

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION No.2148/2018

Dated this Friday the 7th day of May, 2021

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Pramod Ajabrao Shambharkar
Aged about 51 years,
Occu:Ex-Asstt. Supdt of Post Offices,
Resident of C/o. Vijay Gode,
Plot No.264, Sawarbandhe Layout,
Hudkeshwar Road, Nagpur - 440 034. **Applicant**

(By Advocate Shri S.K. Verma)

Versus

1. Union of India, through its Secretary,
Department of Posts,
Ministry of Communications &
Information Technology, Dak Bhawan,
Sansad Marg, New Delhi - 110 001.
2. Member (Personnel),
Office of the Director General,
Department of Posts,
Ministry of Communications &
Information Technology,
Dak Bhawan, Sansad Marg,
New Delhi - 110 001.
3. The Chief Post Master General,
Maharashtra Circle, Fort,
G.P.O. Compound, Mumbai - 400 001.
4. The Post Master General,
Nagpur Region, Dak Bhawan,
Shankar Nagar Post Office,
Nagpur - 440 010.
5. The Senior Superintendent of Post Offices,
Amravati Division,
Amravati Camp - 444 602. **Respondents**

(By Advocate Shri R.G. Agrawal)

ORDER

PER: RAVINDER KAUR, MEMBER (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8 (i) call for the concerned records from the respondent department and to peruse;

(ii) allow the OA.

(iii) order immediate reinstatement in service of the applicant with back wages and also with due promotions and seniority benefits by declaring that the impugned Inquiry Report of the Complaints Committee (Annex A-1) is illegal and bad in law and to quash and set aside the same;

(iv) quash and set aside the impugned Punishment Order (Annex A-2) imposing punishment of dismissal from service on the applicant by declaring that the same has been issued illegally and in contravention of Rule 14 of CCS(CCA) Rules, 1965 and violative of Article 14 of the Constitution of India;

(v) quash and set aside the impugned Appellate Order (Annex A-3) by declaring that the same is unreasoned and non-speaking and without applying its mind; and

(vi) any other relief to the applicant which may deem fit by this Hon'ble Tribunal in the interest of justice."

2. The applicant was appointed as Postal Assistant on 14.07.1992. He was promoted as Sub Divisional Inspector on 31.10.2004 and thereafter, as Assistant Superintendent of Post Offices on 13.12.2012. He was working as ASPO (Central) Office of the Senior Superintendent of Post Offices, Amravati Division,

Amravati. As Senior Superintendent of Post Offices, it was his duty to inspect the administration and accounts of the Branch Post Offices/Sub Post Offices, verification of cash and stamps etc.

2.1 Kumari Jyoti Khandekar (hereinafter referred as complainant) was the Branch Post Master, Post Office, Nadura. On 26.05.2012, the applicant while performing his official duties conducted the cash and stamp verifications of the aforesaid Branch Post Office and detected shortage of Rs.4574/-. The Complainant on seeing all this left the post office without permission by falsely informing the applicant that she was going to hospital to see her ailing brother and would return soon. However, she did not return on that day. Consequently, the applicant made Punchnama with witnesses and closed his inspection. He also ordered the complainant as "Put Off Duty". The process of initiation of departmental proceedings against her was initiated. It is alleged that she being scared of disciplinary action and termination from service deliberately and with malafide intentions hatched a conspiracy to involve the applicant in sexual harassment case. On 06.09.2013, she approached the Members and Head of Yuva Sena activists with a doctored/fake C.D. made by her of the alleged

conversation between her and the applicant. Consequently, the Members of Yuva Sena forcibly entered the office of applicant on 07.09.2013 and gave him beatings, blackened his face and got the news published in the newspaper on the next day with the allegations of sexual harassment against him. The applicant lodged FIR No.195/2013 with City Kotwali Police Station, Amravati regarding the aforesaid incident. The preliminary enquiry was ordered into the incident. Respondent No.5, the Senior Superintendent of Post Offices sent a detailed Inquiry report dated 17/19.09.2013 (Annex A-5) to the Post Master General, Nagpur Region. As a consequence, the applicant was transferred from Amravati Postal Division to Chandrapur Postal Division where he joined his duty on 26.09.2013.

