

\$~43

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

+ **W.P.(C) 9863/2017**

AX

..... Petitioner

Through: Mr Anand Grover, Sr. Advocate with
Mr Sachin Chauhan and Ms Shrinidhi
Rao, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Gaurang Kanth, CGSC with Ms
Eshita Baruah, Advocate alongwith
Mr A. Bhattacharya, SO, Vigilance,
MEA and Ms Neha Swati, ASO,
Vigilance, MEA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

13.11.2017

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(i) Issue an appropriate writ in the nature of mandamus or any other appropriate writ and to further direct that the orders and proceedings of Complaints Committee on Sexual Harassment constituted under the Chairmanship of Smt. Madhumita Hazarika Bhagat, Joint Secretary, (SCO) & Chairperson be quashed and set aside and further the complaint of the petitioner regarding sexual harassment and continuous victimization be investigated strictly as per Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, DoPT OM

16.07.2015 and 12.12.2016 in the supervision of Retired Lady Hon'ble High Court Judge or any senior designated lady lawyer of Hon'ble Delhi High Court.

(ii) The Petitioner be monetary compensated in lieu of mental agony/financial losses/continuous victimization/litigation cost due to action/inaction on the part of respondents. ”

2. In order to avoid subjecting the officers involved to any ignominy, this court is refraining from using the real names of those officers in this order.

3. The petitioner is employed with External Affairs Ministry Government of India, as a personal assistant, and is currently deployed in the office of the Under Secretary (East & Southern Africa). At the material time March/May 2016 - the petitioner was posted in the Investment & Trade Promotion & Energy Security Division as a Personal Assistant to Mr A, Under Secretary (ITP & ES/RP) and Mr B, Under Secretary (ITP&ES/AG). The petitioner claims that this was under instructions of the Head of the Division, (hereafter 'the HOD').

4. It is alleged that on 12.05.2016 at around 4.30 p.m., the petitioner had raised her voice in the office of her Principal and had shouted in the corridor. It is also alleged that certain instances of dereliction of duty and indiscipline on the part of the petitioner were noticed, which included being absent from duty during the office hours without written permission on 3rd, 4th & 5th, May, 2016 as well as being absent from the desk for long durations during working days. In this regard two memos dated 17.05.2016 and 19.05.2016 were issued to the petitioner.

5. On the receipt of the memos, the petitioner made a complaint to the HOD alleging harassment at the hands of Mr A as well Mr B. A plain reading of the opening passage of the said complaint indicates that it was sent in reference to the memos dated 17.05.2016 and 19.05.2016 issued to the petitioner. The petitioner claims that prior to the receipt of the said memos, she had made a verbal complaint to the HOD on 12.05.2016.

6. The petitioner was served another Memo on 21.10.2016 by the Director (CNV & I) & Chief Vigilance Officer (hereafter 'the CVO'), *inter alia*, indicating that inquiries had revealed that allegations of inappropriate behaviour, on the part of Mr A were false and the petitioner was asked to explain why she had made false allegations against the officer and why disciplinary action should not be taken against her. The petitioner responded to the same by reiterating that she stood by her allegations made in her complaint.

7. The complaints made by the petitioner dated 25.05.2016 were forwarded to the Complaint Committee on Sexual Harassment (hereafter CCSH). The Chairperson of the said Committee - who is also the Joint Secretary, (SCO), Government of India - sent a letter dated 06.09.2017 calling upon the petitioner to submit her written statement along with statement of witnessess, if any, to corroborate her allegations of sexual harassment made against Mr A. She also asked the petitioner to confirm that she desired to pursue her allegations against him.

8. The petitioner also received another memo dated 01.12.2016 calling upon her to provide explanation regarding (a) since when the rent is not being paid to her father; (b) reasons and circumstances under which rent to

her father has been stopped; and (c) who is the owner of the residence of her current residence.

8. The petitioner responded to the communication dated 06.09.2017 sent by CCSH confirming that she desired to pursue her complaint regarding the specific sexual harassment acts as mentioned in her complaint-cum-representation dated 25.05.2016.

9. Thereafter CCSH sent a letter dated 05.10.2017 calling upon the petitioner to present herself before the Committee on 13.10.2017 to corroborate her allegations of sexual harassment.

