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

+ **W.P.(C) 4756/2014, CM APPL. No. 9470/2014**

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Date of Judgment : 10.09.2015

DR. SONALI BADHE

..... Petitioner

Through

Mr. Kunal Cheema, Mr. Dhruv Kapur
and Mr. Siddharth Bhatia, Advs.

versus

ASHISH CHANDRA SINGH & ORS

..... Respondent

Through

Mr. D.D. Singh, Adv. for R-1
Mr. Anurag Ahluwalia with
Mr. Prashant Ghai, Adv. for R-2
and 3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Pleadings in this matter are complete. With the consent of the parties, the writ petition is set down for final hearing and disposal.
2. Challenge in this writ petition is to the order dated 30.05.2014 passed by the Central Administrative Tribunal. Before the rival submissions can be considered, we deem it appropriate to state some of the relevant facts as mentioned in the writ petition. It is the case of the petitioner that she was being sexually harassed by respondent No.1 at the work place. She was constrained to file a complaint with respondent No.2 i.e. Internal Complaints Committee on 25.07.2012. The Committee, after examining the witnesses, submitted its report on 31.01.2013 and held the respondent No.1 to be guilty of sexually harassing the petitioner and also directed the respondent No.1 to pay a sum of

Rs.10,000/- towards compensation. The respondent No.1 while relying on Section 18 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 hereinafter referred to as the 'Act' filed an OA before the Central Administrative Tribunal (hereinafter referred to as "Tribunal") on 20.03.2014. This OA was entertained and notice was issued. A preliminary objection was raised by the respondents before the Tribunal that the Tribunal would not have jurisdiction to entertain the appeal against the inquiry report of respondent No. 2. By the impugned order, it has been held that the Tribunal would have jurisdiction over the matter which has led to the filing of the present writ petition.

3. The Tribunal has relied upon a judgment of the Madhya Pradesh High Court in the case of Ramesh Pal Vs. Union of India in W.P. No.9086/2013 dated 14.02.2014. Learned counsel for the petitioner submits that pursuant to the complaint made by the petitioner, the Internal Complaints Committee, which was formed by the employer under Section 4 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, took cognizance and an inquiry was conducted. The first submission of learned counsel for the petitioner is that the OA filed before the CAT could not have been entertained in view of Section 20 of the Administrative Tribunals Act 1985 as the report submitted by the Committee had not attained finality and the disciplinary authority had issued notice to the respondent No.1 to submit its reply. Neither any order with regard to the punishment if to be imposed was passed moreover the respondent No.1 did not exhaust the final remedy of filing an appeal against the order of the

disciplinary authority as the respondent No.1 did not wait for the stage to arise and approached the Tribunal in a hurry. It is also contended that the tribunal failed to take this aspect into consideration and has held that the tribunal would have jurisdiction to which there is no quarrel in view of Section 18 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Learned counsel for the petitioner has also relied on Section 28 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to show that the provision of the Act shall be in addition to and not in derogation of the provisions of any other law for time being in force. Mr. Ahluwalia, learned counsel for respondent/UOI supports the submission made by the learned counsel for the petitioner and contends that the OA filed by respondent No.1 could not have approached the Tribunal till the report of the Inquiry Committee had been considered by the disciplinary authority.

4. Mr. D. D. Singh, learned counsel for respondent No.1 submits that once the Inquiry Committee had submitted its report as per Section 18 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, an appeal would lie either to the Court or the Tribunal in accordance with the provisions of Section 3 (q) of the Administrative Tribunals Act, 1985 and in this case it would be the Tribunal. It is contended that the Act is a full code in itself. Section 4 deals with appointment of an Internal Complaints Committee. Reliance is also placed on Sections 11 and 13 to show that the Committee has wide powers including the proviso to Section 13 (3) (ii) as per which in case the respondent fails to pay the sum referred to in clause 2, the

Internal Complaints Committee would have the power to forward the order for recovery of the sum as arrears of land revenue to the concerned district officer.

5. We have heard the counsel for the parties.
6. The first question which arises for consideration before this Court is whether an appeal under Section 18 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would lie before the Tribunal or not. All parties are in agreement that an appeal would be maintainable against a final order before the Central Administrative Tribunal.
7. The next question which arises for consideration whether an OA would be maintainable before the Tribunal prior to the passing of the final order by the disciplinary authority / appellate authority. As per the learned counsel for the petitioner and respondent nos. 2 & 3, prior to the passing of the final order, an OA before the Tribunal would not be maintainable.
8. We do not find force in the submission made by the counsel for the petitioner and respondent Nos. 2 & 3 that as an absolute rule, OA would not be maintainable prior to passing of a final order. A situation can arise where a delinquent is aggrieved by the manner in which the inquiry is being conducted or in case the inquiry is being conducted without complying with the principles of natural justice. Thus, our answer would be in the positive but the short question which arises for consideration in this case is that after the inquiry committee had submitted its report, can the same be assailed before the Tribunal without the report being considered by the disciplinary authority and

the appellate authority, our answer would be in the negative for the reason that any report of the inquiry is recommendatory in nature as in this case which would be evident upon reading conclusion of the report which reads as under:-

