
(2018) 03 CAT CK 0063

In the Central Administrative Tribunal

Case No : Original Application No. 2167 Of 2017

Jaswinder Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 14(2), 15, 15(2)
Central Civil Services (Conduct) Rules, 1964 — Rule 3C

Citation : (2018) 03 CAT CK 0063

Hon'ble Judges : Permod Kohli, J;K.N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : A.K. Behera, Hanu Bhaskar

Final Decision : Allowed

Judgement

Permod Kohli, J

1. This OA is directed against the order dated 21.08.2013 whereby a penalty of reduction of pay by one stage till his retirement with cumulative effect has been imposed upon the applicant. The applicant has sought further appropriate reliefs as may be found just and proper in the facts and circumstances of the case.

2. Briefly stated, the facts as emerge from the record are that the applicant who belongs to the Indian Postal Service (Group 'A') was posted as Postmaster General, Rajasthan Circle, Jaipur at the time of filing of this OA. While he was posted as Postmaster General, Punjab Region, Chandigarh, a complaint dated 12.11.2009 was lodged by one Smt. Ranju Prasad, then working as Director in the Punjab Region, against the applicant for alleged sexual harassment. On the basis of the said complaint lodged with the respondent No.1, a note was put up by DDG (P), Department of Posts, New Delhi on 23.11.2009 seeking approval to set up an inquiry committee. It is alleged that the file was never put up to the disciplinary authority. The note-sheet dated 23.11.2009 placed on record

(Annexure A-3, page 67) indicates that a committee comprising following officers was proposed by DDG (Personnel) and approved by the Secretary:

- "i. Ms. Kalpana Tiwari, Sr.DDG/CGM(MB) Chairperson
- ii. Shri Kamlesh Chandra, CPMG, UP Circle Member
- iii. Ms. Anuradha Joshi Durgapal, DDG (PAF) Member

The said complaint was forwarded to the above committee. The committee sent the complaint to the applicant for his comments. The applicant submitted his reply dated 14.12.2009 to the committee narrating his defence.

3. While the committee was seized of the aforesaid complaint, another complaint was made by one Ms. Ramandeep Kaur to Ms. Ranju Prasad, Director, Postal Services (Annexure A-5).

In the meantime, the applicant was transferred as Postmaster General (B&M), Uttarakhand Circle on 11.02.2010.

4. Another complaint was made by one Ms. Sunita to the CPMG, Punjab Circle dated 27.01.2010 against the applicant (Annexure A-6). The applicant submitted his reply to the complaints made by Ms. Sunita and Ms. Ramandeep Kaur (Annexure A-7 and A-8) respectively. The committee constituted conducted the inquiry at Chandigarh and Delhi. Statement of Ms. Ranju Prasad was also recorded by the committee on 17.03.2010. The committee submitted the inquiry report dated 09.12.2010 (Annexure A-12). The committee in its report gave following findings and conclusion:

"(i) In Smt. Ranju Prasad's case, no sexual harassment has been established against Shri Jaswinder Singh as she failed to clearly state whether Mr. Jaswinder Singh had either made an oral or physical gesture towards her and he in face denied the incident and rather stated it was Ms. Prasad who as a subordinate was indulging in misbehavior.

(ii) Though Mr. Khanna, CPMG, Punjab Circle had stated during his deposition before the Committee that Ms. Ranju Prasad had talked to him about Mr. Jaswinder Singh's bad behaviour but again he was not able to say whether any sexual angle was involved in it. It could just be a disagreement between the two officers or misbehavior by a senior officer towards his subordinate.

(iii) As far as Ms. Ramandeep Kaur is concerned, she herself has stated that no sexual harassment was involved so her complaint regarding sexual harassment has to be discounted.

(iv) As far as Ms. Sunita's evidence during her first meeting of the Inquiry Committee, then during cross examination, she stood firm by what she has given in her written complaint. Even in her deposition before the Committee and her replies during the cross examination were consistent and it seems that she was making a request for a official decision in her favour which she, perhaps, was

aware of that in the normal circumstances, she would not get it as the Rules did not permit it. She was perhaps willing to buy the decision in her favour by offering him money, and, perhaps, Mr. Jaswinder Singh sensing the window of opportunity made certain sexually laden oral overtures to test how desperate Ms. Sunita was to get her transfer and how far she would be willing to go to get it. This can only be surmised by her oral evidence and Committee's observations during the cross examination of Ms. Sunita by Mr. Singh. Since only two people are involved where one person is outrightly denying the entire incident, it is not possible to conclusively establish that there was sexual harassment involved.

87. In the final analysis, the Committee is of the view that even if allegations of sexual harassment have not been established beyond doubt against Mr. Jaswinder Singh, but his behaviour towards lady employees is certainly not as it should be. As CPMG during his deposition stated that he had also come across another case of a lady inspector being harassed by Mr. Jaswinder Singh while seeking transfer. After hearing all the witnesses, Head of Circle and the complainants, the Committee is of the view that Mr. Jaswinder Singh should be shifted out of Punjab Circle as his continuing to function in such a senior position could lead to vitiating the working atmosphere in the Circle but also may lead to harassment of the employees further. A watch could also be kept on his working in future and it should also be ensured that a lady employee or officer is not directly working under him."

The inquiry report was placed before the disciplinary authority (the then Minister of Communication & I.T.). The disciplinary authority recorded following on 22.02.2011:

"On going through the evidence, I am of the prima-facie opinion, that this is a case of sexual harassment. The Committee is requested to appreciate the evidence afresh and if necessary, review its recommendations. In the meantime, the officer be shifted out of Punjab circle."

On the basis of the aforesaid opinion, the DDG (P) vide his communication dated 23.02.2011 addressed to the Chairperson, Complaints Committee on Sexual Harassment, suggested as under:

"The Committee may therefore, go through its report, remove repetitions, as also make further inquiry from the stage of examining the four officials mentioned in the statement of Ms. Sunita by giving opportunity to all concerned to clear areas of ambiguity, re-evaluate the evidence and give its findings. The Enquiry may be finalized by 15.04.2011 and the final report submitted immediately thereafter."

Consequent upon the aforesaid observations of the disciplinary authority, the committee, after further inquiry, submitted its revised inquiry report dated 18.05.2011 with the following findings and recommendations:

"4. After going through the depositions made by all the four officials, and the

cross examinations by Mr. Jaswinder Singh and Ms. Sunita, the Committee is of the opinion and concludes that as far as Ms. Kamlesh Sethi, Sh. Sanjeev Thakur and Sh. Sudarshan Sharma are concerned, it does not establish anything against Mr. Jaswinder Singh nor does it change or impact in any way the conclusions drawn by the Committee as communicated in the report submitted on 9/12/2010."

