

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

% **Date of decision: 23rd March, 2021.**

+ **W.P.(C) 5565/2020, CM APPL.20098/2020 (for ad-interim stay) and CM APPL.20101/2020 (for condonation of delay in filing writ petition).**

UNION OF INDIA & ORS. Petitioners

Through: Mrs. Bharathi Raju, CGSC

versus

MANOJ KUMAR BARANWAL Respondents

Through: Mr. M.K. Bhardwaj, Advocate

AND

+ **W.P.(C) 7699/2020**

MANOJ KUMAR BARANWAL Petitioner

Through: Mr. M.K. Bhardwaj, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Satyendra Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

1. Both, the employee Manoj Kumar Baranwal and the employer Ministry of Defence, Government of India, are aggrieved from the order dated 30th January, 2020 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No.4630/2018 preferred by the employee.

2. W.P.(C) No.5565/2020 preferred by the employer came up first for hearing on 24th August, 2020, when notice thereof was ordered to be

issued. W.P.(C) No.7699/2020 preferred by the employee came up first before this Court, only on 8th October, 2020 and thereafter on 14th October, 2020, when notice thereof also was ordered to be issued.

3. The Disciplinary Authority (DA) of the employer, vide order dated 10th May, 2018, imposed punishment of dismissal from service on the employee and which punishment was confirmed in the departmental appeal and in the departmental revision petition preferred by the employee. Aggrieved therefrom, the employee preferred O.A. No.4630/2018 aforesaid. Vide the order impugned by both employer as well as employee, CAT has modified the order of dismissal from service, to one of “reduction in rank to a lower stage, i.e. to the post of Assistant, to be in force for a period of two years, from the date of order of punishment” and has further held the employee to be not entitled to any increment during the period of punishment and directed reinstatement of the employee.

4. We have heard the counsels.

5. CAT, in the impugned order has recorded, that (i) the employee joined the service of the Armed Forces, Headquarter (Civil Services) as an Assistant; (ii) by the year 2017, he was holding the post of Section Officer; (iii) he was issued a Charge Memorandum dated 12th September, 2017, alleging that he, on 1st March, 2017, sent an objectionable video and message to one of the women employees of the Organisation; (iv) the employee submitted an explanation, mostly in the form of tendering apology and seeking pardon; (v) not satisfied with the explanation, the DA appointed the Inquiry Officer (IO); (vi) the IO, in the report dated 5th

March, 2018 held the articles of charge framed against the employee as 'proved'; (vii) the DA, vide order dated 10th May, 2018 imposed punishment of dismissal from service on the employee and which punishment was confirmed on 29th May, 2018 in departmental appeal and on 13th February, 2019 in the departmental revision; (viii) it was the case of the employee that he got the subject video as well as the message on his mobile phone from some other person and though he made an attempt to delete the same, it did not materialise; the mobile phone was handled by his minor daughter and inadvertently the video and the message was passed on to as many as eleven persons, including to the woman employee of the organisation; on next day i.e. 2nd March, 2017 itself, when the issue was brought to his notice, he tendered unconditional apology but despite that disciplinary proceedings were initiated; the punishment of dismissal from service, for an inadvertent mistake was highly disproportionate and would deprive him and his family of survival and livelihood; and, (ix) on the contrary it was the case of the employer, that the allegation against the employee was serious in nature and stood proved on the basis of oral and documentary evidence and the employee also was not disputing the act of misconduct.

6. CAT, as aforesaid, has reduced the punishment from that of dismissal from service to that of reduction in rank, reasoning that (i) the employee, by the year 2017, had completed 19 years of service; (ii) the subject message and video were forwarded from his phone at about 2235 hrs.; (iii) the explanation of the employee was plausible; (iv) the employee, at the very first opportunity had expressed regret and tendered apology; (v) the employee did not offer any justification for his conduct

and had tendered apology at all stages; (vi) in these days of uncontrolled and almost unregulated information technology, one hardly knows the source of the messages or objectionable content; while those who are fully acquainted with the technology, know how to prevent and avoid such messages, others become vulnerable and victims thereof; half baked knowledge and lack of proper information about consequences in the context of handling phones had landed the employee into trouble; (vii) the record of the employee, till the issuance of the subject charge memo, was free from blemish; (viii) there was nothing to indicate that the employee had any ill will or bad intention towards the woman employee and it was incidental that she happened to be one of the eleven persons to whom the message got sent; (ix) the conduct of the employee, as soon as the issue was brought to his notice, revealed that he was apologetic from the beginning and did not even make an attempt to justify what had happened; (x) one could not downplay the effect of the message and the content of the video but at the same time there was nothing to indicate that the employee had either deceived or resorted to any acts or omissions vis-à-vis the said woman employee; (xi) though the inquiry was held strictly in accordance with law and no illegality could be found therein but the issue was, proportionality of the punishment imposed; (xii) the livelihood of the employee and his family could not be ignored; and, (xiii) the ends of justice would be met if the punishment was modified.

