Federal Court  Cour fédérale

Date: 20091028

Docket: T-1580-08

Citation: 2009 FC 1103

Ottawa, Ontario, October 28, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MAHALINGAM SINGARAVELU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] The *Canadian Human Rights Act* prohibits discrimination within the federal domain. An employer may not discriminate in matters related to employment on the basis of race, national or ethnic origin, colour, disability or other enumerated grounds. Section 14.1 goes on to provide that it is an additional discriminatory practice for a person against whom a complaint has been filed to retaliate or to threaten retaliation. Mr. Singaravelu complained to the Canadian Human Rights Commission that his employer, Correctional Services Canada, discriminated against him on grounds

of race, national or ethnic origin while he was employed at their Bath Institution. While that complaint was under investigation, and after Mr. Singaravelu was transferred to his employer's Joyceville Institution, he complained of retaliation. The Commission ultimately dismissed the discrimination complaint and then the retaliation complaint. This is a judicial review of the latter decision. Mr. Singaravelu is of the view that the Commission should not have dismissed the complaint but rather should have referred it to the Canadian Human Rights Tribunal for a full inquiry.

BACKGROUND

[2] After spending many years with the Department of National Defence, Mr. Singaravelu began working as an engineering supervisor at the CSC's Bath Correctional Facility. Over the next two years he filed a number of Treasury Board workplace discrimination harassment complaints against several of his supervisors, and a number of grievances with his union. On the other hand, a number of harassment complaints were filed against him by his subordinates.

[3] During his time at Bath he was on sick leave for some time, apparently as a result of work-related stress. CSC transferred him to its regional headquarters (Staff College) and then in July 2006 to the Joyceville Institution. The timeframe of his retaliation complaint is from the commencement of his employment at Joyceville in July 2006 through to September 2006.

THE COMMISSION'S METHODOLOGY

[4] Although there are a number of options open to it in accordance with section 41 and following of the Act, the Commission appointed one of its investigators to look into the complaint. In accordance with its standard operating procedure, a copy of the complaint was sent to the CSC for comment, documents were collected and reviewed, and a number of individuals were interviewed. The investigator issued a report in which she recommended that the complaint be dismissed rather than be referred to the Canadian Human Rights Tribunal. That report was circulated to Mr. Singaravelu and to the CSC for comment. Mr. Singaravelu commented through his solicitors and the CSC commented as well. The Commission decided to endorse the investigator's report and so dismissed the complaint.

[5] Mr. Singaravelu filed an application for judicial review and called upon the Commission, in accordance with the rules of practice of the *Federal Courts Rules*, to produce the record on which it based its decision. He is of the view that some of the documents so provided, particularly email exchanges which passed amongst various CSC employees, strengthen his position that he was the subject of retaliation. He believes that he was a subject of an all encompassing conspiracy.

JOYCEVILLE – JULY TO SEPTEMBER 2006

[6] Mr. Singaravelu's case is based in part upon facts which are in no way in controversy and in part on inference (or speculation) drawn from those known facts.

[7] It is a fact that that when Mr. Singaravelu arrived for his first day of work, his bag was searched and he had to wait for his immediate supervisor to fetch him.

[8] It is a fact that within a few days he filed a harassment complaint against his supervisor, a complaint the CSC refused to consider.

[9] It is a fact that he was given the same office his predecessor had, which was located by a boiler room, and was given access to the same working tools including a telephone and computer. Mr. Singaravelu complained that the phone was not equipped with a direct outside line; ~~that~~ he had to go through the prison operator. He was not content having to share the computer with others.

[10] In accordance with the job description, which had been in place for almost twenty years, he was called upon to fulfil five tasks which fell within that description. He complained that no one man could do that work. Two of the tasks were removed. Still the remaining three tasks were too much. Finally he was asked to carry out one of those three tasks, a task of his choosing. The CSC says that he refused. He said he did not, but that he needed an army of subordinates to carry out the work.

[11] He was away most of this time on sick leave. Going back to his time at the Bath Institution, Health Canada had declared that he was fit for work but needed a few weeks at half time and another week at three quarter time. CSC says that this build up had been accomplished before Mr. Singaravelu's arrival at Joyceville.

[12] It is significant that he is not directly alleging that his employer failed to accommodate a disability, but rather alleges that his disability, which seems to be his inability or unwillingness to do the work the job required, was not accommodated as part of CSC's retaliation against them.

[13] He left Joyceville, and is on leave.

[14] A number of emails from the regional supervisor at the Staff College to the Warden at Joyceville and to others were sent even before Mr. Singaravelu's arrival at Joyceville. The thrust of these emails is that Mr. Singaravelu was an extremely prickly individual who had to be treated with kid gloves. These emails do not lend themselves to the proposition that the CSC was intent on a course of retaliation. Rather they indicate that every effort should be made to deal with his every whim as otherwise complaints would be forthcoming. The prediction turned out to be true.