"7. However, taking all the circumstances into consideration, the depositions made by Ms. Sunita, Mr. Pahuja and CPMG, Punjab, the Committee is of the opinion that, perhaps something untoward happened between Ms. Sunita and Mr. Jaswinder Singh when she visited him in his room to request personally for her transfer under Rule 38. The fact that Ms. Sunita's deputation was cancelled immediately and also the compliance of orders was being monitored by the office of PMG also establishes this fact. But to say clearly that the case is a sexual harassment, is not established beyond doubt. Hence, the Committee has unanimously arrived at the same conclusion and suggest the same action as before given in the earlier report i.e., the Committee is of the view that Mr. Jaswinder Singh should be shifted out of Punjab Circle as his continuing to function in such a senior position could lead to vitiating the working atmosphere in the Circle but also may lead to harassment of these employees further. A watch could also be kept on his working in future and it should be ensured that a lady employee or officer is not directly working under him."

It is relevant to note that during the second phase of the inquiry, the committee recorded statements of four witnesses.

5. On consideration of the revised inquiry report, a note was prepared on 08.06.2011. Relevant note reads as under:

"3. The Committee submitted its report on 09.12.2010 (F/A), which was submitted for kind perusal of Hon'ble MOC&IT. As desired by Hon'ble MOC&IT, committee was requested to appreciate the evidences afresh and to review its recommendations, if necessary. Accordingly, the committee has submitted its revised report on 18.05.2011. The report submitted by the committee may kindly be perused at F/X. The final view of the Committee is reproduced below.

"Taking all the circumstances into consideration, the depositions made by Ms. Sunita, Mr. Pahuja and CPMG, Punjab, the Committee is of the opinion that, perhaps something untoward happened between Ms. Sunita and Mr. Jaswinder Singh when she visited him in his room to request personally for her transfer under Rule 38. The fact that Ms. Sunita's deputation was cancelled immediately and also the compliance of orders was being monitored by the office of PMG also establishes this fact. But to say clearly that the case is a sexual harassment, is not established beyond doubt. Hence, the Committee has unanimously arrived at the same conclusion and suggest the same action as before given in the earlier report i.e., the Committee is of the view that Mr. Jaswinder Singh should be shifted out of Punjab Circle as his continuing to function in such a senior position

could lead to vitiating the working atmosphere in the Circle but also may lead to harassment of these employees further. A watch could also be kept on his working in future and it should be ensured that a lady employee or officer is not directly working under him."

4. It is submitted that the officer has already been transferred from Punjab Circle to Maharashtra Circle and posted as PMG (BD & Mktg), Mumbai. In above connection, kind attention is invited to Rule 15 of CCS (CCA) Rules 1965 regarding action in inquiry report. According to Rule 15 of CCS (CCA) Rules, 1965, the report has to be submitted to the Hon'ble MOC&IT, who is the Competent Authority for acceptance. If approved, case may be submitted to Hon'ble MOC&IT for accepting the findings of the Inquiry Committee."

The Secretary (Posts), on consideration of the aforesaid note, made following recommendation:

"We may accept the recommendations of the Committee. The officer is already posted out of Punjab."

The disciplinary authority, however, mentioned:

"Opinion of ASG, Indira Jaisingh, may be taken first"

In view of the above directions, opinion of Ms. Indira Jaisingh, the then ASG of India, was obtained. Copy of the said opinion is placed on record at pages 89 to 99. The ASG, after discussing the evidence brought on record during the inquiry, vide her opinion dated 09.03.2012 made following suggestions:

"37. A reading of the above provision indicates that the Disciplinary Authority may differ from the inquiry report. However, in such a situation reasons for differing from the opinion of the Inquiry report needs to be stated.",

and formulated her opinion which is as follows:

"40. In view of the above, I come to the conclusion that the findings of the inquiry committee are perverse in as much as the case of misconduct of having committed sexual harassment against Ms. Ranju Prasad and Ms. Sunita stand proved on the evidence on record. The case of Ms. Ramandeep Kaur is not being considered as she did not subject herself to cross-examination. And in view of the above, Disciplinary Authority is at liberty to differ with the Inquiry Committee report. Having regard to the law, a finding to that effect and tentative reasons for differing from the opinion of the Inquiry Committee may be recorded. Also, an opportunity should be given to the charge-sheeted employee to represent against the finding of the Disciplinary Authority. Also, Mr. Singh should be provided with the copy of the inquiry report, the tentative findings of the disciplinary authority disagreeing with the findings of the inquiry report at the earliest.

Opinion accordingly.

Sd/-

INDIRA JAISINGH

(Addl. Solicitor General of India)"

Final report of the complaints committee dated 18.05.2011 along with the opinion of the ASG was placed before the disciplinary authority, who recorded its note of disagreement dated 18.04.2012 (pages 102-106). This disagreement note was served upon the applicant vide memorandum dated 30.04.2012 (Annexure A-22) for his comments/representation within a period of thirty days. The applicant submitted his representation against the disagreement note and the inquiry report on 29.06.2012 (Annexure A-23) refuting all the allegations against him. The aforesaid representation was followed by a supplementary representation dated 02.08.2012 (Annexure A-

24). The disciplinary authority, after receipt of the representation of the applicant, sought advice of the Union Public Service Commission. The Commission under its advice vide communication dated 03.05.2013 made the following recommendations:

"4. In the light of the observations and findings as discussed above and after taking into account all facts and circumstances relevant to the case, the Commission consider that the charges are proved against the CO and the ends of justice would be met if the penalty of Reduction of pay by one stage till his retirement with cumulative effect is imposed on the CO Shri Jaswinder Singh. They advise accordingly."

On receipt of the advice of UPSC, the disciplinary authority passed the impugned order dated 21.08.2013 imposing the penalty of reduction of pay by one stage till retirement with cumulative effect upon the applicant.

6. The respondents filed reply to the OA reiterating the allegations made in the complaints against the applicant. The respondents further referred to the judgment of the Hon'ble Supreme Court in case of Visakha & others v. State of Rajasthan & others [(1997) 6 SCC 241], and Government instructions issued vide office memorandum dated 13.02.1998. It is further stated that in terms of Visakha's judgment and the Government instructions, no separate charge-sheet is required to be served upon the charged officer, and the complaint of sexual harassment against the charged officer is to be treated as the charge-sheet. The report of the complaints committee is to be deemed as the inquiry report under the CCS (CCA) Rules, 1965. No separate inquiry officer is required to be appointed nor any presenting officer is to be appointed. Hence, the charged officer is also not to be provided with the defence assistant.

It is further stated that the disciplinary authority disagreed with the report and findings of the complaints committee and served the disagreement note upon the applicant, and on consideration of his representation the impugned penalty order has been passed.

