by Appellate Authority and order dated September 03, 2009 passed by Revisional Authority being in violation of directions of the Supreme Court in 1997 (6) SCC 241 Vishaka vs. State of Rajasthan which was subsequently followed in 1999 (1) SCC 759 and 2009 (2) SCC 210; and,
- (ii) To issue directions to the respondents to make a workable mechanism for redressal of grievances of woman employees in cases of sexual

harassment in consonance of directions of Supreme Court in Vishaka's case (supra).

2. The imputation of charge in the inquiry conducted in respect of incident dated June 08, 2007 in the office of Sub.Major Yogender Singh reads as under:-

'While working as Office Superintendent, Head Clerk and Incharge Service-Record Clerk, Force No.841540256 Office Superintendent/Subedar Major Yogender Singh (under suspension, presently posted in 106 Bn.) and Force No.84540167 Inspector/M. S.S.Panwar (under suspension, presently posted in 106 Bn.) and Force No.911580449 Sub-Inspector M. Vibha Kumari (under suspension, presently posted in 104 Bn.) during their postings in 108 Battalion having indulged into inactiveness and misconduct in performing their duties in the capacity of having been members of the Force under Section 11(1) CRPF Act, 1949 under which on 08.06.70 in the office of Force No.8511540256 Office Superintendent/Subedar Major Yogender Singh, Force No.841540167 Inspector/M. S.S.Panwar and Force No.911580449 Sub. Inspector/M. Vibha Kumari indulged into physical fight with each other and Office Superintendent/Subedar Major Yogender Singh having been a senior officer, remained a silent spectator and did not put any effort to stop the fight and while submitting the report of the said incident to his senior officers, not only used ignominious words but also extended threat to eliminate to his colleague Inspector/M. S.S.Panwar which amounts to contrary to the orders & discipline of the Force.'

3. The Disciplinary Authority while accepting the report of the Inquiry Officer and after giving an opportunity to the three indicted officers to submit their response, awarded the penalties as under:-

(i) **Sub.Major Yogender Singh** – Since, he had already been awarded penalty of compulsory retirement in earlier disciplinary proceedings, the matter of awarding punishment to him was kept pending in the contingency

of his reinstatement in service by the Appellate Authority.

(ii) **Insp.(M)/Head Clerk S.S.Panwar** – stoppage of increment for two years with cumulative effect.

(iii) **WSI (M) Vibha Kumari** – stoppage of increment for two years with cumulative effect.

4. While filing this writ petition, the petitioner has tried to project this incident to be a case of sexual harassment at work place wherein the inquiry has not been conducted in consonance with the directions of Supreme Court in Vishaka's case (supra). Thus, the first and foremost question arising for consideration before us is whether it was an act of indiscipline and gross misconduct by the petitioner and other force members namely Sub.Major Yogender Singh and Insp.(M)/Head Clerk S.S.Panwar during the course of meeting on June 08, 2007 in the room of Sub.Major Yogender Singh or it was a case of sexual harassment of the petitioner by Insp.(M)/Head Clerk S.S.Panwar at work place. The next issue raised by the petitioner is the effect of inquiry into the incident allegedly conducted in violation of the guidelines laid down in Vishaka's case.

5. To go to the root of the matter we called for the record of the inquiry proceedings. The respondents produced four files before us

(i) Preliminary inquiry ordered on June 08, 2007 with report submitted on June 14, 2007.

(ii) Discreet inquiry with report dated June 20, 2007.

(iii) Department inquiry with report dated August 13, 2008.

(iv) Sector Level Complaint Committee Inquiry with report dated October 10, 2012.

6. Let us start with the preliminary inquiry conducted into the matter that would bring on record the immediate version about the incident.

Preliminary Inquiry:-

7. Vide office order dated June 08, 2007 the Commandant directed the Deputy Commandant Sh.Satbir Singh of 108 Btn. RAF to conduct a preliminary inquiry pertaining to the incident dated June 08, 2007 in the room of Office Superintendent/Sub.Major Yogender Singh involving Sub.Major Yogender Singh, Insp.(M)/Head Clerk S.S.Panwar and WSI (M) Vibha Kumari and submit his report within three days.

