

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM :

The Hon'ble Mr.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE S.S.SUNDAR

W.P.No.12022 of 2018
and WMP.No.14006 of 2018

- 1.Union of India,
rep. by Superintendent of Post of Offices,
Srirangam Division,
Srirangam-620 006.
- 2.The Assistant Superintendent of Police Offices,
Srirangam Sub-Division,
Srirangam-620 006. ... Petitioners

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600 104.
- 2.A.Loganathan ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records of the first respondent and quash the order passed by the first respondent in O.A.No.310/1489/2013 vide Order dated 16.11.2016.

For Petitioners : Mr.C.V.Ramachandra Murthy

For Respondents : Mr.R.Malaichamy
for 2nd respondent
R1-Tribunal

ORDER

(Order of the Court was made by Huluvadi G.Ramesh,
Acting Chief Justice)

This writ petition has been filed by the petitioners seeking a writ of certiorari to call for the records dated 16.11.2016 made in O.A.No.310/1489/2013 on the file of the Central Administrative Tribunal, Madras Bench and to quash the same.

2. The case of the petitioners is as follows:

The second respondent joined as a Gramin Dak Devak Mail Delivered at Marudur Branch Office and he was also officiating as a Postman in various offices. When he was officiating as Postman in Srirangam Head Post Office, one Smt. Selvi, who was working as a Postal Assistant at Samayapuram Sub Post Office, lodged a sexual harassment complaint dated 7.2.2013 against the second respondent.

2.1. The Circle Complaint Committee on sexual harassment, conducted an enquiry and found guilty and recommended for taking suitable action against the second respondent. Based on the Committee's report, a show cause notice dated 14.6.2013 was issued to the second respondent. On receipt of the show cause notice, on 26.6.2013, the second respondent submitted a representation to the second petitioner.

2.2. Upon consideration of the representation of the second respondent and the other connected records, the second petitioner awarded punishment of removal from engagement with immediate effect from 5.7.2013 F.N.

2.3. Aggrieved by the order of the second petitioner, the second respondent preferred an appeal to the first petitioner on 17.7.2013 and by an order dated 08.10.2013, the Appellate Authority rejected the appeal preferred by the second respondent holding that there was no ground to interfere with the action of the Disciplinary Authority .

2.4. Aggrieved by the order dated 8.10.2013, the second respondent filed O.A.No.1489 of 2013 before the Central Administrative Tribunal.

2.5. By an order dated 16.11.2016, the Central Administrative Tribunal allowed the application thereby setting aside the order imposing penalty of removal from GDS engagement dated 5.7.2013 of the Disciplinary Authority , which was confirmed by the Appellate Authority. The Central Administrative Tribunal directed to conduct inquiry from the stage of

preliminary inquiry and furnish all documents and list of witnesses to be examined and afford the second respondent an opportunity to defend his case. Aggrieved by the same, the petitioners have filed this writ petition.

3. Resisting the writ petition, the second respondent filed counter stating that department has failed to follow the provisions in conducting the inquiry against him and in fact, the second respondent was denied with supplying of copies of documents. It is stated that the second respondent was not given an opportunity to submit his written statement of defence against the charge sheet and he was deprived from the chance of getting reasonable opportunity to defend the case by way of engaging defence Assistant on his behalf as per Article 311(2) of the Constitution of India. It is also stated that the Central Administrative Tribunal after hearing the parties, remanded the application back to the Disciplinary Authority with a direction to conduct inquiry from the stage of preliminary inquiry report and furnish all documents to the second respondent and also give full opportunity to defend his case. When the second respondent issued lawyer's notice dated 14.6.2017 stating that since he was nearing retirement age and to expedite the inquiry, the petitioners replied that they intend to file the writ petition against the order passed in O.A.No.1489 of 2013.

4. Heard Mr.C.V.Ramachandra Murthy, learned counsel appearing for the petitioners and Mr.R.Malaichamy, learned counsel appearing for the second respondent and also perused the materials available on record.

5. It appears that when the second respondent was working as Postman, one Smt.Selvi, Postal Assistant, lodged a complaint against him and inquiry had been ordered as per the Prevention of Sexual Harassment of Women Employees at Work Place Act. In the inquiry, nine witnesses were examined and a copy of the enquiry report was furnished to the second respondent.

6. The grievance of the second respondent is that when the department found that allegations were proved in the preliminary enquiry, it ought to have taken steps for conducting a regular enquiry. But the department had failed to conduct regular enquiry by giving an opportunity to the second respondent and only based on the report of the Committee, the second respondent was imposed with the punishment.

7. Finding that the Disciplinary Authority as well as the Appellate Authority have failed to follow the guidelines qua conduction of enquiry in the case of allegation of sexual harassment, the Central Administrative Tribunal set aside the

order of the Disciplinary Authority as well as the Appellate Authority and remitted the matter back to the Disciplinary Authority to conduct inquiry from the stage of preliminary inquiry report. The order of the Central Administrative Tribunal impugned in this writ petition reads thus:

"6. We find force in the contention of the applicant. The steps to be followed for conducting inquiry in case of allegation of sexual harassment are laid down in O.M. F.No.11013/2/2014-Esst (A-III) of DOP & T dated 16.7.2016 which clearly stipulates that such inquiry shall be held as far as possible in accordance with the procedure for Rule 14 inquiry. Further as per DGP&T letter No.151/4/77-Disc-II, dated 16.11.1980 it is 'desirable' that enquiries against ED Agents follow Rule 14 of CCS (CCA) Rules. No reasons are found recorded to deny the applicant his right to cross examination of witnesses, therefore, the orders of the disciplinary authority and appellate authority are liable to be set aside and the same are set aside accordingly and the matter is remanded back to the disciplinary authority to conduct the inquiry from the stage of preliminary inquiry report and furnish him all the documents and list the witnesses to be examined and give him full opportunity to defend his case and, thereafter, pass orders as per the procedure known to the law. The exercise should be completed as expeditiously as preferably within two months from the date of receipt of copy of this order. The O.A. is accordingly disposed of. There shall be no order as to costs."

8. The order of the Disciplinary Authority, which was confirmed by the Appellate Authority were set aside by the Central Administrative Tribunal mainly on the ground that the petitioners have failed to follow the procedure/guidelines laid down in O.M. F.No.11013/2/2014-Esst (A-III) of DOP & T, dated 16.7.2016 in the case of allegation of sexual harassment.

9. It is pertinent to note that nothing has been produced to show that only as per the guidelines laid down in O.M. F.No.11013/2/2014-Esst (A-III) of DOP & T, dated 16.7.2016 and the provisions contained in Sub-Rule 2 of Rule 14 of CCS (CCA) Rules, 1965, the petitioners have conducted the inquiry. Therefore, the Central Administrative Tribunal was right in setting aside the order of the Disciplinary Authority as well as the Appellate Authority and remitted the matter back to the Disciplinary Authority with a direction to conduct the inquiry from the stage of preliminary inquiry report and furnish him all

the documents. We do not find any illegality in the order of the Central Administrative Tribunal and moreover, there is no scope for our interference in the order of the Central Administrative Tribunal and the writ petition is liable to be dismissed.

10. The writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.No.14006 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
High Court Complex,
Chennai - 104.

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.54642
+1cc to Mr.R.Malaichamy, Advocate, S.R.No.54995

W.P.No.12022 of 2018

cs/05/09/18

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