2.2 A Sexual Harassment Committee was constituted by respondent No.3 vide order dated 23.04.2014 consisting of Chairperson Ms. Vandita Kaul alongwith two female members, one male member and a social worker. Vide order dated 02.05.2014, the respondent No.4 directed the Chairperson of the Sexual Harassment Committee to hold meeting for hearing the complainant against the present applicant on 19.05.2014 and thereafter on 20.05.2014 respectively.

2.3 The applicant states that there was no complaint made by the complainant against the applicant about the sexual harassment before the issuance of order for conducting preliminary inquiry or before conducting the inquiry by the sexual harassment committee.

2.4 The applicant was served with the Inquiry report dated 28.08.2014 of the Sexual Harassment Committee i.e. Circle level Committee of Maharashtra Postal Circle (Annex A-1) finding mention that the charges levelled against the applicant were proved as per the inquiry.

2.5 The applicant claims that in violation of Rule 14 of CCS(CCA) Rules, 1965, he was not issued Memorandum of charge by the Disciplinary Authority nor any charges were framed against him before issuing orders to the Circle Level Committee to inquire into the Sexual Harassment allegations against him.

2.6 The Respondent No.3 - Disciplinary Authority issued the impugned punishment order of dismissal from service of the applicant deliberately violating the provisions of Rule 14.

2.7 If he had been issued the Memorandum of Chargesheet, Articles of charges, Statement of Imputation under Rule 14, he would have defended his

case by submitting written statement of defence and during inquiry cross-examined the witnesses but he was not given reasonable opportunity to defend his case which is violative of principles of natural justice, service jurisprudence, Article 14 and Article 311 (2) of the Constitution of India. He was also not supplied with the copies of daily order sheets nor the copies of the inquiry proceedings, the statements collected from numbers of officials against the applicant nor he was given opportunity to cross examine any of the witnesses. The CD which was produced by the complainant was sent for forensics test, however, the concerned official who examined the CD and gave certificate of voice test against the applicant was not produced during the inquiry. Thus the applicant was deprived of his right to cross-examine the said witness to prove his defence.

2.8 The applicant relies upon the DOPT OM dated 16.07.2015 on the subject '*Steps for conducting enquiry in case of allegations of sexual harassment*', laying down the procedure as prescribed in the rules and instructions to be followed by the members of the Complaints Committees and others who are required to deal with such inquiries.

2.9 The applicant denies the allegations of sexual harassment. He claims that his statement to this effect was also recorded by the complainant committee. The committee also recorded the statement of Shri U.C. Mate, Mail Overseer and P.R. Rokde, Mail Overseer about discovery of shortage of thousands of rupees from the account of Branch Post Master, i.e. the complainant during the inspection conducted by the applicant which speaks the truth that the lady employee had committed grave misconduct by taking away the Government money for her use. The applicant claims to be innocent and to have been falsely implicated by the complainant in criminal conspiracy alongwith some Yooth Sena goons.

2.10 On receiving the Memorandum dated 27.11.2014, the applicant made representation dated 30.01.2015 denying all the charges in the impugned Inquiry report dated 28.08.2014 and sought exoneration. It is after receiving the aforesaid representation, the Disciplinary Authority vide order dated 18.11.2015 had appointed Circle Complaints Committee as constituted vide order dated 12.09.2014 to inquire into the allegations against the applicant. The Disciplinary Authority also appointed Shri P.D. Bist, ASPO as the Presenting Officer. The appointment of Inquiring

Authority and the Presenting Officer was without framing any charges and imputations and without issuing any chargesheet to the applicant. The punishment order dated 09.10.2017 issued by Disciplinary Authority without issuing any chargesheet to the applicant and after two years of the appointment of the Inquiring Authority and the Presenting Officer without conducting any inquiry is not sustainable in the eyes of law.

2.11 The applicant preferred appeal to respondent No.2 against the punishment order. However, the same was also dismissed vide non speaking order dated 18.05.2018.

