

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.11.2019

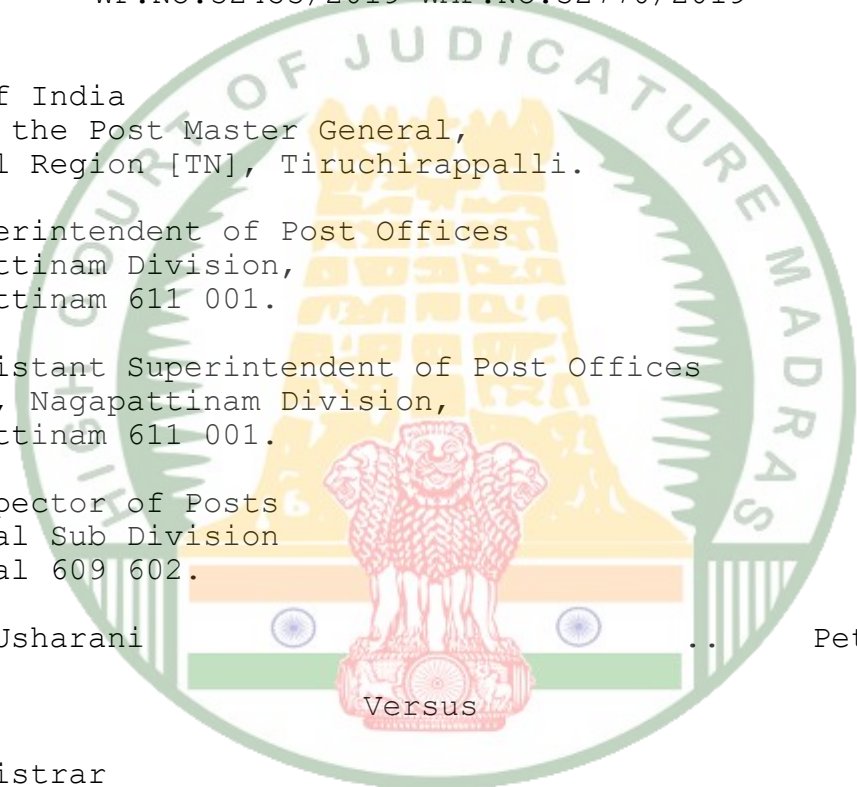
CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.32453/2019 WMP.No.32770/2019

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- 1.Union of India
rep.by the Post Master General,
Central Region [TN], Tiruchirappalli.
- 2.The Superintendent of Post Offices
Nagapattinam Division,
Nagapattinam 611 001.
- 3.The Assistant Superintendent of Post Offices
[Hqrs], Nagapattinam Division,
Nagapattinam 611 001.
- 4.The Inspector of Posts
Karaikal Sub Division
Karaikal 609 602.
- 5.Smt. R.Usharani ... Petitioners
- Versus
- 1.The Registrar
Central Administrative Tribunal
Chennai 600 104.
- 2.Mr.T.Bagavathy .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent and quash the order passed by the 1st respondent in OA.No.810/2014 dated 30.10.2018.

