

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.631/2016

Dated this Friday the 11th day of October, 2019

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

S. Chandra Mohan
Aged about 58 years,
Occ-servng as Regional
Director, Central Board for
Workers Education, Ponda Goa,
Goa, R/at C-7, Poonam Apartment,
Bazar Road, Kaziwada,
Ponda, Goa - 403 401. ... **Applicant**

*(By Advocate Shri Pramod Yadav, proxy counsel
for Shri R.G. Panchal)*

VERSUS

1. Union of India
through Secretary
Government of India
Ministry of Labour and Employment,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi - 110 011.
2. Chairman,
Central Board for Workers Education,
No.20/21, Jam Nagar House,
Mansingh Road,
New Delhi - 110 011.
3. The Director,
Central Board for Workers Education,
North Ambazari Road,
Nagpur - 440 033. ... **Respondents**

(By Advocate Shri D.A. Dube)

O R D E R

Per: Ravinder Kaur, MEMBER (J)

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

"8(a) This Hon'ble Tribunal may be pleased to quash and set aside impugned Order/Memorandum dated 09.09.2016, imposing major penalty of 'Compulsory Retirement' under Rule 11 of CCS(CCA) Rules and also be pleased to quash and set aside Memorandum dated 8.8.2016.

8(b) This Hon'ble Tribunal may be pleased to pass such other order or further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and thus render justice.

8(c) This Hon'ble Tribunal may be pleased to direct the respondents to pay the cost."

2(a) The facts are that after his transfer from CBWE, Chennai to CBWE, Kozhikode as on 13.10.2015, the applicant was posted as Education Officer, Central Board of Workers Education (CBWE), Kozhikode and was the Pay Drawing and Disbursing Officer and Controlling Authority to the Education Officer's Staff and class IV Employees of the Regional Directorate of Kozhikode. Smt Manjula Nair was the Upper Division Clerk at CBWE, Kozhikode.

2(b) It is submitted by the applicant that as on 13.10.2015, all the officers and staff were either on leave or tour and only unusually Smt

Chitralekha Stenographer, Grade-II and class 4 servant one K.P. Vinayan attended the office. Shri K.P. Vinayan also left the office at 4.00 p.m. for official work. The applicant and the above Smt Chitralekha were only available in the office. As usual she wanted to go home by 3.45 pm, when the applicant objected to it and did not permit her to leave. So she threatened the applicant to face false sexual harassment complaint from her and left the office by 4.00 pm.

2(c) On the next date on 14.10.2015 both Smt Manjula Nair and Smt Chitralekha shouted against the applicant, who is not conversant with the local language and also he was not getting any support from the other staff and officers, he said sorry, if Smt Chitralekha was hurt by him on 13.10.2015 but both Smt Manjula Nair and Smt Chitralekha quarreled and intimidated the applicant and compelled him to tender written apology to Smt Chitralekha. The written apology is at Annex A-5.

2(d) Thereafter Smt Chitralekha was transferred from CBWE, Kozhikode to CBWE, Cochin in public interest vide order dated 12.02.2016.

She approached the Ernakulam Bench of this Tribunal and obtained interim stay against the transfer order. The respondents were directed to permit her to continue in the office at CBWE, Kozhikode itself. In the meantime, her transfer order was also withdrawn by the respondents.

3. Smt Chitralkha, through her husband Shri Manojkumar K.P. filed complaint dated 16.11.2015 (Annex A-6) of sexual harassment against the applicant. On the instructions of the respondents, the Competent Authority i.e. Zonal Director, South Zone, Chennai conducted an inquiry into the complaint referred to above. He submitted his report dated 30.12.2015 without giving any finding on proving any attempt of sexual harassment. Thereafter the Zonal Director, South Zone, Chennai submitted two reports dated 09.03.2016 and 11.03.2016 contrary to his earlier report dated 30.12.2015. All these reports are on record as Annexures A-7, A-8 and A-9, respectively.

4. Vide order dated 12.05.2016 (Annex A-10), the Chairman, CBWE constituted a Complaint Committee/Inquiring Authority consisting of the following to inquire into the allegations of

sexual harassment made against the present applicant vide complaint dated 16.11.2015:-

Sl. No	Name	Designated as
1	Dr. K.S. Jayasree, Asstt. Professor, All India President, Bhartiya Streeshakti, "Akshaya", Eranjipalam, Kozhikode, Kerala	Chairperson
2	Smt T.k. Lissy, Regional Director, CBWE, Kochi, Kerala	Member
3	Smt Manjula Nair, UDC, Regional Directorate, CBWE, Kozhikode	Member
4	Shri Shankar Lingegowda, Education Officer, CBWE, Mangalore, Karnataka	Member

Vide order dated 17.03.2016 (Annex A-11) the applicant was placed under suspension which was revoked vide order dated 07.07.2016 (Annex A-12) and the applicant was transferred and posted with Regional Director, CBWE, Goa.