3. The respondents filed a detailed counter affidavit in response to the OA. It is stated that the complainant had submitted written statement on 11.09.2013 during the preliminary inquiry conducted by Assistant Superintendent of Posts (South) and Complaint Inspector, Amravati Division, alleging demand of physical pleasure by the applicant. The said complaint falls within the purview of Rule 3-C of CCS(Conduct) Rules, 1964. Consequently, the Circle Complaints Committee established for inquiring such sexual harassment complaints in the circle, inquired into the said complaints and submitted its report

dated 28.08.2014 holding the charges contained in the complaint/statement as fully proved. The said inquiry report was delivered to the applicant on 08.12.2014.

3.1 It is the contention of the respondents that the disciplinary inquiry under Rule 14 of CCS(CCA) Rules, 1965 (hereinafter referred to as 'Rules') was deemed to have been initiated against the applicant and the complaints committee established for inquiring into such complaints shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of Rule 14 (2) of the Rule.

3.2 The respondents further contend that the Circle Complaints Committee had conducted the inquiry after giving reasonable opportunity to the applicant and submitted its findings on the charges as fully proved. Consequently, the applicant was awarded punishment of dismissal vide order dated 09.10.2017.

3.3 Further that the Circle Complaints Committee was constituted under the provisions of Section (4) of the Sexual Harassment of Woman at workplace (Prevention, Prohibition and Redressal) Act, 2013 and not under the OM dated 16.07.2015.

3.4 The Circle Complaints Committee examined the complainant as per Section 2(n)(ii)(iii) and (v) of the aforesaid Act of 2013 and the committee submitted

findings on the complaint as fully proved. The Disciplinary Authority thereafter imposed the penalty of dismissal on the basis of the said inquiry report.

3.5 The Circle Complaints Committee had also examined the evidence as contained in Audio CD provided by the complainant in the light of the report of FSL, Mumbai dated 18.07.2014 to the effect that the specimen voice of the applicant is similar to the voice contained in the CD.

3.6 The applicant submitted his representation dated 29.01.2015 whereby he denied all the charges levelled against him. The Disciplinary Authority constituted Circle Complaints Committee consisting of Chairperson Ms. Sumitha Ayodhya, Director Postal Service, Pune Region and other Members as the Inquiring Authorities vide memo dated 18.11.2015. The Presenting Officer was appointed vide Memo dated 27.11.2015. The representation of the applicant was examined with reference to the records of the disciplinary case and Circle Complaints Committee's report. The punishment was awarded by the Disciplinary Authority vide order dated 09.10.2017.

3.7 It is submitted that after the applicant submitted his representation on the Circle Complaints Committee's report denying all the charges levelled

against him, the case of the applicant was at final decision stage and in the meanwhile, Office Memorandum dated 16.07.2015 on the steps for conducting inquiry in case of allegation of Sexual Harassment with an intention to give the procedure as prescribed in the rules/instructions was received from Director (E), Ministry of DoPT and was circulated vide Directorate Memo dated 21.08.2015.

3.8 The respondents claim that since the disciplinary proceedings against the applicant were conducted under the definition of Sexual Harassment as per Section 2(n)(ii)(iii) and (v) of the aforesaid Act of 2013 and as per proviso to Rule 14(2) of the Rules in terms of DoPT OM dated 01.07.2004, the matter was referred to Directorate for clarification and guidelines. Meanwhile, postal Directorate in a similar sexual harassment case had taken final decision on the Memorandum issued by them as per the old orders. Accordingly, the case of the applicant was decided by the Disciplinary Authority.

3.9 Regarding the rejection of appeal preferred by the applicant against the order of punishment issued by the Disciplinary Authority, it is submitted that it was carefully considered with reference to the relevant records and facts of the case and, thus,

rejected vide order dated 18.05.2018.

4. The applicant filed rejoinder to the aforesaid reply affidavit of the respondents and reaffirmed his assertions in terms of OA.

5. The sur-rejoinder filed by the respondents is nothing but repetition of the contents of affidavit in reply.

6. We have heard the arguments addressed by Shri S.K. Verma and Shri R.G. Agrawal, learned counsels for the parties and have carefully gone through the pleadings available on record.

