

SUPREME COURT OF INDIA

Union of India

Vs.

Nandita Bakshi

Spl.L.P.(Civil) No.7241 of 1995

(S.C.Agrawal and G.B.Pattanaik JJ.)

26.09.1997

ORDER

1. The respondent had filed a petition (O.A. No. 482 of 1993) before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') wherein she had challenged the order dated January 4, 1993 issued by the Cabinet Secretariat to the Joint Secretary (Personnel) indicating that it had been decided to repatriate the respondent who had been working as Deputy Secretary at that time in the Research and Analysis Wing (RandAW) on deputation basis to her parent cadre. The respondent urged various grounds to challenge the said order including the ground that it was vitiated by mala fides. The Tribunal, by its judgment dated September 2, 1994, has dismissed the said application filed by the respondent and has upheld the order. In the said judgment the Tribunal has, however, made the following observations:

"In the original application, allegations of serious nature have been made by the applicant against respondent No. 2. Those allegations, as material, are these. The present incumbent/respondent No. 2 started to assume towards the applicant a familiarity going beyond their respective official positions as well as the protocol and etiquette attaching to official dealings between personnel. The applicant politely but unmistakably rebuffed the said respondent No. 2 in his said transgression of limits. Consequently, he became hostile to the applicant. In retaliation, he started abusing his official

position and authority in diverse days to embarrass and teach a lesson to the applicant. Delicacy forbids the applicant from divulging further details of the said gender harassment inflicted by the said respondent No. 2 on her."

2. The Tribunal, while disposing of the matter, has given the following directions:

"The R and AW is a highly sensitive department dealing with national interest, including its security-internal as well as external. The allegations made by the applicant call for a through departmental enquiry by an independent authority like Central Vigilance Commission. The reason given for not holding such an enquiry is not convincing at all. Therefore, a proper and through fact finding enquiry should be held now....."

3. This special leave petition has been filed by Union of India wherein the said directions given by the Tribunal have been assailed. The learned Additional Solicitor General, appearing in support of the petition, has submitted that in the first place the Tribunal, in exercise of its powers under the Administrative Tribunals Act, 1985, was not competent to give such a direction and secondly such a direction was not called for in the facts and circumstances of this case. In support of the second submission the learned Additional Solicitor General has pointed out that the case put forward by the respondent to assail the order of repatriation on the ground of mala fides has been rejected by the Tribunal and as regards the averments made by the respondent about gender harassment the tribunal has made the following observations in the concluding part of the judgment:

"Further a reading of the letter dated 31-12-1992 of the applicant to the Secretary (R) discloses that on that day her relations with her were not strained. Moreover, it is significant to note that the applicant has refrained from mentioning the date on which the Secretary (R) allegedly crossed the limits on protocol and etiquette while dealing with her."

4. We have heard Shri M.L. Verma, the learned senior counsel who has been requested to assist the Court as amicus curiae in view of the importance of the questions involved. He has invited our attention to the recent judgment in Vishaka v. State of Rajasthan (1997) 7 JT (SC) 384 : (1997 AIR SCW 3043), decided by the Constitution Bench of this Court wherein guidelines have been laid down for dealing with complaints regarding gender harassment.

5. Having regard to the facts and circumstances of the case we are of the view that the matter should be looked into at the highest level. We, therefore, direct that instead of it being looked into by the Vigilance Commission, the matter should be looked into by the Cabinet Secretary himself and for that purpose he may give notice to the respondent with regard to her complaint about gender harassment. In view of these directions we do not consider it necessary to go into the question

relating to the jurisdiction of the Tribunal in this case the special leave petition is disposed of accordingly with these directions.

6. We record our appreciation for the assistance rendered by Shri M. L. Verma, Sr. Advocate and Shri Amarendra Sharan.

Order accordingly.