

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/NCFWO/A/2017/135800

Nammi Bano v. PIO, National Commission for Women

RTI	:	21.12.2016
First Appeal	:	25 th Jan 2017
FAO	:	Nil
Second Appeal	:	25.05.2017
Hearing	:	06.06.2017
Appellant	:	Present
Public Authority	:	Absent
Decided On	:	16.06.2017

SHOW-CAUSE NOTICE

1. When the right of woman is violated and rule of law does not work, she looks to National Commission for Women for support and sympathy. If men violate rights of woman in NCW office itself, and rule of law does not work, where should she go?
2. Appellant in her second appeal contended: She joined as Research Assistant on contract in January 2010, which was extended on 25.5.2016 to 24.11.2016 (for six months), after which there was no intimation whether her term was extended or not. Her "contract has not been extended solely with the objective to victimize and harass her for daring to raise her voice against sexual harassment by none other than the Deputy Secretary vide her complaint dated 10.03.2016. They extended her contract for three months vide order dated 16.03.2016 and added the following line with malafide intention: "*.....Ms Nammi Bano is advised to improve her performance considerably other she cannot be given any further extension.....*" Prior to 16.03.2016 there was not an iota of dissatisfaction with the work of appellant as can be seen from the previous Office Order (s) / Contract Extension Letter (s). The Committee has not disposed of the complaint in a judicious manner as has been mandated in the **Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013)**. The members in the Internal Complaints Committee (ICC) were

contractual staff of NCW. How can it be expected from a contractual staff to go against the management? And this Contractual Staff was later enormously rewarded by increasing their remuneration two-fold without any adequate justification. The order increasing remuneration states that the expenditure involved is to be charged under Plan Head "Research Studies" whereas their work does not correlate to "Research Study" in any manner whatsoever. Even the witnesses who gave statements before ICC were also adequately compensated for their contribution, by doubling the remuneration without any justification. Appellant applied on 03.06.2016 for complete set of statements given before ICC. She referred to the guidelines of DOPT issued in respect of the Role of the ICC in the matters of Sexual Harassment at Work Place:

In its Order dated 26.04.2004 in the Writ Petition No. 173-177/1999 in the case of **Medha Kotwal Lele and Ors. Vs. UoI & Ors** [2012] INSC 643 the Hon'ble Supreme Court has directed that the Reports of the Complaints Committee shall be deemed an Inquiry Report under the CCS Rules. Thereafter, the Disciplinary Authority will act on the report, in accordance with the Rules'. Sub-Rule (2) of Rule 14 of CCS (CCA) Rules, 1965 has accordingly been amended to provide that the Complaints Committee shall be deemed to be the Inquiry Authority for the purpose of these Rules by the Notification No. 11012/5/2001-Estt.A dated 01.07.2004 (GSR 225 dated 10th July, 2004). In view of the said amendment made to the CCS (CCA) Rules, the instructions contained in DOPT's O.M. dated 12th Dec., 2002 stands modified and the report of the Complaints Committee should be treated as an inquiry report and not a preliminary report (DOP&T O.M. No. 110131312009-Estt. (A) Dated the 21st July, 2009] A DOPT OM dated 12.12. 2002 as amended by O. M. dated 4.8. 2005]. The Complaint Committee is the competent authority in such cases to decide the procedure. However, since the report of the committee is to be treated as the enquiry report under the CCS (CCA) rules and the Disciplinary Authority is to take action on that report as per the same rules (as mentioned at point no 8 above) the procedure prescribed in rule 14 of the CCS (CCA) Rules are to be followed as far as practicable.

(DOP&T OM. No. 11013/3/2009-Estt. (A) dated the 3^d August, 2009]

She alleged: "No such procedure was adhered to in her complaint and also in that of another female staff (Ms. Sucheta Verma) against the same Official. All this while the NCW maintained quietus on the issue and slowly and slightly favoured the Official and subverted the entire Inquiry and after the Inquiry Report was submitted it did nothing than to wait for an opportunity to throw-out her."