7. After hearing the submissions made by learned counsel for the parties, we have carefully gone through the material available on record. The short question for consideration in the present OA is as to whether the respondents conducted the inquiry into the allegation of sexual harassment of a female employee at workplace as per Rule 14 of CCS(CCA) Rules, 1965 and DoPT OM dated 16.07.2015 against the applicant on the basis of the complaint dated 11.09.2013.

8. Learned counsel for the applicant argues that the so-called inquiry conducted by the Complaints Committee/Inquiring Authority is in violation of Rule 14 of CCS(CCA) Rules, 1965 as the applicant was not served with any Memorandum of charge by the

Disciplinary Authority nor any charges were framed against him before issuing orders to the circle level committee to inquire into sexual harassment allegation against him. Neither he was supplied with the copies of the daily order sheets nor the copies of the inquiry proceedings or the statement collected from number of officials against the applicant, nor he was given opportunity to cross-examine any of the witnesses. The CD which was produced by the complainant was admittedly sent for the forensic test, however, the concerned officer who had examined the CD and gave certificate of voice test against the applicant was not produced during the inquiry and thus the applicant was deprived to his right to cross-examine the said witness to prove his defence. In support of his contentions, he has relied upon the Office Memorandum No.F.No.11013/2/2014-Estt (A-III) dated 16.07.2015 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi with the subject 'Steps for conducting inquiry in case of allegation of Sexual Harassment'.

9. Learned counsel for the respondents though have not conceded but could not bring it on record that the applicant was issued any Memorandum of Charge or

charges were framed against him in the proceedings or he was supplied with the statement of the witnesses collected against the applicant or he was given opportunity to cross-examine any of the witnesses. There is no denial that the applicant was not given reasonable opportunity to defend his case. If he had been issued the Memorandum of chargesheet, articles of charges and statement of imputation under Rule 14 of CCS (CCA) Rules, 1965, he would have submitted his written defence and if he had been allowed to cross-examine the witnesses, he could put forth his defence to these witnesses. Non-grant of these opportunities is sheer violation of principles of natural justice and Rule 14 (2).

10. The applicant relied upon OM dated 16.07.2015. The OM guides on steps for conduct of inquiry in complaints of sexual harassment. The same is reproduced as under with the relevant guidelines :-

F. No. 11013/2/2014-Estt (A-II1)
Government of India
Ministry of Personnel,
Public Grievances and Pensions
Department of Personnel & Training

North Block, New Delhi
Dated July 16th, 2015

OFFICE MEMORANDUM

Subject: Steps for conducting inquiry in case of allegation of Sexual Harassment

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 Committees 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.

sd/-
(Mukesh Chaturvedi)
Director (E)

Steps for Conduct of Inquiry in Complaints of Sexual Harassment

Complaints Committees

1. Complaints Committees have been set up in all Ministries/Department and organisations under them in pursuance to the judgement of the Hon'ble Supreme Court in the Vishakha case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013("the Act"), the Internal Complaints Committee (referred to as "Complaints Committee" hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman and at least half of its members should be women. In case a woman officer of sufficiently senior level is not available in a particular office, an officer from another office may be so appointed. To prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committees should involve a third party, either an NGO or some other body which is familiar with the issue of sexual harassment.

What is Sexual Harassment?

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Workplace defined:

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Initial relief

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Complaints Committee to be Inquiring Authority

6. As per Proviso to Rule 14(2) of CCS (CCA) Rules, 1965, in case of

complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

Need for investigation

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

Dual Role

9. In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated

10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a *prima facie* substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

Decision to issue Charge sheet, and conducting Inquiry

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The Inquiry-stages

14. In case the Charged Officer denies the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 14 (6) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

The Section 11(4) of the Act requires that the inquiry shall be completed within a period of ninety days.

15. The Disciplinary Authority shall also in terms of Rule 14(5) (c) appoint a Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/ Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. As a first step, the charged officer would be formally asked as to whether he admits the charges. As mentioned above, in case of any clear and unconditional admission of any Article of Charge, no inquiry would be held in respect of that Article and the admission of the Charged Officer would be taken on record. The inquiry would be held, thereafter, in respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 14(8).

