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

% **Date of Decision: 09th July, 2019**

+ W.P.(C) 5114/2015

ANITA SURESH

..... Petitioner

Through: Mr.Ashwani Verma, Ms.Sheetal
Mishra, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Anil Dabas, Advocate for UOI.
Mr.Yakesh Anand, Advocate for
ESIC.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the order dated 20th January, 2012 of the Internal Complaints Committee (ICC). The petitioner is seeking a direction to respondent No.2 to withhold the retirement benefits of respondent No.3; to initiate independent departmental enquiry against respondent No.3 and to also prosecute respondent No.3.

2. The petitioner was working as an Assistant Director with ESI Corporation in Manesar, Gurgaon in July, 2011. On 08th July, 2011, the petitioner made a written complaint to the Director General of ESI Corporation alleging sexual harassment by respondent No.3. According to the petitioner, respondent No.3 misbehaved and made attempts of sexual

advances. The petitioner reported following two incidents dated 07th July, 2011 in the complaint:-

- (i) *“Yesterday when I was seated with my colleagues on the 1st floor of the building, Sh. Verma came and commented indicating sexual advances. I cannot for the reasons of modesty bring on papers the filthy language he uses for me.”*
- (ii) *“Yesterday in the presence of my staff and other members he asked me to come alone to check the shortcomings of the male toilet when nobody is there and I will follow you soon.”*

3. Respondent No.1 constituted an Internal Complaints Committee to examine the complaint of the petitioner. Respondent No.3 appeared before the Committee and denied all the allegations made by the petitioner. According to respondent No.3, the petitioner made the complaint because of the grudge against him due to certain official work disposed by him in her absence.

4. The Committee examined the petitioner as well as respondent No.3. The Committee examined eight witnesses namely Rashmi Kapoor (O.S.), Lakhan (Supervisor Housekeeping), Rajender Yadav (SSO), Prasanna (Staff Nurse), Hema (Staff Nurse) Pradeep Kataria (Nursing Orderly), Jai Bhagwan (Nursing Orderly) and Kalpana (Dietician).

5. The Committee submitted its report on 20th January, 2012, in which it observed that the exact content of communication of the incident dated 07th July, 2011 could not be established. The Committee gave benefit of doubt to respondent No.3 and recommended relocating both the petitioner and respondent No.3 from their present posting.

6. Learned counsel for the petitioner urged at the time of the hearing that the findings of the Committee are erroneous and unjustified. It is submitted that the petitioner had proved by sufficient evidence that respondent No.3 misbehaved and made attempts of sexual advances against the petitioner on 07th July, 2011 mentioned in the written complaint on 08th July, 2011. Respondent No.3 pressurized the petitioner to withdraw her complaint whereupon a warning was issued to him on 04th November, 2011. The transfer of both the parties to different places was not a justified penalty to the respondent No.3.

7. Learned counsel for the respondent No.1 urged at the time of the hearing that respondent No.1 transferred both the petitioner and the respondent No.3 from their posting. It was further submitted that respondent No.3 superannuated on 28th February, 2015.

8. Vide order dated 28th March, 2019, this Court directed the employer, ESI Corporation to produce the original relevant records which were produced on 09th April, 2019 and have been examined by this Court.

9. The petitioner made the complaint dated 08th July, 2011 against the respondent no.3 which is reproduced hereunder:-

*“To,
The Director General,
ESI Corporation
Hqrs. Office, CIG Mrag.
New Delhi – 02*

*Sub: Sexual harassment by Sh. O.P. Verma, Dy Director, ESI
Hospital, Manesar, Haryana.*

Sir,

*I am posted as Assistant Director in the office of ESI
Hospital, Manesar. In the same office another officer Sh.
O.P.Verma, Dy. Director is seated in the adjoining room where*

I work. For some time passed Sh. O.P.Verma has been misbehaving with me and makes attempts of sexual advances. It was only yesterday when I was seated with my colleagues on the 1st floor of the building, Sh. Verma came and commented indicating sexual advances.

I cannot for the reasons of modesty bring on papers the filthy language he uses for me. Yesterday in the presence of my staff and other members he asked me to come alone to check the shortcomings of the male toilet when nobody is there and I will follow you soon.

I am to request you to safeguard my honour and take necessary action against him. I will explain the earlier instances of harassment as and when the matter will be investigated.

This matter has also been brought to the notice of the Medical Superintendent in earlier and in the afternoon of 07.07.2011 also.

*Yours faithfully
Signed/-
(Anita Suresh)
Assiatant Director
ESI Hospital, Manesar”*

(Emphasis Supplied)

10. As per the complaint dated 08th July, 2011 of the petitioner, the respondent no.3 made comments indicating sexual advances against the petitioner who was sitting with her colleagues on the first floor of the building on 7th July, 2011. The second incident mentioned in the complaint is that the respondent told the petitioner to come alone in the male toilet to check the shortcomings in the presence of the staff and other members.

