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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A. No. 58/2009  
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B. J. 08/07/2015  
SECTION OFFICER (JUDL.)

8/7/2015

FROM NO. 4  
( See Rule 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDERSHEET

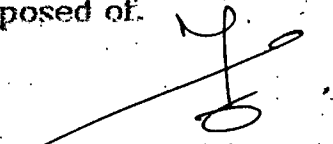
- 1. Original Application No: 58 /2009
- 2. Misc Petition No
- 3. Contempt Petition No
- 4. Review Application No

Applicant(S) Smt. Kanak Lata Deori

Respondant(S) U.O.I. & OPS

Advocate for the Applicant(S): Mr. M. Chanda  
Mr. S. Nath &  
Mrs. U. Dutta

Advocate for the Respondant(S): 6  
Rly. Standing Counsel.

Notes of the Registrar	Date	Order of the Tribunal
This application is in form is filed/C.F. for Rs. 50/- deposited vide IPO/BD No. <u>396/392794</u> Dated <u>22.2.09</u>	30.03.2009	Heard Mr. M. Chanda, learned Counsel appearing for the Applicant and Dr J.L. Sarkar, learned Standing Counsel for the Railways, and perused the materials placed on record.  For the reasons recorded separately, this C.A. stands disposed of.
<u>N. Sanyal</u> Dy. Registrar <u>27.3.09</u> <u>HS 27/3/09</u>		 (M.R. Mohanty) Vice-Chairman
<u>27.3.09</u> 5 copies of Application with envelopes received for issue notice to the Respondents No 1 to 5. nkm		
Received copy Smt. J.L. Sarkar 2/4/09 For Dr. J.L. Sarkar S.C. Railways		

29.4.09

Copy of the order  
alongwith copy of the  
application send to  
the office. for issue  
the time to the Regd.  
a copy of the order  
to the Applicants.

✓

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI  
O.A. No.58/2009**

30<sup>th</sup> day of March 2009

**Smt. Kanak Lata Deori**

**Applicant**

**By Advocates Mr. M. Chanda & Ms. U.Dutta  
Versus**

**The UOI & others**

**Respondents**

**By Advocate Dr. J.L. Sarkar, Standing Counsel for the Railways**

**CORAM: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman**

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No<sup>✓</sup>
2. Whether to be referred to the Reporter or not? Yes/No<sup>✓</sup>
3. Whether their Lordships wish to see the fair copy of the Judgment ? Yes/No<sup>✓</sup>

  
**Vice-Chairman**

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI  
O.A. No.58/2009**

30<sup>th</sup> day of March 2009

Present: The Hon'ble Shri Mamoraranjan. Mohanty, Vice-Chairman

Smt. Kanak Lata Deori,  
Wife of Mohan Lal Deori,  
Railway Ticket Collect, IT [Cell],  
Office of the Chief Commercial Manager,  
N.F. Railway, HQ, Maligaon,  
Guwahati - 781 011.

Applicant

By Advocates Mr. M. Chanda & Ms. U.Dutta

Versus

1. The Union of India  
represented by the  
General Manager,  
N.F. Railway,  
Maligaon, Guwahati - 781 011.
2. The Divisional Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati - 781 011
3. The Chief Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati - 781 011.
4. Sr. Deputy Manager,  
N.F. Railway,  
Maligaon, Guwahati - 781 011
5. Asstt. Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati - 781 011.

Respondents

By Advocate Dr. J.L. Sarkar, Standing Counsel for the Railways

O.A.No. 58/2009

Oral Order

30.03.2009

Manoranjan Mahanty, Vice-Chairman:-

Applicant, an employee of N.F. Railway, was charge-sheeted under Annexure-VIII dated 18.12.2008 and a Departmental Proceeding was initiated

against her. She submitted her written statement to the said charge-sheet on 10.01.2009 under Annexure-IX. As it appears, an Inquiry Officer was appointed on 12.01.2009. By her representation under Annexure-X dated 20.02.2009 she prayed for stay of the inquiry in the Departmental Proceeding; for the reason of pendency of her Appeal [dated 17.02.2009] to the General Manager of N.F. Railway. Under Annexure-XI dated 20.02.2009, she also prayed for supply of certain documents to be utilized in her defence. However, she, as it appears, participated in the enquiry [with a Defence Assistant] and submitted a defence brief under Annexure-XIII dated 03.03.2009 and, on 05.03.2009, an Enquiry Report was drawn and a copy of the same was supplied to her under Annexure-XII dated 09.03.2009 from the Disciplinary Authority. Under Annexure-XIII dated 24.03.2009, the Applicant submitted her representation [directed against the Enquiry Report] to Disciplinary Authority and without waiting for the outcome of the final consideration in the matter, she has rushed to this Tribunal by way of filing [on 27.03.2009] this present Original Application under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- “8.1 That the Hon’ble Tribunal be pleased to declare that the disciplinary proceeding initiated against the applicant vide memorandum of charge sheet dated 18.12.2008 [Annexure-VIII] as illegal and be pleased to set aside and quash the memorandum No.C/ACM/GHY/CON/DAR dated 18.12.2008 and the inquiry report dated 05.03.2009 issued under No. C/ACM/GHY/CON/DAR dated 09.03.2009 [Annexure-XII] as well as the enquiry proceeding.
- 8.2. That the Hon’ble Tribunal be pleased direct the respondents to drop the disciplinary proceeding against the applicant.
83. Cost of the application.
84. Any other relief [s] to which the applicant is entitled as the Hon’ble Tribunal may deem fit and proper.”

2. Dr. J.L. Sarkar, leaned Standing Counsel for the Railways [on whom a copy of this Original Application has already been served] took a stand that this case is premature and also pointed out that the Applicant having participated in the

enquiry [that was conducted on the charge-sheet dated 18.12.2008] cannot be allowed to press the prayer to 'quash the charge-sheet at this stage' that too after the drawal of the enquiry report and after submission of her reply/representation on the enquiry report. Dr. Sarkar submitted that the Applicant need wait for the final orders in the Disciplinary Proceedings.

3. Faced with the above objection, Mr. Chanda, learned Counsel appearing for the Applicant, pointed out [a] that since the Applicant was sexually harassed at her work-place, by a superior staff, she [Applicant] lodged a complaint in writing under Annexure-I dated 20.10.2008; [b] that the said complaint was subjected to an enquiry by a Committee specially constituted; [c] that in the said three-member Committee, majority [including the Chairperson] were women; [d] that under Annexure-II dated 17.11.2008, the Applicant was summoned to attend the enquiry fixed to be conducted on 19.11.2008 by the said Committee; [e] that after the enquiry under Annexure-III dated 28.11.2008, the Report of the said Committee was drawn; [f] that the said Committee having found the complaint of the Applicant to be not proved, she approached the authorities [under the provisions of R.T.I. Act, 2005] under Annexure-IV dated 07.01.2009 to get the details of the enquiry conducted by the Committee in question; [g] that she was given a reply [to her application under R.T.I. Act, 2005] under Annexure-V dated 11.02.2009; [h] that, being aggrieved, she preferred an Appeal under Annexure-VI dated 10.03.2009 and [i] that the said Appeal under Annexure-VI dated 10.03.2009 is still pending with the Appellate Authority.

4. Learned Counsel appearing for the Applicant has also pointed out that the Appeal under Annexure-VII dated 27.02.2009 [directed against the aforesaid Enquiry Report, under Annexure-III dated 28.11.2008, of the Committee] addressed to the General Manager of N.F. Railway is also pending.

5. It has also been argued by the learned Counsel appearing for the Applicant that during the pendency of the aforesaid Appeal, the authorities are proceeding ahead to complete the Disciplinary Proceeding against the Applicant and that, for the reason of undue haste shown in initiating the Disciplinary Proceeding and going through the Enquiry, the Applicant apprehends that the Authorities may complete the Disciplinary Proceeding without examining what has been stated in the representation under Annexure-XIV dated 24.03.2009 of the Applicant and even before disposal of the Appeals under Annexure-VI dated 10.03.2009 and Annexure-VII dated 27.02.2009.

/s/

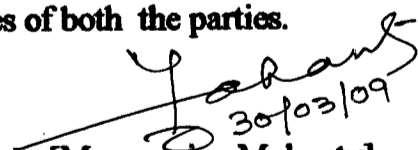
6. Dr. Sarkar, learned Standing Counsel for the Railways, stated that there should not be any apprehension that the Disciplinary Authority shall pass final orders without considering all aspect of the matter raised in the representation of the Applicant.

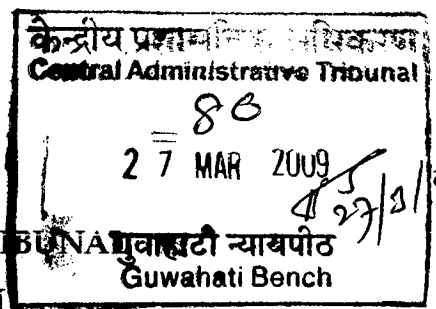
7. Mr. Chanda, appearing for the Applicant, pointed out that apart from her complaint under Annexure-I dated 20.10.2008, the Applicant also filed an F.I.R. in the local Police Station in the evening of 20.10.2008 and in the event of finality of the Departmental proceeding against her, the case in the Police Station may get affected. Dr. Sarkar, learned Standing Counsel for the Railways, on the other hand, pointed out that 'law is well settled that Departmental Proceeding & Criminal Court Proceeding can go simultaneously' and, that, therefore, the Committee could rightly enquired into the matter and there are no bar to proceed with the present Departmental Proceeding against the Informant/Complainant of the Police Case.

8. In the above premises, having heard the learned Counsel for the parties and on perusal of the material placed on record, without entering into the merits at this premature stage, this matter, in the peculiar circumstances, is remitted to the highest authority of the concerned Railway i.e. General Manager of the N.F. Railway; who should pass final orders in the Departmental Proceeding only after considering all aspect of the matter including the points raised in the Appeals [under Annexure-VI dated 10.03.2009 and Annexure-VII dated 27.02.2009] and the representation under Annexure-XIV dated 24.03.2009 of the Applicant.

9. With the above observations and directions, this case stands disposed of at the Admission stage.

10. Send copies of this order to the Applicant and all the Respondents [along with the copies of this Original Application] in the address given in the O.A. Copies of this order be also supplied to the Advocates of both the parties.

  
30/03/09  
[Manoranjan Mohanty]  
Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 58 /2009

Smti. Kanak Lata Deori

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

Applicant is working as Railway Ticket Collector (for short RTC) in IT (cell), in the office of the Chief Commercial Manager, N.F. Railway, Guwahati.

- 20.10.2008- Applicant submitted one application to the Chief Commercial Manager, complaining about the harassment caused to her at her work place by her senior officer Shri S. Sengupta, Asstt. Commercial Manager (IT). (Annexure-I)
- 17.11.2008- Chief Commercial Manager instructed the applicant to attend before sexual harassment complaints committee of N.F. Rly. HQ on 19.11.2008. (Annexure-II)
- 19.11.2008- Applicant appeared before the sexual harassment complaints committee of N.F. Rly. HQ, Maligaon.
- 28.11.2008- Committee submitted its report holding that the allegations brought against Mr. S.Sengupta ACM/IT by the applicant is not proved. (Annexure- III)
- 18.12.2008- Respondent No. 5 issued memorandum of charges against the applicant. In the said memorandum it has been alleged that the complaint lodged by the applicant on 20.10.08 against Sri S. Sengupta, ACM/IT relating to her sexual harassment at work place has been proved to be false by the sexual harassment complaint committee which tarnished the image and reputation of Sri Sengupta and as such the applicant is guilty of misconduct under Rule 3.1 (ii) and (iii) of Railway Service Conduct (Rules) 1966. (Annexure- VIII)
- 23.12.2008- Applicant received report of the sexual harassment complaints committee dated 28.11.08.
- 07.01.2009- Applicant submitted one application to the Public Information Officer cum DGM/G/MLG, N.F. Rly under the provisions of RTI Act, 2005 asking for some documents, vital to her case. (Annexure- IV)
- 10.01.2009- Applicant submitted her written statement against the charge sheet dated 18.12.08. (Annexure- IX)

- 11.02.2009- Deputy General Manager cum P.I.O forwarded a copy of one letter dtd. 23/28.01.09 of Chief Commercial Manager informing the applicant that the information's as sought for, cannot be supplied to her. She was however allowed to appeal before the Appellate Authority against the aforesaid order. (Annexure-V)
- 20.02.2009- Applicant submitted application to the Assistant Commercial Manager (Disciplinary officer) stating that her appeal dated 17.02.09 before the General Manager against the report dated 28.11.09 of the Sexual Harassment Complaint Committee has been pending and further requested to stay the disciplinary proceeding initiated against her vide memorandum dated 18.12.08 until the disposal of the appeal. (Annexure- X)
- 20.02.2009- Application submitted application to the disciplinary authority for supplying of some documents and informations for defending her case. But those documents were not supplied to her. (Annexure- XI)
- 27.02.2009- Applicant preferred an appeal before the General Manager, against the inquiry report, pointing out serious irregularities and infirmities of the inquiry proceeding. (Annexure- VII)
- 03.03.2009- Applicant submitted her defence brief before the inquiry officer against the charges labeled against her vide memorandum dated 18.12.2008 even in spite of non-supply of related documents/informations sought for by her. (Annexure- XIII)
- 05.03.2009/09.03.09- Inquiry officer submitted her inquiry report dated 05.03.09 vide her letter dated 09.03.09. (Annexure- XIII)
- 10.03.2009- Applicant submitted an appeal before the Senior Deputy Manager (Appellate Authority) and requested to supply the informations as sought vide application dtd. 07.01.2009. (Annexure - VI)
- 24.03.2009- Applicant submitted one representation to the disciplinary officer on against the inquiry report dated 05.03.2009. In her said representation the applicant has denied the charges labeled against her vide memorandum dated 18.12.08 and has rebutted the reasonings and findings of the inquiry officer contained in the inquiry report dated 05.03.2009. She has prayed for exoneration from the impugned charges alleged against her. (Annexure- XIV)

### PRAYERS

1. That the Hon'ble Tribunal be pleased to declare that the disciplinary proceeding initiated against the applicant vide memorandum of charge sheet dated 18.12.2008 (Annexure- VIII) as illegal and be pleased to set aside and quash the memorandum No. C/ACM/GHY/CON/DAR dated 18.12.2008 and the inquiry report dated 05.03.2009 issued under No.

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Guwahati Bench

C/ACM/GHY/CON/DAR dated 09.03.2009 (Annexure- XII) as well as the enquiry proceeding.

2. That the Hon'ble Tribunal be pleased direct the respondents to drop the disciplinary proceeding against the applicant.
3. Costs of the application.
4. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

**Interim order prayed for.**

During pendency of this application, the applicant prays for the following relief: -

1. That the Hon'ble Tribunal be pleased to restrain the respondents from taking any further action on the memorandum of charge dated 18.12.2008 and inquiry report dated 05.03.2009 or alternatively be pleased to stay the inquiry proceeding till disposal of the original application.

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Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No. 58 /2009  
Smti. Kanak Lata Deori : Applicant  
Versus -  
Union of India & Others : Respondents.

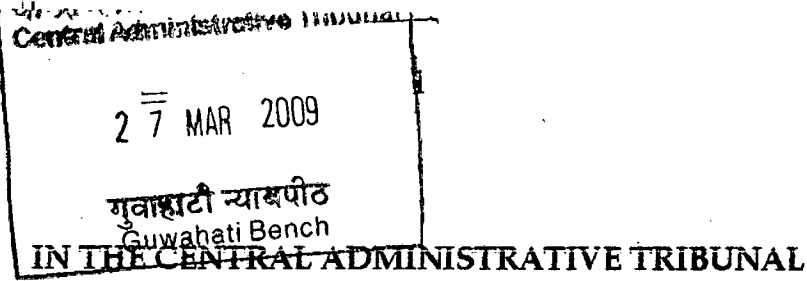
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Date: 27.03.09

Filed by

*M. Dutta*  
27.03.09  
Advocate



GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 58 /2009

**BETWEEN:**

**Smti. Kanak Lata Deori,**

Wife of Mohan Lal Deori,  
Railway Ticket Collector, IT (Cell),  
Office of the Chief Commercial Manager,  
N.F. Railway HQ, Maligaon,  
Guwahati-781011. ✓

..... Applicant.

**-AND-**

1. The Union of India  
Represented by the  
The General Manager,  
N.F. Railway,  
Maligaon, Guwahati-781011. ✓
2. The Divisional Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati-781011. ✓
3. The Chief Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati-781011. ✓
4. Sr. Deputy Manager,  
N.F. Railway,  
Maligaon, Guwahati-781011. ✓
5. Asstt. Commercial Manager,  
N.F. Railway,  
Maligaon, Guwahati-781011. ✓

..... Respondents.

**DETAILS OF THE APPLICATION**

**1. Particulars of order(s) against which this application is made.**

This application is made against the impugned memorandum of charges issued under No. C/ACM/GHY/CON/DAR dtd. 18.12.2008 (Annexure-VIII) and the inquiry report issued under letter No. C/ACM/GHY/CON/DAR dtd. 09.03.2009 (Annexure- XII) whereby a

Kanak Lata Deori

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Filed by the applicant  
through U. Datta, advocate  
on 27.03.09

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Guwahati Bench

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disciplinary proceeding has been sought to be conducted against the applicant on vindictive and malicious grounds.

2. **Jurisdiction of the Tribunal.**

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. **Limitation.**

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. **Facts of the Case.**

4.1 That the applicant is a citizen of India and as such she is entitled to all the rights, protections and privileges as guaranteed by and under the Constitution of India.

4.2 That the applicant while working as Railway Ticket Collector (for short RTC) in IT (cell), in the office of the Chief Commercial Manager, N.F. Railway, Guwahati, submitted one application dtd. 20.10.2008 to the Chief Commercial Manager complaining about the harassment caused to her at her work place by her senior officer Shri S. Sengupta, Asstt. Commercial Manager (IT). She also lodged one FIR against the said Sri Sengupta to the officer-in-charge of Jalukbari Police Station, Guwahati.

Copy of the application dtd. 20.10.2008 is annexed hereto as **Annexure-I.**

4.3 That thereafter the applicant was instructed vide letter no. C/comml./Harassment/08-09 dtd. 17.11.2008 to attend before sexual harassment complaints committee of N.F.Rly. HQ in the chamber of Chief Commercial Manager/FM/MLG at 15.00 hrs of 19.11.2008.

Copy of letter dtd. 17.11.2008 is annexed hereto and marked as **Annexure- II.**

Kanak Lata Deuri

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4.4 That ~~as instructed~~, the applicant attended before the sexual harassment complaints committee and participated in the inquiry proceedings and on conclusion of the inquiry, the said committee submitted its report on 28.11.2008. The committee in its report held that the allegations brought against Mr. S. Sengupta ACM/IT by the applicant is NOT PROVED.

Copy of the inquiry report dtd. 28.11.2008 is annexed hereto as Annexure- III.

4.5 That a copy of the inquiry report dtd. 28.11.2008 was received by the applicant on 23.12.2008. In order to facilitate submission of her representation against the inquiry report aforesaid, the applicant submitted one application on 07.01.2009 to the Public Information Officer cum DGM/G/MLG, N.F.Rly under the provisions of RTI Act, 2005 asking for some documents, vital to her case.

Copy of application dtd. 07.01.2009 is annexed hereto and marked as Annexure- IV.

4.6 That in response of her application dtd. 07.01.2009, to DGM cum Public Information Officer, N.F.railway, Maligaon vide his letter no. Z/RTI cell/HQ/590/2008 dtd. 11.02.2009 forwarded a copy of one letter dtd. 23/28.01.2009 of Chief Commercial Manager informing the applicant that the information's as sought for, cannot be supplied to her. She was however allowed to appeal before the Appellate Authority against the aforesaid order.

Copy of letter dtd. 11.02.2009 alongwith letter dtd. 23/28.01.2009 are annexed hereto as Annexure- V.

4.7 That thereafter, the applicant submitted an appeal before the Senior Deputy Manager (Appellate Authority), N.F.Railway on 10.03.2009 against the letter dtd. 23/28.01.2009 of the CCM and the letter dtd. 11.02.2009 of the DGM cum PIO mentioned above and requested the appellate authority to supply the informations sought for by her in her application dtd. 07.01.2009 in terms of the provisions of RTI Act, 2005.

Kanak Lata Devi

Copy of appeal dtd. 10.03.2009 is annexed hereto and marked as Annexure - VI.

4.8 That being aggrieved due to wrong findings contained in the inquiry report dtd. 28.11.2008 (received on 23.12.2008 by the applicant), the applicant preferred an appeal before the General Manager, N.F. Railway, Maligaon on 27.02.2009 against the said inquiry report. In her appeal, the applicant pointed out serious irregularities and infirmities of the inquiry proceeding and submitted interalia that-

(i) the applicant was examined on 19.11.2008 when only two members of the inquiry committee Smti. Leena Sharma CCM/FM, Chairperson and Smti. Anvita Sinha SPO/MPP, member were present and the lone outside member in the committee Sri P.P. Maniappan, Principal, KV, Maligaon was absent. Both Smti. Sharma and Smti. Sinha who examined the applicant belongs to the same department of the N.F.Railway in which the applicant is working. Such examination of the applicant in absence of outside member was done deliberately and with malafide intention and such procedure is violative of the decision of the Apex Court in Vishaka -vs- State of Rajasthan. Examination of the applicant in absence of outside member was a pre-conceived plan as evident from the para under methodology mentioned in the inquiry report in para 5.

(ii) The inquiry was held in six different dates without communicating the dates and time of inquiry to the applicant and the entire inquiry was conducted behind the back of the applicant who was the complainant, thereby denying the opportunity of cross examining the alleged offender Shri S.Sengupta and other witnesses by the applicant.

(iii) The inquiry committee never intimated/supplied the list of defence witnesses who were examined during the inquiry to the applicant.

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Guwahati Bench

(iv) The statements of the applicant recorded in the inquiry held on 19.11.2008 has not been fully recorded in the inquiry proceeding and some statements have even been wrongly recorded. The statements given by the applicant in Assamese were translated into English in a wrong manner which was read out to her and it was got signed by the applicant in a hasty manner, taking advantage of her extreme mental stress and strains.

(v) Most of the defence witnesses examined by the committee are subordinate officials, working under the supervisory control of Mr. S. Sengupta, the alleged offender in the case and as such they are biased and cannot be expected to open their month against their superior officer.

