

\$~15

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

+ W.P.(C) 7360/2016 & CM No.30238/2016 (stay)

YOUDHVIR SINGH

..... Petitioner

Through: Mr. Rajiv Manglik, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Bharathi Raju, CGSC along with
Ms. Debajyoti Behura, Advocate for
respondent Nos. 1 & 2.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **22.08.2016**

The writ petitioner was commissioned in the Army on 11.06.1988 in the rank of second Lieutenant. He was promoted from time to time. It appears that after the writ petitioner attained the rank of Colonel (Time Scale), there was a complaint against the writ petitioner of sexual harassment, which was referred to the internal Committee constituted under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The writ petitioner approached the Armed Forces Tribunal contending

that the Committee had not been constituted as per the service rules applicable to the writ petitioner. The learned Armed Forces Tribunal, however, passed an order dated 12.08.2016, the relevant part whereof is extracted herein below for convenience.

“Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 has been enacted as a comprehensive legislation to provide for safe, secure and enabling environment to every woman irrespective of her age of employment status, free from all forms of sexual harassment by fixing the responsibility on the employer as well as public authorities, providing a statutory redressal mechanism. The Apex Court in Vishaka & Ors. Vs. State of Rajasthan & Ors, 1997 (7) SCC 323) forwarding upon sexual harassment of women at work place and holding that sexual harassment against working women in is unacceptable issued directions for passing a proper legislation providing a statutory redressal mechanism and, thereupon, the above Act was passed by the Parliament. We find no merit in the case projected by the applicant that he being an army officer, enquiry into any complaint or sexual harassment against him can be conducted only by a Court of Inquiry covered by the Army Rules and not by any Committee constituted under the above Act. The applicant has been directed to appear before the statutory Committee for a preliminary enquiry over a complaint filed by a lady officer imputing of misbehaviour to her. Whatever be his defence or challenge to the constitution of that Committee he can present them before that Committee or any other authority as provided by law but he cannot rush to this Tribunal invoking its jurisdiction when an order issued directing him appear in any part of the enquiry conducted on the complaint do not fall under the ambit of ‘service matters’ covered under Section 2(o) of the Act.

We hold that this Tribunal has no jurisdiction to entertain the OA and accordingly it is dismissed.”

The learned Tribunal observed that the writ petitioner could approach the Committee for his defence to the challenge to the constitution of that Committee. At the same time, the learned Tribunal held that the learned Tribunal had no jurisdiction to entertain the OA and accordingly dismissed the same. An appeal against an order of the Tribunal would lie before the Hon’ble Supreme Court and not this Court. If the order were accepted, the remedy of the writ petitioner would be to approach the Committee.

A complaint against an Army Officer of indulging in sexual harassment is a service matter. In this context, reference may be made to the definition of ‘service matter’ in Section 2(o) which includes (i) the remuneration (including allowances), pension and other retirement benefits; (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions; (iii) summary disposal and trials where the punishment of dismissal is awarded or (iv) **any other matter, whatsoever**. Section 2(o)

(iv) would obviously include proceedings for sexual harassment as well. In our view, the learned Tribunal had jurisdiction which the learned Tribunal had not exercised. So far as the observations on merits are concerned, it is not appropriate for this Court to sit in appeal over the same. The remedy, if any, of the writ petitioner lies by way of an appeal to the Hon'ble Supreme Court or by way of review before the learned Armed Forces Tribunal.

The writ petition is dismissed along with the pending application.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

AUGUST 22, 2016

rs