16. The Inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such documents, if not only given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. The Inquiring Authority would consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed.

Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.

17. When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

Examination of Witnesses

18. Summons would, thereafter, be sent to the witnesses listed in the Charge sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions of the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.

19. The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appears as a witness, she would also be examined and cross-examined. The Inquiry Officer may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.

20. If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

Daily Order Sheet

21.

Defence Evidence

22. After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry

Authority would be taken on record and then the witnesses called and their examination, cross examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

General Examination of the Charged Officer

23. After the Defense evidence is over, the Inquiring Authority shall ask Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defense witness. In case however, he declines to do so, the Inquiring Authority is required to generally question him. At this stage due care is required to be exercised that as per Rule 14(18) the purpose of this stage is to apprise Charged Officer of the circumstances which appear to be against him. This is to enable the Charged Officer to explain them to the Inquiring Authority. Presenting Officer and the Defence Assistant do not take any part in the General Examination. Charged Officer may not be compelled to answer questions during examination by the Inquiring Authority.

Brief

24. After this, the Presenting Officer would be asked to submit his brief. A copy of this brief would be given to the Charged Officer. Both the Presenting Officer and the Charged Officer may be allowed reasonable time for submission of their brief.

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Powers of the Committee to make recommendations

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Suspension

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Special Provisions to deal with threats or intimidation

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11. The relevant Rule which lays down the procedure for dealing with the complaints of sexual harassment is Rule 14 of CCS(CCA) Rules, 1965. The provisions relevant to the present case are reproduced as under:-

“14. Procedure for imposing major penalties

(1). No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

(“Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules. ”)

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(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up -

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

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(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

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8(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary

authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the Inquiring Authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

Note: The Government servant shall not take the assistance of any other Government servant who has (three) pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

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18. The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

12. Rule 14 of CCS(CCA) Rules, 1965 deals with the procedure for imposing major penalties. As per Rule 14(1) no order of imposing major penalty shall be made except after an inquiry is conducted in the manner as provided in Rule 14 and Rule 15 as the case may be.

As per Rule 14(2) whenever the Disciplinary Authority forms an opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against the Government servant, the Disciplinary Authority may itself inquire into, or appoint an authority to inquire into the

truth in the imputation of misconduct or misbehaviour.

When there is a complaint of sexual harassment within the meaning of Rule 3-C of CCS(Conduct) Rules, 1964, as per proviso to Rule 14(2), the Complaints Committee established in each office for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority and if no such procedure has been prescribed for the Complaint Committee for holding the inquiry into the complaint of sexual harassment, the Complaints Committee shall hold inquiry as far as practicable in accordance with the procedure laid down in these rules.

13. As per the guidelines issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi vide OM dated 16.07.2015 relying upon the proviso to Rule 14(2) of CCS(CCA) Rules, 1965, in case of complaint of sexual harassment, it is the Complaints Committee which is set up in each Ministry or Department for inquiring into such complaint, which shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of Rule 14. Proviso to Rule 14(2) has been reproduced as one of the guidelines in the OM referred

to above which explains as to how the Complaints Committee is required to conduct the inquiry on receipt of complaint of sexual harassment. These guidelines speak of preliminary inquiry/fact finding inquiry or investigation which is to be conducted by the Inquiring Authority/Complaints Committee on receipt of a complaint, to verify the facts of the allegation.

14. The guidelines further find mention that the Complaints Committee has dual role to play. At the first stage, to carry out the investigation as referred to above and second stage is when the Committee acts as Inquiring Authority.

The Complaints Committee after investigating into the allegations, should make recommendations as to whether there is a *prima facie* substance in the allegations which calls for conducting a formal inquiry. It is only on receipt of the investigation report, the Disciplinary Authority should examine the report with a view to form an opinion as to whether a formal chargesheet needs to be issued to the Charged Officer.