For Petitioner : Mr.C.V.Ramachandramurthy

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

- (1) The official respondents in the Original Application No.810/2014 are the writ petitioners herein.
- (2) The 2nd respondent herein / Original Applicant was working as 'Gramin Dak Sevak- Mail Deliverer - Mail Carrier' at Kurungulam Branch Office. While working in that capacity, he was issued a Memorandum dated 19.02.2013 proposing to impose penalty under Rule 10 of the GDS [Conduct and Engagement] Rules 2011, on the ground that as per the Enquiry Report of the Circle Complaints Committee of Prevention of Sexual Harassment of Women Employees at Work Place, he used filthy words and harassment against the 5th petitioner herein / complainant. The contents of the said Memorandum also reads that the Disciplinary Authority has decided that the Report of the Circle Complaints Committee [in short 'CCC'] is taken as the Enquiry Report and recommendation was made to initiate suitable Departmental action and the recommendation of the said Committee to initiate suitable Departmental action has no relevance at this stage since as per the provisions of Rule 10 of the Conduct and Engagement Rules, 2011, the Complaints Committee is deemed to be the Enquiring Authority for the purpose of the Rules and the Report of the said CCC deemed to be the Enquiry Report. Accordingly, the said Enquiry Report was furnished to the 2nd respondent herein / Original Applicant and he was called upon to offer his explanation as to the imposition of the penalty.
- (3) The 2nd respondent herein / Original Applicant has submitted his response challenging the legality and validity of the conducting of the enquiry and has also drawn the attention to Rule 14 of CCS [CCA] Rules, 1965 and as such, the disciplinary action taken based on the Enquiry Report of CCC would be detrimental of law of natural justice.
- (4) The 2nd petitioner herein/the 2nd respondent in the Original Application, had taken into consideration, the representations dated 27.02.2013 and 16.03.2013 submitted by the 2nd respondent herein / Original Applicant as well as the connected records and ordered removal of service of the 2nd respondent herein / Original Applicant with immediate effect.
- (5) The 2nd respondent herein / Original Applicant filed an Appeal before the Appellate Authority and the Appellate Authority has also dismissed the said Appeal and thereby, confirmed the punishment imposed on him. The 2nd respondent herein / Original Applicant filed a revision before the Revisional Authority / 1st petitioner herein and the Revisional Authority / 1st petitioner also confirmed the order of punishment imposed by the Disciplinary Authority, confirmed by the Appellate Authority. The 2nd respondent herein / Original Applicant, challenging the legality of the said orders, filed OA.No.810/2014 before the 1st respondent /

Tribunal.

- (6) The 1st respondent / Tribunal, after taking into consideration, the materials and the arguments advanced, in paragraph 6 of the impugned order, had found that 14 witnesses were examined by CCC and however, there is absolutely no mention regarding the presence of the delinquent official when the witnesses were examined and there is absolutely no record to show that the Original Applicant was afforded with an opportunity to cross examine them. The 1st respondent / Tribunal has also taken into consideration, the steps to be followed for conducting enquiry in case of allegation of sexual harassment laid down in OMF.No.11013/2/2104-Estt [A-III] dated 16.07.2016 and found that the enquiry conducted by CCC against the 2nd respondent herein / Original Applicant has seriously prejudiced his defence and therefore, set aside the order of punishment passed by the Disciplinary Authority, as affirmed by the Appellate Authority and the Revisional Authority and remanded the matter to the Disciplinary Authority for providing the 2nd respondent herein / Original Applicant, an opportunity to cross examine the witnesses and take a decision in accordance with law and challenging the legality of the said impugned order dated 30.10.2018, the official respondents in the Original Application, had filed the present writ petition.
- (7) Mr.C.V.Ramachandramurthy, learned counsel appearing for the petitioners / official respondents would have drawn the attention of this Court to the impugned order and would submit that the proceedings commenced during the year 2012 and the Tribunal has placed reliance upon the steps to be followed for conducting enquiry in the case of allegation of sexual harassment dated 16.07.2016, which is having a prospective effect and the same cannot be made applicable in respect of the proceedings which commenced in the year 2012 and hence prays for interference. The learned counsel, during the course of arguments has also drawn the attention of this Court to the Office Memorandum of the Department of Personnel and Training dated 07.08.2019 in OMF.No.11013/3/2019 Estt. [A].
- (8) This Court has carefully considered the arguments advanced by the learned counsel for the petitioners and also perused the materials placed before it.
- (9) It is relevant to extract the provisions of Rule 14[2] of the Central Civil Services [Classification, Control and Appeal] Rules, 1965:-

'' 14[2] Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or

under the provisions of the Public Servants [Inquiries] Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3C 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 harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