10. In the meanwhile the petitioner sent a representation dated 19.09.2017 to the Foreign Secretary reiterating her allegations made in the letter dated 25.05.2016. In addition she also made further allegations of being victimised after 25.05.2016 by various acts, which included (a) institution of disciplinary proceedings against her sister; (b) posting the petitioner where the estranged husband of the petitioner's sister was also working; (c) by not relieving her for a foreign posting; (d) by not forwarding the complaint to CCSH; (e) by issuing further memos including for making false complaint against Mr A etc. She also alleged that she was being pressurised to withdraw her complaint

11. The petitioner responded to the letter dated 05.10.2017 issued by CCSH by stating that she had made a representation to the Foreign Secretary. She further requested that her representation be decided by the Foreign Secretary or the ambit of the CCSH be enhanced in the light of her representation and till that time her statement not be recorded by the CCSH.

The petitioner also demanded that “if the sexual harassment committee wants to proceed in that circumstance the applicant be apprised in writing in the interest of natural justice”

12. The Chairperson, CCSH responded to the petitioner’s letter, by a letter dated 10.10.2017 informing her that the Committee (CCSH) is the nodal agency to inquire into complaints of sexual harassment in the Ministry as provided in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and that the CCSH would be conducting a preliminary investigation into the complaint. It was explained to the petitioner that the CCSH, at this stage, would not be performing the role of an Inquiring Authority but only acting as an authority for conducting preliminary investigations.

13. The petitioner appeared before the CCSH on 13.10.2017 and thereafter filed the present petition.

14. The petitioner alleges that Mr A, the HOD as well as CVO have all conspired together to victimise and harass the petitioner. She also alleges that Mr B, the other officer with whom the petitioner was deployed at the material time, was also harsh and disrespectful to her. The petitioner contends that Mr A has a “*clout in the Ministry of Foreign Affairs*” which is established by the conduct of the HOD and CVO.

15. The petitioner’s sister is also working with the Ministry of External Affairs and apparently there are some complaints against her conduct as well. Consequently, disciplinary proceedings have been initiated against her. According to the petitioner, those proceedings are also to victimise the petitioner and to presurise her. The petitioner alleges that Mr A’s clout also

extends to Mr C (the under secretary with whom the petitioner's sister is deployed).

16. The petitioner also alleges that the Chairperson of CCSH and Ms Aparna Bhatt (a lawyer and a member of CCSH) are also under "*the influence and clout*" of Mr A.

17. The petition is replete with allegations of bias against members of CCSH. The petitioner alleges that the preliminary investigation being conducted by them "*is only a mechanical exercise*" and a "*mere eyewash*".

18. Mr Chauhan, the learned counsel appearing for the petitioner had emphatically argued that the entire proceedings before CCSH were oppressive and the investigation being conducted by them was a farcical exercise. The petitioner has also made several allegations regarding the conduct of Ms Aparna Bhatt, the independent lawyer who is one of the members of the CCSH.

19. In the present petition, the petitioner has alleged that the "*bias and malice*" on the part of the CCSH was established as the members of CCSH were "*not warm and respectful*" towards petitioner; that the atmosphere at the meeting held on 13.10.2017 was "*not at all comfortable for the petitioner*" but on the contrary it was "*hostile and stressful*"; that the members of CCSH were not paying attention while the petitioner was giving her statement; that the members were in haste and were putting pressure on the petitioner to complete her statement while she was trying to narrate important incidents chronologically; that the members openly supported the CVO; that they interrupted petitioner when she was presenting her point of view. The petitioner also found the conduct of Ms Aparna Bhatt, (lawyer)

very rude, “*insulting and humiliating*”.

20. The proceedings of the meeting before CCSH held on 13.10.2017 were recorded. In view of the allegations of bias and malice, which the petitioner has so liberally made against CCSH, Mr Kanth learned counsel for the respondents was called upon by this Court to hear the recording of the proceedings the CCSH and respond to the petitioner’s allegations that the atmosphere at the meeting was so hostile, oppressive and uncomfortable that it smacked of bias and malice. The recording of the meeting was also made available to Mr Chauhan, learned counsel for the petitioner and he was also requested to hear the same and assist the Court. After hearing the recording, Mr Kanth submitted that the reecording of the meeting did not bear out the petitioner’s allegations; however, Mr Chauhan did not agree, he stated that he was unable to make out such from the recording.

