
(2012) 12 DEL CK 0049
In the Delhi High Court
Case No : LPA No. 489 of 2004

Manisha Sharma		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 19(1)(g), 21
Protection of Human Rights Act, 1993 — Section 2(d)

Citation : (2013) 196 DLT 741

Hon'ble Judges : Rajiv Sahai Endlaw, J;D. Murugesan, J

Bench : Division Bench

Judgement

D. Murugesan, Chief Justice

1. This intra court appeal arises out of the order dated 08.01.2004 dismissing the writ petition filed by the appellant herein. The appellant was constrained to approach this Court by filing the writ petition seeking for a direction to the respondents therein to call for records and proceedings of the Fact Finding Inquiry Committee and the Standing Complaints Committee, quash the same and consequentially to direct the appropriate disciplinary authority to take appropriate disciplinary action against respondent No. 5, Mr. Raj Kumar, the then Executive Director (Industrial Relations), Railway Board, New Delhi for his act of moral turpitude and sexual harassment of the appellant and for a further direction against Mr. V.K. Aggarwal, Chairman, Railway Board, Mr. S.P. Mehta, General Manager, Northern Railway and Mr. S. Murali, Financial Advisor and Chief Accounts Officer, Northern Railway who have been arrayed as respondents No. 2 to 4 in this appeal. By the order under appeal, the learned Judge while dismissing the writ petition, directed the General Manager, Northern Railway to consider sympathetically the release of salary to the appellant after September, 2001 within a period of four weeks of her joining the place of posting at Delhi.

2. The facts leading to the filing of the writ petition and the present appeal are as follows:-

The appellant, while was serving as a Senior Divisional Accounts Officer w.e.f. June, 1997 at a Division Accounts and Finance Department of Northern Railway used to report to Mr. Raj Kumar, respondent No. 5 who was working then as a Divisional Railway Manger of Ferozpur Division. On 18.12.1997, the Chairman, Railway Board along with senior railway officers of Railway Board, Northern Railway Headquarters and Ferozpur Division along with General Manager of Northern Railway were on a visit to Beas for the inauguration of Beas-Goindwal Section. The aforesaid officials including respondent No. 5, Mr. Raj Kumar visited the residence of a religious head of Radha Soami sect at Beas and the appellant also accompanied the aforesaid officers. In the course of meeting, the appellant was asked to be seated next to respondent No. 5 on the sofa. While other officers were engrossed in discussions, respondent No. 5 made repeated physical gestures of pressing his thigh against the appellant and brushing his arms and body against the appellant. He tried to put his arm around the appellant and made physical and sexual gestures. The appellant was so taken aback and seeing somber atmosphere could not react immediately and just got up from the sofa during the Swamiji's discourse and discussions with the Chairman, Railway Board and in an extremely disturbed state of mind, made an abrupt exit. The appellant was shell shocked and did not know what she ought to do. She had to rush in tears to the bathroom in Swamiji's house so as to control and compose herself. While she came out and was standing outside the house of Swamiji, respondent No. 5 came up to the appellant and told that she should not have run out and stayed inside and enjoyed herself.

3. Without knowing as to how to deal with the situation, the appellant gathered all the courage and reported the matter to Respondent No. 4, Mr. S. Murali, Financial Advisor and Chief Accounts Officer, who was also present at that time. Mr. Murali assured the appellant that he would inform the General Manager immediately about the incident and would also arrange a meeting with the General Manager in Delhi to enable the appellant to tell the General Manager everything in person.

4. However, nothing happened about the assured meeting with the General manager upto 22.12.1997 on which date, there was a General Manager's Annual Inspection of Ludhiana-Ferozpur line of Ferozpur Division. At the time of such inspection Mr. Gurdip Singh, Financial Advisor and Chief Accounts Officer/B&E, had accompanied the General Manager in place of Mr. Murali and the appellant told Mr. Gurdip Singh that she desired to meet the General Manager to apprise him of the full facts of the incident that took place on 18.12.1997. She was informed by Mr. Gurdip Singh that Mr. Murali had already discussed the matter pertaining to the Beas incident to the General Manager and appropriate action was being taken. The appellant was also informed that a meeting with the General Manager at Delhi was being arranged and the appellant need not visit Delhi immediately.