7. The applicant submitted rejoinder to the reply filed by the respondents and reiterated the averments made in the OA. He also placed on record copy of the order dated 24.11.2009 constituting the complaints committee and the terms of reference, along with some clarifications on various questions in cases of sexual harassment of women at workplace, as also copies of the complaints made against the charged officer, etc.

8. The respondents thereafter filed reply to the rejoinder placing on record certain notings.

9. Mr. A. K. Behera, learned counsel appearing for the applicant, has sought quashing of the impugned penalty order on the following grounds:

(1) That the complaints committee has not been constituted by the disciplinary authority, but only by the Secretary of the Department. Such constitution is illegal, and consequently all disciplinary proceedings are liable to be quashed.

(2) That the copy of advice of UPSC obtained by the disciplinary authority and relied upon in the impugned penalty order was not served upon the applicant prior to passing of impugned order. The applicant was not provided any opportunity to respond to UPSC's advice relied upon in impugned penalty order, violating principles of natural justice.

(3) That the disciplinary authority had no competence to seek the opinion of the ASG of India and was required to apply its own independent mind. In any case, the opinion of the ASG was not furnished to the applicant to enable him to explain and respond to the same.

(4) The disciplinary authority in its disagreement note has based its order only on the opinion of the ASG and was thus influenced by the said opinion, without providing any opportunity to the applicant to respond to the ASG's opinion, thus there is violation of the principles of natural justice.

(5) That the disciplinary authority while remitting the case back to the complaints committee (inquiry committee) asked it to re-appreciate the evidence, which is impermissible in law.

(6) That in the disagreement note, the disciplinary authority had formulated its final opinion and not the tentative opinion. As a matter of fact, the disciplinary authority had made up its mind to impose penalty on the applicant. The disagreement note is not in accordance with law.

10. Heard learned counsel for the parties.

11. Ground 1-The plea of the charged officer (applicant) is that the complaints committee to inquire into the charges of sexual harassment was required to be constituted by the Disciplinary Authority. It is argued by Mr. Behera that as a matter of fact on the complaint of sexual harassment against the applicant, the Disciplinary Authority was to initiate the disciplinary proceedings and for purposes of allegations of sexual harassment, the Disciplinary Authority alone

was to constitute the complaints committee. In the present case, the committee was proposed by the DDG (Personnel) vide Note dated November 23rd, 2009 and the said Note was approved by the Secretary alone and not by the Disciplinary Authority (Hon'ble Minister for Communication & IT). Reference is made to notings at page 67 of the OA. The note has been reproduced hereinabove. From the notings on the file, it is evident that the constitution of the complaints committee was never placed before the Disciplinary Authority. Apart from that, in reply to rejoinder filed by the applicant, the respondents have produced the note-sheet whereby the representation of the applicant dated 29.06.2012 against the inquiry report and disagreement note was dealt with. The relevant extracts are as under:-

"3. The representation dated 29.06.2012 submitted by Shri Jaswinder Singh may kindly be perused at FR. After going through his representation, it is seen that the charged officer has objection on mainly following points. The submission made by the Charged Officer and comments thereon are submitted below.

(A) Complaint Committee was constituted by the Secretary, Department of Posts, who was not authorized to do so.

Comment: In the case of Vishaka and Ors. Vs. State of Rajasthan and Ors. (JT 1997 (7) SC 384), the Hon'ble Supreme Court of India has laid down the guidelines and norms to be observed to prevent sexual harassment of working women at their work place. Accordingly, Department of Personnel & Training, the nodal Department in the matter, has issued basic guidelines/instructions vide their OM No.11013/10/97-Estt (A) dated 13th February 1998 (F/A). As per para 6 of the OM, an appropriate complaint mechanism should be created in every organization for redressal of the complaint made by victim. Wherever such mechanism for redressal of grievance already exist, they may be made more effective and in particular women officers should preferably handle such complaints. It is nowhere mentioned that who will be competent to constitute such Committee. Therefore, Secretary (Posts), who is the Head of the Department, is fully competent to constitute Inquiry Committee to prevent sexual harassment of working women at work place. The extant instructions in the matter do not provide that only the Disciplinary Authority is competent to constitute such committee to inquire into the complaints of sexual harassment of working women at their work place. Moreover, when the Committee submitted its report on 09.12.2010, it was perused by the Disciplinary Authority, i.e., Hon'ble MOC&IT.

From the above, it is established that the committee was constituted by the Secretary alone without any approval of the Disciplinary Authority. The respondents have taken a stand that it is not necessary that the complaints committee to inquire into the charges of sexual harassment was required to be constituted by the Disciplinary Authority.

12. Rule 14 of CCS (CCA) Rules, 1965 deal with the procedure for imposing

penalties. Sub-rule (2) of Rule 14 reads as under:-

"(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."

Sub-rule (2) mandates that whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation or misconduct against a government servant, it may itself inquire into, or appoint the inquiring authority. Proviso to it which was introduced by way of an amendment in the rule vide Notification dated 01.07.2004 and published in the gazette dated 10.07.2004 required that in case of complaint of sexual harassment, 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. In the present case, no permanent complaints committee was established in the Ministry or in the Department to inquire into the imputations of sexual harassment. It was only on the complaints of Ms. Ranju Prasad, a women employee, that the inquiring committee was constituted by the Ministry under the orders of Secretary. The constitution of complaints committee had no approval of the Disciplinary Authority. As a matter of fact, the constitution of inquiring committee itself is an initiation of disciplinary proceedings against the charged officer. Sub-rule (2) of Rule 14 clearly requires the opinion of the Disciplinary Authority to initiate disciplinary proceedings. However, at the time of initiation of disciplinary proceedings, the matter was never placed before the Disciplinary Authority. Apart from that, Rule 13 prescribes the authority to institute proceedings. Rule 13 is reproduced hereunder:-

"13. Authority to institute proceedings

(1) The President or any other authority empowered by him by general or special order may-

(a) institute disciplinary proceedings against any Government servant;

(b) direct a Disciplinary Authority to institute disciplinary proceedings against any

Government servant on whom that Disciplinary Authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A Disciplinary Authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses

(v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties."

Sub-rule (1) of Rule 13 empowers the President or any authority empowered by him by general or special orders to institute disciplinary proceedings against any government servant, and by such order, the disciplinary authority maybe directed to institute disciplinary proceedings against the Government servant on whom that disciplinary authority is competent to impose penalties specified under Rule 11. It is admitted case of the parties that in the present case the President is the Disciplinary Authority and the Hon'ble Minister of the concerned department is a Delegatee of the President to institute disciplinary proceedings under Rule 13. The Secretary of the department was never empowered and in any case no such general or special order has been placed on record to demonstrate that the Secretary of the department was competent to initiate disciplinary proceedings and appoint the inquiring authority to inquire into the charges against the applicant.