(vi) The Chairperson herself was biased and conducted the entire inquiry keeping the applicant in the darkness with no transparency in the proceeding whatsoever. On a careful reading of the inquiry report it is crystal clear that the committee gave more emphasis on the behaviors of Mr. Sengupta with other staff to substantiate his position and shadowed his incidences and behaviour with the applicant which was the subject matter of inquiry. The committee even went to cast aspersions on the character of the applicant in regard to her relationship with CCM/PM and her posting at HQ office which were not the subject matter of the inquiry and which amounts to an aggressive counterattack on the dignity and respect of the applicant by the inquiry committee itself, thereby manifesting the unfair attitude and mindset of the inquiry committee. This has been a strategic move by the inquiry committee for shielding Sri Sengupta from his misdeeds and as such the ultimate finding of the inquiry was pre-determined and the inquiry was simply an eye wash.

(vii) It is evident from letter no. F-40/KVM/2008-09/1326 dtd. 26.02.2009 of Principal, KV, Maligaon that Shri Maniyappan, the lone outside member in the inquiry committee was transferred and

Kanak Lata Deuri

relieved from KV, Maligaon on 18.11.2008 (AN), but it appears from the investigation report that it was signed by Shri Maniyappan on 28.11.2008. It clearly indicates that Shri Maniyappan was not associated in the investigation proceedings at all who was not present at the time of examination of the applicant on 19.11.2008 also and his signature dated 28.11.08 was actually obtained before 18.11.08 i.e. before his release on transfer, which was pre-planned and malafide.

The applicant therefore vide his application dated 27.02.2009 appealed before the General Manager with the prayer to view the infirmities and irregularities of the investigation proceedings and prayed for quashing and setting aside of the unfair and biased investigation report dated 28.11.2008 submitted by the three-member investigation committee headed by Smti Leena Sharma, CCM/FM and Chairperson of the Committee.

Copy of the appeal dated 27.02.09 is enclosed herewith as Annexure- VII.

- 4.9 That the respondent No. 5 vide his letter No. C/ACM/GHY/CON/DAR dated 18.12.2008 has issued one memorandum of charges against the applicant. In the said memorandum it has been alleged that the complaint lodged by the applicant on 20.10.2008 against Sri S. Sengupta, ACM/IT relating to her sexual harassment at work place has been proved to be false by the sexual harassment complaint committee which tarnished the image and reputation of Sri Sengupta and as such the applicant is guilty of misconduct under Rule 3.1 (ii) and (iii) of Railway Service Conduct (Rules) 1966. Accordingly, an inquiry was initiated against the applicant and Dipali Kalita Paine, Asstt. Commercial Manager/PS was appointed as Inquiry officer. It is relevant to mention here that the applicant in the meanwhile preferred an appeal on 27.02.2009 before the General Manager, N.F Railway pointing out serious infirmities and irregularities committed sexual harassment complaint committee in the inquiry.

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Copy of the memorandum dated 18.12.2008 is enclosed as

Annexure- VIII.

- 4.10 That the applicant thereafter submitted her written statement on 10.01.09 against the charge sheet issued under memo No. C/ACM/GHY/CON/DAR dated 18.12.2008. In her written statement the applicant refuted the findings of the sexual harassment complaint committee contained in its' investigation report dated 28.11.08 and rebutted the charges labeled against her in memorandum dated 18.12.08.

Copy of the written statement dated 10.01.09 is enclosed herewith and marked as Annexure- IX.

- 4.11 That thereafter, the applicant submitted one application dated 20.02.09 to the Assistant Commercial Manager (Disciplinary authority) stating that her appeal dated 17.02.09 before the General Manager against the report dated 28.11.09 of the Sexual Harassment Complaint Committee has been pending and further requested to stay the disciplinary proceeding initiated against her vide memorandum dated 18.12.08 until the disposal of the appeal. In another application submitted on the same day i.e. 20.02.09, the applicant filed a prayer to the Assistant Commercial Manager (disciplinary authority) for supplying of some documents and informations which are vital for defending her case. But without giving any consideration whatsoever on her applications aforesaid, and without supplying the documents/informations sought for by the applicant, the respondents went ahead with the inquiry in an arbitrary manner. The inquiry officer, Smti Dipali Kalita Paine submitted her inquiry report also on 05.03.09 vide her letter No. C/ACM/GHY/CON/DAR dated 09.03.09.

Copy of the applications dated 20.02.09, and inquiry report dated 05.03.09 are enclosed herewith and marked as Annexure- X, XI and XII respectively.

- 4.12 That situated thus, the applicant submitted her defence brief on 03.03.2009 before the inquiry officer against the charges labeled against her vide memorandum dated 18.12.2008 even in spite of non-supply of related

Kanak Lata Deuri

documents/informations sought for by her. In her defence brief dated 03.03.09, the applicant denied the charges in entirety and narrated once again the details of misbehaviour and outrages meted out to her at work place by her controlling officer Shri S. Sengupta, ACM/IT. The applicant further pointed out the infirmities and irregularities in the investigation proceeding conducted by the sexual harassment complaint committee and refuted the findings of the said committee contained in its' report dated 28.11.08. As such the applicant submitted that the charges labeled against her vide memorandum dated 18.12.08 are unfounded and malafide and she deserves to be exonerated from the charges.

Copy of the defence brief dated 03.03.09 is enclosed herewith and marked as Annexure- XIII.

- 4.13 That the applicant thereafter submitted one representation to the disciplinary authority on 24.03.2009 being her final defence against the inquiry report dated 05.03.2009 as directed vide letter dated 09.03.09 (Annexure- XIII) of the disciplinary authority. In her said representation the applicant has denied the charges labeled against her vide memorandum dated 18.12.08 and has rebutted the reasonings and findings of the inquiry officer contained in the inquiry report dated 05.03.2009. The applicant has dealt in each proposition of the inquiry report in specific terms and has pointed out the infirmities and irregularities thereto. She has prayed for the exoneration from the impugned charges alleged against her.

Copy of the written statement dated 24.03.09 is enclosed herewith and marked as Annexure- XIV.

- 4.14 That the applicant most respectfully begs to state that it was apparent from the modus operandi of the investigation proceedings conducted by the Sexual Harassment Complaint Committee that the Committee was more emphatic to prove innocence of Shri S. Sengupta, ACM/IT rather than cast aspersions on the character of the applicant, thus focusing its' attention on non-issues rather than the issues with a pre-set mind and conducted the proceedings accordingly which is vitiated by serious infirmities and

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irregularities, thus arriving at its unfair conclusion as reported in the investigation report dated 28.11.08. The initiation of subsequent disciplinary proceeding vide memorandum dated 18.12.2008 against the applicant is vindictive more against the applicant which was pre-planned and well-designed. It is relevant to mention here that the investigation report of the Sexual Harassment Complaint Committee was submitted on 28.11.08 and before its ink dried up, the next memorandum of charges was issued on 18.12.2008 against the applicant which was perhaps kept ready and the inquiry officer was also appointed with unusual promptness vide letter No. C/ACM/GHY/CON/DAR dated 12.01.09. This itself indicates the serious concern of the respondents for shielding Sri S. Sengupta by launching aggressive counter attack on the applicant, the indication of which was abundantly manifested in the inquiry proceedings conducted by the Sexual Harassment Complaint Committee as well.

- 4.15 That the applicant most humbly begs to submit that the investigation report dated 28.11.08 whether rightly or wrongly done, is only the findings of the Sexual Harassment Complaint Committee which will become conclusive only after it is accepted by the Accepting Authority i.e. the General Manager, N.F Railway who constituted the said committee. The said report has not yet been accepted by the General Manager and the appeal dated 27.02.09 filed by the applicant before the General Manager against the investigation report dated 28.11.08 aforesaid is still pending with the General Manager. But surprisingly, the respondents became over enthusiastic and acted on the investigation report even before the said report became conclusive and final, and fell upon the applicant by way of initiating a disciplinary proceeding against the applicant for her complaining against Shri S. Sengupta, ACM/IT. During pendency of the appeal of the applicant against the earlier investigation report dated 28.11.08, initiation of a counter disciplinary proceeding against the applicant is against the procedure established by law and on this score alone the memorandum of charge sheet dated 18.12.08 and the inquiry report dated 05.03.09 are liable to be set aside and quashed.

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- 4.16 That as stated in the preceding paragraphs, the illegal inquiry conducted by Smti Dipali Kalita Paine is a pre-planned one and the findings of the inquiry report are also not based on facts. The applicant has submitted her Defence brief dtd 03.03.09 (Annexure- XIII hereto) and as such refrains from repeating the same here which will be superfluous only.
- 4.17 That the applicant most respectfully begs to state that it is evident from the inquiry report dated 05.03.2009 submitted by Smti Dipali Kalita Paine that none of the PWs has categorically denied the misbehaviour of Shri S. Sengupta against the applicant, rather PW-I asserted that the behaviour of the applicant towards other staff was normal and usually she was regular regarding attendance. In general, all the PWs deposed that they were not aware of incidences complained by the applicant against Shri S. Sengupta and they only described there day to day experiences in the office as seen by them which does not mean that the applicant was not subjected to sexual harassments by Shri Sengupta as complained against. It is beyond any prudence that that sexual harassments will be done by a person in his chamber against a lady employee in a tangible manner and to the visibility of the other staff, and it is a matter to be decided by intelligent inferences only. But Smti Paine, I.O acting in a biased manner failed to appreciate the truth and reached a wrong conclusion, which is inconsistent with the statements of the PWs even.
- 4.18 That the applicant most humbly begs to submit that the Sexual Harassment Complaint Committee as well as Smti Dipali Kalita Paine, I.O in their inquiry proceedings failed to unearth the truth and were bent upon to shield Sri Sengupta and to label vindictive and malicious counter allegation on her. The committee could not find in conclusive term that Sri Sengupta did not outrage the modesty of the applicant and arbitrarily held that the complaints lodged by the applicant have been false.
- 4.19 That the applicant most respectfully begs to submit that the disciplinary proceeding initiated against the applicant vide memorandum dated 18.12.08 is an off-shoot of the findings of the Sexual Harassment Compliant Committee. The said sexual harassment complaint committee not only

Shamali Lata Devi

failed to find out the truth but failed to appreciate the fact that a subordinate lady employee would not brave to bring false allegation of sexual harassment and that too against her controlling officer only to initiate her own troubles and to malign her own character thereby risking her happy subsisting marriage. As such, the finding of the sexual harassment complaint committee and the consequential impugned disciplinary proceeding under memorandum dated 18.12.2008 is not tenable either in the fact or in law.

4.20 That your applicant begs to submit that due to initiation of an unfair disciplinary proceeding vide memorandum of charges dated 18.12.2008 against the applicant on vindictive and malicious grounds, the applicant is apprehending that the respondents must have planned to inflict a punishment upon the applicant which might be on the anvil. As such finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of her rights and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the applicant by setting aside and quashing the impugned memorandum of charges dated 18.12.2008 and the inquiry report dated 05.03.2009 and declaring the disciplinary proceeding so initiated against the applicant is illegal and void.

4.21 That this application is made bonafide and for the cause of justice.

#### 5. GROUND(S) FOR RELIEF (S) WITH LEGAL PROVISION

5.1 For that, the impugned memorandum of charge sheet dated 18.12.2008 is based on the findings in the investigation report dated 28.11.2008 submitted by the Sexual Harassment Complaint Committee. The said report dated 28.11.2008 is vitiated by serious irregularities and infirmities and as such the findings recorded in the report cannot be taken as a basis for issuance of memorandum of charge dated 18.12.2008 and the said report does not give rise to any cause of action for initiating a consequential disciplinary proceeding against the applicant.

Kamalk Lata Deeri

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- 5.2 For that, the applicant has already preferred an appeal dated 27.02.2009 before the General Manager, N.F Railway (Accepting Authority) against the unfair and biased investigation report dated 28.11.2008 of the Sexual Harassment Complaint Committee which is still pending with the General Manager. The respondents therefore do not have any right to initiate a disciplinary proceeding against the applicant on the basis of the report dated 28.11.2008 until the appeal preferred by the applicant is disposed of by the General Manager, N.F Railway.
- 5.3 For that, the investigation report of the Sexual Harassment Complaint Committee is not conclusive or final until it is accepted by the General Manager who constituted the committee. As such the said report cannot be acted upon until it gets the action of the respondents against the applicant are pre-matured and unsustainable.
- 5.4 For that, the Sexual Harassment Complaint Committee as well as Smti Dipali Kalita Paine, I.O failed to find out the truth nor could find beyond reasonable doubt that the officer complained against was innocent. As such, it is unfair to conclude and hold that the complaint lodged by the applicant was false and the allegation made by her is not proved, which is arbitrary, malafide and unfair.
- 5.5 For that, the Sexual Harassment Complaint Committee as well as Smti Dipali Kalita, Paine, I.O failed to appreciate that a subordinate low-ranked lady employee would not have ventured to bring such a serious allegation of sexual harassment and that too against her controlling officer ignoring her own shame and dignity and knowing fully well that such a move would not only invite her own troubles but would malign her own character as well thereby risking her happy subsisting married life.
- 5.6 For that it is shocking that complain of a misconduct of superior officer against subordinate lady worker at work place lodged by the applicant has been viewed as a misconduct on the part of the applicant and it has been sought to throttle her voice by imposing a disciplinary proceeding against

Kanalk Lata Deuri

her, which is unconscionable, ill-motivated and violative of the principle of natural justice.

- 5.7 For that the disciplinary proceeding initiated against the applicant vide memorandum dated 18.12.2008 is vindictive, retaliative and a deliberate attempt to shield Sri S. Sengupta, ACM/IT from his misdeeds at the cost of the applicant.
- 5.8 For that, the applicant prayed for justice against the aggression on her modesty, dignity and respect at her work place but the same has not only been denied but she has been put to further troubles by labeling counter allegations against her which is unfair and opposed to the principles of natural justice.
- 5.9 For that documents and informations sought by the applicant vide her representation dated 20.02.09 has not been supplied to her by the disciplinary authority, as such principle of natural justice has been violated in defending the case of the applicant.
- 5.10 For that impugned report dated 28.11.2008 of the Sexual harassment complaint committee constituted by the C.P.O has not attained finality till appeal pending with the General Manager, N.F Railway is disposed of as such to proceed with the disciplinary proceeding before disposal of the appeal dated 27.02.2009 is highly arbitrary, unfair and opposed to the public policy.
- 5.11 For that the disciplinary authority initiated the disciplinary proceeding against the applicant with undue haste without providing reasonable opportunity to prefer any appeal against the investigation report dated 28.11.2008 of the Sexual Harassment Complaint Committee, such action of the disciplinary authority smacks malafide.
- 5.12 For that, every govt. employee has got liberty to prefer an appeal against any adverse report of investigation which is submitted in violation of rule/guideline and without providing reasonable opportunity and the said appeal cannot be ignored by the disciplinary authority.

5.13 ~~For that to prefer an appeal~~ against the investigation report of the Sexual Harassment Complaint Committee is a legal right of the victim but during pendency of the appeal initiation of a disciplinary proceeding is highly arbitrary, illegal and such action is in violation of the principle of natural justice and on that score alone the memorandum of charge sheet and entire enquiry proceeding is liable to be set aside and quashed.

6. Details of remedies exhausted.

That the applicant declares that she has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that she had not previously filed any application, Writ petition or suit before any court or any other authority or any other bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief (s):

8.1 That the Hon'ble Tribunal be pleased to declare that the disciplinary proceeding initiated against the applicant vide memorandum of charge sheet dated 18.12.2008 (Annexure- VIII) as illegal and be pleased to set aside and quash the memorandum No. C/ACM/GHY/CON/DAR dated 18.12.2008 and the inquiry report dated 05.03.2009 issued under No. C/ACM/GHY/CON/DAR dated 09.03.2009 (Annexure- XII) as well as the enquiry proceeding.

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8.2

That the Hon'ble Tribunal be pleased direct the respondents to drop the disciplinary proceeding against the applicant.

8.3

Costs of the application.

8.4

Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1

That the Hon'ble Tribunal be pleased to restrain the respondents from taking any further action on the memorandum of charge dated 18.12.2008 and inquiry report dated 05.03.2009 or alternatively be pleased to stay the inquiry proceeding till disposal of the original application.

10.

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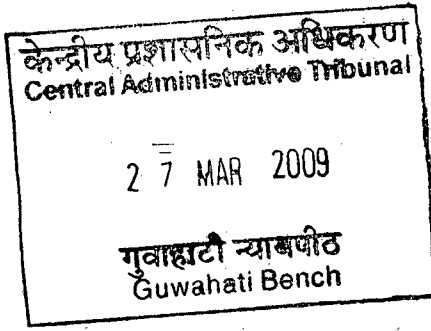
This application is filed through Advocates.

11. Particulars of the I.P.O.

- |      |               |                   |
|------|---------------|-------------------|
| i)   | I. P. O. No.  | : 396 392794      |
| ii)  | Date of Issuc | : 22.02.09        |
| iii) | Issued from   | : G.P.O, Guwahati |
| iv)  | Payable at    | : G.P.O, Guwahati |

12. List of enclosures.

As given in the index.



VERIFICATION

I, Smti. Kanak Lata Deori, Wife of Mohan Lal Deori, aged about \_\_\_ years, working as Railway Ticket Collector, IT (Cell), Office of the Chief Commercial Manager, N.F. Railway HQ, Maligaon, Guwahati-781011, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26<sup>th</sup> day of March 2009.

*Kanak Lata Deori*

27 MAR 2009

ANNEXURE - I 29  
Date: 20/10/08

To  
The CCM  
N.F. Railway Hd. Qr.  
Maligaon, Guwahati-781011  
গুৱাহাটী ন্যায্যপীঠ  
Guwahati Bench

Sub: Prayer for taking necessary action against ACM (IT),  
Mr. S. Sengupta.

Respected Sir,

With due respect and humble submission, I beg to state that the following facts for your kind consideration and necessary action as early as possible please -

That Sir, I, Smt. Kanak Lata Deori, has been working as NTES (Cell) at Headquarter N.F. Railway, for last 5 months under the controlling Officer ACM (IT), Mr. S. Sengupta.

That Sir, I like to bring your kind notice that Mr. S. Sengupta, ACM (IT), has been harassing me by uttering bad, immoral and slang languages for last 5 months. Mr. S. Sengupta always tells me to stay after office hour without any official reason, reason best known to him. Mr. S. Sengupta also insults me as tribal jungly and also passed comment about my dress. Further he always questioned about my character and tells that there are no differences between the prostitute and the working woman at station as I was worked at Guwahati Station as RTC. Moreover, Mr. Sengupta informed me through Mrs. Chaitali Dasgupta to pay Rs. 5000/- to stay in the same Office which will be paid to Dealer of APO Office. Mr. Sengupta is starting to harass me more after my refusal.

That Sir, Mr. S. Sengupta, ACM (IT), created an unhealthy atmosphere to serve my duty properly to the Railway administration and also I am suffering from mental agony.

Therefore, Sir, under the above circumstances, I am suffering mentally from my controlling Officer ACM, Mr. S. Sengupta, so that I request your honour to take appropriate action against him which will help me to serve my duty properly to the Railway Administration in healthy atmosphere.

Thanking you,

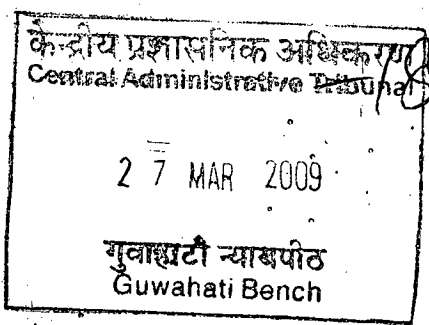
Yours faithfully

Kanak Lata Deori  
(Kanak Lata Deori)  
RTC in IT (Cell)  
Under CCM/N.F. Rly./HQ

12/15/08  
20/10/08  
Smt. K.L. Deori

Attested  
Deori  
Adv

Contd...



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30

11/2/11

①A

Copy to :-

1. The General Manager, N.F. Railway, Maligaon, for kind information and necessary action please.
2. The CCM (PM)/N.F. Railway, for kind information.
3. The President, Boro Women Justice Forum, for kind information.
4. The President, Assam State Commission for Women Bal Bhawan, Uzanbazar, Guwahati-1, for kind information.
5. The President, Assam Pradesh Mahila Congress Committee, Rajib Bhawan, Guwahati for kind information.
6. The President, Assam Pradesh Scheduled Tribes Department, Rajib Bhawan, Guwahati, for kind information.
7. The Hon'ble W.P.T. & D.C. Minister, Govt. of Assam, Disput. Guwahati, for kind information.

*Kanak Lata Deori*  
(Kanak Lata Deori)  
RTC in IT (Cell)  
Under CCM/N.F. Rly./HQ

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

27 MAR 2009

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Guwahati Bench

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N.F.Railway

ANNEXURE-II 31

( Confidential )

Office of the  
Chief Commercial Manager/FM  
N.F.Railway/maligaon.

No. C/Comm/Harassment/08-09

Dt: 17/11/08

To  
Smt Kanaklata Deori, R.T.C./Guwahati.

Sub: Attending before Sexual Harassment Complaints Committee of  
Hqr.on Wednesday (19/11/08) at 15.00 hrs with witnesses.

In reference to your complaint addressed to CCM/NF Railway on 20/10/08, you are  
hereby requested to attend before Sexual Harassment Complaints Committee in the chamber of  
CCM/FM/MLG at 15.00 hrs of 19/11/08 with your witnesses without fail.

*(Lena Sarma)*  
17.11.08

Chief Commercial Manager/FM  
& Chair person ,Sexual Harassment  
Complaints Committee of Hqr.

*Attended  
with  
Hqr*

**INVESTIGATION REPORT ON THE COMPLAINT FILED BY SMT. KANAKLATA DEORI, EX. RTC IN IT CELL (presently RTC IN GUWAHATI)**

1. A complaint filed by one Smt. Kanaklata Deori dated 20/10/2008 was received by the Chairperson of the Sexual Harassment Enquiry Committee on 23/10/2008 from CPO/MLG. A committee comprising of the following members was formed to look at the complaint:-

- 1) Smt. Leena Sharma, CCM/IM - Chairperson.
- 2) Smt. Anvita sinha, SPO/MPP - Member.
- 3) Shri P.P. Maniyappan, Principal, - Member  
Kendriya Vidyalaya, Maligaon.

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

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2. Name of the complainant:- Smt. Kanaklata Deori.

3. Person against whom complaint has been filed: - Shri S. Sengupta. ACM/IT.

**4. Allegations:-**

- 1) Uttering bad and slang language by Sri S. Sengupta.
- 2) Telling complainant to stay after office hours without any official reason (reason best known to Sri Sengupta as stated by complainant).
- 3) Insulting the complainant by using words like Tribal Junglee and also throwing abusive comments about her dresses.
- 4) Questioning about her character and telling her that there are no differences between prostitutes and working women at stations, as the complainant was earlier working at Guwahati station as RTC.

