

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/000431/2018

Jabalpur, this Monday, the 05th day of October, 2020

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

Pawan Deo, S/o Late Shri S.K.P. Sinha, aged about 50 years, presently working as Additional Director General of Police (Recruitment and Selection), Police Headquarters, Naya Raipur, Raipur (C.G.) – 492002, R/o 1/15/9, Bhilai Nagar, Durg (C.G.) – 490006.

-Applicant

(By Advocate – Shri Manoj Sharma through Video Conferencing)

V e r s u s

1. Union of India through its Secretary, Ministry of Home Affairs, North Block, New Delhi – 110001.
2. State of Chhattisgarh through its Addl. Chief Secretary, Department of Home (Police), Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur (C.G.) – 492002.
3. Director General of Police, State of C.G., Police Head Quarters, Naya Raipur, Raipur (C.G.) – 492002.
4. Asha Yadav, aged about 27 years, D/o Late Ganesh Prasad Yadav, R/o Kundrapara, Ward No.13, Lormi, District Mungeli (Chhattisgarh).

-Respondents

(By Advocate – Shri D.S. Baghel for respondent No.1, Shri Ajay Ojha for respondents Nos.2 & 3 and Shri Saurabh Dangi for respondent No.4 through Video Conferencing)

(Date of reserving order : 18.09.2020)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant, who is an officer of Indian Police Service of Chhattisgarh cadre, is challenging the chargesheet dated 19.04.2018 (Annexure A-1) on the ground that the same is against the law.

2. The applicant has sought for the following reliefs:

- “8.1 *To call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal;*
- 8.2 *To quash and set aside the impugned chargesheet dated 19.04.2018 (Annexure A-1).*
- 8.3 *Grant any other relief/s, which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant;*
- 8.4 *Award the cost of the petition to applicant.”*

3. Brief facts of the case, as stated in the Original Application, are that the applicant belongs to 1992 batch of Indian Police Service. He was regularly promoted to higher posts in police department and was promoted to the post of Additional Director General of Police in the year 2017. On 30.06.2016 (Annexure A-2), a complaint was lodged by respondent No.4 alleging objectionable behaviour on behalf of the applicant, which was also forwarded to respondent No.3. After receiving complaint, the respondent authorities constituted a special committee for enquiry under the Sexual Harassment of Workmen at Workplace (prevention, prohibition and redressal) Act, 2013 (hereinafter referred to as ‘**Act of 2013**’). The committee consisted of four



members including Presiding Officer viz; the then Principal Secretary of the State of Chhattisgarh, two retired Police Officers in the rank of IG/DIG and one member from Non-Government Organisation.

3.1 The Committee issued notice to the applicant on 12.07.2016 seeking his reply within 10 working days. After receipt of the notice, the applicant submitted his preliminary reply on 27.07.2016 (Annexure A-4) denying the allegations levelled against him. He also sought for providing necessary documents and materials for preparing reply. The applicant submitted his reply on 01.09.2016 (Annexure A-5). After knowing from media reports that the Internal Complaint Committee has prepared its final report, the applicant applied for providing copy of Investigation Report dated 02.12.2016 (Annexure A-6), which was provided to him on 15.12.2016. The applicant submitted his representation to the Investigation Report on 12.02.2017 (Annexure A-7). In the meantime, respondent No.4 filed a Writ Petition (PIL) No. 4 of 2018 before the Hon'ble High Court of Chhattisgarh, Bilaspur seeking relief to take an action on report submitted by Internal Complaints Committee. The Hon'ble High Court declined to treat the said Writ Petition as a Public Interest Litigation and disposed of the same on 27.02.2018 (Annexure A-8) with a direction to the respondent authorities to take up the report dated 02.12.2016 and do the needful in terms of the provisions of Act



of 2013 in a time-bound period. However, the respondent authorities without taking any decision on the enquiry conducted by the Internal Complaint Committee and enquiry report dated 02.12.2016 have issued the impugned chargesheet dated 19.04.2018 (Annexure A-1) for the same incident and circumstances on which the Internal Complaints Committee has conducted the enquiry and prepared the enquiry report.

4. The applicant submits that vide notification dated 24.07.1998 All India Services (Prevention of Sexual Harassment) Regulation, 1988 have been notified and simultaneously proviso to rule 8(2) of All India Service (Discipline and Appeal) Rules, 1969 has been inserted which contemplated that in the event there is a complaint of sexual harassment within the meaning of Rule 3 of All India Services (Prevention of Sexual Harassment) Regulations, 1988, the Complaints Committee established in each Ministry or Department or office for inquiring into such complaint shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and this Complaints Committee, shall hold the inquiry and its report, likewise is to be construed as the inquiry officer's report. A copy of these rules have also been filed as Annexure A-9 (colly.).





