

\$~20.

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

+ **WRIT PETITION(C) NO. 9352/2016**

Date of decision: 17th October, 2016

SURENDRA KUMAR VERMA Petitioner
Through Mr. R.K. Kapoor & Ms. Rekha Giri,
Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through Mr. Dev. P. Bhardwaj, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

CM No. 37555/2016

Exemption application is allowed, subject to all just exceptions.

W.P.(C) No. 9352/2016

This writ petition impugns the order dated 1st October, 2015 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No. 3503/2011 filed by the petitioner has been dismissed. The present writ petition has been filed nearly a year after the impugned order was passed and, therefore, is delayed and hit by laches.

2. Even on merits, we do not see any reason to interfere with the impugned order passed by the Tribunal.

3. In OA No. 3503/2011, the petitioner had challenged the order dated

14th August, 2009 passed by the disciplinary authority imposing penalty of removal from service, the appellate order dated 14th June, 2010 whereby the appeal was rejected and the order of the reviewing authority dated 13th December, 2010 whereby the review petition was rejected. The petitioner had also challenged the inquiry report dated 5th June, 2009.

4. Learned counsel for the petitioner submits that vide order dated 12th November, 2008 passed in OA No. 549/2005, Cuttack Bench of the Central Administrative Tribunal had directed *de novo* or fresh inquiry. Accordingly, the petitioner should have been served with the fresh charge sheet. The said contention has been rightly rejected by the Tribunal after referring to the order dated 12th November, 2008 passed by the Cuttack Bench of the Tribunal. Paragraph 4 of the said order specifically records and rejects the submission that the charge was vague and needs to be quashed was false and wrong. *De novo* inquiry was directed from the stage of appointment of the Inquiry Officer and the Presenting Officer. The charge sheet dated 2nd June, 2003 was never quashed or set aside. Further, the order dated 12th November, 2008 holds that the petitioner had himself abandoned or stopped attending the inquiry proceedings. However, as procedural lapses were noticed, direction was issued for *de novo* inquiry from the stage of appointment of the Inquiry Officer and the Presenting Officer.

5. The second contention raised by the petitioner is that the

complainant was never examined in the *de novo* proceedings. We find the said contention does not have any merit. Article of the charge No. 1 against the petitioner, which has been proved, reads as under:-

“Article-I

That Shri Surendra Kumar while functioning as T-2 (Overseer) in the CSWCRTI, Research Centre, Koraput had resorted to molestation and physical assault of Ms. X (name withheld), SRF, under NATP, Project at the Centre on 13.8.2002 around 6.00 P.M. while she was working in the Computer Room.

By his above act, Shri Surendra Kumar misbehaved in a most irresponsible manner and acted in a manner unbecoming of the Council’s employee violating the rule 3(1(iii)) of CCS (Conduct) Rules, 1964 as made applicable to the employees of ICAR.”

The complainant had appeared before the inquiry officer which is clear from the inquiry report, which has been annexed as Annexure P-3. In her statement, the complainant had affirmed as correct whatever she had mentioned and written in her complaint to the women cell dated 20th August, 2002 and report dated 14th August, 2002. The inquiry report records and notices the examination of the complainant by the petitioner in the inquiry proceedings, which for the sake of convenience is reproduced below:-

“

CO:*	What she was doing on computer on 13.08.2002 (A.N.) and she may tell the incidence in detail:
------	---

Deponent:	I was compiling data of NATP project as per the directions of Sh. Anchal Dass, Scientist (Agronomy) & Smt. Susama Sudhishri, Scientist (SWC Engg.). Regarding telling incidence it is to submit that I have already submitted all the details of happening on 13.08.2002 in my complaint dated 14.08.2002 which I do not feel to repeat in front of Inquiry Committee.
C.O:	Why she did not report the matter to the Police or Institute headquarters as the matter was serious?
Deponent:	I did not go to the police because Sh. Surendra Kumar came to my residence and requested my family members for not reporting the matter to the police. Moreover, I trusted the office for giving proper justice for the mishappening with me.
C.O:	Ms. X (name withheld) you tell me what happened with you on the day give brief of the incident upto the next day.
Deponent:	I was sexually harassed by Sh. Surendra Kumar. I was forcibly attacked by him and he slapped on my chin with that blood came out from the jaws of my teeth. The shameful act done by him has already been explained by me in front of the Women Cell. He totally misbehaved and tried to rape and sexually harass me.

”

(*The abbreviation C.O referred above refers to the Charged

Officer.)

6. The factual assertions of the complainant received corroboration and support from the statement of other officers, namely, Ms. Sushma Sudhishri (SW-2) and Shri Purno Sisa (SW-5). No doubt, Mr. Sonia Khora (SW-4) did somewhat change his original version, but even the second version clearly supports the facts alleged and the version of the complainant.

7. The third contention raised by the petitioner is that the copy of the preliminary inquiry report was not submitted. We do not find any merit in this contention also. The inquiry report specifically records that the Charged Officer, i.e., the petitioner had stated that he had received the documents and had declined to admit the charges. The petitioner had also stated that no further preliminary inquiry was needed to be held and this fact was recorded on 7th March, 2009.

8. Learned counsel for the petitioner in the end submitted that the order passed by the disciplinary authority dated 14th August, 2009 is a non-speaking order. We have gone through the said order, but regret our inability to accept the plea raised. After the Inquiry Officer had submitted the detailed report, the petitioner had submitted his response vide letter dated 30th July, 2009, which has been enclosed as Annexure P-5. In the reply to the inquiry report, the only contention raised by the petitioner was to the following effect:-

“3. That, it is settled position of law as laid down by the Apex Court that if as statute provides for a thing to be done in a particular manner then it has to be done in that manner and no other manners. The I.O. has not conducted the enquiry as per rule for which the enquiry report is a perverse one.

4. That although the I.O. taken note of the written brief of the charged official but interpreted the same in a wrong motion and has not touched all the point raised in the written brief.”

9. The disciplinary authority referred to the documentary evidence and the statement of witnesses and after examining the inquiry report affirmed the charges, which were proved, except charge No. 3(a). The disciplinary authority had also recorded that the petitioner was granted full opportunity to defend his case. The appellate authority had duly applied his mind and considered the contentions and issues raised.

10. Keeping in view the aforesaid, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 17, 2016
VKR