

CWP No.17129 of 2020

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(PROCEEDINGS THROUGH V.C.)

CWP No.17129 of 2020

Date of Decision: October 15th , 2020

Rajinder Kumar Dawra

...Petitioner

Versus

Central Administrative Tribunal, Chandigarh & others

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. P.S. Dhaliwal, Advocate,
for the petitioner.

Ms. Puneeta Sethi, Sr. Standing Counsel for UOI.

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court by way of the present writ petition challenging the order dated 24.08.2020 (Annexure P-20) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'Tribunal'), vide which the original application filed by him has been dismissed for quashing the enquiry report dated 14.08.2018 (Annexure P-11), the advise para of the Union Public Service Commission (hereinafter referred to as 'UPSC') forwarded vide memorandum dated 19.11.2019 (Annexure P-14), whereby the petitioner has been found guilty and punishment of reversion to the next lower post on permanent basis has been proposed and order dated 11.03.2020 (Annexure P-16), whereby the Disciplinary Authority has accepted the advise of UPSC

and imposed the punishment of reversion to the next lower post on permanent basis. Further challenge has been posed to the order dated 25.10.2016 (Annexure P-5) passed by the Tribunal, whereby the original application filed by the petitioner against the charge memo dated 01.07.2013/05.06.2013 and notice dated 20.05.2014 was dismissed and order dated dated 14.03.2017 (Annexure P-5/A) passed by the Tribunal dismissing the review application of the petitioner.

2. Petitioner asserts that he had been working with the respondent department since 22.06.1987. On 08.06.2010, petitioner was transferred from Punjab Telecommunication Circle, BSNL Amritsar to Haryana Telecommunication Circle, BSNL Ambala, vide Circle Office New Delhi letter dated 08.06.2010 as General Manager (EB) in place of Mr. M.N. Upadhyay. On reaching Ambala Circle office to join his new place of posting, he was impressed upon by the then CGMT Haryana to join at Yamuna Nagar. Petitioner did not agree to the same and therefore, he was adjusted as General Manager (Infrastructure) by creating a new post. Refusal of the petitioner to go to Yamuna Nagar was not taken in the right spirit and a grudge was nurtured.

3. One Ms. Nupur, JTO (Infrastructure) joined at Ambala on 09.08.2010. Since she was not observing office timings properly, she was asked by the petitioner to be punctual. On the instigation of the Association/Union, she lodged a false complaint against him on 11.08.2010 (Annexure P-2) to the CGMT Circle Office, Ambala, alleging misbehaviour with her by the petitioner on two-three occasions, demanding suitable action on the same. The matter was referred to the Sexual Harassment Committee

of BSNL, Haryana Circle Office, Ambala, which was headed by Mrs. Anita Manchanda. The Sexual Harassment Committee submitted its report on 11.08.2020 (Annexure P-3) unanimously concluding that the petitioner had committed the offence as alleged by Ms. Nupur and also mentioned that all the facts seemed to be true. The Committee recommended suspension of the petitioner and suitable disciplinary action to be taken as per rules. Recommendation was also made that the petitioner be transferred from Haryana Circle. Accordingly, petitioner was placed under suspension on 11.08.2010 by the General Manager (BSNL), Ambala Circle.

4. The order of suspension, on challenge by the petitioner, was quashed by the Central Administrative Tribunal, Chandigarh, vide judgment dated 20.10.2010 leading to his reinstatement and posting as General Manager (SAG), Patna, where he joined on 15.02.2011. Petitioner asserts that the report dated 11.08.2010 (Annexure P-3) be treated as enquiry report under Rule 14 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as '1965 Rules') and action was to be taken as per Rule 15 thereof by the Disciplinary Authority but the Director (VA), Sr. DDG (Vigilance)-cum-CVO proceeded to form a fresh Sexual Harassment Committee at BSNL Corporate Office, for which there is no provision under the rules and directed an enquiry to be conducted into the same complaint against the petitioner. This 2nd Sexual Harassment Committee gave its report on 26.10.2010 (Annexure P-4). The conclusions, according to the said report, were that the allegations levelled by Ms. Nupur appears to be true and appropriate action against the petitioner as per the CCS (CCA) Conduct Rules 1964, recommended.