13. In *Vishaka & Others v State of Rajasthan & Others* (supra), the Hon'ble Supreme Court having been apprised of the allegations of sexual harassment of women at work places, took cognizance of the public interest litigation and issued guidelines. After defining the duty of the employer or other responsible person in work place etc. and laying down the broader definition of sexual harassment, the Apex Court also prescribed the nature of proceedings to be initiated. In para 4 of the guidelines, criminal proceedings were suggested where the conduct amounts to specific offence under the Indian Penal Code or any other law, and in other cases disciplinary action. The relevant guidelines are reproduced hereunder:

"5. Disciplinary action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

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 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 complaints 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.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third-party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector."

After the above guidelines were laid down, some women organizations again approached the Hon'ble Supreme Court alleging non-compliance of the guidelines, whereupon the Apex Court passed the following order in *Medha Kotwal Lele & others v Union of India & others* [(2013) 1 SCC 311]:

"Several petitions had been filed before this Court by women organisations and on the basis of the note prepared by the Registrar General that in respect of sexual harassment cases the Complaints Committees were not formed in accordance with the guidelines issued by this Court in *Vishaka v. State of*

Rajasthan [(1997) 6 SCC 241] and that these petitions fell under clause (6) of the PIL Guidelines given by this Court i.e. "Atrocities on Women" and in any event the Guidelines set out in Vishaka were not being followed. Thereupon, this Court treated the petitions as writ petitions filed in public interest.

2. Notice had been issued to several parties including the Governments concerned and on getting appropriate responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:

"Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka case (1997) 6 SCC 241 at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules."

14. Visakhia's judgment (supra), which later came to be modified/clarified by Medha Kotwal Lele & others v Union of India & others (supra), does not, in any manner, direct non-compliance of the provisions of the CCS (CCA) Rules, 1965. The only direction was that the complaints committee will be deemed to be an inquiring authority under the CCS (CCA) Rules, 1965. However, the manner and mode of constitution of the committee and the authority who is to constitute and initiate the disciplinary proceedings has not been laid down in Visakhia's judgment (supra), thus the mandate of rule 14(2) of CCS (CCA) Rules, 1965 would remain in operation. Further, rule 13 which prescribes the authority to initiate disciplinary proceedings has not been complied with.

15. The controversy is also no more res integra. While considering the mandate of Rule 14 of the CCS (CCA) Rules, 1965 and the competence of the authorities to initiate disciplinary proceedings, Hon'ble Supreme Court in Union of India & others v B.V. Gopinath & others [(2014) 1 SCC 351] has laid down following four stages under which the disciplinary authority has to take action:-

- "i) initiation of Disciplinary proceedings for major penalties;
- ii) drawing up of charges of misconduct;
- iii) appointment of Inquiry Officer & Presenting Officer and to supervise fair conducting of inquiry by the Inquiry Officer;
- iv) imposition of penalty, if any."

It is thus established that initiation of disciplinary proceedings and constitution of the inquiring committee is the sole domain of the disciplinary authority. In the present case, neither initiation of the disciplinary proceedings nor constitution of the inquiry committee was by disciplinary authority, and thus initiation of the disciplinary proceedings, including constitution of the inquiry committee, was by incompetent authority. This also renders all subsequent proceedings as illegal.

16. Ground (2) - The applicant has taken the plea of non furnishing of UPSC's advice before passing of the impugned order in the grounds of the OA which reads as under:-

"(L) Because as per extant instructions and judgments of various UPSC's advice was expected to be provided to be applicant prior to issue of the impugned order. However, in the instant case the same has not been done."

In reply to the aforesaid ground, the respondents have stated as under:-

"5.12 That the contents of para 5 (L) of the Original Application are wrong hence denied. There is no provision in the CCS (CCA) Rules, 1965 that the copy of the UPSC's advice would be provided to the charged officer before passing final order in the disciplinary matters. However, copy of the UPSC's advice was duly supplied to the applicant along with the punishment order."

Apart from the above admission, this fact is also established from the impugned order itself. Paras 6 & 7 of the impugned order are reproduced hereunder:-

"6. After careful consideration of the Report of the Inquiry Committee, the representation dated 29.06.2012 of the charged officer thereon and all evidences on record, the President, the disciplinary authority has come to a conclusion that the charged officer could not convincingly and logically refute the charges and was not able to substantiate his arguments in his representation. It was tentatively decided by the President that the charges that stood proved were grave enough warranting imposition of a suitable penalty and the case was referred to the UPSC for its advice on the quantum of punishment or otherwise to be imposed on the charged officer.

7. The UPSC has tendered their advice vide their letter No.F/3/374/2012-SI dated 03.05.2013, a copy of which is enclosed. The UPSC has observed in their advice that Shri Jaswinder Singh appeared to be a habitual offender and had attempted to blackmail ladies subordinate to him in the organization for dispensing sexual favours towards him. They observed that the misconduct of committing sexual harassment against Ms. Ranju Prasad and Ms. Sunita stood proved based on the evidence on record. In the light of these observations and findings and after taking into account all facts and circumstances relevant to the case, the UPSC consider that the ends of justice would be met if the penalty of "Reduction of pay by one stage till his retirement with cumulative effect" is imposed on the CO Shri Jaswinder Singh."

In para 6 above, the Disciplinary Authority referred to representation dated 29.06.2012 of the charged officer and thereafter mentioned about the reference of the case to UPSC for its advice on the quantum of punishment or otherwise. In para 7, reference is made to UPSC's advice dated 03.05.2013, copy whereof was enclosed with the impugned penalty order. Thus, it is established that after the representation of the applicant was obtained in respect to the Inquiry Report and the disagreement note, the matter was referred to the UPSC whose advice

was received by the Disciplinary Authority on 03.05.2013 and relied upon for imposing the penalty. The copy of the UPSC's report was furnished to the charged officer with the impugned penalty order. The Hon'ble Supreme Court in Union of India vs. S. K. Kapoor [(2011) 4 SCC 589] has held as under:-

"8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N. Narula vs. Union of India & Others, Civil Appeal No.642 of 2004 decided on 30th January, 2004 (emphasis supplied)."

Non-furnishing of UPSC's advice is a serious omission as it violates the principles of natural justice and deprives the charged officer of his right to respond to UPSC's advice. Non-furnishing of UPSC's advice before passing the penalty order rendered the penalty order illegal.