5. The applicant claims that he was suspended since disciplinary proceedings were contemplated against him under CCS(Conduct) Rules and CCS(CCA) Rules but till date no disciplinary proceedings have been initiated against him. Instead, the applicant is sought to be penalised with major penalty of compulsory removal from service without following the mandate of law.

6. He was forced to appear before the Complaints Committee as per order dated

14.06.2016. In terms of direction by this Committee, he filed his written statement on the allegation of attempt of sexual harassment in CBWE, Kozhikode dated 13.10.2015. His written statement was not considered by the Complaints Committee in its report dated 15.07.2016 in arbitrary and illegal manner violating the principles of natural justice. It is claimed that the appointment of such committee itself is invalid and *non-est* in the eyes of law as the matter has already been inquired by the Competent Authority i.e. Zonal Director, South Zone, Chennai appointed by the respondents and the matter was deemed to have been closed as no order was passed against the applicant by the respondents thereafter.

7. The Committee was not constituted under the resolution passed by the Governing Body of CBWE, as per Rule 9 of Rules and regulations of CBWE. The Committee did not follow the required procedure while conducting the inquiry. The applicant was not provided with the documents to be relied against him. He was also not given an opportunity to cross-examine any witness examined against him.

Smt Manjula Nair, one of the members of the Committee was allowed to be a witness in the inquiry conducted by the Committee against the applicant.

The so-called inquiry is in gross violation of all canons of principles of natural justice and its stand vitiated.

8. The applicant received the impugned Memorandum bearing No.CBWE/CO/218 dated 08.08.2016 (Annex A-1), issued by the respondent No.2 proposing to impose a major punishment of compulsory retirement on the applicant on the basis of the report of the Internal Complaints Committee dated 15.07.2016 in connection with alleged attempt of sexual harassment in complaint of Smt. Chitralekha N.S., Stenographer Grade-II, CBWE, Kozhikode.

9. It is stated that Zonal Director, CBWE, South Zone, Chennai as Per directions of the respondents had already conducted inquiry in this regard and report dated 30.12.2015 was submitted, with no findings about proving of the alleged attempt of sexual harassment by the applicant at CBWE, Kozhikode. Later on another report from the same Zonal Director dated

09.03.2016 was obtained to the effect that *prima facie* case of attempt of sexual harassment against the applicant was made out. This act of the respondents is stated to be in violation of principles of natural justice.

10. It is further submitted that the applicant received impugned order/Memorandum dated 09.09.2016 (Annex A1A) issued by respondent No.2, imposing major penalty of 'Compulsory Retirement' under Rule 11 of CCS(CCA) Rules, 1965 on the applicant in breach of procedure laid down in Rule 14 to be read with Art 311(2) of the Constitution of India.

11. Vide affidavit respondents filed their reply which is totally vague and general in nature. We have heard Shri Pramod Yadav, proxy counsel for Shri R.G. Panchal, learned counsel for the applicant and Shri D.A. Dube, learned counsel for the respondents. We have also carefully gone through the material available on record.

12. Learned counsel for the applicant has argued that the impugned orders are liable to be set aside as neither the fact finding inquiry nor the formal inquiry was conducted as per

Rules and was against the prescribed procedure. It is stated that the fact finding inquiry and the formal inquiry both were required to be conducted by the Internal Complaints committee constituted in terms of judgment of Hon'ble Supreme Court in the case of Vishaka & Ors. Vs. State of Rajasthan & Ors. reported in AIR 1997 SC 3011 and is violative of Rule 14 CCS(CCCA) Rules, 1965. It is stated that in the present case the formal inquiry was conducted by the complaints Committee constituted vide order dated 16.11.2015. However, the fact finding inquiry was conducted by Shri K. Vanaraj, Zonal Director, South Zone, Chennai.

13. It is further argued that Smt Manjula Nair, Member of the Committee was allowed to be a witness in the inquiry which is in violation of the principles of natural justice.

In any case, in absence of holding a regular departmental/disciplinary inquiry in which the charged officer would be given a fair opportunity of defending himself, and in the absence of proving the charges by following the mandatory procedure, no civil or public servant can be punished with any major penalty as per

the provisions of CCS(CCA) Rules, 1965 to be read with Art 21 and 311(2) of the Constitution of India.