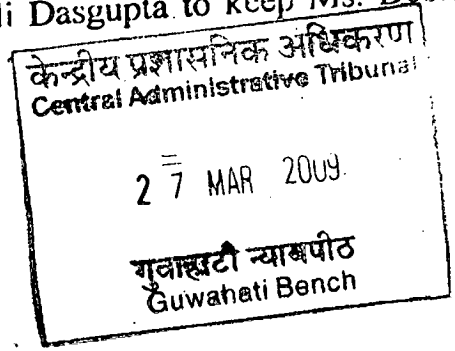
Attested  
Anvita  
AAN

28.11.08

[Signature]

Anvita Sinha  
28/11/08

5) Demanding Rs.5000/ through Ms. Chaitali Dasgupta to keep Ms. Deori in the same office.



### 5. Methodology :-

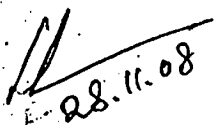
Before starting actual proceeding, the committee decided that the proceedings of the committee would be conducted even when minimum two members were present in a sitting.

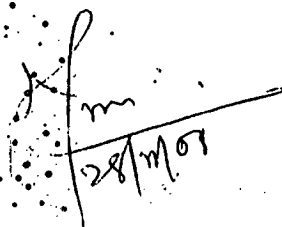
It was further decided that one member will take down the replies when the other two ask questions. Then what was written would be shown to the official whose statement had been recorded and signature obtained.

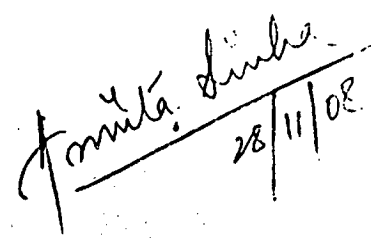
### 7. Findings:-

1) The complaint letter has been marked to seven different persons and different organizations. The logic of sending the letter to the President, Boro Women Justice Forum and the President, Assam Pradesh Mahila Congress Committee is not understood. It is further noted that though the letter is a typed one, the date was hand-written as 20.10.08. It is presumed that the complaint was prepared sometime back and it was submitted on the day of her sparing on 20.10.08.

2) The Committee held six sittings and examined all the key witnesses and asked for representation on 4.11.08 from Mr. S. Sengupta against whom the complaint has been filed.


  
28.11.08

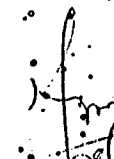
  
28/11/08

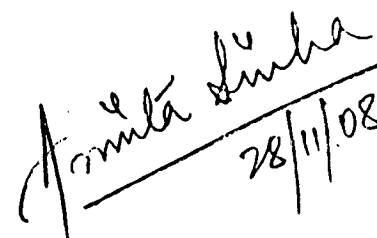
  
28/11/08

27 MAR 2009

- 3) Mr. Sengupta gave a detailed representation narrating the events in sequence on 6.11.08
- 4) The statement of Mrs. Kanaklata Deori was taken on 19.11.08. She could not produce any witness in support of her allegations.
- 5) Mrs. Deori's statement in front of the committee on 19/11/08 covered many more allegations than what was given in her written complaint. In this statement she spoke about Sengupta trying to rub shoulders with her and touch her body on a number of occasions. She was also talking about Mr. Sengupta holding her from behind in the evening of one day on last week of Sept'08 (she has failed to mention the date) in ACM/IT's official chamber and her using force to come out of his grip. She was supposed to have pushed him and he fell on the floor against a steel almirah. She further alleged that she was kept after office hours regularly.
- 6) The members of the complainant committee inspected the chamber of Mr. Sengupta to see for themselves of any probability of the happening of any incident as narrated by the complainant. (Mr. Sengupta was supposed to hold her from behind one evening in this chamber). The committee found that the chamber was glass covered having transparent glass door and anything happening there would be visible from all sides. Therefore any physical misbehavior or abuse as alleged by the complainant is not feasible in that chamber without people knowing about it. Chief OS of the Section Mr. D. Boro told the committee members that he was always available in the office and left office only when it was empty and time to lock. He was never aware about any such incident taking place. Moreover,

  
28.11.08

  
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the committee members noted that when Mrs Deori was guiding them to the spot of her alleged molestation, there was no sign of any horror or shock on her look on recollection of such shocking incidents which usually happens with innocent victims of such horrendous victims of abuse.

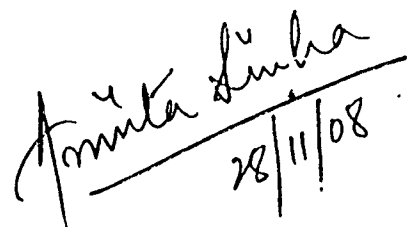
7) All the witnesses examined from CCM/PM's office ( SN 9-14: they were in the same section or in sections adjacent to complainant's section) were unanimous in asserting that Mr. Sengupta was a very gentle officer and his main area of interest was official work and nothing else. He has never misbehaved with any of the staff in that office. Whenever he reprimanded someone it was for dereliction of duties and not for any other consideration.

8) All the staff whose statements were taken agreed on another point that Mrs. Kariaklata Deori was never kept after office hours by Sri Sengupta. She was never seen in office after 05.30 PM. They further told that she had always been aloof from the other staff of that office.

9) It is strange that when so much harassment was allegedly going on against her she chose not to confide to any lady staff or lady officer available right across her place of work. There are 21 lady group C staff posted and working there. At the same time there is a lady officer Mrs. Dipali Kalita Pain who sits near complainant's area of work only. Whenever something goes wrong it is very natural that a lady goes to another lady and confides. But here it was not happening that way. Here she was going to a very senior officer, CCM/PM and supposed to be confiding a part of her woes. Even the Dy.CCM/PM, Mr. Anil Patke who was the immediate senior above Mr. Sengupta for her work in the NTES Cell was not aware about her alleged grievances.

  
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10) Ms. Chaitani Dasgupta (SN8) whose name was mentioned in the complaint as someone asking money on behalf of Mr. Sengupta categorically denied about it and gave in writing also.

11) The allegation that Mr. Sengupta is anti-tribal who uses abusive words against tribal people was not supported by testimonies of two tribal employees of the department- Shri D. Boro Chief OS(SN19) and smti Anjali Basumatari; Chief OS(SN29). It is unbelievable that Mr. Sengupta would show his bias against tribals only to the complainant and not to the others because this bias is a mental attitude and can not be concealed so easily to the staff working under him.

12) The representation submitted by Shri Sengupta(SN5) was gone through by the committee and facts verified through cross-questioning. It is seen from the statements of different staff, and officers like Dy CCM/PM Mr.Patke & CCM/PM Shri VK Jain that the sequence of events narrated by Shri Sengupta are correct. The committee could not find a single instance of disparity between his narration and what was found from cross questioning of different officials. In his representation he mentioned about an incident on 26.09.08 where Mrs. Deori came late and demanded to sign the Attendance Register. Chief OS Mr. Boro Resisted & asked her to sign on late. She refused and persisted in her demand. This was brought to the notice of Mr. Sengupta. Mr. Sengupta apparently supported Chief OS and asked her to show him the work she has claimed to be doing in the morning before signing the Attendance Register. She could not produce anything. Railway officials who were present there testified to the incident. They further vouched that Sengupta did not use any harsh language with the lady.

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13) It is <sup>गुवाहाटी न्यायापीठ</sup> ~~Guwahati Bench~~ the fact that a lady who was allegedly so thoroughly molested a few days back there by an officer could be in a mental state to come to office and demand justice from the same officer in respect of attendance and work.


14) All staff who were examined were unanimous in believing that Mr. Sengupta could never mete out sexual harassment to a lady.

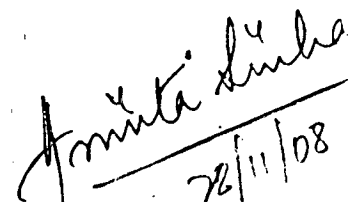
15) With a view to get a balanced view of the situation a questionnaire with 6 questions were sent to 5 lady OSs of the CCM/PM office. 4 ladies replied. 1 lady has been on leave. These 4 neutral and elderly ladies (SN 26 to 29) feels that Mr Sengupta is a well behaved and hard working officer. Their association with him spanned for almost a decade and they have never seen or heard him misbehaving with anyone.

16) To get a broader view of the situation, the copy of the FIR (SN 30) filed by Mrs. Deori to the Police was collected. It is found that complainant alleged about Mr. Sengupta giving dirty hint to the complainant, using slang language and mentioned about an incident on 17.10.2008 when he taunted her as tribal and prostitute. This is in variance with her statement in front of the committee on 19.11.08 where she spoke about molestation by Shri Sengupta on a number of occasions in his chamber. The incident of 17.10.08 as mentioned in the FIR (of Sengupta trying to give impolite hint and taunting) did not find any mention in the complaint letter to the Chief Commercial Manager/NFR on 20.10.08.

17) The statement of Shri A.K. Biswas, SSTE/PRS ( SN 18) is noteworthy in the context of the complaint. Mr. Biswas, an officer from S&T Department was posted there to oversee NTES work but who was debarred from asking work from Mrs Deori. 'She is in the habit of

  
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evading work. On an earlier occasion I scolded her in relation to  
official work. Next day, I got a call from CCM/PM that I should not interfere  
in commercial work....Before leaving office, I go to Mr. Sengupta's  
chamber. I never found him detaining Mrs. Deori or any other lady staff  
beyond office hours.'

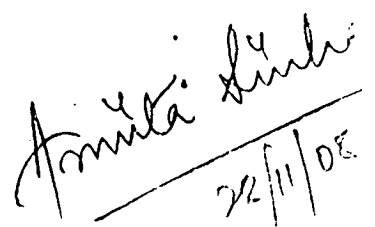
18) The statement of Mr. N.N Barman, CRS/HQ (SN 14) shows that her interpersonal relation with the staff is not good. She fought with a very senior person in the office on a trivial issue.

19) Another aspect which has come to notice is her frequent taking of CCM/PM's name to threaten others (N.N. Barman and Amitabh Kr. Misra who testified for the same) and CCM/PM taking an active interest in her matter like asking SSTE/PR not to interfere in commercial work when he admonished her for not working and on one occasion asking Smt. Deori to report to Shri Diganta Baishya, an inspector and not to Shri Sengupta (CCM/PM's statement SN 16). This is usually never done in a Govt office where hierarchy is respected and not usually violated without assigning proper reason. If he felt that the matter became too hot to need such type of intervention then why it was not brought to the notice of CCM is not understood. Again if the same statement of CCM/PM is perused it is clear that the complaint which he made later on was shown to CCM/PM. This is again too serious a matter not to be brought to the attention of CCM.

20) Mrs Deori was brought from her station to HQ without the knowledge of CCM and even though she was not good at computers which is a pre requisite for manning the NTIS cell or she was not having any known proficiency in that field.

  
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21) Mr Sengupta was told by CCM/PM not to report the matter to CCM as she would be transferred back to Ghy. Interest of CCM/PM in keeping her in HQ is not understood. Also there was never a direct confrontation between Mr Sengupta and Mrs Deori. Whatever was said was either told by CCM/PM to Mr Sengupta or said in CCM/PM's chamber in his presence.

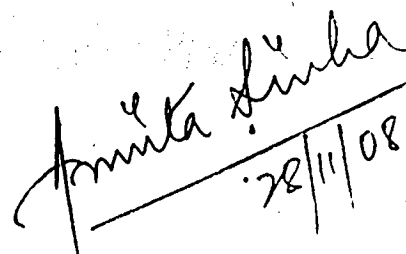
22) CCM/PM has very categorically mentioned to the committee that he did not believe that it was a case of sexual harassment but the language used by Mr. Sengupta to the lady may have been rude. He also said that Mrs Deori probably made the complaint because she was transferred from HQ without being given a hearing.

23) Mrs Deori made a statement that she had decided to ask apology from Sengupta and go for reconciliation if CCM/PM approves. It is hard to believe that a lady will seek apology when she herself has been on the receiving end.

24) CCM/PM was asked about his making exorbitant number of calls to Mrs. Deori (35 calls from 08.09.08 to 07.10.08 and 50 calls from 08.10.08 to 07.11.08) and was also asked about his calling her up 13 times on 20.10.08 (one call was as late as 23.30 night) even though he was out of the state. He replied that was because of her distressed state. All these calls were made to console her (SN 25 and also SN 34 & 35). CCM/PM taking so much interest in the welfare of this particular staff was noted by the committee.

  
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Guwahati Bench

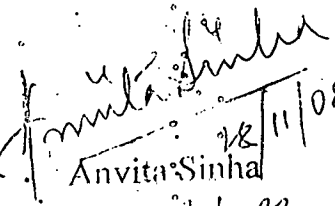
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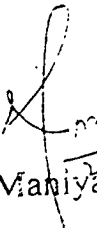
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25) From the above discussions, it is apparent that the complaint which was filed against Mr. Sengupta only after Mrs. Deori's sparing from Maligaon to her previous place of posting, it must have been much to do with her desire to continue in Maligaon. She pre-empted such a move and prepared a complaint and CCM/PM was aware about it. It was shown to him much before as per CCM/PM's own statement. She was spared in the forenoon of 20.10.08 and she filed the complaint in the afternoon of the same day. Such a desperation to cling to an assignment in Maligaon was not understood (Meanwhile, processing for variation of her post in Passenger Marketing branch in Maligaon was also going on). The staggering 13 nos of calls made by GCM/PM from his official mobile to her number on 20.10.08 shows that he was also worried about this sparing and he must have been aware about all the subsequent developments like filing complaint, FIR etc by her.

After analyzing all facts and circumstances the committee has come to the conclusion that the allegations brought against Mr. S. Sengupta, ACM/IT by Mrs. Kanaklata Deori is **NOT PROVED**.

  
28.11.08  
Leena Sarma

  
28/11/08  
Anvita Sinha  
570/MPP

  
P.P. Maniyappa

केन्द्रीय प्रशासनिक अधिकरण  
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I requested CCM/PM for a HD posting. CCM/PM told me about a vacancy in NTE. People in my section were not familiar. CCM/IT used to call me after office hours and I used to show my position after office hours. Since the job was new to me, whenever I was called on Saturday to complete the work I never objected.

On two occasions he pulled shoulders with me. One evening when I was giving my report he asked to see. I didn't wear any clothes, how come you wear such nice saree. On another occasion I was sitting across the table and with his hand/leg (couldn't see) from under the table he lifted my saree.

"Immediately get up."

One day I got a call from my son and left my office at 5:15. I told Diganta Barishya about it. Next day ACM/IT screamed at him as to who is Diganta Barishya that I left with his permission.

Charalal Das Gupta told me that dealer in P/ Branch is to be paid 5000 for vacating a post from SMC due to HD. She told me ACM/IT hunted the same. I told CCM/PM on phone he said no need to pay any money. Let me come back.

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सुप्रीम बेंच  
Supreme Bench

One day in the evening (last week of Sept),  
he held me behind and grabbed me;

I fought back and pushed him aside.  
he said u are CCM's keep, CCM's keep  
and now posing to be a virtuous woman  
in front of him. He called me tribal jungle

I reported the matter to SC/ST <sup>Union</sup> ~~Committee~~  
Somebody told me to report to Deena Madam ↑

I took LTT on 29 & 30<sup>th</sup>

Singla Basshya was with me in NTES cell  
and he was removed. I reported to Mr Patke  
also he said report to HAIT. CCM/PM said  
he <sup>would</sup> ~~under~~ do.

In CCM/PM <sup>Chairman</sup> ~~Chairman~~ ghar ka bibi samjha  
rakhna hai jo area ~~lag~~ <sup>lag</sup> jaisa behane karte ha  
ACM/IT told that ~~the~~ <sup>the</sup> ~~matter~~ <sup>matter</sup> ~~is~~ <sup>is</sup> 'Mera  
Dhi character kharap kar dega'. My reply 'M. i  
kahi matlab? Aapke to Pehle se hi kharab tha.'

Sengupta acknowledged in front of CCM/PM that he  
told that 'Sengupta aurat?'. Before ~~leaving~~ <sup>going</sup> for going  
on leave, CCM/PM asked Mr Patke to keep a watch on  
us, so Mr Sengupta & advised that he would process  
for reconciliation between us. I decided to ask for  
apology from Sengupta, for reconciliation if CCM/PM  
approved.

24350-47171 - Telephone No

Kamakh Lata &

19/11/08

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(9)

Statement of witness

Charitai Das Gupta - No money was asked for last 2 yrs by Mr. Sengupta working in HQ. Controlling officer is Mr Sengupta. PPM/ cell. He was very helpful when I joined, is a thorough gentleman. He has never harassed Mrs Debi. He is interested only in work. He never looks up also while talking to women.

One incident where Mrs Debi was asked whether ICM/PM had occurred after leave, but she got very agitated in that.

She (Mrs Debi) is also very skeptical that people say bad things about her behind her back. (I think too much).

Charitai Das Gupta  
12/11/08

Devg: RCE WJ JPM 30/11/08

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ANNEXURE - 'C' u  
(02 sheets)

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
27 MAR 2009  
गुवाहाटी न्यायपीठ  
Guwahati Bench

ANNEXURE - IV

To  
The Public Information Officer  
Cum DGM/G/MLG  
N.F. Rly.

Date : 07/01/2009

Ref: Complaint No. C/ACM/GHY/CON/DAR/08

AND

IN THE MATTER OF :-

An application under Section 6 of the Right to Information Act, 2005.

AND

IN THE MATTER OF :-

Smti Kanak Lata Deori, RTC in IT (Cell) under CCM/N.F. Rly. HQ.

.....Petitioner

The humble petitioner above named begs to state as follows:-

MOST RESPECTFULLY SHEWETH :-

1. That, the above named complainant/petitioner filed a complaint before the CCM/N.F. Rly., IIQ, Maligaon, Guwahati-11, Vide Complaint No. C/ACM/GHY/CON/DAR/08 on dated 20-10-08.
2. That, in this context the Chairperson of the sexual harassment enquiry committee, has already recorded the consecutive statements of various persons/witness individuals, namely (i) Sri V.K. Jain, CCM/PM, (ii) Sri D. Boro, Chief Office Superintendent, (iii) Sri Arup Saikia, CCMI/IIQ, (iv) Shri Hemanta Sharma, CCMI/HQ, (v) Sri Amitabh Mishra, CS/PRS, Cell, (vi) Shri A.K. Patke, Dy. CCM/PM, (vii) Sri Diganta Baishya CS/PRS (NTES) PRS.
3. That in this regard the petitioner prays that she is required to obtain the distinct statements of the above mentioned persons, those statements were recorded by the aforesaid Enquiry Committee.
4. ~~That the copy of the report submitted to the Assam State Commission for Women, may also be furnished to the petitioner.~~
5. That the humble petitioner also prays that she wants to see her attendance register in the period of 8/5/2008 to 30-9-2008 and 1-10-2008 to 20-10-2008 for clarify about her attendance, because that the aforesaid attendance register was seized or called upon by the N.F. Rly. IIQ, Maligaon Guwahati-11.

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Guwahati Bench

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6. That the humble petitioner prays that she may be allowed to obtain the certified copies of the aforesaid statements for preparing her defense.
7. That this petition has been made bonafide for the ends of justice.

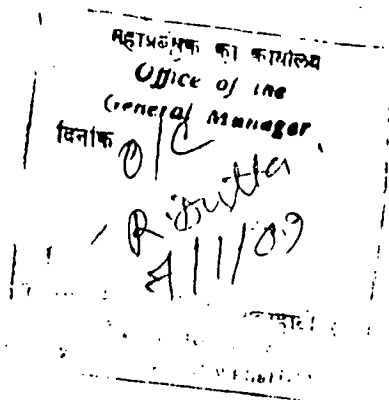
It is therefore prayed that your honour would graciously be pleased to grant of this petition and allow the petitioner to obtain the certified copies of the recorded statements and also allow her to see the attendance register and pass as such on other direction as your honour may deem fit and proper for the great interest of the justice.

And for this acts of kindness your humble petitioner as in duty bound shall ever pray.

Kanak Lata Devi R No/6HY

Complainant/Petitioner

Dt. 07/11/2009



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Allo - 93652 99

पूरे रीले रेलवे/N. F. Railway

कार्ड नं०-बी० सी०/ R. R. C. १  
 एन० ए० सी०/N. F. C. 10000 १/A. C. १  
 20352

क्रम सं०/Serial No. 12

करी सं०/Book No.

नकदी रसीद बही/ CASH RECEIPT BOOK

विभाग/Department Accounts कार्यालय/Office Cash & Pay

प्राप्तकर्ता का नाम/Received from Kanak Lata Deuri

पता/Address RTC/647

रकम/The sum of Rupees / रुपये में/in words Ten only.

बचत/On account of towards deposit of RTI money against RTI Act 2015.

हस्ताक्षर और पदनाम/Signature and Designation

स्टेशन/Station MLG

दिनांक/Date 7/11/09

H. B. Elg. From 07/11/09

(प्राप्तकर्ता के हस्ताक्षर/By) Dy. CAO/ Cash and Pay N. F. Railway, Maligaon Guwahati-781011

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ANNEXURE - 2  
(02 sheets)

JK

N.F.Railway

ANNEXURE - V

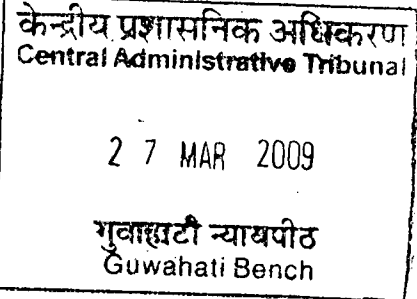
Office of the  
General Manager  
Maligaon, Guwahati-11.

Date : 11 -02 -2009.

No. Z/RTI Cell/HQ/590/2008

To

Smt.Kanaklata Deori  
RTC in IT cell,under CCM/NF.Rly.  
N.F.Rly H.Q  
P.O:- Maligaon,Guwahati -11.



Madam,

Sub: - Request for information under RTI Act'05.  
Ref :- Your letter No. Nil dated 7.1.09.

With reference to the letter as cited above, it is mentioned that your prescribed information was examined thoroughly by concerned Commercial departments of this Railway and the information/remarks as received, is sent herewith for your information please.

With this information above, the case is now treated as disposed of. However, you may like to submit your first appeal within 30 days before the Appellate Authority for further representation, if any, whose address is given below:-

SDGM -cum- Appellate authority  
Northeast Frontier Railway,  
Phone & FAX No.- 0361-2676055.

We look forward to your co-operation.

DA: One page.

Yours Sincerely,

(Khindu Ram)  
DGM/G cum P.I.O/HQ  
N.F.Railway, Maligaon.

Attested  
Metta  
Adv-

JK

JK

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11/2/09

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
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Guwahati Bench

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N.F.Railway

Office of the  
Chief Commercial Manager (G)  
Maligaon, Guwahati-11.

No.C/E-24/OS/MISC/Pivot-Pt.II

Date: 23-01-09

To,  
DGM/G Cum PIO  
N.F.Railway, Maligaon.