“Dr. Sonali successfully proved that Mr. A.C. Singh sexually harassed her from July 2010 onwards, on various occasions, till she filed a complaint. Mr.Singh harassed Dr.Sonali by indulging in unwelcome physical, verbal and non-verbal conduct of sexual nature. The act of the respondent was unbecoming of good conduct and behaviour expected from a senior officer of the ED. The facts and circumstances of the case warrants deterrent punishment and infliction of appropriate major penalty as may be appropriately decided by the Disciplinary Authority. Although no monetary sum can compensate the mental pain and suffering of Dr.Sonali still the Committee is of the opinion that award of some monetary compensation in favour of Dr.Sonali will serve the cause of justice. As per Section 13(3)(ii) of the Act an amount Rs.10,000/- is ordered to be deducted from the salary of Mr.Singh and be paid to Dr.Sonali the aggrieved woman to compensate mental trauma, pain, suffering and emotional distress caused to her.”

9. The committee has recommended that “the case warrants deterrent punishment and infliction of appropriate major penalty as may be appropriately decided by the disciplinary authority. Although no monetary sum can compensate the mental pain and suffering”.
10. We are informed that based on the recommendation of the committee, a notice was issued to the respondent No.1 by the disciplinary authority granting leave to file a reply. At this stage, it would be worthwhile to notice that pursuant to the directions issued by the Supreme Court in the case of *Vishaka and Others vs. State of Rajasthan and Others*

reported in AIR 1997 SC 3011. Rule 14 of the CCS (CCA) Rules was amended and the following proviso was added:-

“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.”

11. As per the amendment (hereinafter referred to as the ‘Proviso’) the Complaint Committee was deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of the rules and the Complaints Committee was to hold in case no separate procedure had been prescribed for the Complaints Committee for the inquiry as far as practicable in accordance with the procedure laid down in these Rules. In the case of ***Medha Kotwal Lele & Ors. Vs. Union of India & Ors.***, reported at VI (2004) SLT 451, it was held by the Supreme Court of India that the report of the Complaints Committee has to be treated as per Rule 14 of the CCS (CCA) Rules as a final report in the enquiry. The relevant observations read as under :

“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishakha’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 (hereinafter

called the CCS Rules) 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.”

12. In fact, in the present case, the report of the Committee is deemed to be a report of the inquiring authority appointed by the disciplinary authority. The natural effect of this would be that after the inquiry report is submitted Rule 15 of the CCS (CCA) Rules would come into play. Rule 15 lays down the procedure to be followed upon receipt of the recommendation of the inquiry report. Rule 15 is to be read alongwith Section 13 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as per which on completion of the inquiry, the Internal Committee is to provide a report of its finding to the employer. The employer in the present case would be the disciplinary authority of the respondent No.1 who, upon receipt of the report, is to record tentative reason of disagreement, if any, with the findings of the inquiry authority and grant an opportunity to the delinquent officer to submit a written report or submission to the disciplinary authority and thereafter the disciplinary authority, after considering the report, record its finding and in case the disciplinary authority is of the opinion that any penalties are to be imposed make an order imposing such penalties.
13. In our view, the petition filed by the respondent No.1 is pre mature as the disciplinary authority although has considered the inquiry report and issued notice to the delinquent officer but before further proceedings could take place as the Tribunal had passed an interim

order.

14. We may notice that challenge before the Tribunal is not to the procedure followed by the Committee neither any grievance has been made that principles of natural justice had not been followed but a challenge has been made to the report of the Inquiry Committee.
15. While counsel for respondent No.1 has submitted that the OA before the Tribunal is comprehensive, as not only the final findings have been challenged but procedural irregularities have also been challenged.
16. We do not agree that the said submission in column '6', which is to provide details of remedies exhausted the respondent No.1 as stated as under:-

“The applicant herein declares that he does not have any other alternative efficacious remedy under the rule against the report/recommendation being impugned in this application.”

17. Based on this averment made in the petition shows that the real challenge is to the recommendations made by the Committee. In our view, the Tribunal should have taken note of the fact that the disciplinary authority was yet to give its finding nor any punishment has been imposed on the delinquent. While there is no absolute bar in entertaining an OA but in the facts of this case the further proceedings could not have been stayed as we have stated earlier that the OA is premature.
18. In the light of above discussions, we dispose of this writ petition with the direction to the Tribunal to decide the question of maintainability of OA on merits.

19. Having regard to the facts that the report of the Inquiry Committee has not attained finality and the disciplinary authority is seized of the matter, we vacate the injunction order granted by the Tribunal as the report of the Inquiry Committee has not attained finality. We do not find sufficient grounds to stay the proceedings. All grounds raised by both the parties are kept open. As prayed, two weeks time is granted to respondent no.1 to make a representation before the disciplinary authority. The disciplinary authority will pass final order within four weeks thereafter. Needless to say, that in case respondent no.1 is aggrieved of the order passed by the disciplinary authority or the appellate authority, he would have a right to assail the same in accordance with law. Any observations made in this order is only for the purposes of deciding the grounds urged before us today and would not be treated as an expression on the merits of the matter.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 10, 2015

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