8. In all nine witnesses were examined revealing strained professional relationship between Insp.(M)/Head Clerk S.S.Panwar and WSI (M) Vibha Kumari. WSI (M) Vibha Kumari was issued a written warning for her earlier act of indiscipline. The background was disclosed to be that while Insp.(M)/Head Clerk S.S.Panwar was in the habit of completing his work on time as per rules, WSI (M) Vibha Kumari was neither punctual nor a willing worker. On the day of incident a meeting was called in the room of Office Superintendent/Sub.Major Yogender Singh to prepare status/compliance report in respect of the various objections raised and infirmities pointed out during inspection by the Director General. When Insp.(M)/Head Clerk S.S.Panwar was seeking details from Ct.Nasimuddin Ansari, Clerk in a loud tone, the petitioner asked Insp.(M)/Head Clerk S.S.Panwar to get out of that room. On this, initially there was verbal dual followed by physical assault. While Insp.(M)/Head Clerk S.S.Panwar slapped WSI (M) Vibha Kumari, WSI (M) Vibha Kumari hit Insp.(M) S.S.Panwar with her chappal and both of them sustained injuries. Uniform of Insp.(M) S.S.Panwar was torn in that fight. In the preliminary report, the role of the office Superintendent of not being able to control the situation, that Insp.(M) S.S.Panwar misbehaved with a female officer and also that a female officer asking his superior to get out of the room and hitting him with her chappal, was opined to be prima

facie made out.

9. There is a confidential report regarding this incident submitted by the Commandant, 108 Bn. RAF under his signature on June 12, 2007 which reads as under:-

'On 08/06/2007, during day time in the chamber of Officer Superintendent of this unit, No.841540256 SM(OS) Yogender Singh, No.841540167 Insp.(M) S.S.Panwar and No.911580449 SI(M) Vibha Kumari started arguing with each other which culminated into a hot argumentation and finally all three scuffled with each other.

2. *On arrival of undersigned from Dett/108 on same evening, a Preliminary Enquiry was ordered to find out the truth which is in progress and report will be submitted on completion.*

3. *After the quarrel, SI(M) Vibha Kumari instead of meeting undersigned or other officers of unit, she has gone to Police Station T.P.Nagar on 09/6/2007 to file FIR against Insp.(M) S.S.Panwar which was denied by SHO who guided her to meet the Unit Commandant for redressal of her problem as he himself was not satisfied with the version of the individual. But so far she has not met the undersigned for redressal.*

4. *It may be mentioned here that SM(OS) Yogender Singh was received in this Unit on 26/9/2006 on his promotion from the rank of Insp.(M) from Pers.II Branch Dte. Genl., Insp.(M) S.S.Panwar was received in this unit on 29/7/2006 on this promotion from the rank of SI(M) from GC.II Ajmer and SI(M) Vibha Kumari was received in this unit on 18/9/2006 on her promotion from GC CRPF Allahabad.*

5. *Earlier also SI(M) Vibha Kumari had quarrelled with Insp./Head Clerk S.S.Panwar on petty matter for which she was warned vide this office letter No.C.III-1/07-CB dated 2/2/07 and again she has misbehaved with him on 30/4/07 for which her explanation was called for vide this office letter of even No.dated 15/5/07 but her reply is till awaited. (Copy of above letters are enclosed). She is in habit of disobeying*

lawful orders, besides late coming to office and not attending official work properly for which she was cautioned by me personally many times. Due to her presence and dubious behaviour, the entire office atmosphere is spoiled. She is a widow lady having one daughter. She was given all help i.e. allotted family quarter out of turn and other helps on her arrival in this unit. But instead of showing gratefulness she is creating nuisance for the entire administration.

6. I request that she may be immediately transferred from this unit to any other unit/office and the undersigned is ready to relieve her even without any substitute.

7. Submitted for kind perusal.'

Discreet Inquiry report dated June 20, 2007 :

10. On June 13, 2007 the petitioner made a complaint to IG, RAF levelling allegations of sexual harassment against Insp.(M) S.S.Panwar. On the directions of IG, the DIG, RAF got the inquiry conducted through Sh.Vikram Sehgal, Commandant. In the report dated June 20, 2007, on the basis of questioning nine officials right from 2-I/C to Ct./GD S.Davison, it was concluded that the charge levelled by the complainant against Insp.(M) S.S.Panwar of outraging the modesty has not been substantiated. The Commandant in his report has given the genesis of the case and facts leading to the incident as deduced during the course of inquiry which can be summarised as under:-

- (i) Office Superintendent Yogender Singh and WSI (M) Vibha Kumar i.e. the Complainant developed some proximity about 5-6 months prior to this incident and the Office Superintendent had been shielding her in day to day official lapses committed by her.
- (ii) This emboldened WSI(M) Vibha Kumari who used to keep sitting in the office of Office Superintendent frequently and used to order

disbursement of her pay on her table which was a practice only for senior most officer. This has apparently resulted into humiliation and annoyance to Insp.(M) S.S.Panwar.

(iii) WSI(M) Vibha Kumar apparently was exhibiting arrogance under the shield of Office Superintendent which was also a factor for nursing grudge against Insp.(M) S.S.Panwar.

(iv) In the past also WSI (M) Vibha Kumari had not been properly conducting herself professionally while dealing with Insp.(M) S.S.Panwar.

(v) During the meeting in the room of Office Superintendent Sub.Major Yogender Singh it was the complainant WSI(M) Vibha Kumari who asked Insp.(M) S.S.Panwar to leave the office and it was the complainant WSI (M) Vibha Kumari who assaulted Insp.(M) S.S.Panwar with her slippers.