**Sub: Application received from Smt. Kanak Lata Deori, RTC in IT (Cell) under CCM/MLG seeking information under RTI Act,2005.**

Ref: Your letter No. Z/RTI Cell/HQ/590/2009 dtd.20.01.2009.

Smt. Kanak Lata Deori, RTC/GHY has been served with a major Penalty Charge Sheet(SF/5) on 18.12.2008.

DAR Enquiry in connection with the above Charge Sheet is under process in which Preliminary Hearing has been fixed on 29.01.2009.

The documents asked for by the applicant is a part of evidence.

Hence, as per clause No.- 8(1) Sub Clause (h) of RTI Act'05, the information as sought for cannot be supplied.

This has the approval of the competent authority.

(A.K.Patke)

Dy.Chief Commercial Manager/PM  
for **Chief Commercial Manager.**

महानगरिक को ब्यालय  
Office of the  
General Manager  
दिनांक  
Date 28/1/09  
N. F. Railway  
Guwahati-11

Handwritten notes: "Affected by the Act" and other scribbles.

To  
The Senior Deputy General Manager  
And the Appellate Authority  
N.F. Railway, Maligaon.

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

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Guwahati Bench

Sub: Appcal u/s 19(1) in respect of refusal of information by CCM/NFR.

Ref: (i) DGM(G)-Cum-PIO's L/No. Z/RTI Cell/HQ/590/2008 dt. 11.02.2009 (copy enclosed).

(ii) CCM/NFR's L/No. C/E-24/OS/MISC/Pivot-Pt-II of 23.01.2009 (copy enclosed).

Sir,

As against my requisition for information u/s 6(1) of RTI Act, 2005 through my application dtd. 07.01.2009 (copy enclosed), the concerned authorities refusal to part with information vide letters to the above at reference (i) & (ii); I hereby appeal against the decision at reference (ii) above.

Grounds:-

- (i) The said information has not been made any evidence in DAR proceedings on SF-5 issued against me.
- (ii) That only a statement by Smt. Chaitali Das Gupta, myself Smt. K. Deuri and the rejoinder submitted by Sri Sengupta. ACM/IT/MLG along with the report of Sexual Harassment Inquiry Committee have been made evidence in the said chargesheet. Therefore, there is no ground for denying other information sought by me.
- (ii) The Inquiry Officer refused to allow production of information forming record of evidence before the committee during the regular hearing in the said chargesheet inquiry, therefore, it is not true that all informations sought by me were either by me for defence on the prosecution, vide Daily order sheet (copies enclosed).

Therefore, I submit that the reasons cited in refusal of the information is violative of the provisions of RTI Act, 2005.

You are, therefore, requested to revoke the CCM/NFR's reply at reference (ii) above and allow me full information.

Thanking you,

DA: As above  
(Total 9 sheets)

Yours faithfully,

Kanak Lata Deuri  
(KANAKLATA DEURI)  
RTC under DCM/GHY

10/03/09

Resident  
Address:- c/o Mohan Lal Deuri  
E-15, Generala Jai Nager  
Maligaon, Gehly - 11

Attested  
Deuri  
ADW

Recd.  
10/3/09

केन्द्रीय प्रशासनिक अधिकरण  
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Guwahati Bench

To,

The General Manager (Accepting Authority),  
N.F. Railway,  
Maligaon.

Sub:- An appeal against the findings of the inquiry committee constituted by the N.F. Railway (CPO/MLC).

Ref:- (1) My application dtd. 22.12.2008 praying for supply of inquiry report.  
(2) Inquiry report dtd. 28.11.2008 received on 23.12.2008.

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to say as follows:-

That Sir, a sexual harassment committee was constituted on 23.10.2008 by the CPO, Maligaon on the basis of my complain dtd. 20.10.2008 addressed to CCM, N.F. Railway, Head Qtr. Maligaon, Guwahati-11. The sexual harassment committee was constituted with the following officers of N.F. Railway and Kendriya Vidyalaya Sangathan.

1. Smt. Leena Sharma, CCM/FM - Chairperson.
2. Smt. Anvita Sinha, SPO/MPP - Member.
3. Shri P.P.Maniyappan, Principal - Member.  
Kendriya Vidyalaya, Maligaon.

It is relevant to mention here that my complain was lodged against misbehaviour and harassment by Sri S. Sengupta, ACM/IT.

The inquiry committee classified my allegations as indicated in para 4 of the investigation report.

The relevant portion of para 4 is quoted below:-

"4. Allegation

1. Uttering bad and slang language by Sri S.Sengupta.
2. Telling complainant to stay after office hours without any official reason (reason best known to Sri Sengupta as stated by complainant).
3. Insulting the complainant by using words like Tribel Junglee and also throwing abusive comments about her dresses.

Attended  
with  
Adv

M.P.  
12/109

27 MAR 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

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5

4. Questioning about her character and telling her that there are no differences between prostitutes and working women at stations, as the complainant was earlier working at Guwahati station RTC.
5. Demanding Rs. 5000/- through Mr. Chaitali Dasgupta to keep Ms. Deori in the same office."

The sexual harassment enquiry committee defined its methodology as indicated in para 5 of the investigation report:-

The relevant portion is quoted below:-

"5 Methodology:-

Before starting actual proceeding, the committee decided that the proceedings of the committee would be conducted even when minimum two members were present in a sitting.

It was further decided that one member will take down the replies when the other two ask questions. Then what written would be shown to the official whose statement had been recorded and signature obtained."

It appears from the methodology adopted by the inquiry committee that when ever at least two members are available in the inquiry committee would proceed to conduct the proceeding. Such decision of the inquiry committee as indicated in para 5 is contrary to the decision rendered by the Hon'ble Supreme Court in the case of Vishaka and Ors. -vs- State of Rajasthan and Ors. Wherein in para 7 of the said decision, the Hon'ble Supreme Court observed as follows:-

"7. Complaints committee:-

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a complaints committee, a special counsellor or other support service, including the maintenance of confidentiality.

The complaints committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from

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गुवाहाटी न्यायपीठ  
Guwahati Bench

senior levels, such complaints committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints committee must make an annual report to the Government Department concerned of the complainants and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the complaints committee to the Government Department".

It is quite clear from the above that in order to prevent the possibility of undue pressure or influence from the senior level, such complain committee should involved the third party either NGO or other body who is familiar of the issue of sexual harassment.

But in the instant case even the methodology adopted by the inquiry committee to conduct the inquiry even when two members are available, is contrary to the procedure laid down by the Hon'ble Supreme Court. Hence the report of the inquiry committee dtd. 28.11.2008 is not sustainable in the eye of law.

It is relevant to mention here that sexual harassment inquiry committee handed by Smti. Leena Sharma, CCM, FM as Chairman acted in total violation of procedure established by law while conducting the inquiry on sexual harassment on the basis of my complain dtd. 20.10.2008.

It is relevant to mention here at this stage that on a mere reading of the investigation report submitted by the sexual harassment inquiry committee headed by Chairperson Smti. Leena Sharma, CCM, FM, it would be evident that there is no "discussion on the evidence" or there is no assement of evidence made by the inquiry committee which was recorded during the inquiry proceeding but the committee straight way came to its finding in total violation of principle of natural justice. The entire proceeding has been conducted in a hide and seek manner without providing any reasonable opportunity to the complainant to examine the charged official and his defence witnesses. It is to be noted here at this stage that the sexual harassment committee headed by Smti. Leena Sharma, CCM, FM committed large scale irregularities while conducted inquiry on

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Guwahati Bench

sexual harassment on the basis of my complain. The irregularities and infirmities committed by the aforesaid inquiry committee are furnished hereunder for perusal of the appellate authority.

1. That the entire inquiry proceeding has been conducted behind the back of the complainant as because no intimation has been given regarding the date of inquiry held on six different dates as reflected in the inquiry report from sub-para 2 of paragraph 7 of the inquiry report.
2. That the complainant has been denied opportunity of examination, cross examination to Sri S. Sengupta, ACM/IT against whom the complain of harassment was lodged.
3. That the inquiry committee not given any intimation to the appellant regarding the time and date of examination of Sri S. Sengupta, ACM/IT. Thereby the inquiry committee denied opportunity to cross examine Sri S. Sengupta, ACM/IT against whom complain was lodged.
4. That the inquiry committee never intimated regarding the list of defence witnesses, who were examined in the inquiry proceeding either at the instance of Sri S. Sengupta, ACM/IT or at the instance of sexual harassment committee headed by Smt. Leena Sharma, CCM, FM. Chairperson of sexual harassment committee constituted by CPO, MLG.
5. For that not a single copy of statement of Sri S. Sengupta, ACM/IT and other defence witnesses were served upon the appellant for comments and thereby denied reasonable opportunity to the appellant.
6. For that your appellant has been examined by 2 members of the inquiry committee namely Smti. Leena Sharma, CCM/FM, Chairperson and Smti. Anvita Sinha, SPO/MPP, member both belonging to officers of the N.F. Railway, whereas the other

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member Sri P.P. Maniappan, Principal, Kendriya Vidyalaya, Maligaon, member was absent on the day when the appellant was examined by the inquiry committee on 19.11.2008. As such proceeding held on 19.11.2008 is in total violation of the procedure laid down by the Supreme Court in the case of Vishaka -Vs- State of Rajasthan.

7. For that, all of my statements has not been recorded in the inquiry proceeding held on 19.11.2008, rather one of my statement has been wrongly recorded in the inquiry proceeding on 19.11.2008.
8. For that my statement recorded in the inquiry proceeding on 19.11.2008, it appears from last para of the statement that I wanted to tender apology to Sri S. Sengupta in the event of reconciliation, where as I said before the inquiry proceeding that I would be agreeable for reconciliation in the event of Sri Sengupta tender apology to me for his misdeed but the same was deliberately recorded however due to stress and strain I signed the statement on 19.11.2008 in the inquiry proceeding.

Apart from the aforesaid serious irregularities and information's the appellant also beg to point out that the inquiry committee had acted on extraneous consideration and failed to look into the grievances of the appellant from the right prospective.

In addition to the above irregularities, the appellant also beg to point out the following infirmities of the inquiry proceeding.

- (i) It would be evident from sub-para 1 of para 7 of the findings recorded in the inquiry report that the inquiry committee has presumed that my complain dtd. 20.10.2008 was prepared earlier but the same was signed on 20.10.2008, such presumption of the committee, is drawn without any evidence.

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and also observed that when the appellant guiding the inquiry committee to the spot of molestation, there was no sign of any horror or shock on my look on recollection of the shocking incidence. In this connection it may be stated that none of the members of the inquiry committee are experts of human psychology. The complain of the appellant must be looked into with an open mind specially when the inquiry committee is investigating such a serious and grave matter. As such findings of the committee is totally perverse.

- (vii) That with regard to the observation made by the inquiry committee in 8, 9, 10 and 11, wherein it is stated that all the witnesses examined from CCM/PM's office were unanimous in asserting that Mr. S. Sengupta was a very gentle officer and he never misbehaved with any of the staff of that office and the appellant was never kept after office hours in the office and further observation of the inquiry committee that the appellant never intimated about the harassment to her lady Group C staff and Mrs. Chaitali Dasgupta denied the demand of money from the appellant in writing, and the testimonies of two tribal employees of the department goes to show that it is unbelievable that Mr. Sengupta would show its biasness only to the complainant.

The above finding of the inquiry committee is not sustainable in view of the fact that the appellant is meted out with sexual harassment, physical molestation by Sri S. Sengupta, ACM/IT, therefore his behaviour with subordinate staffs of the office cannot be a consideration by the sexual harassment inquiry committee constitute by the CPO, Maligaon when there was specific statement made by the complainant regarding sexual harassment and molestation pointing out the location/spot, therefore such complain of a lady worker must be considered by the inquiry committee with utmost sincerity. Moreover statement of the witnesses examined by the inquiry committee also not supplied to me and the entire inquiry was conducted by the committee behind the back of the appellant and on the

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score alone the entire findings of the inquiry committee is not sustainable in the eye of law. Moreover most of the witnesses appears to be subordinate officials working under supervisory control of Mr. S. Sengupta, ACM/IT. As such those witnesses may not be inclined to say anything offending against the immediate supervisory officer Mr. S. Sengupta before inquiry committee.

That with regard to the observation made in sub-para 12, 13, 14, 15, 16, 17 and 18 by the inquiry committee referred the incident dtd. 26.09.2008 regarding signing of attendance register with regard to the representation submitted by Sri S. Sengupta on 06.11.2008 and reached to the conclusion that Sri Sengupta did not use any harsh language with the lady on 26.09.2008. The observation of the inquiry committee on the above incident on 26.09.2008 is quite irrelevant, since the said incidence was not the subject matter of inquiry.

The observation made in sub para 13, 14 and 15 is also quite irrelevant. So far observation made in sub para 16, 17 and 18 of para 7 is concerned, in this connection it may be stated that the inquiry committee has made the entire investigation with a closed mind in order to save Mr. Sengupta, as such it appears from the observation that there is an attempt on the part of the inquiry committee to exonerate Mr. Sengupta at any cost, deliberately ignoring the grievances of the applicant. It is also relevant to mention here that normally a lady employee does not want to disclose this type of incidence of sexual harassment until someone is compelled like the appellant.

That the observation made by the inquiry committee in sub para 19, 20, 21, 22, 23, 24 and 25 of para 7 is quite irrelevant and it further establishes that the inquiry committee acted in a manner prejudicial to the interest of the appellant. On a mere reading of the observation made in para 19, it would be evident that the inquiry committee has taken much interest in projecting Mr. S. Sengupta as a clean person. On the other hand an effort is made by the committee on extraneous consideration to project unusual relationship with CCM/PM and the inquiry committee also gone into the question of my posting at HQ office. So far question of seeking apology to Mr. S. Sengupta as stated in para 23 has been wrongly interpreted by the

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inquiry committee. It is surprising to note at this stage that the inquiry committee in para 24 also inquired about the number of telephonic calls made between the undersigned and CCM/PM, when the committee is constituted to enquire into the complain dtd. 20.10.2008 submitted by the appellant. Therefore, it appears that the committee acted on extraneous consideration in favour of sri. S.Sengupta against whom the complain was lodged. The inquiry committee has not discharged its duty in a fair and impartial manner but acted on extraneous consideration to protect the right and interest of Mr. S. Sengupta as it appears from the observation made in sub-para 25 of para 7 and reached to the conclusion in an arbitrary manner that the allegation brought against Mr. S. Sengupta, ACM/IT is not proved.

It is also learnt from letter bearing No. F.40/KVM/2008-09/1326 dated 26-02-2009 that Sh. Maniyappan, Ex-Principal, K.V N.F Railway, Maligaon has been transferred and relieved on 18.11.2008 A.N (Copy enclosed). Therefore, it is not understood how the investigation report was signed by Sh. Maniyappan on 28.11.2008, as such it can rightly be presumed that the signature of Sh. Maniyappan, Ex-Principal, K.V, Maligaon in fact was not associated with the investigation but obtained his signature in order to maintain the formalities as required under the norms. Therefore, it can rightly be said that Smti Leena Sharma, CCM/FM- Chairperson and Smti Anvita Sinha, SPO/MPP-Member of the same department have investigated the matter and for the sake of formalities the signature of Sh. Maniyappan, Ex-Principal, K.V., Maligaon has been obtained. As such it can rightly be said that the inquiry was made in total violation of the guidelines laid down by the Hon'ble Supreme Court in the case Vishaka - Vs- State of Rajasthan, and it can also be presumed that the signature of Sh. Maniyappan was obtained prior to his departure or alternatively the other two Members completed the investigation and subsequently obtained signature of Sh. Maniyappan. Therefore the entire inquiry is vitiated due to lack of quorum and as such said investigation report is not sustainable in the eye of law and the same is liable to be set aside and quashed.

In view of the grounds stated above the findings of the sexual harassment inquiry committee constituted by the CPO, Maligaon headed

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by Smti. Leena Sharma, who is working in the same department is not sustainable in the eye of law.

In the circumstances stated above it is humbly prayed before your Honour that in view of the aforesaid infirmities, irregularities and also in view of the fact that the sexual harassment inquiry committee constituted by the CPO, MLG conducted the investigation is in total violation of principle of natural justice and also in violation of the procedure laid down by the Hon'ble Supreme Court, thereby denying reasonable opportunity to the appellant, as such, the entire findings of the inquiry committee recorded in paragraph 7 of the investigation report dtd. 28.11.2008 be set aside and quashed.

It is further prayed that during pendency of the appeal, the Hon'ble General Manager, N.F. Railway be pleased to stay the findings of the investigation report dtd. 28.11.2008 till disposal of the appeal.

And for this act of kindness the appellant shall remain ever grateful.

Yours faithfully

Kanak Lata Deori

Smt. Kanak Lata Deori,

RTC/GHY under DCM/GHY

Date: - 27.02.2009

Attested  
Kanak Lata  
Adv

27.2.09

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ANNEXURE - VIII

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STANDARD FORM NO. 5  
CHARGE SHEET FOR MAJOR PENALTIES RULE-9  
OF RAILWAY SERVANTS ( DISCIPLINE AND APPEAL) RULES, 1968

No. C/ACM/GHY/CON/DAR

Name of the Administration N. F. Railway place of issue Guwahati, date. 18.12.2008

MEMORANDUM

1. The President / Railway Board / undersigned propose (s) to hold an inquiry against Smt. KanakLata Deori, RTC / GHY under DCM/ GHY under Rule -9 of the Railway servants ( Discipline and appeal) Rules 1968. The substance of the imputations of misconduct and misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge ( Annexure-1). A statement of the imputations of misconduct or misbehavior in support of each article of charge is enclosed ( Annexure-II ). A list of documents by which and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed ( Annexure-III & IV).
2. Smt. KanakLata Deori, RTC / GHY under DCM/ GHY in scale Rs 5200/- to 20200 /- ( Gr. Pay Rs. 1900/-) under DCM/ GHY is hereby informed that if he so desires, she can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this memorandum. For this purpose he should contact DCM/ GHY immediately on receipt of this memorandum.
3. Smt. KanakLata Deori, RTC / GHY under DCM/ GHY is further informed, that she may, if so desires, take the assistance of another Railway servant / an official of Railway Trade Union ( who satisfies the requirement of Rule-9 (13) of the Railway servants ( Discipline and Appeal Rules, 1968 and Note-1 and / or note-2 there under as the case may be ) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, she should nominate one or more persons in order of preference. Before nominating the assisting Railway servant (s) or Railway Trade Union Officials (s) Smt. KanakLata Deori, RTC / GHY under DCM/ GHY should obtain an undertaking from the nominee (s) that he ( they) is ( are) willing to assist her during the disciplinary proceedings. The undertaking should also contain the particular of other cases if any, in which the nominee ( s) had already undertaken to assist and the undertaking should be furnished to the undersigned/ General Manager N.F. Railway along with the nomination.
4. Smt. KanakLata Deori, RTC / GHY under DCM/ GHY is hereby directed to submit to the undersigned a written statement of her defence ( which should reach the DCM/ GHY's office) within ten days of receipt of this Memorandum, if she does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if she desires to inspect documents and also (a) state whether she wishes to be heard in person and (b) to furnish the names and addresses of the witness if any, whom she wishes to call in support of his defence.

Accepted  
S. Nath  
Advocate

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Guwahati Bench

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5. Smt. KanakLata Deori, RTC / GHY under DCM/ GHY is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. She should, therefore, specially admit or/deny each articles of charge.
6. Smt. KanakLata Deori, RTC / GHY under DCM/ GHY is further informed that if she does not submit her written statement of defence within the period specified in Para.-2 or does not appear in persons before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule -9 of the Railway servants ( Discipline and Appeal ) Rules ,1968 or the order / directions issued in pursuance of the said rule , the inquiring authority may hold the inquiry Ex. parte.

The attention of Smt. KanakLata Deori, RTC / GHY under DCM/ GHY is invited to Rule -20 of the Railway servant ( conduct) Rule, 1966 under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his/her interests in respect of matter pertaining to his/her service under the Govt., if any representation is received on his/her behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Smt. KanakLata Deori, RTC / GHY under DCM/ GHY is aware of such a representation and that it has been made at his/her instance and action will be taken against him/her for violation of Rule - 20 of the Railway services ( conduct ) Rule -1996.

7. The receipt of this memorandum may be acknowledged.

( By order and in the name of the President ) ( Signature) Name and Designation of competent authority.

Enclosed : Annexure- I,II,III & IV

*B. K. Mishra*  
18.12.09  
( B. K. Mishra )  
Asst. Commercial Manager  
Guwahati N. F. Railway

To  
Smt. KanakLata Deori,  
RTC / GHY under DCM/ GHY

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Guwahati Bench

Annexure-I

Article -1

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SMT.  
KANAKLATA DEORI RTC/GHY UNDER DCM/GHY

Smt Kanaklata Deori RTC/GHY while working in the PPM Cell of CCM/ General branch during May'2008 to October'2008, had committed the following serious irregularities.

Smt Kanaklata Deori while working in the PPM Cell of CCM General branch of HQrs. Commercial Department lodged a complaint on 20-10-2008 addressed to CCM / N. F. Railway with Copy to others against Sri S. Sengupta, ACM / IT leveling various charges including one which can be interpreted as charges of sexual harassment of women at work place.

During the course of investigation by Sexual Harassment Complaint Committee of HQrs. the complaint of Smt Deori has been proved to be false, fabricated and motivated by self consideration out of selfish motive which has tarnished the image and reputation of Sri Sengupta, ACM/IT in particular and Railways in general.

The baseless complaint of Smt. Deori is an act against the office decorum, discipline and aimed at discouraging officers from performing and enforcing discipline in office.

Thus, by the above act Smt. Kanaklata Deori, RTC/ GHY has conducted a serious misconduct and exhibited lack of devotion to duty which tantamounts to unbecoming of a Railway servant and gross violation of Rule No 3.1 (ii) & (iii) of Railway service conduct (Rules) 1966.

*B. K. Mishra*  
18.12.08

(B. K. Mishra)  
Asst. Commercial Manager  
Guwahati N. F. Railway,

Asst. Commercial Manager  
Guwahati N. F. Railway

*Attested  
Kanaklata  
Adv*

27 MAR 2009

Annexure-II

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Guwahati Bench

Article-1

**STATEMENT OF IMPUTATION OF MISCONDUCT / MIS BEHAVIOUR  
AGAINST SMT. KANAKLATA DEORI**

Smt Kanaklata Deori, RTC / GHY while working in General branch of HQrs. Commercial Department lodged a complaint on 20-10-2008 to CCM against Sri S. Sengupta, ACM/IT bringing the following allegation :-

- (1) Uttering bad and slang language by Sri S. Sengupta.
- (2) Telling complainant to stay after office hours without any official reason (reason best known to Sri Sengupta as stated by complainant)
- (3) Insulating the complainant by using words like Tribal Jungle and also throwing abusive comments about her dresses.
- (4) Questioning about her character and telling her that there are no differences between prostitutes and working women at stations, as the complainant was earlier working at Guwahati station as RTC.
- (5) Demanding Rs. 5000/- through Ms Chaitali Dasgupta to keep Mrs Deori in the same office.