- (10) The proviso to Rule 14 of CCS [CCA] Rules, 1965, contemplates among other things that if separate procedure has not been prescribed for the Complaints Committee which go into the sexual harassment complaint, for holding enquiry into such complaints, the enquiry as far as practicable in accordance with the procedure laid down in these rules.
- (11) Part VI of CCS [CCA] Rules, 1965, deals with the procedure for imposing penalties and Rule 14 speaks about the procedure for major penalties.
- (12) A perusal of the Enquiry Report which is available at page No.22 of the typed set of documents, would disclose that with regard to the complaint given by the 5th petitioner herein, the 2nd respondent herein / Original Applicant was not at all put on notice and that apart, the witnesses were examined in his absence. A further perusal of the said Report would also disclose that even as per the statement of the 5th petitioner herein / complainant, she knows the 2nd respondent herein / Original Applicant for 15 years and that she has no problem with him; but he had acted in collusion with one Mr. Panneerselvam, Senior Postmaster and even against the main delinquent, her complaint was that he did not indulge in any other form of harassment except verbally abusing her
- (13) A copy of the Enquiry Report was furnished to the 2nd respondent herein / Original Applicant and in his representation / response to the Enquiry Report, the 2nd respondent herein / Original Applicant took a stand that the copy of the complaint letter and other connected documents were not supplied to him for perusal before facing enquiry and no opportunity for cross examination of the witnesses was accorded to him and despite taking such a stand, the

Disciplinary Authority did not deal with the said ground at all and thought fit to impose punishment of removal from service. Even before the Appellate Authority as well as before the Revisional Authority, the 2nd respondent herein / Original Applicant took the very same stand and once again, it was not dealt with and rather curiously, both the Appellate Authority and the Revisional Authority had erred in misconstruing that an enquiry into the allegation of sexual harassment in a work place by a co-employee, need not follow the principles of natural justice ; whereas the proviso to section 14 does not provide anything such as that.

(14) The 1st petitioner / Revisional Authority in the impugned order dated 07.05.2014, in paragraph No.4, observed as follows:-

'4 As per the provisions contained in Rule 14[2] [inserted vide G.I.Department Per. & Trg., Notification NO.11012/5/2001-Est.[A] dated 1st July , 2004], of CCS [CCA] Rules, 1965 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 of 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 the enquiry. As such, there is no provision of issue of charge sheet, permission of defence assistant, cross examination of witnesses by the charged official, supply of documents, Inquiry proceedings of departmental officials are also applicable to GDS officials, hence this Committee's report is taken as Inquiry Report.'

(15) These materials placed before this Court would indicate that no opportunity whatsoever, has been afforded to the 2nd respondent / Original Applicant / delinquent and there is an utter and flagrant violation of principles of natural justice. It is also well settled position of law that unless there is a specific provision as to the exclusion of the applicability of the principles of natural justice, it should be strictly adhered to and the proviso to Rule 14 also contemplates the same.

(16) No doubt, the applicability of 2016 Guidelines have no application to the case on hand and however, the Tribunal in paragraph No.6 of the impugned order has also gave a finding as to the non presence of the delinquent officer when the witnesses were examined and also non affording of

opportunity to the delinquent to cross examined the concerned witnesses and had rightly reached the conclusion that the impugned order of removal from service passed against the 2nd respondent / Original Applicant by the Disciplinary Authority as confirmed by the Appellate Authority and the Revisional Authority warrant interference and remanded the matter to the Disciplinary Authority for fresh consideration and adjudication.

(17) This Court, on an independent application of mind to the entire materials and also in the light of the reasons assigned above, is of the considered view that there is no error apparent or infirmity or illegality in the reasons assigned by the 1st respondent / Tribunal and finds no merits in the writ petition.

(18) In the result, the writ petition stands dismissed at the admission stage itself confirming the order impugned herein, passed by the Tribunal/1st respondent dated 30.10.2018 in OA.No.810/2014. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Post Master General, Union of India,
Central Region [TN], Tiruchirappalli.
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- 4.The Inspector of Posts
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Karaikal 609 602.

+1cc to Mr.C.V.Ramachandramurthy, Advocate, SR.96436

WP.No.32453/2019

PA (CO)

CB(02/01/2020)