4.1 Further, Section 11 of the Act of 2013 makes it clear that if the Inquiry Committee has to proceed to make inquiry into the complaint, the provisions of the Service Rules as are applicable, are to be followed. Section 13 provides for inquiry report which the Committee is required to submit to the employer within 10 days of completion of the inquiry and this report is to be made available to the concerned parties. Sub-section 3 of Section 13 provides that the Committee can recommend for taking action for the misconduct in accordance with the provisions of the Service Rules. The OM dated 16.07.2015 (Annexure A-10) referred by the Internal Complaints Committee regarding the steps for the conduct of complaints relating to sexual harassment is not applicable to the applicant and provisions of Rule 9 of All India Services (Discipline and Appeal) Rules are to be applied.

4.2 It has also been submitted that Section 13(4) of the Act of 2013 makes it mandatory to take action on enquiry within a period of 60 days. However, the impugned chargesheet has been issued after a period of almost one and a half years.

5. Respondents Nos.2 and 3 have filed their reply, wherein it has been stated that in pursuance to the investigation report submitted by the Internal Complaint Committee, opinion was sought from General Administration Department, Department of Law, Government of Chhattisgarh and Ministry of

Home Affairs, Government of India (Annexure R-2-3/1, Annexure R-2-3/2 and Annexure R-2-3/3 colly.). Regarding the applicability of OM dated 16.07.2015, the DoP&T vide its letter dated 22.09.2017 has clarified that rules, regulations and orders applicable to officers of the Central Services, Class I can be applied for the matter for which there is no provision in the rules made or deemed to have been made under the All India Services Act, 1951. Therefore, after completion of investigation, chargesheet has been issued to the applicant.

5.1 It has been further submitted by the respondents Nos.2 & 3 that the chargesheet has been served on the applicant after the preliminary investigation was over and, therefore, there was no delay in serving the chargesheet. Further, the respondents have acted as per law and the entire proceedings have been done in the manner prescribed.

6. Respondent No.4 has also filed her reply, wherein it has been stated that vide report dated 02.12.2016 (Annexure A-6), the Internal Complaint Committee has found substance in the allegations levelled by her. However, when no action was taken against the applicant for a period of two years, she preferred a Writ Petition (PIL) No. 04/2018 before the Hon'ble High Court of Chhattisgarh for taking action against the applicant on the basis of the report dated 02.12.2016. Though the said Writ Petition was declined to be heard as





Public Interest Litigation but considering the severity of the issue, the Hon'ble High Court has disposed of the same with the directions to the respondent authorities to take up the report dated 02.12.2016 and do the needful within a time frame. The State authorities in compliance of the orders passed by the Hon'ble High Court, were required to forward the copy of the Internal Complaint Committee to the Union of India. But despite doing so, the State Authorities issued chargesheet to the applicant. It has been agreed by respondent No.4 that once an inquiry has been conducted under the provisions of Act, then the same is final and further action on the said inquiry report has to be taken. The employer cannot consider the report of Internal Complaint Committee as preliminary and issue chargesheet in light of the OM dated 16.07.2015.

6.1 The respondent No.4 has further submitted that issuance of chargesheet dated 19.04.2018 (Annexure A-1) is not only contrary to the scheme of Act but also against the order of the Hon'ble High Court of Chhattisgarh in the aforesaid Writ Petition.

7. The applicant has also filed rejoinder to the reply filed by respondents Nos.2 & 3, wherein apart from reiterating what has been stated in the Original Application, it has been submitted that the Act specifically eliminates the scope of any preliminary inquiry to be followed by some

inquiry/investigation. The opinions sought at multiple levels viz; General Administration Department, Law Department, Department of Personnel & Training are absolutely flawed and contrary to the specific statutory provisions. The OM dated 16.07.2015 has no applicability to All India Officers working in connection with the affairs of a State.

8. Learned counsel for the applicant contended that once the enquiry has already been completed by the Internal Complaint Committee and report has been submitted on 02.12.2016, therefore issuance of chargesheet for making a re-enquiry is not permissible as per rules. The Office Memorandum dated 16.07.2015 referred by the DoP&T is applicable for the employees governed under CCS (CCA) Rules, 1965. Since the applicant is an All India Service rank officer, the provisions contained in All India Services (Discipline & Appeal) Rules, 1969 would be applicable in his case.