In course of Smt Deori's deposition before Sexual Harassment Complaint Committee of HQrs and on cross examination she could not produce any witness in support of her allegation.

Smt Deori put forward before the Committee on 19-11-2008 in her statement many more allegations in addition to her written complaint dated 20-10-2008 including attempt to physical molestation by Sri Sengupta, ACM/IT inside his chamber.

The Committee members inspected the glass covered chamber of ACM/IT and came to conclusion that physical misbehavior or abuse as alleged is not feasible in that chamber without people knowing about it.

The Complaint Enquiring Committee after analyzing all facts and circumstances has rejected and proved baseless false, all the allegation brought by Smt. Deori against Sri Sengupta, ACM/IT and concluded that allegations are not proved.

The incident of 17-10-2008 as mentioned by Smt. Deori in the FIR lodged to Officer In-charge, Jhalukbari Police station Guwahati-12. ( about Sengupta trying to give impolite hint and taunting ) did not find any mention in the complain letter to CCM / N. F. Railway on 20-10-2008.

Smt. Deori in her complaint date 20-10-2008 addressed to CCM indicated the name of Miss. Chaitali Dasgupta who asked for Rs. 5000/- as per order of ACM/IT Sri Sengupta for arranging posting in the CCM/ Genl office.

Ms Chaitali Dasgupta RCC at PPM Cell / HQ categorically denied about it and gave in writing also before the complaint enquiring Committee and thereby proved the allegation of Smt Deori as false.

Smt Deori RTC/ GHY while recorded statement on 19-11-2008 before the complaint enquiring Committee spoke about molestation by Sri Sengupta on a number of occasions in his chamber. This is in variance with her complaint dated 20-10-2008 to CCM where nothing has been indicated about molestation inside chamber.

Thus, by the above activities Smt. Kanaklata Deori RTC/ GHY has acted as most unbecoming of a Railway servant and lack of devotion to duty and thereby violated Rule No. 3.1 (ii) & (iii) of Railway Service Conduct (Rules) 1966.

*Attested  
Deori  
Adv*

*B. K. Mishra*  
19.12.08  
(B. K. Mishra)  
Asst. Commercial Manager  
Guwahati N. F. Railway,

Annexure-III

Article -I

LIST OF DOCUMENTS BASED ON WHICH THE CHARGE FRAMED AGAINST SMT.  
KANAKLATA DEORI, RTC/ GHY

1. Complaint lodged by Smt. Kanaklata Deori, RTC/ GHY on 20-10-2008 addressed to CCM/ N. F. Railway docketing copy to others.
2. Reply submitted by Sri Sengupta ACM/ IT addressed to The Chairperson, Sexual Harassment Complaint Committee of HQrs. dtd. 06-11-2008 in respect to the complaint of Smt. Deori, RTC / GHY dated 20-10-2008.
3. Investigation report dated 28-11-2008 of Sexual Harassment Enquiry Committee on the complaint filed by Smt. Kanaklata Deori, RTC/ GHY along with all documents.
4. Statement of Smt. Kanaklata Deori, RTC/ GHY on 19-11-2008 before the Complaint Enquiry Committee.
5. Statement of Miss Chaitali Dasgupta, RCC at PPM Cell under CCM /Genl / Maligaon on 12-11-2008 before the Complaint Enquiry Committee.
6. Copy of FIR lodged by Smt. Deori to Officer in-charge Jhalukbari Police station Guwahati-12.
7. Copy of Spare memo dated 20-10-2008 issued to Smt Deori, RTC/GHY.

*B. K. Mishra*  
( B. K. Mishra )

Asst. Commercial Manager  
Guwahati N. F. Railway ,

*Affected  
Smta  
Devi*

Article -I

Annexure-IV

LIST OF WITNESS BASED ON WHICH THE CHARGE FRAMED AGAINST SMT.  
KANAKLATA DEORI, RTC/ GHY

1. Sri D. Boro , Chief Office Superintendent.
2. Shri Arup Saikia , CCMI/ HQ
3. Shri Hemanta sharma, CCMI/ HQ
4. Shri Amitabh Mishra, CS/ PIR Cell
5. Miss Chaitali Dasgupta , RCC at PPM Cell/ HQ

*B. K. Mishra*  
( B. K. Mishra )  
Asst. Commercial Manager  
Guwahati N. F. Railway ,

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ANNEXURE-IX

To  
The Asstt. Commercial Manager  
N.F. Railway,  
Guwahati-1..

Dated-10.01.2009  
केन्द्रीय प्रशासनिक आधिकारण  
Central Administrative Tribunal

27 MAR 2009

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Guwahati Bench

Sub : Written Statement against Charge-Sheet issued  
vide Memo No.C/ACM/GHY/CON/DAR dated 18.12.2008  
by the Asstt. Commercial Manager, N.F. Railway.

Sir,

In reference to the above subject, I beg to  
submit my written statement of defence against the  
Charge-Sheet dated 18.12.2008 which was served on me  
19.12.2008, as follows:

1. That I was appointed as RTC on 08.02.1996 in the  
N.F. Railway.
2. That I am a member of Deuri Community which is a  
scheduled tribe community of Assam. I am a married  
woman with 3 (three) children, respectively aged  
about 18 years, 16 years and the third one aged  
about 14 years. Presently I am aged about 40 years.
3. That, on 08.05.2008 I was transferred and joined at  
Maligaon Head Quarters as RTC to work at <sup>NTES</sup> Cell.

Received  
Banshi  
10.1.2009  
Army Gtry

Attended  
10.1.2009  
Adv

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केन्द्रीय प्रशासनिक आयोग  
Central Administrative Tribunal  
27 MAR 2009  
गुवाहाटी न्यायालय  
Guwahati Bench

Since my appointment in 1996, I have been discharging in my duties with outmost sincerity with honesty and dignity.

4. That, at the Maligaon Head Quarters as NTES Cell I was required to work under one Mr. S. Sengupta, ACM (IT). Since the month of September, 2008 Mr. Sengupta, ACM (IT) (in short, Mr. Sengupta only) started indecent overtures aimed at having sexual harassment. In number of occasion thereafter started detaining me in office even after the office, could used obnoxious language against me. He even called me a prostitute and taunted at me being a tribal lady. He would say that the tribals are fools then gradually from the oral and indecent behaviour Mr. Sengupta came over to physical harassment with an intention to fulfill his sexual urge. On two occasions Mr. Sengupta rubbed his shoulders with me. One day while I was submitting my report he very indecently told me that the tribals do not wear any cloth but how could I wear such nice saree being a tribal. In another occasion while I was sitting across the table before him, he lifted my saree from under the table. Then I immediately got up from the chair and protested. Again one day in the evening he

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Guwahati Bench

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caught hold up me from behind and I was forced to push him aside. He also told me that I am CCM/PM's kept.

5. That, seeing the situation going from bad to worse I am compelled to inform the matter orally to Mr. Veenit Kumar Jain, CCM/PM. I told the CCM/PM that I would be submitting a complain against Mr. Sengupta. Then CCM/PM advised me not to submit any complain in writing as that would cast and aspersion on the department.
6. That, inspite of any oral complain made to any superior officer, CCM/PM, Mr. Sengupta would not stop his lustly behaviour of which I had to again meet the CCM/PM on 06.10.2008 and asked him as what should I do. The CCM/PM asked me to wait for two days so that he could call Mr. Sengupta and solve the problem.
7. That, the office was closed for Durga Puja holidays on 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> October, 2008.

On opening of the office CCM/PM called Mr. Sengupta and me and after some questioning tried to

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Guwahati Bench

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solve the matter. And advised Mr. Sengupta not to indulge in such thing any further.

8. That, again on 17.10.2008, Mr. Sengupta called me and asked me why I had gone to report the matter to the superior officer and that he would terminate my service for reporting the matter to higher authority.
9. That, from 18.10.2008, CCM/PM went on leave.
10. That, on 20.10.2008 (Monday), since CCM/PM had gone on leave and in his absence, I went to report the matter to the CCM, who is the highest authority in the department in writing. But the Secretary to the CCM did not permit me to meet the CCM, but asked me to submit my application to him instead. Accordingly, I submitted my application to the Secretary to the CCM and obtained acknowledgement.
11. That, in the evening of 20.10.2008 I lodged an F.I.R. before the Jakukbari Police Station being Case No.595/2008 under Section 294/354/509 Indian Penal Code read with Section 3(xi)(xii) of the Schedule Caste, Schedule Tribes (Prevention of

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Atrocities) Act, 1989. The case investigation.

12. That, on the same date i.e. 20.10.2008 I was transferred to Head Quarter to Guwahati Railway Station.
13. That, thereafter I lodged a complain to the sexual harassment enquiry committee which comprises three members.
14. That, but instead of three members enquiry the matter only two members made the enquiry.
15. That, the committee did not record my full statements during the enquiry and as such I am seriously prejudiced. Mr. Sengupta being senior officer and I being a low grade employee it appears that the voice of the senior officer overweighed sorrows and sufferings of a poor tribal woman.
16. That, Mr. Sengupta was seen very active in persuading and influencing the employees under him so that nobody gives any evidence against him.

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Guwahati Bench

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17. That Sir, I do hereby totally deny the charges against me vide charge sheet referred above. The complaint lodged by me against ACM/IT, was not at all baseless and it can't amount to an act against office decorum and discipline and it was also not aimed at discouraging officers from performing and enforcing discipline in office as alleged in the article of charge. I also deny the charge of serious misconduct, exhibiting lack of devotion to duty, alleged unbecoming of a railway servant and gross violation of Rule 3.1 (ii) and (iii) of Railway Service Conduct (Rules) 1966 as leveled against me.

18. That the findings of the sexual harassment complaint committee is not correct in as much as it is not based on the true facts of the case. Moreover, I was not allowed to produce any witness in support of my complaint. That apart the recording of my statements given before the committee in Assamese by translating the same into English is also wholly correct which I could not detect at that time as the statements recorded in English was not read over to me nor I was made to understand the Assamese meaning of the same by the enquiring authority. The committee did not make any correct assessment of my

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work by collecting and scrutinizing the records. Moreover, I never stated before the committee that I decided to ask apology from ACM/IT and to go for reconciliation if CCM/PM approves. The finding of the committee that the office chamber of ACM/IT being glass covered and having transparent glass door anything happening their would be visible from all sides is not at all correct in as much as there remains window cartines as well as almirah inside the room. Although I did not mention all indecent in my complaint petition which were faced by me in the hands of my controlling officer ACM/IT but I made all those clear before the sexual harassment enquiry committee, but those were not given any weight by the said committee and the said committee was wrong in holding that the complaint lodged by me was not proved. On two occasions the ACM/IT rubbed shoulders with me, another day in the evening while I as submitting my reporty to him he told tribals do not wear any cloths, but how I could wear such nice sarees. On another occasions while I was sitting across the table before him he lifted my saree by his hand which I could not see as he did it from under the table. I got up immediately. One day in the evening in the last week

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of September, 2008 he caught hold of me and some how I pushed his aside. He told that I am CCM/PM's kept. Smt. Chaitali Das Gupta being the relation of ACM/IT as well as a subordinate employee to him who was insisting me for money to keep in Head Quarters even without my request naturally might have not admitted the correct things before the enquiry committee.

19. That Sir, since my joining in the department I am all along sincerely rendering my services without there having any blemish or stigma what so ever in my service carrier. During my long past service period there was no any occasion to make any complaint against any of my superior officer at any point of time. Moreover, I being a very lower graded employee it was naturally very difficult on my part to bring complaint of present nature against my respectable controlling officer, but it was only under the compelling circumstances when the things went beyond tolerance I could not but the complaint. I most humbly submit that whether it is found to be proved or not proved by an inquiry committee where the rules and procedure necessary for imparting natural justice are not followed the findings given

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by such a committee may not be taken as instituting departmental enquiry against me for imparting major penalty. The mere fact of lodging complaint as stated above does not amount to violation of Rule No.31 (ii) and (iii) of Railway Service Conduct (Rules) 1966.

20. That Sir, the sexual harassment enquiry committee could not find out the truth and failed to appreciate the fact that a subordinate woman employee would not dare to bring false allegation of sexual harassment that too against her controlling officer thereby to malign her own marriage.

21. That Sir, I most respectfully submit that I have no any selfish motive to tarnish the image and reputation of my controlling officer ACM/IT as alleged in the article of charge, but it was only in the interest of protecting and preserving my own dignity while working in the department I had to make the complaint.

22. That Sir, I am the only bread earner of my family as my husband is also not having any job and my whole

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family will have to suffer like anything if any punishment is imposed on me for no fault on my part.

23. That since the police case is pending investigation and trial the issue of Departmental charge-sheet dated 18.12.2008 would seriously prejudice the investigation and trial of the police case.

Therefore the departmental charge-sheet may be dropped. Sir, I have already been a victim of sexual harassment, Your Honour may kindly do justice to me.

That Sir, I most sincerely hope that Your Honour would be kind enough to drop the charges leveled against me and to exonerate me from the same.

Kanak Lata Deuri, RTC/GH  
Yours faithfully,

10/01/09

Attsted  
Lata  
Adh

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To.

The Assistant Commercial Manager, *Disciplinary officer*  
N.F.Railway,  
Guwahati.

Sub:- Prayer for stay of the inquiry proceeding bearing letter no.  
C/ACM/CHY/DAR dtd. 18.12.2008.

Ref:- Your memorandum of chargesheet issued under letter no.  
C/ACM/CHY/DAR dtd. 18.12.2008.

Sir,

I like to draw your kind attention on the subject cited above and further beg to say that I have preferred an appeal before the Hon'ble General Manager, N.F.Railway on 17.02.2009 against the investigation report dtd. 28.12.2008 and its finding given by the sexual harassment inquiry committee constituted by the CPO, MLG. Since the appeal is pending before the Hon'ble General Manager, N.F.Railway, therefore you are requested kindly to stay the disciplinary proceeding initiated against me through memorandum of chargesheet dtd. 18.12.2008 till disposal of the appeal.

This is for your kind information and necessary action.

Yours faithfully

Date:- 20.02.2009

*Kanak Lata Deori*  
20/02/09  
Smt. Kanak Lata Deori,  
RTC/CHY under DCM/CHY

Copy to :- Inquiry officer for information and necessary action. Inquiry officer also requested to stay the inquiry proceeding proposed to be held today on 20.02.2009 pursuant to the memorandum of chargesheet dtd. 18.12.2008.

*Affected  
K. Lata  
Adv*

*o/c*

*Received  
20.2.09  
Adv. L. V. 20/02/09*

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To  
The Assistant Commercial Manager  
(Disciplinary Authority),  
N.F. Railway,  
Guwahati.

Sub : Prayer for supply of the documents.

Ref : (1) Your Memorandum bearing No.C/ACM GHY/CON/  
DAR dated 18.12.2008

Sir,

I have the honour to inform you that I have preferred an appeal separately on 17.10.2009 against the investigation report dated 28.11.2008, wherein I have also prayed for stay of the disciplinary proceeding till disposal of my appeal. However the following relevant defence documents are necessary to me for defending my case.

- (1) Reply submitted by Sri S. Sengupta, ACM/IT addressed to the Chairperson of sexual harassment complaint committee of Hqr. Dtd. 06.11.2008, in respect of the complaint of Smt Deori, RTC/GHY dated 20.10.2008 (Sl. No.217 of the list of documents)
- (2) Statement of Miss Chaitali Dasgupta submitted before the sexual harassment enquiry committee.
- (3) Statement of Shri D. Boro, C.O.S. submitted before the sexual harassment enquiry committee.
- (4) Statement of Shri Arup Saikia, submitted before the sexual harassment enquiry committee.

Attested  
Mita  
KSW

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- (5) Statement of Shri Hemanta Sharma, submitted before the sexual harassment enquiry committee.
- (6) Statement of Shri Amitava Mishra, submitted before the sexual harassment enquiry committee.
- (7) Statement of Shri Chaitali Das Gupta, RCC at PPM, submitted before the sexual harassment enquiry committee.
- (8) Statement of all witnesses examined by the sexual harassment enquiry committee.
- (9) Copy of complaint, if any based on which the instant disciplinary proceeding is instituted.
- (10) The individual independent investigation report of the members of the sexual harassment committee constituted by CPO, MLC.
- (11) Note sheet or proposal referring my complaint dated 20.10.2008 to sexual harassment enquiry committee.
- (12) Statement of the persons other than witnesses examined by the committee referred in sub para 9, 19 of para 7 of the findings of investigation report.
- (13) Particulars of the telephone calls i.e. detail particulars of 35 nos. of call from 08.09.2008 to 07.10.2008 and 50 nos. of telephone calls from 08.10.2008 to 07.11.2008 and particulars of 13 calls on 20.10.2008 between the charged officer and CCM/PM as alleged in sub para 24

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of para 7 of the findings of inquiry committed dated 28.11.2008.

(14) Statement of CCM/PM referred in sub para 2 of para 7 of the findings of the sexual harassment enquiry committee.

Yours faithfully

Dated: 20.02.2009

*Kanak Lata Deori*  
Smt. Kanak Lata Deori

20.02.09

RTC/GHY under DCM/GHY

Copy to-

1. Inquiry officer for information and necessary action.
2. Presenting Officer for information and necessary action.

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ANNEXURE - XII

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N.F. Railway

Office of the  
 Divil. Comml. Manager  
 Guwahati  
 Dated, 09.03.09

No. C/ ACM /GHY/Con/DAR

To  
 Smt. Kanaklata Deori  
 RTC/ Guwahati  
 N.F.Railway (under CTI/ GHY/ N.F.Rly)

Sub: - Inquiry Report of inquiry dated 5-3-2009 in DAR case  
 No. C/ACM/GHY/Con/DAR dt. 18-12-2008 against  
 Smt. Kanaklata Deori RTC/ Guwahati.

Inquiry Report of inquiry in Major Memorandum No.  
 C/ACM/GHY/Con/DAR dt. 18-12-2008 in 11(eleven) pages is sent herewith for  
 submission of Final Defence within 15 days from the date of receipt of this  
 letter.

You are therefore; advise to submit your final defence within the  
 stipulated period mentioned above , failing which it will be presumed that you  
 have nothing to say in this respect and the case will be decided exparte.

D.A/Enquiry Report in 11(eleven) pages.

*Attested  
Adutta  
Adv*

*Biswajit*  
 ACM/GHY 9-3-09  
 D.A

Following serious irregularities .

*5/3*

Contd..2.

INQUIRY REPORT

केन्द्रीय प्रशासनिक अधिकरण  
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Departmental Inquiry against Smt. Kanaklata Deori, RTC/GHY.

1.0. I, Smt. Dipali Kalita Paine, ACM/PS/HQ was appointed as Inquiry Officer (IO) by ACM/GHY with the approval of the competent authority, vide appointment letter No.C/ACM/GHY/CON/DAR dated 12.01.09 for inquiring into the charge framed against Smt. Kanaklata Deori, RTC/GHY.

Major Penalty DAR action was initiated against Smt. Kanaklata Deori for committing the following serious misconduct.

Smt. Kanaklata Deori, RTC/GHY, while working in PPM Cell of CCM/General Branch of HQrs. Commercial Department lodged a complaint on 20.10.2008, addressed to CCM/N.F.Railway with copy to others against Shri S. Sengupta, ACM/IT leveling various charges including one which can be interpreted as charge of sexual harassment of women at work place.

During the course of investigation by Sexual Harassment Inquiry Committee of HQrs., the complaint of Smt. Deori has been proved to be false, fabricated and motivated by self consideration out of selfish motive which has tarnished the image and reputation of Shri Sengupta, ACM/IT in particular and Railways in general.

The baseless complaint of Smt. Deori is an act against the office decorum, discipline and aimed at discouraging officers from performing and enforcing discipline in office.

Thus, by the above, Smt. Kanaklata Deori, RTC/GHY has committed serious misconduct and exhibited lack of devotion to duty which tantamounts to unbecoming of a Railway Servant and gross violation of rule No.3.1 (ii) & (iii) of Railway Service Conduct (Rules) 1966.

2.0. Major Penalty Memorandum was issued to Smt. Kanaklata Deori, RTC/GHY vide letter No.C/ACM/GHY/CONFIDENTIAL/DAR dated 18.12.08 through CTI/GH. The CO acknowledged it.

3.0. Order of DA appointing Inquiry Officer and Presenting Officer : ACM/GHY vide his letter No.C/ACM/GHY/CON/DAR dated 12.01.09, appointed myself as Inquiry Officer and Shri T. Ahmed as Presenting Officer to the subject DAR case.

4.0. Case of DA:

There is only one Article of Charge framed against Smt. Kanaklata Deori, RTC/GHY.

Article-

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SMT. KANAKLATA DEORI, RTC/GHY UNDER DCM/GHY.

Smt. Kanaklata Deori, RTC/GHY while working in the PPM Cell of CCM/General Branch during May'2008 to October'2008 had committed the following serious irregularities :

*Handwritten signature/initials*

Contd..2.

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Smt. Kanaklata Deori, RTC/GHY while working in the PPM Cell of GCM General Branch of HQrs. Commercial Department lodged a complaint on 20.10.08, addressed to CCM/N.F. Railway with copy to others against Shri S. Sengupta, ACM/IT leveling various charges including one which can be interpreted as charges of sexual harassment of women at work place.

During the course of investigation by Sexual Harassment Inquiry Committee of HQrs., the complaint of Smt. Deori has been proved to be false, fabricated and motivated by self consideration out of selfish motive which tarnished the image and reputation of Shri Sengupta in particular and Railways in general.

The baseless complaint of Smt. Deori is an act against the office decorum, discipline and aimed at discouraging officers performing and enforcing discipline in office.

Thus, by the above act, Smt. Kanaklata Deori, RTC/GHY has conducted a serious misconduct and exhibited lack of devotion to duty which tentamounts to unbecoming of a Railway servant and gross violation of rule No.3.1(ii) & (ii) of Railway Service Conduct (Rules) 1966.

5.0. Statement of Imputation:

Statement of imputation of misconduct or misbehaviour in support of the Articles of Charge framed against Smt. Kanaklata Deori, RTC/GHY is that Smt. Kanaklata Deori, RTC/GHY while working in General Branch of HQrs. Commercial Department lodged a complaint on 20.10.08 to CCM/N.F. Railway against Shri S. Sengupta, ACM/IT bringing the following allegations.

