

**IN THE WEST BENGAL ADMINISTRATIVE  
TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

**Present :-  
The Hon'ble Smt. Urmita Datta (Sen)  
Member (J)**

**-AND-**

**The Hon'ble Dr. A. K. Chanda  
Member ( A )**

**J U D G M E N T  
-of-**

**Case No. O.A. - 311 of 2017**

**Abhijit Karjee .....Applicant**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant : Ms. Bulbul Sarbajna,  
Advocate.**

**For the Respondent No. 1 to 3: Mr. Manujendra Narayan Roy,  
Advocate.**

**For the Respondent No. 4: Mr. Bejoy Krishna Roy,  
Advocate.**

**Judgment delivered on : 18.07.2018**

**The Judgment of the Tribunal was delivered by :-  
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

## Judgement

1. The instant application has been filed praying for following relief(s):

“a) To pass an order directing the respondents to forthwith withdraw, rescind the purported charge sheet and statement of allegations against the applicant.

b) To pass an order quashing/ setting aside entire proceedings and the enquiry report of the Internal Complaint Committee as well as the report of the Uttam Ghosh Former Deputy Superintendent of Police (D & T), Malda.”

2. (i) According to the applicant, at the time of filing of this O.A., he was posted as Inspector of Police (AB), 2<sup>nd</sup> I.R. Bn., Siliguri on and from 09.12.2016. Prior to joining this post, he was posted in the post of Reserve Inspector of Police, Malda and was released from such post on 30.11.2016. However, on 24.03.2017, he was served with Charge Sheet being Memo No. 140/E dated 24.03.2017 (Annexure - A & B), wherein he was charged with allegations of moral turpitude, undue favouritism and exploitation of manpower by misusing his official power on the basis of a preliminary enquiry report submitted by the Internal Complaints Committee, Malda (Annexure - C).

(ii) As per the applicant, the Internal Complaint Committee had never given the applicant any opportunity to clarify his case, which is violation of the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- (iii) The applicant has further stated that the fact finding report of Shri Uttam Ghosh without giving him any opportunity is also violation of natural justice. Thus, the Charge Sheet is bad in law and liable to be quashed. Being aggrieved with, he has filed this application.
3. (i) The respondents have filed their reply, wherein it is stated that while the applicant was posted at Malda, the Superintendent of Police, Malda received several complaint against the applicant filed by 15 lady constables and accordingly, the Superintendent of Police, Malda entrusted the same to the Internal Complaints Committee to examine the same. Accordingly, the said Internal Complaint Committee submitted its report and they were prima facie of the opinion that the charges were genuine as alleged in the complaint. The said Internal Complaints Committee in terms of the provisions of Sec. 13 (3) (i) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 recommended a proceeding to initiate against the applicant.
- (ii) It is further submitted that not only the complaints were lodged by the lady constables but also by one ASI Amit Mishra who filed a complaint to the Superintendent of Police, Malda. Accordingly, on receipt of the same, a preliminary enquiry was conducted by Shri Uttam Ghosh, Deputy Superintendent of Police (D & T). After conducting the preliminary enquiry, Shri Uttam Ghosh also of the opinion that prima facie, the allegations seems to be genuine. Accordingly, the Superintendent of Police, Malda sent the same to the Disciplinary Authority i.e. the Inspector General of Police (Head Quarters), West Bengal and the Disciplinary Authority upon applying his independent judicious mind framed the charges against the applicant, which he is

competent to do so. Accordingly, a Charge Sheet dated 23.03.2017 was issued to the applicant.

(iii) It is submitted by the respondent that the employer is within the right to conduct a preliminary enquiry upon receiving any complaint and the person conducting the said preliminary enquiry is not bound to give notice to the person since the alleged employee would get proper opportunity during regular disciplinary proceedings to defend his case as he would be at liberty to raise his defense. Therefore, there is no violation of natural justice.

(iv) The Counsel for the respondent has further submitted that there is a little scope to interfere in the disciplinary proceedings by the Tribunal under judicial review unless it is said to be issued by an incompetent authority or whereas the charge itself does not reflect any misconduct and / or charges are said to be perverse and bias in nature so it shakes the conscience of a person with normal prudence.

(v) In the instant case neither Charge Sheet was issued by an incompetent authority nor the same is perverse or biased in nature, which may vitiate the entire charge Memo. Further in disciplined force, certain parameters are required to be maintained so as to set examples for others to follow, any departure from the said high standards would create an atmosphere of anarchy. Therefore, as per the respondents, the Tribunal should not interfere with the disciplinary proceedings.

4. We have heard both the parties and perused the records. It is noted that according to the applicant, as per the provision of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, he should had been granted an opportunity of hearing before submitting report by the Internal Committee. The applicant has also challenged the report submitted by Shri

Uttam Ghosh, Former D.S.P. (D&T). Therefore, non-granting of personal hearing by the Internal Committee as well as Shri Uttam Ghosh has caused violation of natural justice to him and is liable to be quashed.