9. On the other hand, learned counsel for respondents Nos.2 & 3 argued that on receipt of the opinions received by the General Administration Department and the Department of Law and after seeking the clarification from the DoP&T, the respondents have proceeded as per the guidelines issued by the DoP&T in Office Memorandum dated 16.07.2015. It has also been argued by learned counsel for respondents Nos.2 & 3 that no cause of action is there in favour of the applicant as only chargesheet has been issued to him, which



cannot be quashed at this stage. For this purpose, he placed reliance on a judgment of Hon'ble Apex Court in the case of **Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha**, (2012) 11 SCC 565; order of Principal Bench of this Tribunal in OA No.3168/2013 dated 05.01.2015 in the case of **Sukhdev Singh Karkhal vs. Union of India & Ors.**

10. The arguments of learned counsel for respondent No.4 were on the same lines as per the written statement.

11. We have heard the learned counsel for the parties and perused the pleadings and the documents available on record. We have also gone through the written submissions given by the parties.

12. Learned counsel for the applicant has placed reliance on a decision of Hon'ble Supreme Court of India in **Medha Kotwal Lele and others vs. Union of India and others**, (2013) 1 SCC 297, wherein while issuing further directions to the State and Union Territories in view of the guidelines in the case of **Vishaka vs. State of Rajasthan**; (1997) 6 SCC 241, it has been held as under:

“44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report



of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.



13. Learned counsel for respondent Nos.2 & 3, in his written submission, has cited the following judgments:

13.1 Judgment of Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 14566 of 2015 dated 12.10.2015 (**Sunil Manuprasad Jani vs. High Court of Gujarat & Others**).

13.2 Judgment of Hon'ble High Court of Delhi in **Avinash Mishra vs Union of India** in W.P. (C) 821/2014 decided on 30.09.2014 and **Tejinder Kaur vs. Union of India & Ors.** in W.P. (C) 5928/2016 dated 12.12.2017. It has been argued by learned counsel for respondents Nos.2 & 3 that upon receipt of the report by ICC, being an investigation agency, the Disciplinary Authority has proceeded further by issuing chargesheet to the applicant and there is nothing wrong with the issuance of chargesheet.

14. We have given our thoughtful consideration to the entire matter.



15. It is the case of respondent No.4 that she has been harassed by the applicant for which she has made a complaint against him to the concerned Police Station on 30.06.2016 (Annexure A-2). On receipt of her compliant, a special Committee for enquiring the allegations levelled by respondent No.4 was constituted by the respondent authorities under the provisions of Act of 2013. The Internal Complaint Committee prepared its Investigation report on 15.12.2016, a copy of which was served to the applicant on 02.12.2016. It is also the case of respondent No.4 that when no action was taken by the respondent authorities, she preferred a Writ Petition (PIL) No. 4 of 2018 before the Hon'ble High Court of Chhattisgarh, Bilaspur. The Hon'ble High Court vide order dated 27.02.2018 (Annexure A-8) directed the respondent authorities to take up the report dated 02.12.2016 and do the needful thereon in terms of the Act of 2013, within a period of 45 days from the receipt of copy of the judgment. However, the respondent authorities instead of forwarding copy of the report of Internal Complaint Committee to respondent No.1, have issued chargesheet to the applicant. Further, once an inquiry has been conducted under the provisions of Act of 2013, then the same is final and there is no other recourse available to the employer to proceed except to take necessary action as per the Act of 2013.

16. The relevant paragraph 6 & 7 of the order of Hon'ble High Court of Chhattisgarh, Bilaspur dated 27.02.2018 in Writ Petition (PIL) No. 4 of 2018 reads as under:

“6. The Report dated 02.12.2016 is available with the Government. This is not in dispute. It is submitted that it relates to the 4th Respondent. If that is a Report which is to be dealt with in accordance with the provisions of the aforesaid Act, such follow up action on that Report in accordance with the laws, and in particular in accordance with the aforesaid Act and the Rules thereunder cannot be delayed having regard to the terms of that Act and the context and setting in which that legislation has been made in the backdrop of the judgment rendered by the Apex Court in Vishaka vs. State of Rajasthan; (1997) 6 SCC 241.

7. For the aforesaid reasons, without expressing on the merits or demerits of the contentions of the petitioner vis-à-vis the 4th Respondent and also vice-versa, we direct Respondents No.2 and 3 to take up the Report dated 02.12.2016 and do the needful thereon in terms of the aforesaid Act and bring the same to the notice of the 1st Respondent, if the law obliges the State Government to do so. Let action at the State level be concluded within a period of 45 days from the receipt of a copy of this judgment. Writ Petition is ordered accordingly.”