(vi) Chances of the Office Superintendent Sub.Major Yogender Singh and WSI (M) Vibha Kumari concealing the fact of assaulting Insp.(M) S.S.Panwar could not be ruled out as she herself admitted her attempt to remove the slippers.

Departmental Inquiry report dated August 13, 2008

11. Office Superintendent Sub.Major Yogender Singh had the knowledge of quarrel on earlier occasions between Insp.(M) S.S.Panwar and WSI (M) Vibha Kumari. During the incident he remained a silent spectator and while going to the Section Officer to report about the incident, used indecent language including threat to kill Insp.(M) S.S.Panwar.

12. When discussion was going on between Insp.(M) S.S.Panwar and Ct.Nasimuddin Ansari on the status and compliance report regarding the infirmities pointed out by the Director General during his inspection, even if tone of Insp.(M) S.S.Panwar was loud, WSI (M) Vibha Kumari had no reason to ask Insp.(M) S.S.Panwar to get out of the office.

13. The altercation and assault between WSI Vibha Kumari and Insp.(M) S.S.Panwar in the presence of Office Superintendent Sub.Major Yogender Singh who failed to take steps to defuse the situation, was a sad reflection, Insp.(M) S.S.Panwar should not have slapped a female colleague and by doing so he has shown absolutely improper and indecent behaviour. Thus, the act of Office Superintendent Sub.Major Yogender Singh as well Insp.(M) S.S.Panwar and WSI(M) Vibha Kumari has lowered down the reputation of the force calling for rigorous punishment. However, in the facts and circumstances, lenient view was taken.

Sector Level Complaint Committee Inquiry Report dated October 10, 2012

14. The inquiry into the incident conducted by the Chairman, Sector Level Complaint Committee, RAF is running into more than 100 pages which include the testimony of witnesses examined by the Committee. In its conclusion while the Committee confirmed the incident involving the petitioner and the other two officers namely Sub.Major Yogender Singh and Insp.(M) S.S.Panwar, it was not found to be a case of sexual harassment.

15. Thus we find that during all inquiry proceedings conducted into the incident dated June 08, 2007 involving the petitioner, there is a commonality in the conclusion arrived at that it was not a case of sexual harassment. It is emerging on record that the petitioner was enjoying patronage of the Office Superintendent Sub.Major Yogender Singh and she was virtually exercising the power of Office Superintendent Sub.Major Yogender Singh while sitting in his office, expecting even from her superior officers to be treated at par with the Office Superintendent. The facts leading to the incident have been appreciated by the Disciplinary Authority as well by the Appellate and Revisional Authorities at appropriate stages. The Disciplinary Authority is

the sole judge of the facts and the Appellate Authority has co-extensive power to reappreciate the evidence. The Supreme Court in the decision reported as (2013) 6 SCC 602 S.R.Tewari vs. Union of India (UOI) & Anr. has considered the power of judicial review of this Court and has enumerated the circumstances when such power need to be exercised. The relevant paragraphs No.14 to 17 of the report are as under:-

'14. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from malafide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: Tata Cellular v. Union of India AIR 1996 SC 11; People's Union for Civil Liberties and Anr. v. Union of India and Ors. : AIR 2004 SC 456; and State of N.C.T. of Delhi and Anr. v. Sanjeev alias Bittoo : AIR 2005 SC 2080).

15. In Air India Ltd. v. Cochin International Airport Ltd. and Ors. AIR 2000 SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.

16. There may be a case where the holders of public offices have forgotten that the offices entrusted to them are a sacred

trust and such offices are meant for use and not abuse. Where such trustees turn to dishonest means to gain an undue advantage, the scope of judicial review attains paramount importance. (Vide: Krishan Yadav and Anr. v. State of Haryana and Ors. AIR 1994 SC 2166).

17. The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (Vide: High Court of Judicature at Bombay through its Registrar v. Udaysingh S/o Ganpatrao Naik Nimbalkar and Ors. AIR 1997 SC 2286; Government of Andhra Pradesh and Ors. v. Mohd. Nasrullah Khan AIR 2006 SC 1214; and Union of India and Ors. v. Manab Kumar Guha (2011) 11 SCC 535).'

16. On perusal of the record of the various inquiries into the matter and the conclusion arrived therein, we could not find even a trace for the case being treated as that of sexual harassment of the petitioner or the physical assault falling in the category of sexual assault or the petitioner being slapped with an intention to outrage her modesty. There is also no evidence of the conclusion being arbitrary or perverse or the disciplinary proceedings being conducted in violation of principles of natural justice.

17. Writ petition has no merit and the same is dismissed.

18. No costs.

PRATIBHA RANI, J.

PRADEEP NANDRAJOG, J.

April 17, 2015/st