5. Reference has been made to an FIR, which was registered by the Employees Union against the petitioner, regarding the incident alleged against the petitioner, in which Untraced Report was submitted by the police to the Area Magistrate, Ambala, which stood accepted. The said order was challenged by the Secretary of the Union by filing CRM-M-7503-2011 in the Punjab and Haryana High Court, which, on the statement of Ms. Nupur, on 21.02.2012 before the Court that she does not want to pursue the case lead to the withdrawal of the said petition with liberty to take alternative recourse available as per law.

6. On 01.07.2013/05.06.2013, the Director (VA), as Disciplinary Authority, issued a charge-sheet to the petitioner with the allegation that he has indulged in an act of sexual harassment of a working woman at her work place in violation of Rule 3-C of CCS (Conduct) Rules, 1964 and acting in a manner unbecoming of government servant contravening provisions of Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964 and Government of India decision 23 (4) and (5) below Rule 3 of CCS (Conduct) Rules, 1964. Petitioner filed objections against the charge-sheet but the proceedings continued against him. He made various representations but the same were all ignored. Statement of Ms. Nupur was taken on 16.05.2014 at his back. Based upon the above enquiry, fresh statement of charges was served on 20.05.2014 (Annexure P-7) on the petitioner and he was called upon to appear before the Sexual Harassment Committee at Sanchar Bhawan, New Delhi on 23.05.2014. He submitted a representation on 22.05.2014 to the Chairperson seeking clarification as to which charge-sheet was being pursued against him. Various representation thereafter was

also submitted but to no avail.

7. The matter proceeded with formation of 3rd Sexual Harassment Committee by the respondents in violation of Rule 14 and 15 of the 1965 Rules to enquire into the charges levelled against the petitioner. Petitioner challenged the formation of the 3rd Sexual Harassment Committee by filing OA No.060/00700/2015 before the Central Administrative Tribunal, Chandigarh, for setting aside the charge memorandum dated 05.06.2013 and notice dated 20.05.2014. The said challenge on the part of the petitioner failed as the Tribunal dismissed the application vide order dated 25.10.2016 (Annexure P-5). The Review Application preferred by the petitioner also stood dismissed on 14.03.2017 (Annexure P-5A).

8. The 3rd Sexual Harassment Committee conducted the proceedings and gave its report on 14.08.2018, which was received on 17.09.2018 (Annexure P-11). Charge against the petitioner was proved and in response thereto, petitioner submitted a representation dated 16.10.2018 (Annexure P-12) taking the plea that the enquiry proceedings were illegally initiated and are unsustainable in the eyes of law. Petitioner, thereafter, received a communication dated 26.11.2019, which was dated 19.11.2019 (Annexure P-14), whereby the UPSC has proposed a punishment of reversion to the next lower post on permanent basis. Representation dated 03.01.2020 (Annexure P-15) was submitted by the petitioner putting forth the factual and legal submissions but the same were ignored and recommendations of UPSC were accepted overlooking the submissions of the petitioner and order dated 11.03.2020 (Annexure P-16) was passed imposing the proposed punishment reverting the petitioner to the next lower

post on permanent basis. These orders were assailed by the petitioner by filing OA No.060/00286/CH/2020, which has been dismissed by the Central Administrative Tribunal, Chandigarh, on 24.08.2020 (Annexure P-20), which stands challenged in this Court.

9. Learned counsel for the petitioner has put forth his submissions by asserting that once the Sexual Harassment Committee has submitted its report dated 11.08.2010 (Annexure P-3), the same was required to be treated as an enquiry report under Rule 14 (2) of the 1965 Rules and thereafter, the Disciplinary Authority was required to proceed in accordance with the Rule 15 of the said Rules. The holding of enquiries by the 2nd Sexual Harassment Committee and thereafter, 3rd Sexual Harassment Committee being violative of the statutory rules cannot sustain. One after the other enquiries on the same charges are not maintainable. Assertion has also been made that the *ex parte* enquiry which was conducted against the petitioner and the report dated 14.08.2018 (Annexure P-11) as submitted proving the charges levelled against the petitioner is unsustainable as the same is in violation of the principles of nature justice especially when his representations which he had submitted, had not been considered. Counsel has vehemently pressed into service the order dated 21.02.2012 passed by this Court in CRM-M-7503-2011, preferred by M.S. Kadian, the Secretary of the Employees Union, challenging the Untrace Report, which has been filed by the Investigating Agency in a criminal case, which was got registered on behalf of the Employees Union and the same was accepted by the Area Magistrate. What has been emphasized upon by the learned counsel for the petitioner is that the alleged victim had come present in Court and stated that she does