5. On coming to know that no action was taken on the incident dated 18.12.1997

and fearing further sexual harassment at the hands of respondent No. 5 and feeling unsecured at her workplace, she was constrained to proceed on leave w.e.f. 23.12.1997. She was pursuing the matter with Mr. Murali for appropriate action against respondent No. 5 and having noticed that no action would be taken, she wrote a letter dated 07.01.1998 to Mr. Murali requesting him to take immediate action about the incident which took place on 18.12.1997 at Beas. After the said letter, she was denied permission to go on leave and was compelled to join back service which she did on 01.01.1998 on which date she was denied leave.

6. On 17.01.1998 the Divisional Railway Manager's Annual Inspection had been planned at Ferozpur division. The appellant was also constrained to go for the inspection along with the other members even while she was under a state of trauma on account of the incident of 18.12.1997 and the refusal of leave as well. While the appellant was travelling in a special train where respondent No. 5 also travelled, he once again acted in a debased manner and made provocative sexual statements when the appellant went to pick up her belongings from the carriage at Kotkapur station. In view of the above, she had to get down at Kotkapur station leaving her belongings including her file and purse in the carriage. At the time of inspection at Kotkapur station, all the officers were seated inside the carriage and the petitioner went back to the same carriage where her bag, purse and official files were lying. To her horror, she found that respondent No. 5 was sitting alone in the lounge of the carriage and when the appellant hastily tried to grab her belongings which was lying on a Table in the lounge and rushed towards the exit door, the respondent No. 5 immediately moved and tried to stop her by catching her arm and asked her to sit on the sofa next to him. With great effort, the appellant managed to extricate herself from the situation and escaped by jumping down from the carriage. As by the time, the train had started moving the appellant rushed towards the next carriage and with great difficulty boarded the same and in the process she even injured her ankle. On her return to Ferozpur, the appellant again spoke to Mr. Gurdip Singh and complained about the incident which took place in the train. She also requested Mr. Gurdip Singh for an urgent meeting with Mr. Murali, Financial Advisor and Chief Accounts Officer on the ground that he could not have subjected herself to further humiliation and sexual exploitation and continued threat to her dignity as a woman. She refused to go on inspections which was to be held on 23.01.1998 and 24.01.1998 and rather decided to go to Delhi to take up the matter with Financial Advisor and Chief Accounts Officer and General Manager.

7. On 23.01.1998, the appellant along with her husband met Mr. Murali, FA& CAO and the General Manager, Mr. S.P. Mehta. The husband of the appellant apprised the General Manager about the details regarding various incidents and how she was sexually harassed by the officer who was heading the Division in which the appellant was working. The General Manager was requested to safeguard the appellant's honour and dignity, create safe working environment for lady officers like the appellant.

8. Instead of taking corrective steps, the General Manager suggested that the appellant should be immediately transferred from Ferozpur. In fact, the General Manager was also informed that respondent No. 5 got emboldened when no action was taken against him for the alleged incident on 18.12.1997 and the second incident on 17.01.1998. On finding a completely unsympathetic approach of the General Manager, the appellant was left with no alternative but to proceed on leave as it was not possible for her to work in the division in an atmosphere where her dignity and honour was continuously under threat. To her utter shock, instead of taking any action against respondent No. 5, the appellant received a transfer order dated 17.01.1998 when she had just completed 8 months at Ferozpur. In compliance of the order, she joined at Delhi on 02.03.1998 after being on medical leave in the intervening period due to a sudden and severe attack of measles.

9. As no action was taken, the appellant wrote a letter dated 19.03.1998 not only re-agitating the complete insensitivity of the administration towards the aforesaid two incidents of sexual harassment by respondent No. 5 but also set out in detail the background in which the incidents had taken place and in spite of the above no action was taken. Hence the appellant was compelled to approach the National Commission for Woman vide her complaint which was received by the Commission on 01.04.1998.