1. Uttering bad and slang language by Shri S. Sengupta.
2. Telling complainant to stay after office hours without any official reason (reason best known to Shri Sengupta as stated by complainant).
3. Insulting the complainant by using words like 'Tribal Junglee' and also using abusive comments about her dress.
4. Questioning about her character and telling her that there is no difference between prostitutes and working women at stations, as the complainant was earlier working at Guwahati station as RTC.
5. Demanding Rs.5000/- through Ms. Chaitali Dasgupta to keep Smt. Deori in the same office.

In course of Smt. Deori's deposition before Sexual Harassment Inquiry Committee of HQrs. and on cross examination, she could not produce any witness in support of her allegations. She put forward before the Committee on 19.11.2008 in her statement many more allegations, in addition to her written complaint dated 20.10.08 including rubbing of shoulders and attempt to molest her by Shri S. Sengupta, ACM/IT inside the office. However, she did not specify any time or date about these incidents.

The Sexual Harassment Inquiry Committee members inquiring into the case inspected the glass covered chamber of ACM/IT shown by the CO, where the alleged incident of molestation took place and came to conclusion that physical misbehaviour or abuse as alleged is not feasible in that place without people knowing about it.

Contd..3.

5/3

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The Sexual Harassment Inquiry Committee, after analyzing all facts and circumstances has concluded that all charges brought against Shri S. Sengupta, ACM/IT by Smt. Kanaklata Deori, RTC/GHY is not proved.

The incident of 17.10.2008 as mentioned by Smt. Deori in the FIR lodged to Officer-in-Charge, Jhalukbari Police Station, Guwahati-12 (about Sengupta trying to give impolite hint and taunting) did not find any mention in the complaint letter to CCM/N.F.Railway on 20.10.2008.

Smt. Deori in her complaint dated 20.10.08, addressed to CCM, indicated the name of Ms. Chaitali Dasgupta, RCC at PPM Cell/HQ, who asked for Rs.5000/- as per order of ACM/IT Shri Sengupta for arranging posting in the CCM/General Branch.

Ms. Chaitali Dasgupta, RCC at PPM Cell/HQ categorically denied about it and gave in writing also before the Complaint Inquiry Committee and thereby proved allegation of Smt. Deori as false.

Smt. Deori, RTC/GHY while recorded statement on 19.11.08 before the Enquiry Committee spoke about molestation, physical harassment by Shri Sengupta on a number of occasions inside the office. This is in variance with her complaint dated 20.10.08 to CCM where nothing has been indicated about molestation inside chamber.

Thus, by the above acts Smt. Kanaklata Deori, RTC/GHY has acted as unbecoming of a Railway Servant and showed lack of devotion to duty and thereby violated rule No.3.1 (ii) & (iii) of Railway Service Conduct (Rules) 1966.

6.0. List of Documents:

Seven nos. of documents were relied upon vide Annexure-III to substantiate the Article of Charge framed against Smt. Kanaklata Deori, RTC/GHY.

RUD-1. Complaint lodged by Smt. Kanaklata Deori, RTC/GHY on 20.10.08, addressed to CCM/N.F.Railway docketing copy to others.

RUD-2. Reply submitted by Shri S. Sengupta, ACM/IT, addressed to The Chairperson, Sexual Harassment Inquiry Committee of HQrs. dated 06.11.2008 in respect to the complaint of Smt. Kanaklata Deori, RTC/GHY dated 20.10.08.

RUD-3. Investigation report dated 28.11.08 of Sexual Harassment Inquiry Committee, on the complaint filed by Smt. Kanaklata Deori, RTC/GHY alongwith all documents.

RUD-4. Statement of Kanaklata Deori, RTC/GHY on 19.11.2008 before Complaint Inquiry Committee.

RUD-5. Statement of Ms. Chaitali Dasgupta, RCC at PPM Cell under CCM/Gen/Maligaon on 12.11.2008 before the Complaint Inquiry Committee.

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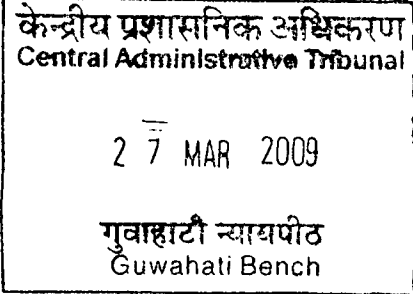
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RUD-6. Copy of FIR lodged by Smt. Deori to Officer-in-Charge, Jhalukbari Police Station, Guwahati-12.

RUD-7. Copy of spare memo dated 20.10.2008 issued to Smt. Deori, RTC/GHY.

7.0. List of witness:

- PW-1. Shri D. Boro, Chief Office Superintendent.  
PW-2. Shri Arup Saikia, CCMI/HQ.  
PW-3. Shri Hemanta Sarma, CCMI/HQ.  
PW-4. Shri Amitabh Mishra, CS/PRS Cell.  
PW-5. Ms. Chaitali Dasgupta, RCC at PPM Cell/HQ.



8.0. Proceedings of the Inquiry:

- i) The date of Preliminary Hearing was fixed on 29.01.09 at 11.00 hrs. in the chamber of ACM/PS/HQ cum Inquiry Officer and Smt. Kanaklata Deori, RTC/GHY (CO) was informed accordingly. The CO acknowledged it vide on 15.01.09. But CO did not appear at the preliminary hearing and even did not inform about the reason of her absence from which it could be presumed that she remained absent to avoid inquiry. Presenting Officer Md. T. Ahmed and Inquiry Officer were present.
- ii) The date for Regular Hearing was fixed on 10.02.09 at 11.00 hrs. in the chamber of ACM/PS/HQ and CO was informed accordingly to attend the hearing by letter sent to her office address, to her residential address, and also through notices published in 'the Assam Tribune' and 'Asomiya Pratidin' dated 01.02.09. It was also intimated that the enquiry will be conducted ex parte if CO fails to appear. But CO did not appear. Instead, she sent one messenger with a letter addressed to ACM/PS/HQ stating herself as sick and with request to postpone the date of inquiry till she resumes duty. The above letter was not supported by Railway Medical Certificate and therefore I have reasons to believe that she wanted to avoid the inquiry again.
- iii) The regular hearing was conducted on 10.02.09. Presenting Officer (PO) Md. T. Ahmed and Prosecution Witness Shri D. Boro, Chief Office Supdt., Shri A. Saikia, CCMI/HQ, Shri H. Sarma, CCMI/HQ, Shri A. Mishra, CS/PRS Cell and Ms. C. Dasgupta, RCC at PPM Cell at HQrs. were present and their side of the case was heard.
- iv) Prosecution Witnesses have been examined. Statement of PW-1 Shri D. Boro, Ch. OS revealed that he knows Shri S. Sengupta from 2003 as equal behaved person to all the staff working under him. He never heard about his misbehaviour from anyone. He also never heard Shri Sengupta using unparliamentary language towards anyone. About CO Smt. Deori, Shri Boro stated that her behaviour was normal towards other staff. Usually she was regular regarding attendance. On three or four occasions she became late during her service at HQrs. Shri Boro remains at Office usually upto 18.00 hrs. or 18.30 hrs. but he had never seen her remaining at Office after office hours and he never witnessed any incident of harassment done by Shri Sengupta, ACM/IT towards Smt. Deori. He quoted one incident of one

Contd..5.

*[Handwritten signature]*

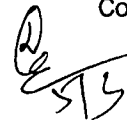
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day when Smt. Deori (CO) became late in attendance, was asked to sign in the late attendance register to which she did not agree. She asked Shri Sengupta, ACM/IT to allow her to sign in regular attendance stating that she was busy in doing some official work for which she forgot to sign in the regular attendance register. When Shri Sengupta asked her to show the work she had done which led her to forget to sign, she could not show the same and became a little bit aggressive. Lastly, she signed at the late attendance register. Shri Boro also stated that the chamber of Shri Sengupta is covered by glass and though there are curtains at one side, it is towards the corridor side and there is one Almirah at the corner which do not create any obstruction to the visibility of inside of the chamber of Shri Sengupta from outside.

- v) The statement of PW-II, Shri Arup Saikia, CCMI/HQ revealed that Shri Sengupta, ACM/IT is a gentleman with helping attitude towards the staff working under him. Shri Saikia confirmed that he never witnessed any incident of harassment faced by the CO Smt. Kanaklata Deori. However, one day while he was sitting in the Chamber of ACM/IT, Smt. Deori came into the chamber of ACM/IT followed by Shri D. Boro, Ch.OS/G and Smt. Deori requested ACM/IT Shri Sengupta to allow her to sign in the regular attendance register. Then ACM/IT asked Smt. Deori to show her work, she went out of the chamber and did not return back till his presence in the chamber.
- vi) The statement of PW-III Shri Hemanta Sarma, CCMI/HQ revealed that Shri Sengupta, ACM/IT is a person of good behaviour and he never witnessed any harassment from ACM/IT towards Smt. K.L. Deori during her working period at HQrs. He also repeated the same matter, happened at about 17.15 hrs. of one day that the PW-II has already stated.
- vii) The statement of PW-IV Shri Amitabh Mishra, CS/PRS/HQ revealed that Shri Sengupta, ACM/IT is very co-operative towards the staff with gentle behaviour. Shri Mishra stated through his statement that he has been maintaining a distance from Smt. Deori though they used to sit and work in adjacent cells at CCM/G's Office/HQ due to her complaining nature. He also narrated the same matter that happened one day at about 17.15 hrs. in the chamber of ACM/IT Shri Sengupta as already stated by PW-I, II and III in their respective statements.
- viii) PW-V Ms. Chaitali Dasgupta, RCC at PPM Cell/HQ stated that Shri Sengupta, ACM/IT is a polite in behaviour and he never or seldom looks up while talking to women staff. Ms. Dasgupta also stated that as a co-worker of adjacent seats in the same Cell, usually Smt. K.L. Deori's behaviour was normal but some times she lost her temper and behaved rudely during her working period at HQ. Ms. Dasgupta also stated that she had no interaction or discussion regarding her (Smt. Deori's) willingness to stay and work at HQrs. and she categorically denied about asking money from Smt. Deori for arranging posting of Smt. Deori at HQ.

Contd..6.



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ix) The date of Regular Hearing was again fixed on 20.02.2009 and the CO Smt. Deori was advised to appear in the hearing on the fixed date at 11.00 hrs in the chamber of ACM/PS/HQ cum Inquiry Officer with her Defence Counsel and Witness, if any, vide letter No.C/ACM/GHY/CON/DAR dated 11.02.09 and sent to her Office address as well as to her residential address and vide Railway Notification published in the 'Assam Tribune' on 13.02.09 and 'Asomiya Pratidin' on 14.02.09. On 16.02.09, one consent letter to act as Defence Counsel for CO Smt. Deori has been received from Shri Mridul Kumar Das, Hd.Clerk under CCM/FM now spared to work as TCW under CCM/G Office/MLG.

x) As per programme, on 20.02.09, regular hearing started at the chamber of ACM/PS/HQ at 11.00 hrs. the Defence Counsel Shri M. K. Das was also present. During the proceedings, Smt. Kanaklata Deori while answering to the questions of IO admitted that she has received the Charge sheet, the documents mentioned in Annexure of the Charge Memorandum and have understood the charges leveled against her. To the question regarding whether she has any witness from her side, she answered that it will be intimated during the course of proceedings. To the question as to whether she has any Defence Counsel, she answered that Shri Mridul Kumar Das, Head Clerk under CCM/FM now working under Dy.CCM/PM as TCW has consented to act as Defence Counsel on behalf of her vide his consent letter dated 16.02.2009. CO was asked the reason for submitting complaints to CCM/NFR dated 20.10.08 and statement before the "Sexual Harassment Inquiry Committee" on 19.11.08 with different contents and different allegations. The Defence Counsel on her behalf stated that before answering to that question, she begs to submit some preliminary objections as follows.

- a) As the CO has already submitted an application before GM/N.F.Railway with request to review the report of the "Sexual Harassment Inquiry Committee" and as DA has already been requested to postpone the Inquiry till the disposal of the above appeal, she also begs before IO to postpone the regular hearing. A copy of appeal to GM/N.F.Railway, a copy of representation addressed to DA seeking some copies of documents have been submitted by DC to IO. The objection was rejected by the IO, stating that D & AR proceedings cannot be stayed by sending an application to the authority.
- b) IO's position to act as Inquiry Officer has been challenged stating that IO's name has been mentioned in the report of "Sexual Harassment Inquiry Committee" as IO expressing certain view on the complaint. This objection too was not accepted as DC or CO cannot challenge such an issue during the inquiry.
- c) A regular hearing was already conducted in CO's absence and without giving her opportunity to have subsequent date of preliminary hearing and PW's were also examined in her absence. The DC & the CO were told in clear terms that sufficient advice was sent but the CO avoided the inquiry on two dates - one without information and the other by reporting sick on private account.

Contd..7.

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- d) She (CO) needs certain documents to defend herself and has already requested before IO through DC and also mentioned that some other documents may also be required. It was told that all the documents she had asked for has been given to her.
- e) She requested IO to furnish the copy of the proceedings held during preliminary hearing to enable her to cross-examine and re-examine the PWs in her defence through DC. These documents were given to her, as demanded.
- f) She requested for opportunity to submit defence documents and defence witnesses, if needed. It was agreed.

Photocopies of PW's statements have been provided to CO. date for regular hearing was fixed on 24.02.09 at 11.00 hrs in the chamber of ACM/PS/HQ cum IO in continuation to the hearing of 20.02.09. CO was informed about the next date vide letter No.C/ACM/GHY/CON/DAR dated 20.02.09. PO, witnesses, DC and DA have also been informed and advised to attend the regular hearing on 24.02.09.

xi) The regular hearing on 24.02.09 started at 11.00 hrs in the chamber of ACM/PS/HQ cum Inquiry Officer and following were present in the hearing :

- |  |   |        |
|--|---|--------|
| 1. Smt. D.K. Paine, ACM/PS/HQ                                | - | IO     |
| 2. Md. T. Ahmed, CCMI/HQ                                     | - | PO     |
| 3. Smt. Kanaklata Deori, RTC/GHY                             | - | CO     |
| 4. Shri M.K. Das, Hd.Clerk under CCM/FM now under Dy.CCM/PM. | - | DC     |
| 5. Shri D. Boro, Ch. OS/HQ                                   | - | PW-I   |
| 6. Shri A. Saikia, CCMI/HQ now ACM(IT)(FM).                  | - | PW-II  |
| 7. Shri H. Sarma, CCMI/HQ                                    | - | PW-III |
| 8. Shri A. Mishra, CS/PRS/HQ                                 | - | PW-IV  |
| 9. Ms. Chaitali Dasgupta, RCC/PPM/HQ                         | - | PW-V   |

Before starting the cross examination of PWs, DC for CO submitted one representation before IO with request to furnish CO certain documents namely letter of acceptance or note or any other communication signifying the acceptance of the report submitted by the Sexual Harassment Inquiry Committee and sought for the appearance of all the witnesses who were examined by the aforesaid Committee or whose names are referred in the said report including the 5 (five) lady OSs of CCM/G Office, Maligaon to whom the committee addressed a questionnaire. He also requested IO the presence of the members of the Committee and its chairperson for examination in the proceedings. Neither these documents nor the so called witnesses were relevant to the enquiry and hence not permitted.

During the course of regular hearing, all above PWs were cross-examined by the DC for CO. CO was examined by IO. DC requested for defence by CO and requested for self examination of CO also. IO advised DC

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to submit the Defence Brief, if any, within 07 days. Self examination of CO was permitted but DC declined. Hence, self examination could not be conducted.

9.0. During the course of the inquiry, it was observed that the CO and DC tried to obstruct the process of D & AR inquiry by raising objections, one after the other by submitting irrelevant representations. The CO did not attend the Preliminary Hearing on 29.01.09 and RH on 10.02.09. Further, she did not submit any list of witness in time but kept on saying that she would produce witness if any in time, only to cause confusion. Yet, all opportunities of fair inquiry were given.

10.0. Defence Brief:

Defence Brief having 19 pages, submitted by CO has been received on 03.03.09. It is seen from the same that the CO has raised a series of objections. I went through the objections carefully and observed as follows.

SN	Objection	My observation
(i)	15 Documents were not given.	All documents, connected to the report of Sexual Harassment Complaint Committee listed in SL No.(i) to (v) have been given to CO on 23.12.08. Rest are not relevant.
(ii)	Committee Report has not been signed by all three members.	Not true (RUD-3)
(iii)	Report suffers from irregularity.	Not acceptable.
(iv)	Not accepted by GM.	There is no provision for acceptance by GM or any authority.
(v)	One member was under order of transfer.	Irrelevant because it does not affect fair conduct of inquiry.
(vi)	CO's statement was not recorded.	Not true. CO's statement was recorded. She was heard and she accompanied the members to inspect the site.
(vii)	CO was not allowed to produce any witness.	Not true.

The CO then goes on to narrate the complaint which she has already told either in the representation addressed to CCM (RUD-1) or in her FIR to the local Police (RUD-6) or in her statement to the Sexual Harassment Inquiry Committee (RUD-4). All these points are being discussed in the subsequent paras and therefore, the same do not require any discussion here.

In the discussion on oral evidence by prosecution, CO has tried to only pick holes without substantiating anything.

11.0. Discussion, Assessment of evidence and reasons for findings:

Examination of the PW-I revealed that CO's presence after office hours at

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office was not witnessed by him though he usually remained at office upto 18.00 hrs. or 18.30 hrs. Misbehaviour or use of unparliamentary language towards other staff by ACM/IT Shri Sengupta was never seen by him. He had never heard about such incident. Though PW-I Shri D. Boro has mentioned one event where CO was not allowed to sign her regular attendance by ACM/IT Shri Sengupta, it was within the purview of his duty which cannot be termed as harassment towards Smt. Deori, CO. Moreover, Shri Boro also stated that the chamber of ACM/IT is glass covered and curtains and almirah available there do not create any obstruction to the visibility of the chamber of inside of the chamber of Shri Sengupta. During cross examination by DC also he stated that the whole area of the office does not come within his view from his seat, the room of ACM/IT is visible at all time by one or the other of the office staff. Hence, any incident of any kind of harassment towards CO would have been noticed by one or the other office staff.

The statement of PW-II Shri Arup Saikia, the then CCMI/HQ, now ACM/IT/FM, the statement of PW-III Shri Hemanta Sarma, CCMI/HQ, statement of PW-IV Shri Amitabh Mishra, CS/PRS/HQ and statement of PW-V Ms. Chaitali Dasgupta during examination and cross examination did not establish any evidence of any kind of harassment towards CO by ACM/IT. As PW-V Ms. Chaitali Dasgupta categorically denied the allegation asking Rs.5000/- from CO to keep her at HQ, it could not also be established.

During examination of CO, in reply to the Q.No.1, she stated that the contents of the Complaint submitted by her to CCM/NFR and to Sexual Harassment Inquiry Committee were different because she wanted to meet CCM personally and explain the happening of 17.10.08, but she could not meet him. Moreover, she wanted to be more elaborate in the FIR. This is not acceptable, because CCM could not have taken any immediate action upon her complaint. So, she should have submitted all incidents in writing as record to enable CCM to take necessary action on her complaint. In answer to Q No.3, she stated that she could not remember the dates when ACM/IT rubbed soldiers with her. As she thought those events as sexual harassment, she should have remembered the dates or month. In answer to the Q No.5, she showed the reason of not reporting to SCM/PS as having no communication with him regarding official work and Dy.CCM/PM being nor responsive towards her in some cases. It is not acceptable because she chose to approach the other many authorities who had no previous communication with CO. In reply to Q. No.7, CO mentioned that she went to CCM before receiving the spare letter (RUD-7). On the body of her complaint (RUD-1), the time of receipt by Secretary to CCM is endorsed as 12.15 hrs. In answer to Q.No.12, CO stated that she cannot remember the time when she received the spare letter. Since she could not remember the time of her sparing from HQ on 20.10.08, the statement that she went to meet CCM before she was spared, is not acceptable. Enquiry Report of Sexual Harassment Inquiry Committee (Para 25 of RUD-3) too confirms that the complaint to CCM was filed after receiving the spare letter, transferring her back to GHY.

From the complaint filed by Smt. Kanaklata Deori, RTC/GHY dated 20.10.08 before CCM regarding the alleged misbehaviour by

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Shri S. Sengupta, ACM/IT/N.F. Railway, it is observed that the complaint is too general in nature to bring out a very serious issue. The CO informs that Shri S. Sengupta, ACM/IT has been harassing her by detaining in the Office after Office hours for the reasons best known to him. He has also said to be insulting her by calling her caste name and commenting about her dress. Further, she adds in her subsequent complaints (RUD-4 & 6) to Sexual Harassment Inquiry Committee and local Police that she was harassed physically on a number of occasions inside the office by Shri S. Sengupta, ACM/IT. She also alleges that she has been indirectly called a prostitute. From the evidences given above and also from the report of enquiry submitted by the Sexual Harassment Inquiry Committee (RUD-3), it is observed that she had neither reported any of this incident to anybody for 05 months nor remembered any date, time etc. nor anyone in the office has seen the incident or her plight. It is unbelievable that she remembered suddenly of these incidents on 20.10.08 i.e. on the day when she was spared to carry out her transfer order to GHY Station. It is difficult to believe that a lady official surrounded by so many colleagues male and female will not report about such harassment to anyone in the office and tolerate it for long 05 months till the day she was spared on account of poor performance. It is also not acceptable that no colleague in office will observe such incident, at least once. In view of the facts above, I am convinced that allegations brought against Shri S. Sengupta, ACM/IT by the CO, mentioned in SI.No.1 to 4 in Para 5 above, are not true.

Further, she alleges that Shri S. Sengupta, ACM/IT wanted a bribe of Rs.5000/- through Ms. Chaitali Dasgupta, RCC. This has been denied by Ms. Chaitali Dasgupta, RCC herself, thereby, proving that allegation at SI.No.4 in Para 5 above, is also a false allegation against the officer.

The CO further alleges in her FIR, addressed to Officer-in-Charge, Jalukbari Police Station ( RUD-6) that Shri S. Sengupta, ACM/IT used to harass her by detaining her in office after office hours and hints that on 17.10.08, he tried to physically harass her in the office. Interestingly, this most vital part of the complaint is missing in the original complaint dated 20.10.08, addressed to CCM. She elaborates this aspect, without mentioning any specific date in her statement before the Sexual Harassment Inquiry Committee dated 19.11.08 by saying that one day Shri S. Sengupta, ACM/IT physically assaulted her in the office. The members of the Committee inspected the site of the incident alongwith the CO and the latter showed them the place, where the incident is said to have taken place. The Sexual Harassment Inquiry Committee has ruled out any incident of misbehaviour on the part of Shri S. Sengupta, ACM/IT, saying that such an incident is not feasible in that chamber which is covered by transparent glass frame, without the knowledge of people in the office.