14. The applicant in support of his contentions has relied upon the following judgments:-

(i) Board of Trustees of the Port of BPT.Vs. Dilipkumar

Raghavendranath, 1983 (1) SCC 124

(ii) Deepali Gundu Surwase Vs. Kranti Junior Adhyapak

Mahavidyalaya (D.Ed.) and Others, 2013 (10) SCC 324

(III) A.R. Antulay Vs. R.S. Nayak & Anr., 1988 (2) SCC 602.

(iv) S.L. Kapoor Vs. Jagmohan & Ors., AIR 1981 SC 136.

15. After hearing the submissions made by learned counsel for the parties, we have carefully gone through the material available on record. The short question for consideration in the present OA is as to whether the respondents conducted the inquiry as per Rule 14 of CCS(CCA) Rules, 1965 against the applicant on the basis of the complaint dated 16.11.2015. filed by Shri Manojkumar K.P. alleging that the applicant attempted to sexually harass Smt Chitralekha N.S., Stenographer Grade-II, CBWE, Kozhikode.

16. Learned counsel for the applicant argues that the so-called inquiry conducted by the

Internal Complaint Committee/Inquiring Authority is in violation of Rule 14 of CCS(CCA) Rules, 1965 as the applicant was not given opportunity to cross examine the witnesses examined by the Committee. Thirdly, the applicant was also not provided with the documents relied upon against him and was also not provided fair opportunity to defend himself. Smt Manjula Nair, one of the members of the Committee also appeared as a witness against the applicant. In support of his contentions, he has relied upon the Office Memorandum No.F.No.11013/2/2014-Estt (A-III) dated 16.07.2015 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi with the subject 'Steps for conducting inquiry in case of allegation of Sexual Harassment'. .

17. Learned counsel for the respondents though not conceded but could not bring it to the notice of the Tribunal as to why the fact finding inquiry was conducted by Shri K. Vanaraj and not by the Internal Complaints Committee. Further after the fact finding inquiry whether a proper charge sheet containing articles of charges alongwith imputation was served upon the

applicant or not and whether he was given an opportunity to submit his reply within the stipulated period to admit or deny the charges. The respondents counsel has admitted that the witnesses examined by the complaints committee were not allowed to be cross examined by the applicant and he too was not allowed to lead his evidence in defence. It is also not disputed by the respondents that Smt Manjula Nair who is one of the members of the Internal Complaint Committee has been cited and examined as witness against the applicant, which is sheer violation of principles of natural justice as she could not sit in the capacity of judge in the case where she herself appeared as a witness against the charged officer.

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

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

North Block, New Delhi
Dated July 16th, 2015

OFFICE MEMORANDUM

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

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

2. The annexed guide on "*Steps for Conduct of Inquiry in complaints of Sexual Harassment*" is intended to give the procedure as prescribed in the rules/instructions. This is, however, not intended as a substitute for reference to the Rules and instructions. Members of the Complaints Committees and others who are required to deal with such inquiries should acquaint themselves with Central Civil Services (Classification, Control and Appeal) Rules, 1965, and instructions issued thereunder.

sd/-

(Mukesh Chaturvedi)
Director (E)

Steps for Conduct of Inquiry in Complaints of Sexual Harassment

Complaints Committees

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

What is Sexual Harassment?

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Workplace defined:

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Initial relief

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Complaints Committee to be Inquiring Authority

6. As per Proviso to Rule 14(2) of CCS (CCA) Rules, 1965, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

Need for investigation

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

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

Dual Role

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

10. As the Complaints Committees also act as Inquiring Authority in

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

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

Decision to issue Charge sheet. and conducting Inquiry

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The Inquiry-stages

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

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

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

15. The Disciplinary Authority shall also in terms of Rule 14(5) (c) appoint a Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/ Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. As a first step, the charged officer would be formally asked as to whether he admits the charges. As mentioned above, in case of any clear and unconditional admission of any Article of Charge, no inquiry would be held in respect of that Article and the admission of the Charged Officer would be taken on record. The inquiry would be held, thereafter, in

respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 14(8).

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

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

Examination of Witnesses

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

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

20. If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged

Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

Daily Order Sheet

21.

Defence Evidence

22. After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

General Examination of the Charged Officer

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

Brief

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

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Powers of the Committee to make recommendations

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Suspension

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Special Provisions to deal with threats or intimidation

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

"14. Procedure for imposing major penalties

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

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

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

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

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

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

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

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

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

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

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

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

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18. The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the

circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

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

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

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

the complaint of sexual harassment, the Complaints Committee shall hold inquiry as far as practicable in accordance with the procedure laid down in these rules.