Perusal of the order of the Hon'ble High Court makes it clear that the respondent authorities were directed to take action as per the report submitted by the Internal Complaint Committee on 02.12.2016 under the provisions of Act of 2013 keeping in view the ratio laid down by the Hon'ble Apex Court in the case of **Vishaka** (supra).

17. There is no doubt that the Hon'ble Apex Court in the case of **Vishaka** (supra) has referred to 'complaint mechanism'. It was held that 'whether or not such conduct constitutes an offence under law or a breach of the service rules,





an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.¹ The Act of 2013 provides for a detailed procedure right from the stage of filing of complaint to the submission of report on the basis of enquiry to be conducted as per the procedure laid down therein. Section 11 of the Act of 2013 makes it clear that if the Inquiry Committee has to proceed to make inquiry into the complaint, the provisions of the Service Rules, as applicable, are to be followed. Section 13 provides for inquiry report which the Committee is required to submit to the employer within 10 days of completion of the inquiry and this report is to be made available to the concerned parties. Sub Section 3 of Section 13 of the Act provides that the Committee can recommend for taking action for the misconduct in accordance with the provisions of the Service Rules.

18. On 24.07.1998, the All India Service (Prevention of Sexual Harassment) Regulation, 1998 were notified, wherein the definition of sexual harassment and prohibition of sexual harassment at workplace has been prescribed. A proviso to Rule 8(2) was introduced on 10/18.06.2014 in the said rules, which provides that the Complaints Committee for enquiry into complaints of sexual harassment shall be deemed to be the inquiring authority appointed by the

disciplinary authority for the purpose of these rules and the Complaints Committee is required to hold enquiry as far as practicable in accordance with the procedure laid down in those rules. Thus, there is a specific provision under the All India Services (Discipline and Appeal) Rules, 1969 for conduct of enquiry relating to the cases of sexual harassment. These rules provide specific procedure for conduct of the enquiry which has been incorporated by the Act of 2013.

19. The Department of Personnel & Training, vide its Office Memorandum dated 16.07.2015 (Annexure A-10) have issued the guiding principles regarding steps to be taken for conducting inquiry in case of allegation of Sexual Harassment. The said OM has been applied in the case of the applicant while issuing the chargesheet. The extracts of the Office Memorandum dated 16.07.2015 read as under:

“Undersigned is directed to say that during the meeting of the Chairpersons of Complaints Committees with Secretary (Personnel) on the 16th April, 2015 it was suggested that the Department of Personnel and Training may prepare a step guide for conduct of inquiry in complaint cases of sexual harassment. Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 lays down that the Complaints Committee established in each Ministry or Department for inquiring into complaints of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in these Rules.

2. The annexed guide on “Steps for conduct of Inquiry in complaints of Sexual Harassment” is intended to give the procedure as prescribed in the rules/instructions. This is, however, not intended as a substitute for reference to the Rules and instructions. Members of the Complaints Committee and



others who are required to deal with such inquiries should acquaint themselves with Central Civil Services (Classification, Control and Appeal) Rules, 1965, and instructions issued thereunder.”

The said Office Memorandum talks of Rule 14(2) of the CCS (CCA) Rules, 1965, which lays down that the Complaints Committee established in each Ministry of Department for inquiring into complaints of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in the CCS (CCA) Rules, 1965. It is pertinent to mention that the said Office Memorandum is in the form of guidelines and is not substitute to the rules. The guidelines deal with the cases covered under CCS (CCA) Rules, 1965, whereas the applicant is an officer of All India Services. The All India Services (Discipline & Appeal) Rules, 1969 specifically provide for manner and method of enquiry into sexual harassment complaint. Thus, we are of the view that the Office Memorandum dated 16.07.2015 (Annexure A-10) has no applicability in the case of the applicant.

20. Learned counsel for respondents Nos.2 & 3, while referring to the judgment of Hon’ble Apex Court in the case of **Prabhash Chandra Mirdha** (supra) and the order of Principal Bench of this Tribunal in the case of **Sukhdev Singh Karkhal** (supra) argued that neither the disciplinary proceedings nor the chargesheet are to be quashed at an initial stage as it would be a premature stage to deal with the issues. It is true that law does not



permit quashing of chargesheet in a routine manner. It is well settled law that a Tribunal or court of law can interfere in disciplinary proceedings only on limited grounds. However, in the instant case, the respondents were required to deal with the applicant's case in accordance with the provisions of the Act of 2013 and as per the applicable service rules, which has not been done in this case.