Saga of appellant under RTI Act

She filed RTI application dated 21.12.2016 to Shri G. Nagrajan, CPIO (N. C. W.), Plot No. - 21, FC — 33, Jasola Institutional Area (New Delhi — 110025), seeking file notings, correspondence regarding extension (or non-extension) of contract of her employment, inquiry report, statements of witnesses, action taken on report etc through 16 points. As per Section 7 (1) of the RTI Act, 2005, the CPIO was to give the requested information within 48 Hours / 30 days of the application, however, NO INFORMATION was received. A reply dated 30.12.2016 of Shri G. Nagrajan, was received. She made telephone calls in response to instructions in that letter, but they were not answered. Her e-mail dated 06.01.2017 to the CPIO, NCW, also was without any response. She filed the First Appeal dated 25.01.2017.

On 23/24.03.2017 she received a call from the PS to Joint Secretary, NCW, calling her for a meeting on her First Appeal, and she attended before the First Appellate Authority on 27.03.2017 at 3.00, along with her cousin Sh Nafisuddin. The proceedings were Video – recorded for no reason. Claiming that some of the information was "Third Party Information" it was denied as the consent has not been obtained. Such statements before ICC cannot be treated as "Third Party Information". She claimed that she was in dire need documents for contesting her case before the various Authorities and the Competent Court as well. As there was no response to her RTI application, emails, telephonic requests and the first appeal, visits and efforts after that, she preferred second appeal under Section 19(3) of RTI Act.

3. The second appeal with above contention of the appellant is self explanatory. It presents the background of harassment and denial of information on illegal and unreasonable grounds. The official website http://ncw.nic.in/frmRTI_Officers.aspx shows that Mr VVB Raju, the deputy secretary of NCW was designated as First Appellate Authority. As per the complaint of appellant this officer is accused of harassing the appellant. The key portion of the complaint by the appellant dated 10.3.2016 submitted to the Member Secretary is:

"But for the last four months I have been going through huge problems in the same work and the routine. Some four months back a new Deputy Secretary has come to the Commission whose attitude and behavior is objectionable. Mr. V.V.B. Raju, who is the new D.S., started harassing me ever since he joined the Commission. He insists that I should come to him in person to get his signatures and that too in the evening, only after 5:30 p.m. When I refused to stay after 5:30 for getting his signatures, then he threatened he would complain to the Chairperson of the Commission and will throw me out of the job".

Breach of Statutory Obligations by First Appellate Authority

4. It is clear that the officer Mr. VVB Raju was accused of sexual harassment, and he was same officer supposed to decide the first appeal as designated FA authority under RTI Act. It is evidently a case of conflict of interest and yet he was facilitated to continue. Sadly, the First Appellate Authority Mr. VVB Raju did not hear the case properly and did not care to decide it within prescribed time. This is in complete violation of Section 19 (6) of the RTI Act, which says: "19 (6) An appeal under sub-section (1) or sub section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing....." The First Appellate Authority did not give any reason for delay.

The Office Memorandum No. 1/3/2008 IR, Dated 25th April, 2008, issued by Department of Personnel and Training, titled "Guidelines for the Officers designated as First Appellate Authorities under the RTI Act, 2005", says:

38. Deciding appeals under the RTI Act is a quasi-judicial function. It is therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to be have been done. In order to do so, the order passed by the

appellate authority should be a speaking order giving justification for the decision arrived at.

.....

.....

40. If an appellate authority comes to a conclusion that the appellant should be supplied information in addition to what has been supplied to him by the CPIO, he may either (i) pass an order directing the CPIO to give such information to the appellant; or (ii) he himself may give information to the appellant while disposing off the appeal. In the first case the appellate authority should ensure that the information ordered by him to be supplied to the appellant immediately. It would, however, be better if the appellate authority chooses the second course of action and he himself furnishes the information alongwith the order passed by him in the matter.