17. Grounds 3 & 4 - As noticed hereinabove, the first report of the inquiry committee dated 09.12.2010 and revised report dated 18.05.2011 were placed before the disciplinary authority who directed to obtain opinion of ASG, Indira Jaising, as per the noting dated 08.07.2011 (pages 86 & 87 of the OA). The same reads as under:-

"3. The Committee submitted its report on 09.12.2010 (F/A), which was submitted for kind perusal of Hon'ble MOC&IT. As desired by Hon'ble MOC&IT, committee was requested to appreciate the evidences afresh and to review its recommendations, if necessary. Accordingly, the committee has submitted its revised report on 18.05.2011. The report submitted by the committee may kindly be perused at F/X. The final view of the Committee is reproduced below.

"Taking all the circumstances into consideration, the depositions made by Ms. Sunita, Mr. Pahuja and CPMG, Punjab the Committee is of the opinion that, perhaps, something untoward happened between Ms. Sunita and Mr. Jaswinder Singh when she visited him in his room to request personally for her transfer under Rule 38. The fact that Ms. Sunita's deputation was cancelled immediately and also the compliance of orders was being monitored by the office of PMG also establishes this fact. But to say clearly that the case is a sexual harassment, if not established beyond doubt. Hence the Committee has unanimously arrived at the same conclusion and suggests the same action as before given in the earlier report, i.e., the Committee is of the view that Mr. Jaswinder Singh should be shifted out of Punjab Circle as his continuing to function in such a senior position could lead to vitiating the working atmosphere in the Circle but also may lead to harassment of these employees further. A watch could also be kept on his working in future and it should also be ensured that a lady employee or officer is not directly working under him.

4. It is submitted that the officer has already been transferred from Punjab Circle to Maharashtra Circle and posted as PMG (BD & Mktg), Mumbai. In above connection, kind attention is invited to Rule 15 of CCS (CCA) Rules, 1965 regarding action on inquiry report. According to Rule 15 of CCS (CCA) Rules, 1965, the report has to be submitted to the Hon'ble MOC&IT, who is the Competent Authority for acceptance. If approved, case may be submitted to Hon'ble MOC&OT for accepting the findings of the Inquiry Committee.

Submitted pls.

Abhay

08.VI.XI

SO (SPG)

ADG (SGP)

Dir (Staff)

DDG (P)

Member (P): Vacant

Secretary (Pers) : We may accept the recommendations of the committee. The officer is already posted out of Punjab.

MOC&IT- fist take opinion of ASG, Indira Jaising.

This is regarding complaint made by officers of Punjab Circle regarding sexual harassment at work place against Shri Jaswinder Singh(IPoS-1980), PMG. Notes on page 15/N towards will recall the case.

2. The final report dated 18.05.2011 of the Complaint Committee was submitted to the Hon'ble MOC&IT for its acceptance. Hon'ble MOC&IT has ordered the following:

"opinion of ASG, Indira Jaising, may be taken first"

3. In view of above order of Hon'ble MOC&IT, we may refer the case to Ministry of Law with a request to seek the opinion of Learned ASG Ms. Indira Jaising in the matter.

Submitted plz."

18. The procedure to be adopted for action on the inquiry report has been prescribed under Rule 15 of CCS (CCA) Rules, 1965. Sub-rule (2) of Rule 15 deals with such a procedure. The same reads as under:-

"(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if

any, with the findings of Inquiring Authority or any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

The above rule does not envisage opinion of a third person on the inquiry report and that too from a law officer to be nominated by the disciplinary authority by name. We may observe that in the present case, the then disciplinary authority was himself a known jurist. Under what circumstances the course in contravention to Rule 15 (2), referring the case to ASG, was adopted is not evident from the record. The disciplinary authority who is not merely a law knowing person but himself a jurist was to consider the issue, but the said authority chose to refer it to the nominated law officer for the reasons best known to him. Firstly, such a procedure is alien to the service jurisprudence and not envisaged under Rule 15 of CCS (CCA) Rules, 1965.

19. Assuming seeking opinion of a Law Officer is not forbidden under the rules and the disciplinary authority in its wisdom chose to seek such an opinion, it being an extraneous material, it was incumbent upon the disciplinary authority to have furnished a copy of the opinion of the ASG to the charged officer for his response in observance of the principles of natural justice. The same principle as applies to the advice of the UPSC is also applicable where the disciplinary authority decides to seek any advice or opinion of a third person not associated with the disciplinary proceedings. The disciplinary authority has heavily relied upon opinion of the ASG while passing the disagreement note. Non-furnishing of ASG's opinion to the charged officer and without providing him an opportunity to make representation itself violates the principles of natural justice and the ratio of the judgment in S. K. Kapoor's case (supra) would be equally attracted in the present case on this count as well and the impugned order is thus vitiated for non furnishing of ASG's report to the charged officer.

20. Ground 5 - From the noting on file, we find that when the Disciplinary Authority considered the inquiry report dated 09.12.2010, it recorded as under:-

"On going through the evidence, I am of the prima-facie opinion, that this is a case of sexual harassment. The Committee is requested to appreciate the evidence afresh and if necessary, review its recommendations. In the meantime, the officer be shifted out of Punjab circle.

(KAPIL SIBAL)

MoC&IT"

Sub-rule (1) of Rule 15 deals with action on the Inquiry Report. It reads as under:-

"(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority

for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be."

On consideration of the Inquiry Report, the Disciplinary Authority is entitled to remit the case to the inquiring authority for further inquiry and report by recording reasons. In the present case, the Disciplinary Authority has chosen to remit the case firstly without recording any reasons and secondly it emphasized that the inquiring authority may appreciate the evidence afresh and, if necessary, review its recommendations. This clearly was intended to issue directions to the inquiring authority to re-appreciate the evidence and revise its recommendations. It would not be inappropriate if this direction is considered to be an attempt to influence the inquiring authority for reconsideration of its opinion on the evidence and recommendations.

Sub-rule (1) of Rule 15 empowers the Disciplinary Authority to remit the case for further inquiry but not to issue directions to re-appreciate the evidence afresh and to revise the recommendations. Such recourse is also contrary to the mandate of Rule 15 (1). The action of the Disciplinary Authority is also contrary to law.

21. Ground 6 - It is vehemently argued on behalf of the applicant that in the disagreement note dated 18.04.2012, the Disciplinary Authority has formulated final opinion, demonstrating pre-determined mind. The Disciplinary Authority has recorded as under:-

"15. Hence, for the reasons stated above, I differ from the opinion of the Inquiry Committee and have come to the conclusion that the findings of the Inquiry Committee are perverse in as much as the case of misconduct of having committed sexual harassment against Ms. Ranju Prasad and Ms. Sunita sand proved on the evidence on record. The Committee has failed to take note of the position of dominance of Mr. Singh over these women and the vulnerability of these women at workplace. The case of Ms. Ramandeep Kaur is not being considered, as she did not subject herself to cross-examination. The Committee has failed to note that the repeated complaint by women of sexual harassment have created a hostile working environment.