[15] One would expect a prison warden to have seen the wild side of life. Nevertheless, palpable frustration leaps from this email she sent to regional headquarters:

> On three separate occasions we have tried to assign him duties and he continues to create scenarios which prevent him from taking on the duties.
>
> July 17/18
> Refused to sign the memorandum of agreement from his assignment.
> Sent home until we could get clarification from rhq
>
> July 24/25
> Again refused to sign agreement
> Attempted to assign 5 duties
> He refused by continued arguing

> Tried to assign him one duty of his choosing
> He agreed to that then refused
> Sent home again
>
> July 31 ordered back to work
> Files a harassment complaint
> Goes home again
> Complaint screened out
> Directed back to work [S]ept 27/28
> Sept 29 off sick
> Claiming workplace stress
>
> We have met all the obligations of the gradual return to work plan when he worked for [J]ohn [O]ddie and then [J]ulia [H]obson
>
> He is refusing to take on any tasks
> At this point I wonder if demotion is even an option
>
> In 2003 when it was obvious he could not manage as a supervisor he could have been demoted then but there was no support for that then
>
> He cannot perform any duties unless he works in isolation, and he does not have to take direction from anyone

She concluded that he outright refused to work.

[16] The Commission's investigator was extremely thorough in her report. Mr. Singaravelu was of the view that his work environment was poisoned at the get-go by having the guard search him. I would be appalled if someone showed up at a prison and was not searched. When he stated that he did not believe that fire chief duty should form part of the duties contained in his job description, he was given the option of demoting himself. It was established that his complaints that his workplace was dangerous had no basis in fact.

[17] The investigator was satisfied that CSC had surpassed what had been medically recommended, but not necessary. There were repeated noise level checks, air quality checks. Maintenance and repair to ceiling tiles were carried out and a boiler analysis and similar activities were conducted in a fruitless effort to satisfy the complainant.

[18] Her conclusion was that there was no evidence to support his complaint that he was discriminated against, harassed or treated in an adverse differential way either because of retaliation for having filed the previous complaint or for any other reason based, in whole or in part, on a prohibited ground. In the 15 weeks between Mr. Singaravelu's scheduled first day of work and his last day of work he only attended a total of 16 working days. The remainder of the time he was at home on various leaves with pay. In every instance when he returned to work from sick leave he was always medically assessed as being fit to return to work without limitation or restriction.

[19] In January 2007, Health Canada was of the view that he should not return to CSC, but he was assessed fit for work without restrictions or limitations in another federal government department. The warden referred him to numerous departments and agencies, wrote letters, emails, forwarded his resume and assisted him in securing employment within the federal public service, without success.

THE LAW

[20] In *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission),* [1989] 2 S.C.R. 879, the Supreme Court plumbed Parliament's intention in the event

there be insufficient evidence to warrant the referral of the complaint by the Commission to the Tribunal. Mr. Justice Sopinka said at page 899: “It is not intended that this be a determination where the evidence is weighed as in a judicial proceeding but rather the Commission must determine whether there is a reasonable basis in the evidence for proceeding to the next stage.”

[21] In *Bell v. Canada (Canadian Human Rights Commission)*; *Cooper v. Canada (Human Rights Commission),* [1996] 3 S.C.R. 854, Mr. Justice La Forest noted at para. 53 that the Commission is not an adjudicative body. In determining whether a complaint should be referred to the Tribunal, it carries out a screening analysis somewhat analogous to that of a judge at a criminal preliminary inquiry.

[22] The vetting duty of a judge at a preliminary inquiry in criminal law was summarized by the Supreme Court in *R. v. Arcuri,* [2001] 2 S.C.R. 828, 2001 SCC 54 at paras. 21-23. The question to be asked is whether or not there is any evidence upon which a reasonable jury properly instructed could return a verdict of guilty. The judge must commit the accused to trial if there is admissible evidence which could, if it were believed, result in a conviction. Then there is the question whether the evidence is direct or circumstantial. If circumstantial, some limited weighing is permitted to assess whether the evidence is reasonably capable of supporting the suggested inferences.

[23] In this case the evidence is all circumstantial. Adapting the principles from *Arcuri* to this context, the question facing the Commission was whether there was evidence reasonably capable of supporting an inference that Mr. Singaravelu was retaliated against such that, if it believed that

evidence, the Tribunal could find that CSC retaliated against him. Mr. Singaravelu submits that the evidence indicates a conspiracy against him. The Commission found that the circumstantial evidence was not reasonably capable of supporting an inference of a conspiracy. I find that that conclusion was reasonable (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). There is no evidence of a conspiracy. His belief derives from outright speculation, not from reasonable inference derived from proven facts.

[24] It follows that the decision of the Commission not to refer his complaint to the Commission was reasonable. This application for judicial review is dismissed.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. The application for judicial review is dismissed with costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1580-08
STYLE OF CAUSE:	*Singaravelu v. Attorney General of Canada*
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	October 13, 2009
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DATED:	October 28, 2009

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