Further, it is to be noted that contents of the complaint in RUD-1, RUD-6 and RUD-4 are different. The first one is mild, the second one is serious and the third one is very serious. This shows a frame of CO's mind. I agree with the committee report that RUD-1 was probably written and typed (in mild language) before 20.10.08 and the same was submitted after being spared on 20.10.08 by putting the date with ink. Subsequently, she made the content more serious to achieve better result.

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It is also unbelievable that a lady will forget date, time etc. of such an incident so easily.

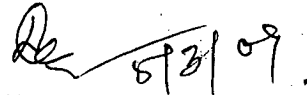
All these convince me beyond any reasonable doubt that the allegation of physical harassment against Shri S. Sengupta, ACM/IT is false and fabricated.

The Sexual Harassment Inquiry Committee also went into the reasons for filing such a false and fabricated complaint. I have no reason to disagree with the report that all circumstantial evidences prove beyond doubt that it was on account of vendetta. CO was transferred from Maligaon HQ to Guwahati Station due to her poor performance, but she had a desire to continue in Maligaon HQ for personal convenience. She pre-empted such a transfer on account of her own performance and prepared a complaint which was kept ready without a date. She was spared in the forenoon of 20.10.08 and immediately after that she filed the complaint by putting the date on it by 12.15 hrs, as recorded in the complaint (RUD-1) by Secretary to CCM. The motive of a false and fabricated complaint is, thus, established. Subsequently, in order to strengthen her case, she filed an FIR with the local Police against Shri S. Sengupta, ACM/IT adding new charges. She, thus, wanted to teach a lesson to Shri S. Sengupta, ACM/IT, who as her controlling officer tried to discipline her, for which, the CO was continuously complaining to CCM/PM. She knew it well that she had been transferred out of HQ by CCM on the complaint of ACM/IT.

From the above assessment of evidences and discussion, it is clear that the CO has filed a false, fabricated and motivated complaint out of selfish motive against Shri S. Sengupta, ACM/IT, her controlling officer. It is natural that the false and fabricated complaint filed by Smt. Kanaklata Deori, RTC/GHY has caused serious mental agony to Shri S. Sengupta, ACM/IT and his family, as stated by him in his statement before the Sexual Harassment Inquiry Committee ( RUD -2); because any person in society can be humiliated by a mere complaint of this nature. I am, therefore, convinced that this has tarnished the image of Shri S. Sengupta, ACM/IT, in particular for no fault of his and the railways in general. The baseless/fabricated complaint of the CO also affected office decorum and discipline. As explained above, the CO, thus, aimed at discouraging officers from performing and enforcing discipline in office.

In view of the above, I conclude that Article-I (Annexure-I & II) stands established.

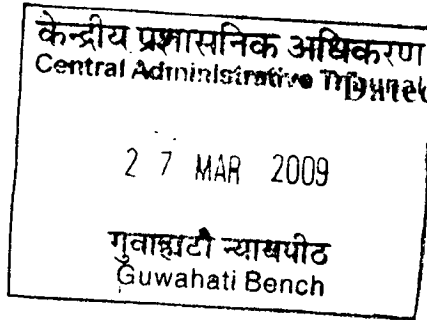
Article-I is proved.



(DIPALI KALITA PAINE)  
Asstt. Commercial Manager/PS  
Cum  
Inquiry Officer.

*Attached  
Dutta  
Adv*

Inquiry Officer  
In Chargesheet Memo No. : C/ACM/GHY/CON/DAR  
Issued by ACM/GHY  
Dated : 18.12.2008



Madam,

Sub. : Defense Brief.

The CO undersigned begs to submit her defense brief as follows :

INTRODUCTION :

1. That this Defence Brief is as per Daily Ordersheet No. Nil dated 24-02-2009 passed by respected I.O. Respected P.O. was not asked to submit his Prosecution Brief if any by I.O nor the P.O. offered to present his Brief. Hence this Brief by CO is in absence of any Prosecution Brief to counter.
2. That this Defence Brief is not a Defence that could be offered during the course of the inquiry as no such Defence through self examination of the CO was allowed by I.O. during the enquiry on 24-02-2009 when Regular Hearing was concluded by I.O.
3. That this is also submitted in the constraint of very limited time of seven days during which I.O. has ordered the CO to submit the Brief which is not a reasonable time for preparing this Brief involving volume of papers.

Accepted  
Dutta  
A. S.

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4. That this is also submitted in the constraint of non-supply and denial by I.O. of documents cardinal for her defence which documents were neither allowed to be brought in the enquiry nor given access to by I.O. vide CO's letter dated 20-2-2009 and 24-02-2009. on records of proceedings of RH on 20-02-2009 and 24-02-2009. These documents required for defence which were denied are listed below :

- i. Reply submitted by Sri S. Sengupta ACM/IT addressed to the Chair person of Sexual Harassment Enquiry Committee Dtd. 06-11-2008, in respect of the complaint of Smt. Deori, RTC/GHY dated 20-10-2008 (Sl. No. 217 of the list of documents).
- ii. Statement of Shri D. Boro, C.O.S. submitted before the Sexual Harassment Enquiry Committee.
- iii. Statement of shri Arup Saikia, submitted before the Sexual Harassment Enquiry Committee.
- iv. Statement of Shri Amitava Mishra, submitted before the Sexual Harassment Enquiry Committee.
- v. Statement of all witnesses examined by the Sexual Harassment Enquiry Committee.
- vi. Copy of complaint, if any based on which the instant disciplinary proceeding is instituted.
- vii. The individual independent investigation report of the members of the Sexual Harassment Enquiry Committee.

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viii. Note sheet or proposal referring my complaint dated 20.10.2008 to

Sexual Harassment Enquiry Committee.

- ix. Statement of the persons other than witnesses examined by the Committee referred in sub para 9, 19 of para 7 of the findings of investigation report.
- x. Particulars of the telephone calls i.e. detail particulars of 35 nos. of call from 08-09-2008 to 07-10-2008 and 50 nos. of telephone calls from 08-10-2008 to 07-11-2008 and particulars of 13 calls on 20-10-2008 between the charged officer and CCM/PM as alleged in sub para 24 of para 7 of the findings of Inquiry Committed dated 28-11-2008.
- xi. Statement of CCM/PM referred in sub para 2 of para 7 of the finding of the Sexual Harassment Enquiry Committee.
- xii. Statements of all the honourable officers who deposed before the committee.
- xiii. Statements of all the respected staff who deposed before the committee excepting the ones who have been made PWs in Annexure IV article I from Sl. No. 1 to 5.
- xiv. Response of all the respected lady OS of the CCM/G Office who were given the questionnaire by the Committee vide the report at P.6 para 15.
- xv. The acceptance note/order/letter by the authority to whom the report was submitted by the committee.

The letters dated 20-2-2009 and 24-2-2009 are annexed as Annexures

“A” and “B” respectively.

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**DETAILED DEFENCE BRIEFED**

1. That the charges are denied in toto.
2. That it is submitted that the imputation of misconduct etc in support of the charges are not true and hence denied.
3. That charges are a nullity ab initio because the Investigation Report on the complaint filed by CO submitted by the three member committee comprising Smt. Leena Sharma Chief Commercial Manager / FM as Chairperson and Smt. Anvita Sinha, Sr. Personnel Officer and Shri PP Maniyappan, Principal, Kendriya Vidyalaya, Maligaon both members, to the competent authority appointing the committee has not accepted the findings of the committee and as such the findings are not a finality and hence not tenable as basis of the chargesheet.

Therefore this proceeding is premature and since it is not postponed as yet, it deserves to be quashed now.

4. That the charge is that on the failure of the CO's complaint before the Sexual Harassment Enquiry Committee of HQrs, the allegations being found 'not proved', the CO is guilty of serious misconduct, lack of devotion to duty which tantamounts to unbecoming of a Rly servant and gross violation of Rule No. 3.1 (ii) and (iii) of RS Conduct Rules, 1966. That the investigation report of the said committee suffers from glaring irregularity is devoid of logic, violative of the natural justice due to the CO, as reasoned in the

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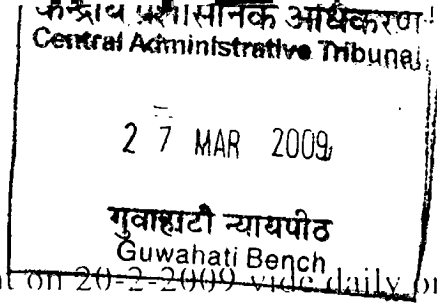
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appeal against it to General Manager, N.F. Rly who constituted the committee and who is the accepting authority of the report vide CO's appeal Annexure "A" and her submission in Annexure "B" On this count alone no charge can be brought about against CO on the evidence of the said report. The RUDs contain only this report as the evidence by prosecution. All other RUDs are mere papers presented to the said committee and have no independent bearing on the prosecution case to be proved against the CO.

4.1 That thus no written evidence by prosecution is tenable. Even the report is signed by one member respected shri P.P. Ramigappan who relinquished his charge of Principal Kendriya Vidyalaya, Maligaon on 18.11.2008 and went on transfer to Kendriya Vidyalaya Payannur on 18.11.2008 who by the date of his signing the report of the said committee i.e. 28-11-09 has no locus to be associated as a member of the committee from the date of his transfer i.e.18.11.2008. Moreover the said respected member Sri Maniappyappan was not privy to the whole facts as analysed and presented in the report in as much as he was not present in the committee when the CO was examined on 19-11-08 and on another date when CCM/PM/Mr. V.K. Jain was examined whereas the report was signed by the respected member without qualifying his non-hearing of the CO and Mr. Jain. It is submitted that this is a departure from the truth and the established procedure. It is also submitted that the report of the said committee therefore is not maintainable before any enquiry committee under the Railway Servants (Discipline & appeal) Rules, 1968. The report is violative of the Principle of Natural justice on this ground among the other grounds cited in the CO's appeal to GM vide Annexure

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"A" submitted to IO as a defence document on 20-2-2009 vide daily order sheet dt. 20-2-2009.

5. That I would state my case in defence on the core issue of my grievances regarding my suffering sexual harassment as complained. The facts were presented and be it submitted that they were presented to IO as had been required to her questions in replies by CO which replies the respected IO recorded in summary. I like to elaborate on them to reflect the truth below.
- 5.1 That, at the Maligaon Head Quarters at NTES Cell I was required to work under one Mr. S. Sengupta, ACM (IT). Since the month of September, 2008 Mr. Sengupta, ACM (IT) (in short, Mr. Sengupta only) started indecent overtures aimed at having sexual harassment. In a number of occasions thereafter he started detaining me in office even after the office and used obnoxious language against me. He even called me a prostitute and taunted at me being a tribal lady. He would say that the tribals are fools. Then gradually from the oral and indecent behaviour Mr. Sengupta came over to physical harassment with an intention to fulfill his sexual urge. On two occasions Mr. Sengupta rubbed his shoulders with me. One day while I was submitting my report he very indecently told me that the tribals do not wear any cloth but how could I wear such nice saree being a tribal. In another occasion while I was sitting across the table before him, he lifted my saree from under the table. Then I immediately got up from the chair and protested. Again one day in the evening he caught hold of me from behind and I was forced to push him aside. He also told me that I am CCM/PM's kept.

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That, seeing the situation going from bad to worse, I am compelled to inform the matter orally to Mr. Veenit Kumar Jain, CCM/PM. I told the CCM/PM that I would be submitting a complain against Mr. Sengupta. Then CCM/PM advised me not to submit any complain in writing as that would cast an aspersion on the department.

That, inspite of any oral complaint made to my very superior officer, CCM/PM, Mr. Sengupta would not stop his lusty behaviour for which I had to again meet the CCM/PM on 06-10-2008 and asked him as what should I do. The CCM/PM asked me to wait for two days so that he could call Mr. Sengupta and solve the problem.

That, the office was closed for Durga Puja holidays on 7th, 8th and 9th October, 2008.

On opening of the office CCM/PM called Mr. Sengupta and me and after some questioning tried to solve the matter. He advised Mr. Sengupta not to indulge in such thing any further.

That, again on 17-10-2008, Mr. Sengupta called me and asked me why I had gone to report the matter to the superior officer and that he would terminate my service for reporting the matter to higher authority. He was extremely angry and got up from his chair in rage cousing me to get threatened. I narrated this incident to IO who refused to record it as additional and unnecessary without proof as my reply to her question.

That, from 18-10-2008, CCM/PM went on leave.

That, on 20-10-2008 (Monday), since CCM/PM had gone on leave and in

his absence, I went to report the matter to the CCM, who is the highest authority in the department in writing. But the Secretary to the CCM did not permit me to meet the CCM and asked me to submit my application to him instead. Accordingly, I submitted my application to the Secretary to the CCM and obtained acknowledgement.

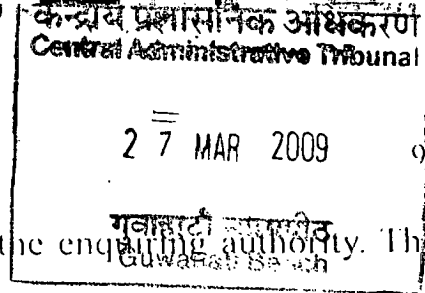
That, in the evening of 20-10-2008 I lodged an F.I.R. before the Jalukbari Police Station being Case No. 595/2008 under Section 294/354/509 Indian Penal Code read with Section 3(xi) (xii) of the Schedule Caste, Schedule Tribes (Prevention of Atrocities) Act, 1989. The case is under investigation. I filed the FIR being outraged as a Tribal and as a woman on finding that mitigation of my grievances is a far cry through my office.

That, thereafter I lodged a complain to the sexual harassment enquiry committee which comprises three members.

That, the committee did not record my full statements during the enquiry and as such I am seriously prejudiced. Mr. Sengupta being senior officer and I being a low grade employee it appears that the voice of the senior officer overweighed sorrow and sufferings of a poor tribal woman.

That the findings of the Sexual Harassment Enquiry Committee is not correct in as much as it is not based on the true facts of the case. Moreover, I was not allowed to produce any witness in support of my complaint. That apart the recording of my statements given before the committee in Assamese by translating the same into English is also not wholly correct which I could not detect at that time as the statements recorded in English was not read over to me nor I was made to

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understand the Assamese meaning of the same by the enquiry committee did not make any correct assessment of my work by collecting and scrutinizing the relevant records. Moreover, I never stated before the committee that I decided to ask apology from ACM/IT and to go for reconciliation if CCM/PM approved. The finding of the committee that the office chamber of ACM/IT being glass covered and having transparent glass door anything happening there would be visible from all sides is not at all correct in as much as there remains windows, curtains as well as almirah inside the room. Although I did not mention all indecent behaviour in my petition which were faced by me in the hands of my controlling officer ACM/IT I made all those clear before the Sexual Harassment Enquiry Committee, but those were not given any weight by the said committee and the said committee was wrong in holding that the complaint lodged by me was not proved. On two occasions the ACM/IT rubbed shoulders with me, another day in the evening while I was submitting my report to him he told tribals do not wear any cloths, but how I could wear such nice sarees. On another occasions while I was sitting across the table before him he lifted my saree by the hand which I could not see as he did it from under the table. I got up immediately. One day in the evening in the last week of September, 2008 he caught hold of me from behind and some how I pushed his aside. He told that I am CCM/PM's kept. Smt. Chaitali Das Gupta being the relation of ACM/IT as well as subordinate employee to him who was insisting me for money to keep my posting in Head Quarters even without my request naturally might have not admitted the correct things before the enquiry committee.



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Discussion on oral evidence by Prosecution:

6. That as regards depositions of PWs it is submitted that all the PWs 1 to 5 deposed that the incident of harassment in the allegedly false complaint did not occur in their presence i.e. to their knowledge.

6.1 PW/I Shri Deobar Boro Chief OS/Genl in reply to Q. No. 11 said that he never witnessed such incident (= of harassment) by ACM/IT Shri Sengupta. To bolster his claim he has replied to Q. No. 12 that the chamber of ACM/IT is fully covered by white glass and the visibility of the inside of the chamber is not obstructed by the existing almirah or curtains.

When crossexamined Shri Boro replied to Q.No. 3 put by D.C. whether the whole area of the office came within his field of view from his seat, that "No" When crossexamined in Q. No. 4 as to whether the visibility of the chamber as maintained by him in his reply to Q. No. 12 by I.O. applied to every corner of the office, he evaded a true and direct reply and stated that 'the room is visible' at all time by one or the another of the office staff. The PW/1 forgot that he not one or the other of the staff is deposing as PW. that the PW/1 is a tutored witness can be seen from his reply that the whole area of the office doesnot come within his field of view from his seat and at the same breath his assertion that the chamber is visible from any place by some staff at any point of time. But he fails to pin point who stood where and when to know that the visible room was not any place of where the harassment did occur. His interest in proving the charge through his benign belief that no such incident could be created by one of shri Sengupta's na-

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ture, character, bearing and responsibility, can be understood from this line

of reasoning that if the incidents happened at least some one would have seen it in a glass covered visible chamber interior.

Submitted that the evidence is of no worth because sexual harassment (the word sexual has been carefully omitted by prosecution from the question part) may not be visible.

Further the evidence of this PW is not dependable as he had first replied that he usually leave the office in between 18-00 to 18-45 hrs to Q. No. 9 by I.O. plainly meaning almost always he later changed this 'usually' to mean always vide his reply to Q. No. 2 by D.C. Obviously he doesn't leave office within those hrs always. He does not know at what time the CO submits her NTES cell report daily vide his reply to Q. No.1 Put by DC in cross examination. Therefore he can't vouchsafe that the CO never remained in office after 1730 hrs as he asserted in reply to Q. No. 10 put by I.O.

PW-1's evidence is all on the basis of his personal impression and experience. He asserts his personal knowledge of the ACM/IT's conduct and behaviour being beyond reproach. But he is ignorant whether the alleged incident occurred. His evidence borders on heresay. It doesn't help prosecution to prove its case.

6.2 PW-2 Shri Arup Saikia CCMI/HQ also deposes that he didn't hear of any such complaint and had not witnessed any incident of harassment vide his replies to Q. No. 4 and 6 by I.O. This witness in reply to Q. No. 7 by I.O. that he never saw any contradiction occurring between Shri Sengupta, ACM/IT

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and the CO. He mentioned the incident of the CO's asking the Attendance Register when ACM/IT asked her to produce her day's work which she did not produce so long as he was in the chamber of ACM/IT that day. On cross examination he clearly states that if the incident was of such magnitude that the complainant would file a complaint of Sexual Harassment against ACM/IT, "It is best known to the complainant". He was cross examined on the point by asking whether he knew what is Sexual Harassment vide Q. No. 2 by DC dated 24-2-08. But I.O. overruled the question once again though the chargesheet and the enquiry are about Sexual harassment as irrelevant to Q. No.2 here. The Q. No. 2 is about complaint of Sexual harassment as the probable result of CO's contradiction with ACM/IT on the Attendance Register episode. But respected I.O. overruled it as irrelevant and denied CO a reasonable opportunity to test PW-2's perception on a question he says "is best known to the complainant." At any rate PW-2's evidence doesn't prove the prosecution case.

6.3 The evidence of PW-3 Shri Hemanta Sarma CCMI/HQ on the point whether the incident of the attendance register was of such magnitude as to lead the CO to file the complaint vide Q. No. 1 by DC on cross examination is that he didn't think so. Thus the aspect of any contradiction of CO with ACM/IT goes in CO's support throughout the depositions of all the PWs and shows that there was no contradiction between CO and ACM/IT other than the grievance of being sexually harassed as the sole cause of her filing the complaint.

6.4 Thus PW-3 has revealed, be it submitted in all humility as to non-adherence to mandatory rules of Deptt enquiry in the present proceedings, that he was asked questions for his deposition not by PO but by I.O. He corrected himself a minute later on rethinking that both I.O. and P.O. asked questions. P.O. asked question on consultation with I.O. He deposed that some questions were put by I.O. and some by P.O. but he couldn't say which question was put by whom vide his replies to Q. No. 2

6.5 That the PW-3 lied is clear from the records. There is no division in records of the proceedings if the answers were in reply to questions by P.O. or as examination by I.O. This is flagrant departure from rules of proceedings and it is clear that due procedure has not been followed in the Enquiry and the respected I.O. allowed her role as I.O. to be transformed into that of DA as she examined the prosecution witnesses by proxy for P.O. Thus the principle of fair Proceedings as Natural justice has been violated to the detriment of C.O.

6.6 The evidence of PW-4 Shri Amitabh Mishra, CS/PRS, on whether the set norm of submission of daily report of NTES Cell by the CO was 12 hrs at noon he affirmed that was the set norm for all the three cells of PRS, UTS and NTES vide his reply to Q. No. 1 by DC. But he also gave evidence that he didn't know the time of submission of the report by the CO to her concerned officer vide his reply to Q. No.2 by D.C. He then clarified on cross-examination that by stating (in his reply to Q. No. 7 whether the CO had to go alone to ACM/IT's chamber after office hours also) that as the reports of

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the PRS, UTS and NTES cell were to be submitted by 12 hrs daily there was no question of the CO's remaining in office after 1730 hrs. he meant only the practice by norm i.e. in theory which he followed but he didn't know how and when the CO submitted her report. Thus his evidence doesn't prove the prosecution point that CO was never kept in office after office hours. In all PW-4 had nothing to say adverse to CO and in support of the charge.

6.7 The evidence of PW-5 Smti. Chaitali Dasgupta has nothing to say about the CO's temperament stating that CO's conduct towards her was not bad excepting the normal sign of wear and tear through occasional loss of temper (Q. No.1 by DC) At the same breadth she mentions ACM/IT as one gentle and helpful and polite towards lady staff. (Q. No. 2 by I.O.) She categorically states that 'No such incident ever occurred' in her presence. It is to be concluded that she has nothing to say if such incident took place in her absence (Q. No. 4 by I.O.)

Her denial that no any interaction on the question of her asking for Rs. 5000/- at the behest of ACM/IT for staying at HQ is natural and is not any clinching proof that CO alleged it without any foundation (Q. No. 6 by I.O.)

In all PW-5's evidence is of no use for the prosecution

7. As to the antiribal altitude of ACM/IT as described by CO in her complaint the PW-1 could not throw any light specific to the CO's complaint against ACM/IT as calling her names as 'Tribal Jungle' and stating that tribals do not know how to dress and yet how came that she dressed

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well with a saree the PW-1, who is himself a tribal, could say only in general that ACM/IT Sri Sengupta never uses unparliamentary language towards any one. (Vide his reply to Q 5 by I.O.) Thus his evidence is in general and has no relation with CO's complaint.

From the above discussion of the PWs' deposition it is seen that their evidence has no worth to negate the complaint by CO as false.