Referring to the above opinion of the Disciplinary Authority in the disagreement note, it is strenuously argued by Mr. Behera that the Disciplinary Authority has held the charged officer guilty of misconduct while disagreeing with the report of the inquiring authority. It demonstrates pre-determined mind of the Disciplinary Authority. This issue is no more *res integra* having been considered by the Apex Court in *Ram Kishan v Union of India & others* [(1995) 6 SCC 157], wherein the following observations were made:

"...The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached

by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect...."

The Hon'ble Supreme Court, considering Ram Kishan's case (supra) and some other judgments, in a later decision reported as Punjab National Bank & others v Kunj Behari Misra [(1998) 7 SCC 84] held as under:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."

22. Shri Behera has further referred to the disagreement note and the opinion of the ASG to say that the disagreement note is nothing but adoption of the opinion of ASG. He has compared the paras of the disagreement note with the opinion of the ASG. The relevant paragraphs are reproduced hereunder:-

Sl. No.

Disagreement Note

ASG's Opinion

1.

At the outset, I wish to note that the Inquiry Committee was empowered to enquire into the complaint of sexual harassment made by Ms. Ranju Prasad, Ms. Sunita and Ms. Ramandeep Kaur against Shri Jasvinder Singh. Hence, each of the three complaints if establish would constitute three separate acts of misconduct, though by the same individual. Hence, each case has to be examined separately.

23. At the outset, I wish to note that the inquiry committee was empowered to enquire into the complaint of sexual harassment made by three women against Shri Jasvinder Singh. Hence, each of the three complaints if established would constitute three separate acts of misconduct, though by the same individual. Hence, each case will be examined separately.

2.

Before dealing with the findings of the Inquiry Committee, it would be appropriate to define sexual harassment at work place. The term Sexual Harassment as defined by the three Judge Bench of the Hon'ble Supreme Court in Vishaka Vs. State of Rajasthan (1997) 6 SCC 241 which reads as follows:

"2 Definition

For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) Physical contact and advances;
- b) A demand or request for sexual favours;
- c) Sexually coloured remarks;
- d) Showing pornography;
- e) Any other unwelcome physical, verbal or nonverbal conduct of sexual

Where any of these acts is committed in circumstances hereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto."

19. Before proceeding further, it is important to understand as to what constitutes sexual harassment. The three Judge Bench of the Hon'ble Supreme Court in Vishaka Vs. State of Rajasthan (1997) 6 SCC 241 defined sexual harassment as follows:

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3.

A perusal of the above definition of sexual harassment indicates that it includes and is not limited to the instances mentioned above. Therefore, it follows that in every case where the conduct complained of is sexual in nature and creates a hostile atmosphere at work, it will constitute sexual harassment.

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4.

The Hon'ble Supreme Court in *Apparel Export Promotion Council Vs. A. K. Chopra* (1991) 1 SCC 759 was confronted with the question as to whether an action of the superior against a female employee, which is against moral sanctions and does not withstand test of decency and modesty not amount to sexual harassment? Is physical contact with the female employee an essential ingredient of such a charge? Does the allegation that the superior tried to molest a female employee at the place of work, not constitute an act unbecoming of good conduct and behavior expected from the superior?

It was held by the Supreme Court Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment. Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance

and had the effect of creating an intimidating or hostile working environment for her.

The observations made by the High Court to the effect that since the respondent did not actually molest Miss X but only tried to molest her and, therefore, his removal from service was not warranted rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression molestation. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step. There was no justification for²⁵ the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X.

21. The Hon'ble Supreme Court in *Apparel Export Promotion Council Vs. A. K. Chopra* (1991) 1 SCC 759 was confronted with the question as to whether an action of the superior against a female employee, which is against moral sanctions and does not withstand test of decency and modesty not amount to sexual harassment? Is physical contact with the female employee an essential ingredient of such a charge? Does the allegation that the superior tried to molest a female employee at the place of work, not constitute an act unbecoming of good conduct and behavior expected from the superior?

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5.

The first complaint was made by Ms. Ranju Prasad. She deposed at the inquiry and was cross-examined by Shri Jasvinder Singh. The evidence of Ms. Ranju Prasad clearly establishes that she was subjected to harassment by Shri Singh. The evidence also establishes that the harassment was of a sexual nature. It also emerges from the evidence that whenever Mr. Singh called her, he put on the "do not disturb" sign clearly creating an atmosphere of secrecy and insecurity for a woman employee. Further comments such as "if you cooperate with me, you will have no problem" are clearly suggestive of sexual and improper and immoral demands. It further emerges from the complaint that on the date of the incident, Mr. Singh got up from his chair and put his arm on her shoulder. This physical contact is clearly of unwanted nature and this coupled with his remarks and the fact that he created an atmosphere of secrecy leads to the conclusion that is guilty of sexual harassment at the work place within the meaning of the judgment of the Supreme Court in Vishaka Vs. State of Rajasthan (supra). He also created a hostile working environment for Ms. Ranju Prasad.

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26. The evidence of Ms. Ranju Prasad clearly establishes that she was subjected to harassment by Shri Singh. The evidence also establishes that the harassment was of a sexual nature. It also emerges from the evidence that whenever Mr. Singh called her, he put on the "do not disturb" sign clearly creating an atmosphere of secrecy and insecurity for a woman employee. Further comments such as "if you cooperate with me, you will have no problem" are clearly suggestive of sexual and improper and immoral demands. It further emerges from the complaint that on the date of the incident, Mr. Singh got up from his chair and put his arm on her shoulder. This physical contact is clearly of unwanted nature and this coupled with his remarks and the fact that he created an atmosphere of secrecy leads to the conclusion that he has indulged in sexual harassment at the work place within the meaning of the judgment of the Supreme Court in Vishaka Vs. State of Rajasthan (supra). He also created a hostile working environment for Ms. Ranju Prasad.

6.

Mr. Prasad's conduct after the incident inspires confidence in her testimony. The evidence of Mr. Khanna (Chief Postmaster General) and superior officer of Ms. Prasad that after coming out of Mr. Singh's room, Ms. Prasad was very agitated. Mr. Khanna also stated that a few days after the incident, he got a call from the husband of Ms. Prasad asking what action was taken against Mr. Singh against the complaint of sexual harassment made by her. Her evidence is therefore credible and worthy of acceptance and has been corroborated by Mr. Khanna.