21. As per the guidelines issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi vide OM dated 16.07.2015 relying upon the proviso to Rule 14(2) of CCS(CCA) Rules, 1965, in case of complaint of sexual harassment, it is the Complaints Committee which is set up in each Ministry or Department for inquiring into such complaint, which shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of Rule 14. Proviso to Rule 14(2) has been reproduced as one of the guidelines in the OM referred to above which explains as to how the Complaints Committee is required to conduct the inquiry on receipt of complaint of sexual harassment. These guidelines speak of preliminary inquiry/fact finding inquiry or investigation which is to be conducted by the Inquiring Authority/Complaints Committee on receipt of a complaint, to verify

the facts of the allegation.

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

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

23. The guidelines further find mention that as per Rule 14(3), the chargesheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity to file reply to the chargesheet. After considering the reply of the Charged Officer, as per Rule 14(5) a

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

24. As per Rule 14(8), the Charged Officer is also entitled to engage a Defence Assistant. The Complaints Committee is thereafter required to ask the Presenting Officer to have the prosecution documents as mentioned in the

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

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

26. Next stage is the Examination of the Witnesses. The examination-in-chief of the prosecution witness/s would be done by the Presenting Officer. Thereafter the Charged Officer will be given an opportunity to cross-examine the witness/s so examined in Chief.

After cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. No leading questions are allowed to be put to the witness by the Presenting Officer while recording his examination-in-chief, though in cross-examination leading questions are permissible.

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

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

inquiring authority will give its findings on the charge as proved or not proved.

29. In the present case, perusal of the record shows that neither the provisions of Rule 14 of CCS(CCA), 1965 discussed above have been followed, nor the guidelines mentioned in DoPT OM dated 16.07.2015 based on Rule 14 CCS(CCA) 1965 have been followed. In this case, the so called preliminary inquiry conducted by Shri K. Vanaraj, Zonal Director, South Zone, Chennai is also not in terms of the provisions of Rule 14(2). Annex A-7 dated 30.12.2015 is the preliminary inquiry report submitted by him. 30.

30. Rule 14 speaks of setting up of the complaints Committee in all Ministries /Department and organisations under them in pursuance to the judgment of the Hon'ble Supreme Court in the Vishakha case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act"), the Internal Complaints Committee (referred to as "Complaints Committee" hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman and at least half of its members should be

women. In view of proviso to Rule 14(2) CCS(CCA) Rules, 1965, even the preliminary inquiry is required to be conducted by the Complaints Committee referred to above whereas in the present case, the Complaint under consideration was assigned to Shri K. Vanaraj, Zonal Director for conducting preliminary inquiry which is in violation of the law laid down by the Hon'ble Apex Court in Vishakha's case and proviso to Rule 14(2).

31. As per OM dated 16.07.2015, the Complaints Committee set up under Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is the only Committee who is required to conduct the preliminary inquiry/fact finding inquiry or the investigation into the allegations of sexual harassment at workplace. This OM too has been violated in the instant case.

32. Perusal of the so-called fact finding report does not find mention that the concerned authority reached any conclusion with regard to the allegations of sexual harassment against the applicant. Later on the respondents procured

another report dated 09.03.2016 from Shri K. Vanaraj and therein for the first time he observed that the *prima facie* allegation of sexual harassment against the applicant was made out. It is on the basis of this report that the so-called formal inquiry was carried out by the Complaints Committee constituted vide order dated 12.05.2016, which is in violation of the Rule 14 and OM dated 16.07.2015.

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

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

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

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

34. Even perusal of the report of the Complaints Committee, which is placed on record as Annex A-14, does not indicate that Rule 14

CCS (Conduct) Rules and the guidelines issued vide OM dated 16.07.2015 were followed by the Committee as the learned counsel has admitted during course of arguments that before the Complaints Committee the statement of witness was recorded but no opportunity was given to the applicant to cross-examine the witnesses of the prosecution nor he was furnished the relevant documents relied upon by the prosecution nor he was allowed to lead his own defence nor his general statement was recorded with regard to the evidence available on record against him.

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

35. In these circumstances, the entire procedure followed in the present case has vitiated the entire inquiry proceedings. Hence, the impugned orders dated 08.08.2016 and 09.09.2016 are hereby set aside. The matter is remitted to the Disciplinary Authority to follow the required procedure from the stage of conducting fact finding inquiry and conclude the inquiry proceedings within a period of six months from the date of receipt of certified copy of this order. The Competent Authority may take appropriate decision as per provision of Fundamental Rule 54(4) regarding the pay and allowances to be paid to the applicant for the period from the date of his compulsory retirement till reinstatement in pursuance to this order.

36. With these directions, the Original Application stands disposed of. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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