not want to pursue with the complaint. His contention is that had the complaint been truthful, she would have contested the Untraced Report and would not have made such a statement before the Court. Assertion has, thus, been made that the false allegations have been levelled against the petitioner at the behest of the Union and no such incident, much less sexual harassment, had taken place with the lady official of the Department. It is, therefore, asserted that the charge-sheet, which was issued to the petitioner at the very inception as also the subsequent proceedings arising therefrom deserve to be set aside including the order dated 25.10.2016 (Annexure P-5) passed by the Tribunal dismissing his Original Application challenging the charge-sheet dated 05.06.2013 and notice dated 20.05.2014 as also the order dated 14.03.2017 (Annexure P-5A) dismissing the review application apart from subsequent enquiry report dated 14.08.2018 (Annexure P-11), recommendation/advise of the UPSC as communicated on 19.11.2019 (Annexure P-14) and the order of punishment dated 11.03.2020 (Annexure P-16) reverting the petitioner to the next lower post on permanent basis.

10. On considering the submissions which have been made by the learned counsel for the petitioner and going through the pleadings including the impugned order dated 24.08.2020 (Annexure P-20) passed by the Tribunal, we do not find any ground to agree with the contentions of the learned counsel for the petitioner.

11. The primary effort on the part of the petitioner was to take benefit of the order dated 21.02.2012 (Annexure P-6) passed by this Court in CRM-M-7503-2011. A perusal of the same would show that it was a criminal case which was registered against the petitioner, where a

cancellation report has been submitted which was challenged before this Court, wherein Ms. Nupur was called in person by the Court on 21.02.2012, who stated that she does not want to pursue the said case. Nothing has been mentioned in the said order dated 21.02.2012 (Annexure P-6), which would indicate that she had made a statement that no incident, as complained by her, had taken place or that the allegations in the complaint were false. Merely because the victim has come forth and stated that she does not want to pursue the case, does not mean that the incident had not taken place. In any case, criminal proceedings and departmental proceedings fall in two different platforms cannot be equated as has been held by various judgments passed by this Court as well as by the Hon'ble Supreme Court. The law is settled in this regard and therefore, the benefit as is being sought to be taken by the petitioner of the order dated 21.02.2012 (Annexure P-6) is totally misplaced. Despite the criminal proceedings having come to an end, disciplinary proceedings can still go on against a delinquent employee.

12. Now coming to the aspect with regard to treating the report dated 11.08.2010 (Annexure P-3), as submitted by the 1st Sexual Harassment Committee on the basis of the complaint dated 11.08.2010 (Annexure P-2) of Ms. Nupur, under Rule 14 (2) of the 1965 Rules and proceeding under Section 15 of the said Rules, suffice it to say that the said aspect along with subsequent Sexual Harassment Committees constituted and the report submitted thereon leading to the issuance of the charge-sheet dated 05.06.2013, was challenged by the petitioner in OA No.060/00700/2015 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, which was dismissed on 25.10.2016 (Annexure P-5), it

would not be open to the petitioner to challenge the same as the said order has attained finality after the dismissal of the review application preferred by the petitioner on 14.03.2017 (Annexure P-5A). The operative part of the order dated 25.10.2016 (Annexure P-5) reads as follows:-

14. We have carefully considered the matter and perused the documents annexed with the OA as well as the rejoinder. It is clear from the record that an initial inquiry was held by the Sexual Harassment Committee at Ambala and since the Chairperson of this Committee was far junior than the applicant, the BSNL had directed that the matter be inquired into through a High Level Committee headed by a DDG. The applicant did not appear for the initial hearings and even when he did appear, he went into unrelated matters and did not make an effort to defend himself except to allege that the allegations had been made by Ms. Nupur at the instigation of the Union. This report (Annexure A-13) was submitted by the HLC in October, 2010. Thereafter, the applicant filed his representation dated 03.06.2011 that he had not been given adequate opportunity by the HLC to defend himself, the statement of witnesses were recorded behind his back, and he was not able to cross-examine the witnesses. In the light of the submissions, finally a decision was taken after obtaining the advice of the DOPT that the Inquiry Committee would proceed as per Rule 14 of CCS (CCA) Rules, 1965 and this inquiry is at present going on. Although representation dated 03.06.2011 is not on the record, applicant has not denied submission of this representation.