7. The counsel for the employer, before us, has argued that (i) the employee has challenged the order of CAT as an afterthought; (ii) on receipt of complaint of sexual harassment, the same was forwarded to

the Internal Complaints Committee (ICC), for initial/fact finding inquiry; (iii) the ICC in its report in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 concluded that *prima facie* sexual harassment complaint against the employee was in order; (iv) departmental proceedings were initiated under Rule 14 of the CCS (classification, control and appeal) (CCA) Rules, 1965, vide Charge Memo dated 12th September, 2017; (v) the employee had threatened the complainant/ woman employee, that the employee will commit suicide if the complaint was not withdrawn; (vi) though CAT, in the impugned order acknowledges that the charges of sexual misconduct are serious, yet reduced the penalty to reduction of rank to a lower stage for two years, on the misplaced assumption that sharing of obscene/pornographic video was a mistake, completely ignoring that compassionate pension had been granted to the employee; (vii) CAT had interfered with the disciplinary proceedings and had shown misplaced sympathy towards the employee; reliance is placed on ***State of Punjab Vs. Ram Singh Ex-Constable*** (1992) 4 SCC 54; (viii) forwarding obscene messages and videos is an act of sexual harassment; (ix) under Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 and under Section 67A of the Information Technology Act, 2000 also, whosoever publishes or transmits or causes to publish or transmit material which contains sexually explicit acts or conduct, is liable to be punished; (x) the employee had also violated Section 354A of the Indian Penal Code, 1860; (xi) the employee had made no effort to apologize to the complainant, immediately after the incident was brought to light; on the contrary the employee approached the complainant at her hostel,

intimidating her to withdraw the complaint under threat of committing suicide; (xii) the employee admitted to his misdeeds, only when left with no option and tried to shift the blame to his minor child; (xiii) CAT, by interfering with the penalty/punishment has failed to protect and render justice to the victim of sexual harassment; (xiv) even if CAT felt that the punishment was disproportionate, it ought to have remanded back the matter to the DA; reliance in this regard is placed on *Union of India Vs. Parma Nanda* (1989) 2 SCC 177, *Apparel Export Promotion Council Vs. A. K. Chopra* (1999) 1 SCC 759 and *B.C. Chaturvedi Vs. Union of India* (1995) 6 SCC 749; and, (xv) courts do not sit in appeal over administrative decision and must exercise utmost restraint while exercising power of judicial review and in the absence of *mala fide* or infirmities, judicial review is inappropriate; reliance is placed on *Tata Cellular Vs. Union of India* AIR 1996 SC 11.

8. Per contra, the counsel for the employee has argued that, (i) the complainant, though appeared before the Fact Finding Inquiry but did not even participate in the disciplinary proceedings and did not make any statement; (ii) in the absence thereof, the charge against the employee, of threatening the complainant woman employee, could not have been held to be proved; reliance is placed on *Roop Singh Negi Vs. Punjab National Bank* (2009) 2 SCC 570 and *Jai Bhagwan Vs. Commissioner of Police* (2013) 11 SCC 187; (iii) the employee admits to, along with his wife, visiting the hostel where the complainant woman employee was residing, only for apologizing and not for threatening the complainant in any way whatsoever; (iv) it was never the case of the complainant woman employee, and was not the charge, that the employee ever had

any intention to sexually harass the complainant; (v) the order of dismissal from service and that too on the ground of sexual harassment has severe consequences on the employee; (vi) had the complainant woman employee been examined in evidence during the inquiry, the employee could have cross-examined her to prove that no threats were ever meted out by the employee to the complainant.

9. We have considered the rival contentions.

10. The reasons given by CAT in the impugned order, of (a) those fully acquainted with the technology knowing how to prevent and avoid such messages and those not fully familiar with the technology becoming vulnerable and victims thereof; and, (b) the incident with which the employee was charged, being attributable to “lack of proper information about the consequences in the context of handling phones” for reducing the punishment from that of dismissal from service to that of reduction in rank, notwithstanding the factual finding against the employee and which factual finding of misconduct has not been disturbed by CAT also, cannot, in our opinion, be said to be perverse, i.e. which no reasonable person could have fathomed or given. The astronomer Carl Sagan also echoed, “We live in a society exquisitely dependent on science and technology, in which hardly anyone knows anything about science and technology”. The same thought was expressed by author Agatha Christie also, by observing “To err is human, but human error is nothing to what a computer can do if it tries”. Philosopher Michael Bassey Johnson also observed, “In today’s world, there are a lot of smart phones, mainly owned by not-so-smart people”.

11. The order dated 10th May, 2018 of the Disciplinary Authority itself records that while the complaint was made to it at about 1330 hours on 2nd May, 2017, the employee, when confronted therewith on the same day at about 1700 hours, stated that the messages had been forwarded mistakenly by his minor daughter, not only to the complainant but to ten others as well. It is also not as if CAT has let go the respondent scot free. The respondent has been meted out punishment of reduction in rank, making the respondent a living example in the work place, of the consequences of his act.

12. As far as the argument of the counsel for the employer, of CAT, even if found the punishment meted out to be disproportionate, having erred in itself substituting the punishment instead of remitting the matter to the disciplinary/appellate authority, is concerned, all that needs to be said is, that the rule in the regard is not absolute. Often it is found that remitting the matter leads to multiplicity of proceedings. It is also not as if the contention of the petitioner is, that any other punishment than of reduction in rank should have been meted out to the respondent in substitution. CAT, to put a quietus to the matter, in its wisdom has meted out the next punishment in the hierarchy, to the punishment of dismissal from service.

13. We therefore do not find any reason to, at the instance of the employer, interfere in the order of CAT.

14. We however agree with the counsel for the employer, that the challenge by the employee to the order of CAT, is an afterthought. To be fair to the counsel for the employee, he, though has challenged the order,

has not even addressed any arguments impugning the same. The petition of the employee is also thus to be dismissed.

15. Before parting with the matter, we request the employer to ensure that the respondent, on reinstatement in employment and the complainant woman employee, in future, are not posted in the same department and preferably not posted even in the same premises.

16. Resultantly, both the petitions are dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 23, 2021
'pp/gsr'..