27. Mr. Prasad's conduct after the incident inspires confidence in her testimony. The evidence of Mr. Khanna that after coming out of Mr. Singh's room, Ms. Prasad was very agitated. Mr. Khanna also stated that a few days after the incident, he got a call from the husband of Ms. Prasad asking what action was taken against Mr. Singh against the complaint of sexual harassment made by her. Her evidence is therefore credible and worthy of acceptance.

7.

The inquiry committee has dismissed the evidence of Ms. Prasad only on the ground that Mr. Singh has denied the incident. It hardly needs mentioning that a charge-sheeted employee facing disciplinary proceedings of serious nature is bound to deny the charges. The question that requires consideration is whether the evidence of the complainant who has been subjected to cross-examination is creditable. Nothing has been brought on record to destroy her evidence. On the contrary, the evidence of Mr. Khanna corroborates the evidence of complainant. The evidence of Mr. Khanna is rejected only on the ground that Mr. Khanna does not state whether any "sexual angle" was involved. The facts on record establish that Mr. Singh did in fact put on the "do not disturb" sign, got up from his chair, came and sat next to the complainant during a business discussion in office and put his arm around her shoulder. This conduct was obviously unwelcome to the complainant as it is evident from the fact that not only did she complain to Mr.

Khanna on the intercom and seen agitated but also discussed it with her husband who then enquired what action was taken against Mr. Singh.

28. The inquiry committee has dismissed the evidence of Ms. Prasad only on the ground that Mr. Singh has denied the incident. It hardly needs mentioning that a chargesheeted employee facing disciplinary proceedings of serious nature is bound to deny the charges. The question that requires consideration is whether the evidence of the complainant who has been subjected to cross-examination is creditable. Nothing has been brought on record to destroy her evidence. On the contrary, the evidence of Mr. Khanna corroborates the evidence of complainant. The evidence of Mr. Khanna is rejected only on the ground that Mr. Khanna does not state whether any "sexual angle" was involved. The facts on record establish that Mr. Singh did in fact put on the "do not disturb" sign, got up from his chair, came and sat next to the complainant during a business discussion in office and put his arm around her shoulder. This conduct was obviously unwelcome to the complainant as it evident from the fact that not only did she complain to Mr. Khanna on the intercom and seen agitated but also discussed it with her husband who then enquired what action was taken against Mr. Singh.

8.

In the circumstances, the finding of the inquiry committee is perverse and requires to be rejected. Further the finding is also perverse, as he inquiry committee seems to be using a "standard of proof beyond doubt". This is incorrect as the committee is to judge on the "balance of probabilities" and not on "proof beyond doubt" as this is "civil matter and not a criminal matter".

Personal of DA

9.

The next complainant was Ms. Ramandeep Kaur. She stated that Mr. Singh has bad intentions towards women employees and is not a man of moral character. He uses bad language such as "bastard, stupid idiot etc". It appears however, that she did not present herself for cross examination and hence I am not going into her evidence as the charge sheeted employee had a right to cross examine any person giving evidence against him. The complaint made by her is therefore not proved.

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10.

The next case is that of Ms. Sunita. Her evidence clearly establishes that Mr. Singh did proposition her as a quid pro quo for considering her transfer. In fact the inquiry committee does consider the issue and come to the conclusion Mr. Jasvinder Singh "sensing a window of opportunity" made "sexuality laden overtures" to test how desperate Ms. Sunita was to get her transfer and how far she was willing to go to get her transfer. This is nothing short of finding of sexual harassment at the workplace. Added to this finding, is the fact of victimization of Ms. Sunita who suffered the consequence of cancellation of her deputation.

30. The next case is that of Ms. Sunita. Her evidence clearly establishes that Mr. Singh did proposition her as a quid pro quo for considering her transfer. In fact the inquiry committee does consider the issue and come to the conclusion Mr. Jasvinder Singh "sensing a window of opportunity" made "sexuality laden overtures" to test how desperate Ms. Sunita was to get her transfer and how far she was willing to go to get her transfer. This is nothing short of finding of sexual harassment at the workplace. Added to this finding, is the fact of victimization of Ms. Sunita who suffered the consequence of cancellation of her deputation.

11.

The evidence of Ms. Sunita has been rejected only on the ground that there was delay in the making of her complaint. It is well settled that delay in reporting of cases of sexual harassment is understandable as women are reluctant to speak of sexual abuse due to the fear of adverse consequence and the stigma associated with such complaints. In this case, Ms. Sunita actually suffered the adverse consequences in the form of cancellation of her deputation. The documentary record shows that Mr. Singh took an extraordinary interest in her immediate cancellation of deputation. This evidence has been rejected only on the ground that oral evidence of Mr. Pahuja, SSP Hoshiarpur was not sufficient to link Mr. Singh to the speed with which the order of deputation of Ms. Sunita in haste immediately after the incident. The time gap between the incident and cancellation of deputation order is proof enough of the incident between the two. Mr. Singh was in supervision and control of decision of this nature. The committee has misdirected itself in rejecting this evidence on the sole ground that it was oral evidence. The oral evidence is corroborated by documentary evidence of the haste with which Ms. Sunita's deputation was cancelled. Even assuming that Mr. Singh was not responsible for cancellation of deputation, the sexual harassment stands established as mentioned above. Moreover, the committee has failed to take into consideration the position of dominance that Mr. Singh admittedly occupied in relation to Ms. Sunita and her condition of employment.

31. The evidence of Ms. Sunita has been rejected only on the ground that there was a delay in the making of her complaint. Quite apart from the fact that delay in cases of sexual harassment is expected as women are reluctant to speak of

sexual abuse due to the fear of adverse consequence and the stigma associated with such complaints. In this case, she actually suffered the adverse consequences in the form of cancellation of her deputation. That apart the documentary record shows that Mr. Singh took an extraordinary interest in her immediate cancellation of deputation. This evidence has been rejected only on the ground that oral evidence of Mr. Pahuja, SSP Hoshiarpur was not sufficient to link Mr. Singh to the speed with which the order of deputation was cancelled. In my opinion, oral evidence is acceptable evidence in law, especially when corroborated by documentary evidence, and the committee has misdirected itself in rejecting this evidence. Moreover, the committee has failed to take into consideration the position of dominance that Mr. Singh admittedly occupied in relation to each of these women.

12.

The case of sexual harassment of Ms. Sunita against Mr. Singh is clearly made out on the evidence on record and the conclusion of the committee to the extent that a case of sexual harassment is not made out is perverse.

32. The case of sexual harassment against Mr. Singh is clearly made out against Ms. Sunita on the evidence on record that the conclusion of the committee to the extent that it case of sexual harassment is not made out is perverse. The findings of the inquiry committee are also perverse because the standard of proof required to establish Sexual Harassment is "balance of probabilities" and not "beyond doubt" as the committee seems to think. This being a civil case and not criminal case. The former test applies i.e. of balance of probabilities and not the latter. Judged by that standard, in the instant case Sexual Harassment alleged is established.