21. In the above circumstances, I have heard the recording of the proceedings which are in two parts one spanning 1:50:33 minutes and the other spanning 2:21 minutes before CCSH. It is at once clear, that the petitioner’s allegation against the CCSH - the chairperson and Ms Bhatt in particular - are wholly bereft of any merit. On the contrary, the patience exhibited by the Chairperson at the meeting is comendable. During the first fourteen minutes, the petitioner was reluctant to even inform the CCSH about the facts of her complaint and repeatedly insisted on being informed about the procedure. This was informed to her by the Chairperson, CCSH by her letter dated 10.10.2017 yet the Chairperson repeatedly explained the same to her. It is plainly evident from the recording that the Chairperson, CCSH took all efforts to put the petitioner at ease and repeatedly informed

her of the nature of the meeting and almost cajoled her to state her facts. It is with much persuasion, that the petitioner commenced her narrative of her grievances (this is after about 15 minutes into the proceedings). Much contrary to the petitioner's allegations of hostile atmosphere, the petitioner was made most comfortable and the petitioner freely described the events and incidents alleged by her. The questions put to her were only to elicit facts of the incidents narrated by her and to confirm the chronology of events. Instead of stifling or curtailing the petitioner, the CCSH encouraged the petitioner to relate full facts in detail.

22. Having heard the recording of the meeting of the petitioner with CCSH, this court is in no doubt that the allegations of bias and malice made by the petitioner against CCSH is without any basis. The statement that the conduct of CCSH or any of its member was insulting and humiliating to the petitioner or that the atmosphere at the meeting was hostile is far from true. The allegations made by the petitioner in this petition against the CCSH are plainly incorrect and *prima facie* malicious and dishonest.

23. It has been alleged in the writ petition that "bias and pre-determination" on the part of CCSH is established as CCSH refused to acknowledge the definition of sexual harassment as laid down under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This contention is without any basis whatsoever.

24. The petitioner has alleged that CCSH was not permitting the petitioner to make any statements regarding events that had transpired after 12.05.2016 and members of CCSH were seeking to curtail the petitioner's narrative only to the events of 12.05.2016. This was also urged by Mr

Anand Grover, learned Senior Counsel who appears on behalf of the petitioner today. This contention is without any basis and the allegation that CCSH had restricted the petitioner from making any statement regarding events post 12.05.2016 or those that were not mentioned in her complaint dated 25.05.2016 is incorrect. The petitioner had, in fact, made an exhaustive statement before CCSH, which also covered the events and her grievances regarding her alleged victimisation after 12.05.2016. These grievances were noted by CCSH. Contrary to the allegation made by the petitioner, CCSH - Ms Bhatt and the Chairperson in particular - had encouraged the petitioner to narrate the events chronologically and exhaustively till her current deployment. It is most unfortunate that the petitioner has chosen to make allegations against CCSH in such wanton manner.

25. During the course of proceedings, Mr Anand Grover requested that the petitioner be permitted to withdraw the allegations against CCSH. This Court had no hesitation denying this request. The practice of callously making serious cannot be countenanced and must be deprecated. In the present case, the entire edifice of the petition rests on allegations of malice and bias on the part of CCSH and such allegations have been repeated multiple times. These allegations are clearly untrue; however, this Court is refraining from initiating any proceedings in this regard, although the same may be warranted.

26. At the present stage, the CCSH is only conducting a preliminary fact finding enquiry. The question of holding an inquiry may arise at a later stage. This Court has no reason whatsoever to believe that the CCSH will

not act as per law and/or not follow the relevant Office Orders.

27. The petition is bereft of merit and for the reasons stated above is dismissed with costs quantified at ₹10,000/-. The cost shall be paid to the Delhi High Court Legal Services Committee within a period of four weeks from today.

28. The pen drive containing the recording of the proceedings of 13.10.2017 before CCSH be kept in a sealed cover. The respondent would be at liberty to apply for return of the Pen Drive after a period of three months from today.

VIBHU BAKHRU, J

NOVEMBER 13, 2017

pkv