21. In **Sunil Manuprasad Jani** (supra), relied upon by learned counsel for respondents Nos.2 & 3, the Hon'ble High Court of Gujarat has held as under:

“20 *The law on the subject and the rules have come into existence thereafter. So much of the clarity was possibly missing in the year 2010 and in absence of proviso to Rule 9 of GCS [Discipline & Appeal] Rules and also for want of following of procedure as far as practicable so also in absence of other prescribed procedure to deal with such complaints, the internal complaints committee could not be construed as Inquiring Authority not its report to be accordingly treated as the report of Inquiry Authority. Proviso has been inserted after the judgment delivered in case of Medha Kotwal Lele [Supra] by the Apex Court. Had broad procedure been followed while conducting earlier inquiry no. 2 of 2010, then also, such a stand may have been permissible.”*

21.1 In the aforesaid case of **Sunil Manuprasad Jani** (supra), the Hon'ble High Court has held that the ICC cannot be construed as Inquiring Authority when there was no proviso in the Discipline & Appeal Rules in 2010 to deal with the cases of sexual harassment. It is only after the verdict of Hon'ble Apex Court in **Medha Kotwal Lele** (supra), such proviso has been inserted

and the findings and reports of the Complaints Committee shall be treated as finding/report in an inquiry. In the instant case, the All India Services (Discipline & Appeal) Rules specifically provide for manner and method of enquiry into the complaint of sexual harassment. Thus, the said decision is not applicable in the facts and circumstances of the present case.

22. In **Tejinder Kaur** (supra), the challenge was made by a Member of ICC to the status report of Disciplinary Authority holding that the complaint of sexual harassment was time barred and the matter was not referred to the ICC.

In para 20, the Hon'ble High Court of Delhi has held as under:

“20. It is apparent from the above that ICC has a dual role. It has to act as an investigation agency in the first stage and as an Inquiring Authority, if the Disciplinary Authority is of the opinion that disciplinary proceedings be initiated against the officer accused. However, it is also necessary to bear in mind that the above steps are only to serve as a guide and does not replace the statutory provisions of the Act or the CCS (CCA) Rules, 1965.”

22.1 It is pertinent to mention that the decision of **Medha Kotwal Lele** (supra) as also the scope of Section 11 and 13 of the Act of 2013 did not come up for consideration before the Hon'ble High Court. Furthermore, the applicability of OM dated 16.07.2015 was also not in question before the Hon'ble High Court. Even the Hon'ble High Court admits that the OM dated 16.07.2015 is only to serve as a guide and does not replace the statutory



provisions of the Act and service rules. The issue herein is whether after the report of ICC, a fresh inquiry can be conducted by the department as well as regarding applicability of OM dated 16.07.2015 and, therefore, the decision in the case of **Tejinder Kaur** (supra) will also not be applicable to the present facts of the case.



23. The decision in **Avinash Mishra's** case is also distinguishable as it was not a case of two inquiries, i.e. one by the ICC and thereafter by the department. In that case challenge was made to the proceedings of Complaints Committee, which led to an inquiry into complaint of misconduct amounting to sexual harassment at the work place. The instant case pertains to enquiry afresh by issuance of chargesheet, whereas the enquiry has already been completed by the ICC into the matter.

24. In the instant case, an Internal Complaint Committee was constituted by the respondent authorities for conducting enquiry into the complaints made by respondent No.4. The Committee has considered the matter in detail and submitted its final report on 02.12.2016 (Annexure A-6). Once an enquiry has already been conducted into the matter and the final report has been prepared, the respondents ought to have proceeded further as per the Act of 2013. Since proviso of Rule 8(2) specifically provides that the Complaints Committee shall be deemed to be the inquiring authority appointed by the disciplinary

authority for holding the inquiry into the complaints of sexual harassment, there was no occasion for the respondent authorities to issue a chargesheet and proceed afresh for the same allegations when a full fledged inquiry has already been conducted by the Internal Complaints Committee. The issuance of chargesheet dated 19.04.2018 (Annexure A-1) is not only contrary to the scheme of Act of 2013 but also in violation of the order of Hon'ble High Court of Chhattisgarh in Writ Petition (PIL) No. 04/2018, whereby the respondent authorities were directed to take action on the report dated 02.12.2016 (Annexure A-6), as per the Act of 2013.

25. Resultantly, the Original Application is allowed. The impugned chargesheet dated 19.04.2018 (Annexure A-1) is quashed and set aside. The respondents Nos.2 & 3 may proceed further from the stage of submission of report dated 02.12.2016 (Annexure A-6) by the Internal Complaints Committee, as per the Act of 2013 keeping in mind the observations made hereinabove. No costs.

**(Naini Jayaseelan)
Administrative Member**

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**(Ramesh Singh Thakur)
Judicial Member**