8. Further the evidence of PWs in RH was recorded in absence of CO on the very first and of RH and she had no chance to know if the evidence was rightly recorded. She had no chance to cross-examine them just after their reply and elicit their responses to disprove their contention on many points in subsequent stages.
9. Still further the cross-examination belated by several days was in absence of records from the investigation committee to cross-check and cross-examine them on the points they deposed before that committee and now before I.O. This has handicapped CO in her full defence and is the result of her deprivation from her right to natural justice in the committee and in these proceedings before I.O.
10. That to all these depositions on cross examination the CO could have offered a formidable and truthful Defence if she was supplied the requested Documents and thereby enabled her to bring her own Defence witness and produce the documents as her Defence Documents as would be relevant. She could also have done a more precise exercise of self defence before I.O. has she been given the opportunity of self-examination by I.O. during the enquiry.

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- 10.1 That the I.O. denied all the fair and reasonable opportunities which are quite few in number, well reasoned and extremely plausible and mandatory under the principles of Natural justice. She was not granted a 3rd chance to appear in Preliminary Hearing and one more chance, the second chance, for first RH.
8. That the I.O. violated the sacrosanct principle of sitting in quasi-judicial hearing when she herself is knowledgeable about the facts under enquiry and hence not impartial.
- 8.1 That this was objected to by CO vide records of proceedings dated 20-2-2009 at page 2 para (ii) But the respected I.O. choose to carry on the proceedings as I.O.
9. That the formal aspect of initiation and conducting the proceedings under various provisions of the Railway servants (Discipline & appeal) Rules, 1968. has been breached at several stages which has vitiated the lawful process.
- 9.1 That the CO was not served the letter of appointment of I.O.
- 9.2 That the appointment of I.O. and P.O. were given in the standard form No. 8 and 7 respectively whereas the rule is to so appoint in standard form No. 7 and 8 which is violative of the principle of fair procedure.
- 9.3 The P.O.'s responsibility of presenting the DA's case questioning the PWs and CO was discharged by I.O. Thereby the respected I.O. has vitiated the fair procedure of enquiry as per law.

- 9.4 That the enquiry commenced without disposing appeals that should have estopped DA and I.O. from initiating the process of issuing charge sheet and continuing enquiry.
- 9.5 CO's appeal on the said report by the committee to GM was pending.
- 9.6 CO's intimation to DA on her above appeal requesting him to postpone enquiry was pending before D.A.
- 9.7. The report itself was pending before the accepting authority and hence non-conclusive.
- 9.8. CO's request to the prosecution to produce the acceptance of the Committee's report was not heeded.
- 9.9. Whereas the Committee didn't bring in the element of CO's police case on the complaint. I.O. chose to bring that element to the enquiry though P.O. did not pose the issue from DA's side.
10. That proceedings were begun even though the court case by CO on the same facts are pending. Any conclusion by I.O. on the question in the chargesheet and action taken on Enquiry Report by DA will create a bias against the CO.
- 11 That the authorities refused to part with information sought by CO with information sought by CO under RTI Act, 2005 thus depriving her valuable access to be defence in the enquiry. This has vitiated her case.
- Copies of her requisition for information as above and the reply by PIO are annexed as Annexure 'C' and 'D' respectively.

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11.1 That though her complaint of Sexual Harrasment was explicit as an atrocity against a Tribal woman the complain without being a complaint of Sexual Harassment simplisiter, no where a Tribal Officer or authority or NGO is associated in the whole process of hearing her complaint disposal of it and initiation of the DAR proceedings to the Enquiry Proper.

11.2 That to all these there is no counter from P.O.

Under the above circumstances the Articles of charge are not proved. Submitted that the humble CO deserves an from the charges exoneration.

Yours faithfully

*Kanak Lata Deori*

**(Kanak Lata Deori)**

RTC/GHY, under DCM/Ghy

Date : 3-3-2009

Enclosure :

*Attested  
Dutta  
Adw*

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ANNEXURE - XIV

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To  
Disciplinary Officer  
In Charge sheet memo No C/ACM/GHY/CON/DAR Dt 18.12.2008  
Issued by ACM/GHY

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Sub: REPRESENTATION  
Ref: Your letter No .C/AC M/GHY/CONDAR Dt. 09.03.2009

Sir,

Respectful submissions of CO are as follows:

1. That during the Inquiry the charge- sheet was denied in Toto as it lacks in legality and is vague in nature and adequate proof of this was offered by this humble CO. However in establishing the Article of Charge of the CO's violation of Service Conduct Rule 3. 1 (ii) and (iii) of 1966 the respected IO has failed in total appreciation of the related grounds and facts as evidence offered by the CO in disproving the particular charges .
2. That it is maintained by CO that the charge of violating Service Conduct Rule 3.1 (ii) and (iii) is not proved by prosecution and the finding of the respected IO on this point as being established is assailed in this representation on the following grounds/ reasons in further elucidation of the evidence laid during the Enquiry proceedings and in the DEFENCE BRIEF.
3. That the charge is that the CO filed a complaint on 20.10.2008 addressed to CCM/ N. F. Rly with copy to others against Shri S. Sengupta, ACM/IT, leveling various charges including one, which can be interpreted as charges of sexual harassment of women at work place. And that during the course of investigation by Sexual Harassment Complaint Committee of HQrs. This complaint was found to be false, fabricated and motivated by self consideration out of selfish motive that tarnished the image and reputation of the ACM/IT Shri Sengupta in particular and Railways in general leading to violation by CO of the Rule 3.1 (ii) and (iii) of the Railway Service Conduct Rules, 1966.

Thus what the Prosecution needs all to prove is that the CO so lodged a false complaint in the nature of sexual harassment against Shri Sengupta and the falsity of the said complaint has been established with finality following due procedure. Only patent illegality in the alleged commission of the act of filing a false complaint against CO's superior by CO if proved during the Enquiry can establish the charge. But it is respectfully submitted that no such patent illegality by CO was ever proved by the Prosecution. But in the report IO has failed to assess this lapse of the prosecution.

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4. The Relied Upon Documents in support of the Prosecution story have not been read in proper perspective and meaning by respected IO for which she has assumed the RUDs as capable of proving the charges.
- 4.1 The whole of the Prosecution story of the guilt of the CO is based upon the Report of the Sexual Harassment Enquiry Committee dated 28.11.08, which is the RUD No. 3. The finding by the Committee "that the allegations brought against Mr. S. Sengupta ACM/IT by Mrs Kanaklata Deori is not proved" is the centrepiece of evidence relied upon by Prosecution to prove the charges against the CO.
- 4.2 Strangely enough the records of the investigation by the said Committee were not made RUDs in full by respected DA in this DAR proceeding.
- 4.3 Strangely again not all the persons who deposed before the Committee or who were questioned or associated with the investigation by it were made Prosecution Witness in the DAR proceeding.
- 4.4 Request by CO to produce the full records of the Committee and all the persons deposing before the Committee or questioned or associated by it in the investigation to the Enquiry for examination by CO in her defence was not granted by IO or the DA.
- 4.5. Thus it is respectfully submitted, the CO was not given reasonable opportunity to defend herself against the central-piece of Prosecution written and oral evidence without any valid cause shown by respected IO. which will be discussed shortly hereafter.
5. *CO's objections to certain aspects of the enquiry process which are of cardinal importance for the CO raised at the earliest opportunity by CO were not granted by IO on her reasoning which is not fair as will be shown below with reference to the Inquiry Report.*
- 5.1. The respected IO in Para 9.0 has held that during the course of the inquiry the CO and DC tried to obstruct the process of D & AR inquiry by raising objections, one after the other by submitting irrelevant representations. This is against the tenets of Departmental Enquiry and an exercise in violation of CO's right to Natural justice to speak in her defence.

**What the CO submitted were reasoned requests for certain documents to be given to her and certain persons to be brought to the enquiry for her cross-examination on their versions as reflected in the documents requested and examination of the authors of the Investigation Report of the Committee which is already a RUD for the Prosecution *vide para 4 of the Introduction of the Defence Brief* and her objection questioning the fairness of the enquiry being conducted by a partisan IO *vide para 8 and 8.1 and para 7 of 7 in the Defence Brief* and in a manner not in accordance with due procedure *vide para 9.3 and 9.4 of the Defence Brief*.**

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That CO only objected to the enquiry on the valid grounds of her Appeal being pending before GM on the centre-piece of Prosecution evidence i.e. the Report of the Committee and non- acceptance of the Committee's Report by the appointing authority i.e. the G.M./N.F.Rly vide para 3,9.4, 9.5,9.6 and 9.7. of the Defence Brief.

5.2. The CO submitted that the Enquiry was premature as the said Report by the Committee was not final having been appealed against before the General Manager. CO placed before the IO a copy of the Appeal and the letter enclosing addressed to the DA. Vide para 3 of the Defence Brief.

6. The respected IO had to say only the following in her disposing the above requests and objections by the humble CO vide Para 10.0 of the Inquiry Report ( the objections as formulated by IO from the submissions are given in bold and the observation of IO in disposing the CO's submissions are separated by dashes below).

“ Defence Brief having 19 pages , submitted by CO has been received on 03.03.09. It is seen from the same that the CO has raised a series of objections. I went through the objections carefully and observed as follows:

- (i) **15 Documents were not given.** ----- All documents, connected to the report of Sexual Harassment Complaint Committee listed in SL No. (i) to (v) have been given to CO on 23.12.08. Rest are not relevant.
- (ii) **Committee Report has not been signed by all three members.** -----Not true (RUD-3).
- (iii) **Report suffers from irregularity.** Not acceptable.
- (iv) **Not accepted by GM.** ----- There is no provision for acceptance by GM or any authority.
- (v) **One member was under the order of transfer.** -----Irrelevant as it does not affect fair conduct of enquiry.
- (vi) **CO's statement was not recorded.** ----- Not true. CO's statement was recorded. She was heard and she accompanied the members to inspect the site.
- (vii) **CO was not allowed to produce any witness.** --- Not true.

6.1. That CO would like to state on the above observations of IO as below:-  
On (i) it is submitted that in rejecting the request the IO has not said why she did not found the requested documents relevant.

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Mere holding as not relevant does not satisfy the rule of Natural justice as envisaged in Board's circular No. E(D & A ) 59 RG6-38 Dt.12.5.1960 and E(D&A)67 RG 6-41 Dt 17.377. Since the Committee's Report is the sole evidence for prosecution, the PWs being also deponents before the Committee, no lawful course can deny the CO excess to these documents and the examination of the persons having been questioned by or having deposed before the Committee, without infringing upon the right of the CO to Natural Justice.

*On (ii) it is respectfully submitted that nowhere the CO said that the committee's Report was not signed by all the three members as stated by IO. CO only averred that though on the day CO was examined by the Committee one member of the Committee namely respected Shri P.P Maniyappan was not present to examine her but he also signed the Report without qualifying that he did not hear the CO vide para 4.1 of the Defence Brief. In the same para the same point is made by CO in saying that this respected member of the Committee was also not present when it examined CCM/PM Shri Jain and this respected member signed the report without qualifying that he was not privy to the examination of Shri Jain by the Committee. Thus where the objection was found as having been made by CO is not known. This shows that the IO did not apply her mind in assessing the Defence. And she rejected a vital contention of Natural Justice by CO casually and without having gone through the records. This also shows, it is begged to be permitted to be stated, her bias against the CO's case.*

*On (iii) above it is submitted that the Committee's Report suffered from irregularity vide Para 4 and 4.1. As against the cogent reasoning of CO why the Report suffered from irregularity, the IO has no reason shown as to why CO's contention did not appeal her or why it is not acceptable.*

**On (iv) above it is submitted that IO has not indicated relevant Rule where the provision was not included.**

**On (v) it is submitted that on being transferred the concerned respected Member of the Committee ceased to be a member and can not therefore sit in the Committee to sign the Report after the date of transfer vide para 4.1 of the Defence Brief. And hence the report as a product of irregularity can not serve as an evidence or a basis of the present Proceeding.**

**On (vi) it is submitted that not everything deposed by CO before the Committee was recorded and she was not given to peruse the depositions and to examine the witnesses before the Committee. Even the reply by Shri S. Sengupta to the Committee was not supplied to the CO by the Committee for her counter statement and thus the procedure in Committee was not fair.**

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On (vii) it is submitted that the CO wanted to peruse the proceedings of the Committee and examine all the persons as per request at Annexure - A and B to the Defence Brief and then determine to name her Defence Witness and her Defence Documents in her turn and requested the IO to be allowed to produce these DWs and DDs in course of Enquiry which the respected IO has found it expedient to describe as obstruction to the Proceedings. Thus it is as good as denying the CO any chance to produce Witness. On the other hand there was no eye witness to the Sexual Harassment of the CO as complained and hence she could only offer Defence Documents and Defence Witnesses by sifting facts and culling data on factual depositions and contradictions in the Committee's findings from the records. It is submitted that in the facts and circumstances of the present case, this opportunity to CO was totally reasonable and relevant and denial of this opportunity is direct violation of her right to Natural Justice and indicative of malafide and bias on the part of the respected IO. The record is quoted below:

“ Further, she did not submit any list of witness in time but kept on saying that she would produce witness if any in time , only to cause confusion. Yet, all opportunities of fair enquiry were given.”

This point can be further emphasized from the records of the Enquiry that the IO started the Mandatory Questions when CO's self- examination was not allowed. CO was not allowed self-examination as there being no time dispensing with the rule of adjournment in the interest of justice vide daily order sheet of 24.2.09. This shows that the IO was in a great hurry to finish the Enquiry by 24.2.09 even if that meant that due opportunity is denied to CO. The record is quoted here for clarity's sake:

“ Self-examination of CO could not be conducted as time was over. CO is advised to submit the Defence Brief in writing , if any within 07 (seven) days. Regular Hearing is concluded. “

It is respectfully submitted that no amount of reasoning would support that this course of action in denying the CO reasonable access to documents and witnesses at the disposal of the Prosecution was legally valid.

7. The respected IO has not offered any reason on the points referred in para8, 8.1, 9, 9.1, 9.2, 9.3, 9.4, 9.9,10,11, 11.1 and 11.2 of the Defence Brief. Submitted that on the vital point of fair and recognized procedure as established by law on the negation of the role of the PO appointed for the proceedings raised in para 9.3 of the Defence Brief. the respected IO has not offered any consideration and rebuttal.

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8. **That IO in the report has not assessed the cross-examination of the PWs by DC in true meaning.** It is submitted the value of the depositions of the PWs in replies to cross-examination was negated in the Report by a casual observation that the DC only tried to poke holes on the evidence by PWs. *But it is submitted that the evidence by PWs was shown by Defence to be totally of no avail to Prosecution.*
- 8.1 *That the questions to PWs put by IO instead of mandatory questioning by PO, were all leading in nature and designed to prove the charge rather than unearthing the truth. It will be seen that the PWs were asked whether they saw any harassment of CO by Shri Sengupta and whether there was any contradiction between the CO and Shri Sengupta, whether Sengupta's conduct with the staff was good and whether Shri Sengupta badly behaved with Tribal people working in the Office which questions had the potential of eliciting replies from the PWs only to show the Shri Sengupta within the sphere of their personal experience with him. These replies nowhere could show that the complaint by CO was false but only established that it was not within their knowledge or it did not happen in their presence or they were not present when if anything happened in the nature of the Complaint. Or that they did not remain in office after 17.30 hrs to know of any such happening.*
- 8.2 *That only PW-1 Shri Deobar Boro strangely claimed that he usually left office when there was none in the office and it was time to lock the office. But this PW changed his version on cross-examination that he meant always by usually while saying that usually he left office in the above time. But the respected IO never examined this PW whether he was on leave on any day of the period to ascertain the veracity of this tall claim of meaning always by usually of remaining in office till the time of locking the office.*
- 8.3. *That the Prosecution solely depended on the factor of visibility of the ACM/IT's chamber from any part of the office at all time through its glass fitted partitions allowing visibility. PW-1 deposed to this effect and said that none saw the alleged harassment in that chamber. But on cross-examination he admitted that the chamber is not visible from his seat. And after admitting this he said that the room was visible by any one or the other at all time from some or the other part of the office area. That is to say the Witness indulges in parables to maintain an absurdity to say that at all time some looks in to the chamber not to miss the view if something in the nature of the complaint happened. And such frivolous evidence has been accepted by IO to establish the charge.*
- 8.4. *That this predilection with the visibility of the alleged incident of harassment if it happened in the chamber together with the predilection for the good conduct and love of office work by ACM/IT are too obvious on the part of the Prosecution and the PWs mainly deposed to bring the possibility of the harassment not happening in the chamber and with such an Officer to the notice of the IO. And the respected IO was persuaded to accept this negative testimony that such thing cannot happen in such chamber and cannot be committed by such a man whereas the requirement of law is that the charge is proved by positive evidence that such thing never happened.*

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*Thus the ordinary prudence in Departmental justice administration has been forsaken in the Report.*

8.5. That contrary to this the IO has not been persuaded to accept that since the PWs also said nothing against the CO to assert that the CO was a person to make any such false complaint or had any such contradiction with ACM/IT that would motivate the CO to file a false and fabricated complaint the CO's innocence also cant not be doubted. And IO has not shown any reason why the testimony of Prosecution appealed her where CO was also shown in positive light by PWs.

9. *That the finding of the IO is based on surmises and assumptions and hence biased and malafide. It is based on extraneous consideration. In elaboration, the following is respectfully submitted by this humble CO:*

9.1 That the IO has placed undue importance on the supposed cause of the CO's filing the complaints and the motives behind them. Respected IO has discovered in the progressive elucidation and careful consideration of the pros and cons of filing the complaint by CO being a very inferior employee against her superior officer on a vital matter of her dignity as a woman CO's design to coin her complaint to CCM, then to Sexual Harassment Enquiry Committee and finally to the Police in gradually graver tone to frame the officer and get her alleged objective of the so-called pre-empting of her transfer from Hqrs. to produce the part from the Report:-

[A]

“ Further it is to be noted that the contents of the complaint in RUD-1, RUD -6 and RUD-4 are different. The first one is mild, the second one is serious and the third one is very serious. This shows a frame of CO's mind”.

THEN in another place--

[B]

“ The Sexual Harassment Inquiry Committee also went into the reasons for filing such a false and fabricated complaint. I have no reason to disagree with the report that all circumstantial evidences prove beyond doubt that it was on account of vendetta. CO was transferred from Maligaon Hqrs to Ghy station due to her poor performance, but she had a desire to continue in Maligaon HQrs for personal convenience. She pre-empted such transfer on account of her own performance and prepared a complaint, which was kept ready without a date. She was spared in the forenoon of 20.10.08 and immediately after that, she filed the complaint by putting the date on it by 12.15 hrs as recorded in the complaint (RUD -1) by Secretary to CCM. The motive of a false and fabricated complaint is, thus, established”.

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THEN in another place

[C]

“ Subsequently in order to strengthen her case she filed an FIR with the local police against Shri Sengupta , ACM/IT adding new charges . She thus wanted to teach a lesson to Shri S. Sengupta, ACM/ IT, who as her controlling officer tried to discipline her for which, the CO was continuously complaining to CCM/PM. She knew it well that she had been transferred out of HQ by CCM on the Complaint of ACM/IT”.

9.2. It is respectfully submitted that from the above it is seen that IO acted on the Prosecution side with the help of her foreknowledge in place of her independent judgement. IO resorted to assumptions and in place of cogent reasoning, she offers her imaginative approach to the events and surmise on the findings. To speak clearly, she has imagined that the date put in ink on the CO's complaint to CCM shows a that the CO nurtured a vendetta against the ACM/IT and at last moment of her Sparing from HQRS she put the date on 20.10.08 and gave it to Secy to CCM. This almost telephonic. But the same reasoning has not been shown by the IO to DA's story. The Charge sheet memo is all in Type writing/Computer script except the letter No. and the date, which were put in ink as C/ACM/GHY/CON/DAR and 18.12.08. Can it be said applying IO's logic that the Chargesheet was prepared when it was found that CO's case in the Committee would fail and CCM/PM who was privy to everything almost was not coming forward to divulge everything that the ACM/IT admitted as his guilt of the CO's Sexual Harassment before him already , and as soon as the Report exonerated the ACM/IT the number and the Date were put in ink and the Chargesheet was served to teach the inferior employee for daunting the officers to the challenge of a clear-cut amidst truthful complaint of sexual harassment against the Officer? The humble CO does not do such iconoclastic act nor she doubts the *bona fides* of the DA on his appreciation of the Committee's Report but the CO only requests an avoidance of different yardstick by IO while considering her defence.

9.3 That IO has confirmed CO's pre-empting the transfer whereas the truth is that she could not get justice from the Departmental authorities on her successive complaints to the High Officers but was given a transfer as punishment, if IO's version is to be believed, instead. IO's conclusion of CO pre-empting the transfer or her attempting to foil any such alleged move through her complaint is thus without foundation. And strangely this foundationless notion has led to IO's conclusion of the motivated filing of a false and fabricated complaint and brings out the FINDING that the charges are proved.

Contd..... 9

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केन्द्रीय प्रशासनिक अधिकरण  
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9.4. That from the observation of the respected IO in the quotation at [C] above it will be seen that the IO's averments are not supported by any evidence on record. Nobody appearing in the Inquiry said anything of the sort against the CO. On the other hand there is no any reason shown by IO why CO's statement that while she failed to get departmental justice on her *long silent suffering of sexual harassment at he concerned Officer's hands she was meted out an unsolicited transfer she was convinced that the Dept would not give her justice and she decided not to delay any further from her taking refuse under the protection of law and filed the successive complaints. This simple motive of CO for the complaints which are all in the true nature of a complaint of sexual harassment, has not appealed to the IO but the far fetched motive of vendetta has been taken as genuine by IO.*

10. It is submitted that the report of IO ON THESE POINTS IS NOT AT ALL REASONED AND SPEAKING. *This is in violation of standing rules. In accordance with settled principle of law the competent authority like IO is required to pass a speaking order which is part of Natural justice vide Railway Board's circular no. E(D&A)86RG-6-1 Dated 20.1.86. THIS ELABORATE REASONING OF THE CO HAS NOT APPEALED TO THE RESPECTED IO BUT SHE HAS ACCEPTED HER VERSION OF THE PROSECUTION WITHOUT SHOWING ANY REASON WHY SHE REJECTED THAT OF THE CO'S.*

11. That there is prescribed rules for forwarding & disposing of representation from staff. The Railway Board's directives are also clearly emphatic on the need of disposal of appeal before any administrative action adversely effecting the staff concerned. But no such action as per law was taken by the authorities. The CO was deprived from his Natural right of being heard before she is made to suffer.

*It is fervently prayed that the humble CO is totally exonerated from the charge and be given opportunity to serve the Railways better and thus obliged.*

Yours faithfully,

Encl. As above in Nil sheets.

*Attested  
Dutta  
Adv*

*Kanak Lalā Beeri  
Charged Official.*