10. Only thereafter she received a communication dated 02.04.1998 signed by Sh. R.K. Sarkar, CAO (Construction), respondent No. 6 in his capacity as Chairman of the Fact Finding Inquiry Committee. By the said communication, the appellant was informed that the General Manager has constituted a Fact Finding Inquiry Committee to go into the complaint submitted by the appellant with regard to her sexual harassment by respondent No. 5. She was asked to present her case before the Inquiry Committee on 03.04.1998, i.e., on the next day. According to the appellant, the said communication dated 02.04.1998 was served on her only at 6:00 p.m. on that date, requiring herself to appear before the Inquiry Committee on 03.04.2008. The appellant appeared before the Inquiry Committee along with her father and husband on 03.04.1998. The Committee, comprised of respondent No. 6, Mr. I.P.S. Anand, SDGM and Dr. (Mrs.) Meena Murthy, Chief Health Director objected to the presence of her father and husband and they were asked to leave the room. The Committee also informed that if they did not leave the room, the Inquiry would not proceed.

11. Instead of proceeding to inquire into the complaint, the members of the Committee started cross-examining the appellant by raising frivolous issues trying to browbeat with issues which were in no way connected with the complaints. No proceedings were recorded by the Committee in the presence of the appellant nor she was shown copy of the proceedings nor her signatures were taken. All the deliberations of the Committee were oral and the appellant made her submissions and took out her complaint orally. Thereafter, the appellant was informed that the next date of hearing would be intimated to her

later. The Inquiry was held on 21.04.1998 and the petitioner was threatened that the Committee will not proceed with the inquiry unless she withdrew her letter dated 20.04.1998 wherein she had expressed her displeasure over the word "desired" by the appellant, in the letter dated 16.04.1998 intimating the next date of inquiry. The said letter was, in fact, returned to the appellant and thereafter, the inquiry was commenced. There was denial of an opportunity to the appellant to place her case before the Inquiry Committee. The inquiry was then held on 27.04.1998 but none of the inquiry proceedings were given to the appellant nor she was made to sign on any of the proceedings. The documents filed by the appellant were taken on record and the appellant was not given any opportunity to lead evidence in support of her case. The Committee sat in a pre-determined and the inquiry was a mere sham and an eye wash. No further inquiries were held and the inquiry was closed without any conclusion.

12. Apart from the above, the appellant brought to the notice of Committee that the inquiry committee itself was illegal and contrary to the judgment of the Supreme Court in Vishaka and others Vs. State of Rajasthan and Others, .

13. Under the above circumstances, the appellant was constrained to make a complaint dated 31.03.1998 to the National Commission for Woman. Vide letter dated 03.07.1998, the Secretary of the National Commission of Women addressed a communication to the Chairman, Railway Board stating inter alia that the purported Committee set up by the Board was not in accordance with the directives given by the Supreme Court in the case of Vishaka Vs. State of Rajasthan & Ors (supra) and the Committee ought to have been headed by a woman and not less than half of the members should be woman. Only thereafter, the appellant came to know on 20.08.1998 that yet another Committee had been constituted to look into her complaint when she received a telephonic call from Mr. Sudhir Mathur, FA&CAO (WST), Northern Railway and Mrs. Deepali Khann, EDF (Budget), Railway Board calling upon the petitioner to visit Delhi on 24.08.1998. The appellant took objection to the constitution of the Committee as it was constituted without even intimating her when already a committee was constituted for the said purpose. The appellant had through subsequent communication objected to the constitution of the Committee and the inadequate notice given to her to appear before the said Committee.