5. Mr. VVB Raju as First Appellate Authority has totally violated the provisions of RTI Act and these guidelines. In **M/s. Nagarjuna Construction Company Limited v. Govt. of Andhra Pradesh and Ors.**, while deciding Civil Appeal No. 1438 of 2004, the Hon'ble Supreme Court has observed on 20th October 2008 that every appellant must be given a opportunity to be heard by a quasi judicial authority, before passing any order. It held:

"35. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works (1963 (143) ER 414), the principle was thus stated:

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

36. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

6. The First appellate authority has not followed the principles of natural justice. He neither gave a proper notice nor conducted proper hearing besides not deciding the case within prescribed time. He should have recused from being FAA in this case as a complaint was submitted against him accusing sexual harassment. The NCW should have appointed another authority to hear her first appeal.
7. Second appeal explains that the appellant is not only the victim of sexual harassment by a Deputy Secretary, her rights under the 2013 Act and right to information under RTI Act also violated.
8. Surprisingly the National Commission for Women did not respond to her complaint, not conducted inquiry properly and disregarded to the guidelines of DoPT, the Supreme Court, and 2013 Act.
9. The second appeal clearly shows that she was further victimized because of her bold complaint against sexual harassment of First Appellate Authority, by reducing her term of contract and then by removing from her position. First her contractual term of job was reduced, then not extended, along with two other employees Mr. Ishwar Chandra and Smita Jha. Thereafter, these two employees were re-instated in the month of April 2017, but appellant was left out. The sudden increase in the remuneration of contractual employees who were on inquiry committee and witnesses strengthen the allegation of conspiracy to harass the appellant and strategic plan to remove her. The NCW should not have abdicated the good governance principles of responding to complaint and following two statutes and guidelines of DoPT in dealing with RTI Application and also the

First Appeal, and totally ignoring the serious complaint of sexual harassment, against Mr. V.V.B. Raju.

10.The appellant was further denied her right to access to information and also right to access to justice by refusing to provide any response to any of her oral, written, email representations, complaints and RTI request/appeals.

11.It is not just the accused officer VVB Raju, but also the office of the NCW was alleged of non-response and further victimization of victim. The appellants sordid story explains how several staff members were acting together to deny her rights.

Breach of RTI Act by CPIO

12.The claim of the CPIO Shri Nagarajan, Under Secretary, that the 'information sought was voluminous, as per section 7(9) of RTI Act and no larger public interest was involved' was factually and legally incorrect. Section 7(9) can be used only when the demanded information necessitates disproportionate diversion of resources, which was not even attempted to be established by the CPIO.

13.The appellant complained that though she was provided inspection of related files on 27.03.2016, the inquiry report or related documents were not provided to her. She was again asked by ICC of NCW to appear before them on 1^{2th} April, 2017 and that meeting and proceedings were video recorded, which created a threatening environment. The denial under Section 8(1)(j) saying that was third party information and consent of witnesses was required, was also not correct. The statements of witnesses cannot be considered as third party information. The complainant has right to have statements of witnesses, because without those copies she cannot cross examine the witnesses or defend her claim. It is against the principles of natural justice to deny the copies of those statements. Even an accused in criminal case will be given those copies besides examining the witnesses in his presence.

Decision

14.It is not known why NCW office was acting totally against the rights of the appellant and there was not an iota of effort to address her grievance or

complaint or a problem and why the RTI wing of the NCW has totally blocked the access to information to the appellant. And above all the Member Secretary is silent on her complaint.

15. Though the appellant elaborated 16 requisition points, all of them could have been addressed with simple offer of inspection and furnishing of chosen documents as per RTI Act.

16. The submission of the appellant reflect unhealthy environment at workplace in the forum which supposed to protect the rights of women. Her right to life, right to work and right to information were seriously endangered by sexual harassment by senior officer.

17. Because the allegations leveled against the NCW officers are of serious nature, and that there was no representation in the hearing from NCW, the staff of this CIC contacted the CPIO for their response. He was informed that he can send a written response at least. But there was no response till today. Non-response of National Commission for Women to two complaints of sexual harassment within their organization, allowing an officer who was accused of sexual harassment, to deal with the first appeal under RTI Act ignorance of the notice from CIC was surprising. Section 10 of the National Commission for Women Act, 1990 says:

Section 10. Functions of the Commission.—(1) The Commission shall perform all or any of the following functions, namely:—

(a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other law;....