15. If the applicant had wanted that the report of the HLC should be treated as final, there was no reason for him to submit the representation dated 03.06.2011 alleging

infirmities in the report. After he had raised this issue, the BSNL and DOT handled the matter appropriately and after obtaining the advice of the DOPT, directed that proceedings be carried out in the case of the charge sheet related to the applicant under Rule 14 of the CCS(CCA) Rules, 1965.

16. Even when the hearing was going on in this OA, learned counsel for the applicant was asked as to whether he wished that in view of the findings of the HLC, the applicant be imposed appropriate penalty directly, but the learned counsel did not even want this option to be exercised. Therefore, this appears to be a case where the applicant wants to have his cake and eat it too. On the one hand, he has alleged that in the proceedings before the HLC, he was not allowed adequate opportunity to defend himself and now that he has been afforded such opportunity through proceedings being taken up under Rule 14 of the CCS(CCA) Rules, 1965, he is impugning the relevant orders, perhaps with the idea that if reliance is placed on the HLC report and punishment imposed on him in view of the findings of the HLC report dated 26.10.2010, he could at a later stage, again challenge the HLC report which would form the basis of such penalty on the plea that he had not been given adequate opportunity to defend himself.

17. Impugned notice dated 20.05.2014 (Annexure A-2) does not appear to have been issued in continuation of the impugned charge sheet of 05.06.2013. Besides, in view of the categorical statement of the learned counsel for the respondents in this regard, it is presumed that no action will be taken against the applicant regarding this notice. The issues raised in the OA regarding reference to the order of the Hon'ble High Court dated 21.02.2012 and written statement not being filed by competent

officer are rejected outright. The Hon'ble High Court had allowed the applicant in the CRM to withdraw the petition with permission to take alternative recourse available as per law.

18. In view of the discussion above, we do not consider it necessary to interfere with the impugned charge sheet memo dated 01.07.2013/05.06.2013 (Annexure A-1) It is in the interest of the applicant to face the inquiry proceedings and take the opportunity available to him under Rule 14 of the CCS (CCA) Rules to defend himself. The OA is hence dismissed. No costs.”

13. The challenge, therefore, to these aspects would not be open to the petitioner in the present proceedings especially when the same has been now sought to be challenged by him in the present petition after a delay of more than three years and that too, after the said judgment/order has been given effect to, which was duly accepted by the petitioner and has not agitated against the same earlier. In any case, we agree with the above order dated 25.10.2016 of the Tribunal.

14. As regards the subsequent proceedings which have been held against the petitioner, suffice it to say that it was the petitioner who himself did not participate in the enquiry proceedings and after the dismissal of his Original Application (OA), which order has been accepted by him especially after the dismissal of the review application, it does not lie in the mouth of the petitioner to assert that the principles of nature justice have been violated or that the statutory rules have not been followed. All the pleas, which are being sought to be taken again, stood considered and decided by the Tribunal while passing the order dated 25.10.2016

(Annexure P-5).

15. This Court is of the view that the order which has been passed by the Tribunal, dated 24.08.2020 (Annexure P-20) deals with each and every aspect as has been raised by the counsel for the petitioner in details. The Tribunal had gone into the assertions and has responded and replied to all the pleas in the facts and circumstances of the case. The Tribunal has also proceeded to go through the enquiry report leading to the acceptance thereof by the Disciplinary Authority with the consequential order of punishment, where it has been found that the same is in accordance with law as no statutory rule/instructions/regulations have been violated. There is ample material disclosed and enough evidence on the file/records to indicate that the charges against the petitioner stood proved. It is not a case of no evidence or where there has been violation of any statutory provision nor has it been found by the Tribunal that there has been any prejudice caused to the petitioner in any manner in the procedure and the proceedings which have been held by the Department against the petitioner. We also have found that there is no reason as to why this Court should exercise its extraordinary jurisdiction in the present case.

16. Finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

October 15th , 2020
Harish

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No