14. Vide his letter dated 27.08.1998, Mr. Sudhir Mathur, Convenor, Standing Complaints Committee seeking information from the respondents as to under which authority, the Committee had been constituted and who shall chair the Committee, the said request was made as in terms of Vishaka judgment, the Committee should be headed by a woman whereas the Committee was headed by a male member, namely, Mr. Sudhir Mathur. In spite of her objection, the Committee went on to proceed with the hearings and ultimately submitted its findings. The Committee ultimately concluded that "Having regard to the depositions of the other officers, particularly, lady officers the Committee has come to the conclusion that the allegations of sexual harassment against Sh. Raj

Kumar are not established." In this circumstances, the appellant approached this Court on the following grounds:-

- i. The Constitution of the Committee is not in accordance with the judgment of the Supreme Court in Vishaka Vs. State of Rajasthan & Ors (Supra)
- ii. The proceedings of the fact finding inquiry were not held in accordance with law and were held in contravention of law if the land as held by the Supreme Court in Vishaka Judgment as the members of the Committee had cross-examined the appellant regarding her submissions.
- iii. The proceedings of the Committee was oral and no proceedings were ever recorded by the Committee in the presence of the appellant nor she was shown the copy of the proceedings nor her signatures were taken.
- iv. The appellant was not permitted to lead evidence.
- v. The second inquiry should have been conducted de novo and ought not to have taken into consideration the oral record or proceedings of the earlier committee which was not constituted in accordance with the judgment of the Supreme Court in Vishaka Vs. State of Rajasthan & Ors (Supra).

15. Having considered the above, the learned Single Judge did not accept any of the grievance and ultimately dismissed the petition giving a cause for the present appeal.

16. We have heard at length Ms. Manisha Sharma, appellant-in-person. Both the complaints relating to the alleged incidence dated 18.12.1997 and 17.1.1998 are serious in nature and if accepted and proved warrant severe and a drastic action against those concerned with them. Sexual harassment cannot be construed to be in narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on. Sexual harassment of a woman in workplace is of serious concern to humanity on the whole. Having noticed the absence of domestic law occupying field and taking note of the contents of the international conventions and norms for the purpose of interpretation of guarantee of gender equality, right to work with human dignity enshrined in Articles 14, 15, 19(1)(g) and 21 of the Constitution of India, the Apex Court in Vishaka and others Vs. State of Rajasthan and Others, laid down certain guidelines and norms for due observation at all workplace or other institutions and until a legislation is enacted for the purpose. The guidelines on norms prescribed in the said judgment are as under:

16... Having regard to the definition of "human rights" in S. 2(d) of the Protection of Human Rights Act, 1993, Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient form employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

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

- a) Physical contact and advances;
- b) a demand or request for sexual favours; 9
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victims 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 her 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.

3. Preventive Step:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings :

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

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 employers 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, 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 ensure 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 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.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

17. Guideline No. 1 relates to "Duty of the Employer or other responsible persons in work places and other institutions"; Guideline No. 3 relates to the "Duties of the employers or persons in charge of the work to take preventive steps following the initiation of criminal proceedings under Clause (4) where the conduct of a male officer amounts a specific offence under Indian Penal Code or any other law, including disciplinary action initiated against such officer under Clause (5) and the complaint mechanism under Clause (6) and constitution of Complaints Committee under Clause (7). Grievance of the appellant is basically relating to the constitution of the Committee on the ground that it was not in conformity with above guidelines in Vishaka (supra) and she was not given fair hearing. We are inclined to discuss those grievances in detail hereunder:

Constitution of Committee:

18. The Supreme Court in Vishaka (supra) directed that the employer or other responsible persons in the workplace as well as other institutions should form a complaint committee consisting of a woman to head the committee and not less than half of its members are women. The committee also should involve a third party either an NGO or other body, which is familiar with sexual harassment as such involvement would prevent the possibility of any undue pressure or influence from senior level. It appears that the said complaint committee is permanent in nature not only to receive complaint from affected women at work place, but also to make annual report to the Government Department of the complaints and action taken by them. The employer and person in charge shall

also report on the compliance of the guidelines including on the reports of the complaints committee to the Government Department.