15. The guidelines further find mention that as per Rule 14(3), the chargesheet is to be drawn by or on behalf of the Disciplinary Authority. In case the

Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity to file reply to the chargesheet. After considering the reply of the Charged Officer, as per Rule 14(5) a decision on conducting the inquiry has to be taken. If the Disciplinary Authority has formed an opinion to conduct inquiry against the Charged Officer, then in terms of Rule 14(5) (c) he shall appoint a Government servant as a Presenting Officer to present the evidence on behalf of prosecution before the Complaint Committee. The Presenting Officer will be provided with the listed documents. Thereafter, the Complaint Committee would summon the Presenting Officer and the Charged Officer. The first step required of the Complaint Committee is to formally ask the Charged Officer as to whether he admits the charge/s. In case the Charged Officer makes clear and unconditional admission to any article of charge, no inquiry would be held in respect of that article and the admission of the Charged Officer will be taken on record. However, where the Charged Officer denies the charge/s, the inquiry would be held.

16. As per Rule 14(8), the Charged Officer is also entitled to engage a Defence Assistant. The Complaints Committee is thereafter required to ask the Presenting

Officer to have the prosecution documents as mentioned in the chargesheet, inspected by the Charged Officer. The copies of the documents relied upon are to be furnished to the Charged Officer. Thereafter, the Charged Officer would be required to submit a list of documents and witnesses which he wants to produce in support of his defence. Here, it is the duty of the Complaints Committee/Inquiring Authority to allow only such documents or witnesses of the Charged Officer which are relevant.

17. The above guidelines further prescribe that when the regular hearing commences, the Complaints Committee/Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. The documents which are disputed by the Charged Officer are required to be proved by the witnesses before they are taken on record whereas undisputed documents would be taken on record and marked as Exhibits.

18. Next stage is the Examination of the Witnesses. The examination-in-chief of the prosecution witness/s would be done by the Presenting Officer. Thereafter the Charged Officer will be given an opportunity to cross-examine the witness/s so examined in Chief. After cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. No

leading questions are allowed to be put to the witness by the Presenting Officer while recording his examination-in-chief, though in cross-examination leading questions are permissible.

19. In the guidelines vide OM dated 16.07.2015, it is specifically mentioned that failure to provide an opportunity to the Charged Officer to cross-examine all the witnesses examined on behalf of the prosecution may be construed as a denial of reasonable opportunity to the Charged Officer, resulting in vitiation of the inquiry, though the Inquiry Officer may disallow certain questions which are offensive or indecent. These guidelines further speak of the powers of the inquiring authority to seek clarification. The Inquiring Authority may put questions to the witnesses but it should not be done with any bias for or against the Charged Officer. Further it lays stress that no inquiry should be conducted behind the back of the Charged Officer.

20. After the closure of the prosecution evidence, the Charged Officer is required to submit his statement of defence. Thereafter the Defence evidence will be recorded and the Presenting Officer will be allowed to cross-examine the defence witnesses. After the conclusion of the recording of evidence of both

the parties, it is duty of the Inquiring Authority to ask the Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defence witness and in case he does not want to examine himself as a defence witness, the Inquiring Authority is required to generally question him as per Rule 14(18) to apprise him of the circumstances which appear to be against him, to enable him to explain the same. Thereafter the Presenting Officer and the Charged Officer would be asked to submit their brief. Finally on conclusion of the inquiry proceedings, the Inquiry Authority writes the inquiry report which should be a speaking one clearly bringing out as to the evidence on the basis of which any particular conclusion has been reached. Based on this analysis, the inquiring authority will give its findings on the charge as proved or not proved.

21. In the present case, perusal of the record shows that neither the provisions of Rule 14 of CCS(CCA), 1965 discussed above have been followed, nor the guidelines mentioned in DoPT OM dated 16.07.2015 based on Rule 14 CCS(CCA) 1965 have been followed. It is the contention of the respondents that after the applicant submitted his representation on the report