13.

Mr. Singh is also guilty of creating a hostile working environment by his repeated misconduct. It is also evidence from the Committee own finding that it is not in the interest of the establishment to have Mr. Singh working in the present office and hence the Committee recommends his transfer. This and other evidence on record also establishes that Mr. Singh has created a "hostile working environment" for women.

33. It is also evident from the Committees own finding that it is not in the interest of the establishment to have Mr. Singh working in the present office and hence the Committee recommends his transfer. This and other evidence on record also establishes that Mr. Singh has created a "hostile working environment" for women.

14.

On the facts established by the Inquiry Committee, I am entitled to differ with the findings if they are perverse or if irrelevant facts are taken into consideration. I have already pointed out that the findings were perverse. That

apart, the Inquiry Committee has not taken into consideration the relevant fact that the charged officer was in a position of authority over each of the three women who have complained against him and was in a position to influence and affect their terms and condition of appointment including transfer and deputation. He was exercising supervisory and disciplinary control over them

No equivalence

15.

Hence, for the reasons stated above, I differ from the opinion of the Inquiry Committee and have come to the conclusion that the findings of the Inquiry Committee are perverse in as much as the case of misconduct of having committed sexual harassment against Ms. Ranju Prasad and Ms. Sunita stand proved on the evidence on record. The Committee has failed to take note of the position of dominance of Mr. Singh over these women and the vulnerability of these women at workplace. The case of Ms. Ramandeep Kaur is not being considered, as she did not subject herself to cross-examination. The Committee has failed to note that the repeated complaint by women of sexual harassment have created a hostile working environment.

In view of the above, I come to the conclusion that the findings of the inquiry committee are perverse in as much as the case of misconduct of having committed sexual harassment against Ms. Ranju Prasad and Ms. Sunita stand proved on the evidence on record. The case of Ms. Ramandeep kaur is not being considered as she did not subject herself to crossexamination. And in view of the above, Disciplinary Authority is at liberty to differ with the Inquiry Committee report. Having regard to the law, a finding to that effect and tentative reasons for differing from the opinion of the Inquiry Committee may be recorded. Also, an opportunity should be given to the charge-sheeted employee to represent against the finding of the Disciplinary Authority. Also, Mr. Singh should be provided with the copy of the inquiry report, the tentative findings of the disciplinary authority disagreeing with the findings of the inquiry report at the earliest.

16.

In my opinion, there is no need to remit the matter for further inquiry and I am at liberty under rule 15 (2) of CCS (CCA) Rules 1965 to differ with the conclusion of the Inquiry Committee on conclusive facts.

No equivalence

17.

Since I have differed with the findings of the Inquiry Committee, I hereby grant a period of 30 days from the date of issuance of this decision to the delinquent to make a representation against the findings and my decision recorded herein. Mr. Singh should be provided with the copy of the inquiry report at the earliest

to enable him to make his representation against the findings.

A reading of the above judicial pronouncements indicates that it is within the prerogative of the Disciplinary Authority to differ from the report of inquiry officer. However, in doing so the Disciplinary Authority must record its reason for differing with the report of Inquiry Officer. Also, an opportunity should be provided to delinquent officer to represent before the Disciplinary Authority before it records its findings.

The above factual position as is revealed from the opinion of the ASG and that of the Disciplinary Authority in the disagreement note clearly established that the Disciplinary Authority has completely adopted the opinion of the ASG without application of its own mind and imposed the impugned penalty order. This is a clear case of violation of principles of natural justice as the report of the ASG was never furnished to the charged officer for his opinion.

23. From the perusal of the impugned order, it is evident that the Disciplinary Authority has not recorded reasons for imposing the penalty. The charged officer in his representation dealt with not only the allegations but all questions in-extenso. The Disciplinary Authority has recorded the following observations in the impugned order:-

"5. The President carefully considered the Inquiry Report dated 18.05.2011 submitted by the Complaints Committee and tentatively decided to disagree with the findings of the report. Thereafter, a copy of the Inquiry Report along with the disagreement note was forwarded to the charged officer vide Memo No.15-7/2009-SPG dated 30.04.2012 and subsequent memo dated 04.05.2012 to enable him to make written representation and submission against the Inquiry Report of the Committee and the tentative decision of the President disagreeing with the findings of the Inquiry Committee. Due process was adopted in the process as required under the rules. The charged officer was informed to submit a written reply on the findings of the Complaints Committee and tentative decision of the President within a period of 30 days irrespective of the fact whether the Report was favourable to him or not. The charged officer submitted his final representation dated 29.06.2012 on the inquiry report and the tentative view of the President.

6. After careful consideration of the Report of the Inquiry Committee, the representation dated 29.06.2012 of the charged officer thereon and all evidences on record, the President, the disciplinary authority has come to a conclusion that the charged officer could not convincingly and logically refute the charges and was not able to substantiate his arguments in his representation. It was tentatively decided by the President that the charges that stood proved were grave enough warranting imposition of a suitable penalty and the case was referred to the UPSC for its advice on the quantum of punishment or otherwise to be imposed on the charged officer.

From the above, it appears that the Disciplinary Authority has not recorded any

reasons, nor dealt with the representation with the contentions of charged officer raised in its two representations and imposed the penalty. The impugned penalty order is liable to be set aside on this count as well.

24. Under normal circumstances, for non compliance of the principles of natural justice and non-recording of reasons, we would have remitted the case back to the disciplinary authority. However, we are of the considered view that the present case is not such where the matter should be remitted back to the disciplinary authority for re-examination/re-consideration. The proceedings were initiated against the applicant in the year 2009 and have continued up to 2013 when the penalty order was passed. The applicant has already retired from service. It is more than eight years that the sword of disciplinary proceedings remained hanging over the head of the applicant. The applicant has suffered a lot. Otherwise also, the inquiry committee on two occasions exonerated the applicant, but the disciplinary authority did not agree with the opinion of the inquiry committee and imposed the penalty. We have already discussed the manner in which the disciplinary authority has dealt with the matter. This is a fit case where the matter must be given a quietus at this stage. Our opinion is fortified by the judgment of the Apex Court reported as *Narinder Mohan Arya v United India Insurance Co.* [2006 SCC (L&S) 840] wherein, under similar circumstances, the Hon'ble Supreme Court declined to remit the case to the disciplinary authority.

25. In the totality of factual and legal analysis, the impugned penalty order is liable to be set aside. This OA is accordingly allowed. The impugned penalty order is hereby set aside. The applicant has retired during the pendency of this OA on 30.09.2017. He shall be entitled to all consequential benefits.