5. It is pertinent to mention that in the instant case, against the rejection of prayer of interim relief by way of staying of departmental proceedings, the applicant had preferred one WPST No. 85/2017 before the Hon'ble High Court and the Hon'ble High Court vide their order dated 13.11.2017 has observed and directed

“Having heard the learned Advocate appearing for the respective parties as also after considering the fact and circumstances of this case, we find that it is not in dispute that the disciplinary proceeding against the petitioner has been initiated under the aforesaid provisions of Police Regulation of Bengal by issuing a charge sheet dated March 23, 2017. The date for submitting the reply to the above charge sheet expired on or about March 30, 2017. The petitioner filed the original application before the learned Tribunal on April 7 2017. The order impugned to this writ application was passed on June 9, 2017. In view of the continuation of proceeding the petitioner did not submit his reply to the charge sheet. But we are given to understand that the enquiry proceeding had already been commenced though there is no substantial progress in the same.

In view of the above, we are of the opinion that the justice will be sub-served to allow the disciplinary authority to proceed further in the

matter of disciplinary proceeding which has been initiated against the petitioner and not to declare the result of the above disciplinary proceeding till disposal of the original application by the learned Tribunal.

On the basis of our observations made in the preceding paragraph, liberty is given to the petitioner to give reply to the charge sheet within seven days from date with a further direction upon the respondent authorities including the disciplinary authority to take necessary steps so that the enquiry officer shall proceed in the enquiry proceeding taking into consideration the above reply which may be filed by the petitioner within the aforesaid period of time.

The learned Tribunal is requested to conclude the hearing of the above original application expeditiously without granting any unnecessary adjournment / adjournments to either of the parties.

This writ application is thus disposed of.

There will be, however, no order as to costs.”

Therefore, it seems that the Hon’ble High Court was also not convinced that any violation of natural justice has been caused to the applicant by not granting any personal hearing by the Internal Committee, which is a preliminary enquiry in nature.

6. However, even if we accept that he should get opportunity of personal hearing before the Internal Committee as per Section 11(i) of the aforesaid Act, in that case also, as per the Section

18(ii) of the said Act, any person aggrieved from the recommendations made under the provision of this Act, he may prefer an appeal to the court or Tribunal in accordance with the provisions of the Service Rules and such appeal shall be preferred within a period of 90 days of the recommendation. In the instant case, the recommendation of the Internal Committee was made on 02.10.2016, whereas the instant application has been preferred on 10.04.2017. Moreover, there is no whisper that in the interim, he has made any appeal before the authority. Therefore the applicant himself has not complied with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7. Further, the report submitted by Shri Uttam Ghosh, former D.S.P. (D & T), Malda, who enquired about the allegation of the A.S.I. (AB)-584 Amit Kr. Mishra, that the applicant pressurized Shri Amit Kr. Mishra to raise money from the members of the police force and to bring wine in lieu of giving them undue advantage. Therefore, the report submitted by Shri Uttam Ghosh is the preliminary enquiry report for which granting of personal hearing is not mandatory.
8. The Hon'ble Apex Court in the case of Divisional Manager, Plantation Division, Andaman and Nicobar Islands -Vs- Munnu Barik and Others reported in (2005) 2SCC 237 has held, inter alia,

“it is well settled that principle of natural justice may not be put in a straight jacket formula. It must be viewed with flexibility. Its application will depend upon the facts and circumstances of each case. In a given case, where deviation takes place as regards compliance with the principle of

natural justice, the court may insist upon proof of prejudice before setting aside the order in impugned before it.”

In the instant case, both the Internal Committee and the preliminary enquiry report submitted by Shri Uttam Ghosh is not the final report or decision of the authority, but mere preliminary enquiry report on factual aspect. Therefore, non-granting of personal hearing would not prejudice the applicant as claimed by the respondents and was also not denied by the applicant as he would get full-fledged opportunity during the regular disciplinary proceedings to examine and cross-examine as well as to submit his defense before the regular enquiry officer. Moreover, the applicant never submitted how he has been prejudiced due to non-granting of personal hearing. Further it is observed that the Hon’ble High Court in the instant case also had not granted any stay of the disciplinary proceedings though the instant case has been filed challenging the disciplinary proceedings only on the ground of violation of natural justice by way of not granting the personal hearing by the Internal Committee as well as by the fact finding authority but directed to continue with the Disciplinary Proceeding.

9. In view of the above, we are of the considered opinion that the disciplinary proceeding has not been vitiated by not granting any personal hearing before the Internal Committee as well as the fact finding authority, being only preliminary enquiry, as the applicant would get sufficient opportunity to defend himself in regular enquiry.

Accordingly, the O.A. is dismissed with the above observations with no order as to costs.

**DR. A.K. CHANDA**  
MEMBER (A)

**URMITA DATTA (SEN)**  
MEMBER (J)