of Circle Complaints Committee denying all the charges levelled against him, the case of the applicant was at final decision and at that stage, the Office Memorandum dated 16.07.2015 came into operation and was circulated vide Directorate memo dated 21.08.2015. However, this argument has no force. The record shows that the applicant had filed his representation on 29.01.2015 and thereafter nothing was done by the Disciplinary Authority except constituting Circle Complaints Committee for conducting inquiry vide Memo dated 18.11.2015 and appointing Presenting Officer. Since the Committee itself was constituted on 18.11.2015 which was subsequent to the issuance of Office Memorandum dated 16.07.2015, it was incumbent upon the respondents to have followed the OM in its true letter and spirit. To the contrary, after 18.11.2015, no inquiry was conducted and punishment of dismissal was awarded by the Disciplinary Authority on 09.10.2017 after lapse of around two years. In these circumstances, it does not lie in the mouth of the respondents to say that when OM dated 16.07.2015 was issued, the case of the applicant was at final stage as the respondents have failed to bring any material on record as to what proceedings were conducted against the applicant during the period from

18.11.2015 to 09.10.2017 and what procedure was followed.

22. Even assuming that in the preliminary inquiry the *prima facie* material was available against the applicant, he was required to be served with a formal chargesheet drawn by or on behalf of the Disciplinary Authority, giving him an opportunity to reply to the chargesheet in terms of Rule 14(3) CCS(CCA) Rules, 1965.

Rule 14(5) clearly specifies that a decision to conduct an inquiry has to be taken only after consideration of the written statement of the defence and it is only thereafter that the Disciplinary Authority either himself inquires into the articles of charge which are not admitted or gets it done through an inquiring officer appointed under sub Rule 2.

Rule 14(2) proviso clearly specifies that the complaints committee established in each Ministry or department or office for inquiring into the complaints of sexual harassment, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purposes of this rule and the complaints committee has to follow the procedure laid down in Rule 14 unless separate procedure has been prescribed for the complaints committee.

Thus it is only after conducting a proper preliminary inquiry through the complaints committee, in case *prima facie* substance was found in the allegation of sexual harassment against the applicant, the formal inquiry was to be initiated by serving formal chargesheet containing specific articles of charge and providing opportunity to the applicant to file reply to admit or deny the charge/s or to take his defence therein. All these procedural steps which are mandatory in nature have not been complied with in the present case.

23. Even perusal of the report of the Complaints Committee, which is placed on record as Annex A-14, does not indicate that Rule 14 CCS(Conduct) Rules and the guidelines issued vide OM dated 16.07.2015 were followed by the Committee as the learned counsel has admitted during course of arguments that before the Complaints Committee the statement of witness was recorded but no opportunity was given to the applicant to cross-examine the witnesses of the prosecution nor he was furnished the relevant documents relied upon by the prosecution nor he was allowed to lead his own defence nor his general statement was recorded with regard to the evidence available on record against him. The proceedings were thus carried out in utter

disregard to the law laid down by the Hon'ble Apex Court in the case of Vishaka (supra) and the guidelines provided vide DoPT OM dated 16.07.2015. It is totally shocking to note that the Complaints Committee, which conducted the inquiry against the applicant did not even observe the basic steps of giving opportunity to the applicant to cross-examine the witnesses and to allow him to lead his defence evidence. Even his general examination was dispensed with for no reason.

24. In these circumstances, the procedure followed in the present case has vitiated the entire inquiry proceedings. Hence, the impugned orders dated 28.08.2014, 27.11.2014, 09.10.2017 and 18.05.2018 are hereby set aside. The matter is remitted to the Disciplinary Authority to follow the required procedure from the stage of conducting fact finding inquiry and conclude the inquiry proceedings within a period of six months from the date of receipt of certified copy of this order. The Competent Authority may take appropriate decision as per the relevant provisions regarding the pay and allowances to be paid to the applicant for the period from the date of his dismissal till reinstatement in pursuance to this order.

25. Due to lack of comprehension and insensitive approach of the respondent No.3 - the Disciplinary Authority, he flouted all the rules and regulations and therefore, a cost of Rs.20,000/- (Rs. Twenty Thousand) is imposed upon him to be recovered within two months from his salary by respondent No.2, out of the recovered cost, Rs.10,000/- to be deposited with the PM Relief Fund and Rs.10,000/- to be paid to the applicant towards the cost of the proceedings. The receipts of payment of cost be deposited by respondent No.2 with the Tribunal within 15 days from the recovery of the cost.

26. With these directions, the Original Application stands disposed of.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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