11. The Committee examined the petitioner who could not recollect the names of any of the persons present at the time of the aforesaid incidents. The petitioner was shown the relevant papers relating to the staff members

present on that day but still she could not recollect the names. The petitioner stated that she confided the incidents to Rashmi Kapoor (O.S.) on the same day after the incident. The Committee examined Rashmi Kapoor who stated that she was not present at the time of incident. However, she stated that the petitioner told her that the attitude of respondent No.3 towards the petitioner was not good. She further stated that the petitioner told her that respondent No.3 made two inappropriate comments against her. However, these two comments were not stated by the petitioner in her statement to the Committee.

12. The Committee examined Lakhan (Supervisor Housekeeping) who stated that the petitioner was matching the goods with the list and he did not witness any incident on 07th July, 2011 as alleged by the petitioner.

13. The Committee examined Rajender Yadav (SSO) who was present at the time of incident and he stated that there was no altercation between the petitioner and respondent No.3.

14. The Committee examined Prasanna (Staff Nurse) who stated that the petitioner had normal relations with respondent No.3 who never commented on her in her presence.

15. The Committee examined Staff Nurses Hema (Nursing Orderly), Pradeep Kataria (Nursing Orderly), Jai Bhagwan (Nursing Orderly) and Kalpana (Dietician) who did not witness any incident on 07th July, 2011.

16. The Committee examined respondent No.3 who denied all the allegations of sexual harassment made by the petitioner. He stated that he brought the absence of soap in the male toilet to the notice of the petitioner. He further stated that his remarks were misinterpreted and taken totally out of context. He further stated that the petitioner made complaint against him

due to a grudge which was the result of certain official work disposed by him in petitioner's absence.

17. On careful consideration of the record of the inquiry proceedings, this Court is of the view that the complaint dated 08th July, 2011 of the petitioner appears to be false. The complaint dated 08th July, 2011 contains two incidents out of which the first incident was in the presence of the petitioner's colleagues whereas the second incident was in the presence of the staff and other members. During the inquiry proceedings, the petitioner could not give the name of any person present at the time of the incidents. The petitioner was shown the record of the staff persons present on duty on the date of the incident but still she could not recollect the names of any colleague/staff member. It is not believable that the petitioner would not remember the names of any colleague/staff member. The Committee examined all the persons who were on duty on that day but no persons supported the allegations of the petitioner. The petitioner has not mentioned the alleged comments of respondent No.3 in the complaint on the ground of modesty. The petitioner did not even disclose the alleged comments before the Committee. No reason or justification was been given by the petitioner for not disclosing the same before the Committee. The entire complaint of the petitioner appears to be false and has been filed with some ulterior motive.

18. The record produced by the respondent No.5 contains the service record of the petitioner. The petitioner joined ESI Corporation as an Insurance Inspector on 24th September, 1997. On 15th February, 1998, the petitioner was issued a charge sheet for major penalty proceeding for negligently surveying two firms ignoring vital information and suppressing

material information while submitting the survey reports. Vide order dated 23rd October, 2001, the Insurance Commissioner took the view that the petitioner had only put one year of service in the Corporation and no *malafide* intention was proved and therefore, a lenient view was taken and the penalty of 'Censure' was imposed upon her. On 03rd March, 2006, the petitioner was issued a charge sheet for major penalty proceeding by Regional Office, Delhi on the allegations that during her posting in Legal Branch as an Insurance Inspector for the period from 22nd March, 2004 to 12th July, 2004, the petitioner had exhibited gross misconduct as she failed to follow the reasonable order of her superiors and exhibited lack of devotion towards duty. Vide order dated 22nd September, 2009, the Insurance Commissioner observed that the conduct of the petitioner was unbecoming of a Corporation employee and imposed the penalty of reduction pay by one stage for one year. The petitioner filed an appeal which was rejected by the Appellate Authority vide order dated 27th October, 2010 and thereafter, she preferred a revision petition which was also rejected. This rejection order was further challenged by the petitioner before this Court in W.P. (C) 8529/2011 which was dismissed by this Court vide order dated 24th November, 2011. On 13th July, 2011, the Medical Superintendent of ESIC, Hospital, Manesar, Haryana, Dr. Archana Rani gave a written memorandum to the petitioner who was posted in the hospital as an Assistant Director to show cause as to why the action should not be taken against her for insubordination and gross misconduct. The above mentioned incidents show that the petitioner did not have a clean service record.

19. There is no merit in this writ petition which is dismissed with cost of Rs.50,000/- to be deposited by the petitioner with the Delhi High Court Advocates Welfare Trust within four weeks.
20. Respondent No.2 is at liberty to initiate appropriate action against the petitioner for filing false compliant against the respondent no.3 in accordance with law.
21. Copy of this judgement be sent to the respondents.
22. List for reporting compliance with respect to the payment of the cost before the Joint Registrar on 9th August, 2019.

JULY 09, 2019
ds

J.R. MIDHA, J.

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