(e) take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;

(f) look into complaints and take suo moto notice of matters relating to—

(i) deprivation of women's rights;

(ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women,

18. At least in case of this appellant, the NCW has totally ignored its primary functions under section 10. If this is the fate of woman who is working as research assistant in National Commission for Women, what will be the plight of ordinary women outside the NCW? The National Commission for Women has a Constitutional duty to explain reasons for breach of two statutes on Sexual Harassment and Right to Information in case of this appellant. Why NCW not acted upon a) two complaints of sexual harassment, b) removing the appellant along with other two persons and reinstating those two persons, which transaction looks like a plan to remove appellant only, c) increasing remuneration of members of ICC and d) not providing the information sought and witnesses claiming lame and illegal excuses to deny the information.

19. Hence, the Commission directs:

- a) To furnish their response on this alleged inaction (explained in para 18 above)
- b) To facilitate inspection to the appellant on 27.06.2017 at 11:00 a.m. of files of ICC, statements, inquiry report, action taken on that, and provide certified copies of the documents sought, free of cost, along with the files pertaining to increasing remuneration of ICC members, and witnesses, file notings of extension of contract of appellant including remarks of satisfactory work, along with the inquiry report and action taken report on that, free of cost;
- c) The CPIO Mr. G Nagarajan to show-cause why maximum penalty should not be imposed against him for not furnishing the information sought by the appellant within stipulated time, before 14.07.2017.
- d) The Deputy Secretary, Mr. V.V.B. Raju, considering him as deemed PIO, to show cause why maximum penalty should not be imposed against him for obstructing the access to information as alleged above, before 14.07.2017;
- e) The First Appellate Authority Mr. VVB Raju explain why disciplinary action should not be recommended against him for violating law in

dealing with first appeal under RTI Act, in spite of being accused of sexual harassment of the complainant, which could be a clear case of conflict of interest

- f) The Member Secretary to explain why the NCW should not be ordered to pay compensation to the appellant for the harassment, and to explain his action/inaction on the complaint of the appellant
- g) In exercising the powers under section 18 (1) of RTI Act, the respondent authority to conduct inquiry in to the appellant's complaints against Mr. VVB Raju, the increase in remuneration of inquiry committee members and witnesses before inquiry committee in case of complaint of sexual harassment, and provide the report to this Commission, before 14.08.2016. Non-response by the prescribed date compels the Commission to presume that has nothing to explain and to proceed further under RTI Act, 2005.

20. The Commission recommends the Chairperson of National Commission for Women to consider this second appeal, including this order, as a complaint against inaction in NCW on the complaints of sexual harassment and breach of RTI, to save the credibility and reputation of NCW, within reasonable time and perform its duty to cleanse the RTI wing including the First Appellate Authority to make it objective and secure it from misconduct and breach by officers.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
National Commission for Women,
Plot No. 21, Jasola Institutional Area,
New Delhi-110025.

2. Shri Nammi Bano,
H. No. 115-A, 3rd Floor, Gali No. 4,
Jahaz Wali Gali, Johri Farm,
Jamia Nagar, New Delhi-110025.
3. Smt. Lalitha Kumaramangalam,
Chairperson, National Commission for Women,
Plot No. - 21, FC — 33, Jasola Institutional Area,
(New Delhi — 110025).
4. SHRI V. V. B. RAJU, Deputy Secretary,
(Designated First Appellate Authority under the RTI Act, 2005),
National Commission for Women (N. C. W.),
Plot No. - 21, FC — 33, Jasola Institutional Area,
(New Delhi — 110025).
5. Member Secretary,
National Commission for Women (N. C. W.),
Plot No. - 21, FC — 33, Jasola Institutional Area,
(New Delhi — 110025).