19. Pursuant to the complaint of the appellant, a Committee consisting of three Members was constituted to inquire into the complaints, though belatedly, by orders of the General Manager/Northern Railway on 01.4.1998. The said fact finding inquiry committee consisted of Shri R.K. Sarkar, CAO/Const. as Chairperson, Shri I.P.S. Anand, SDGM and Dr. (Mrs.) Meena Murty, Chief Health Director as Members. The committee held its first meeting on 02.4.1998 on which date it decided the modalities for conducting the inquiry. The appellant had objected to the constitution of the said Committee on the ground that it was not constituted in conformity with the guidelines of the Supreme Court in Vishaka (supra). She also participated in the inquiry and made her statements. In spite of the objection raised by the appellant as to the constitution of the Committee, it proceeded to examine certain officers including Mr. Rajkumar against whom the complaints were made. On conclusion, the Committee found as follows:

11 Conclusion:

i. The Committee's endeavor was animated by a sincere desire to fully investigate allegations to seek the truth of the matter, to secure expeditious redressal of grievances and also to suggest a few measures to reform the system on the I.R. Smt. Sharma has been accorded every possible opportunity to tender further evidence and list of witnesses for substantiating her allegations which are of a serious nature. Particularly, the Committee would also like to place on record special efforts made by the lady member of the Committee to communicate in private and or on phone, to elicit full facts of the allegations.

ii. Based on written evidence placed on record as well as interaction with a number of officers and subsequent detailed deliberations amongst the Members of the Committee held in the CAO's office on 18th, 20th & 21st July, 1998, it emerges that the allegations made by Smt. Sharma could not be substantiated in any established manner. Although the DRM's alleged conduct could, at worst, be characterized as abrasive and non-cooperative, however, even the most uncharitable reading of records placed on evidence as well as evaluation of detailed interaction with several officials fails to reveal any basis whatsoever for a claim of sexual assault, misconduct or harassment, either overtly or covertly, in this case.

iii. The Committee also deliberated at great length to fathom the reasons behind Smt. Sharma's complaint, of various allegations of serious nature, particularly against her head of the Division, viz., DRM/FZR. The background and track record of Sh. Raj Kumar elicited no trace of any immoral or sexually based behavioral pattern. This was also viewed in the light of our interaction with two single lady officer, who worked on important positions, including that of Sr. DAO/FZR. Both have clarified that the overall work atmosphere was conducive to work and was free from any vitiated environs harboring on sexual harassment etc.

They have also categorically and clearly indicated that the DRM in no way created any difficulties or discriminated against them particularly as the lady officers.

iv. In face of the above position, we are not able to understand cogently as to why within a short period of time, where she had reportedly sought posting, Smt. Sharma felt threatened and unduly undermined in authority which ultimately resulted in virulent and voluminous allegations, which in retrospect, appear to be like a campaign of calumny with a pre-determined bid to vitally harm the career and character of a senior official and material placed on record, the Committee is of the view that the serious allegations could perhaps be outcome of a mixed set of feelings and factors:-

- Probably of a woman officer having some problems which could not get fully ventilated or attended to by administration;

- A lone crusader against seemingly corrupt practices all around and deep-rooted beliefs thereof;

- Reportedly difficult track record of interpersonal relationship with staff, fellow officers and seniors;

- Tendencies of easy mistrust in interaction with other colleagues;

- Non satisfactory functioning of the Accounts branch and fact that the division was subsequently adjudged as No. 7 out of 8 divisions for evaluation of Efficiency Shield (1997-98);

- Apprehension of poor grading by the DRM and her wish to extricate herself immediately from the Division, including, by leveling serious allegations.

v. The above are merely illustrative conjectures and the Committee had not had the benefit of Smt. Sharma revealing her true and innermost feelings. While we express our sincere concern for her well-being and sound career prospects in coming period, however, based on evidence and our other endeavours, we could not find the allegations duly substantiated.

12. Finding:

Having regard to depositions and written evidence on record, the Committee finds that the allegations made by Smt. Manish Sharma are not substantiated.

20. We must hasten to add that we are not inclined to look into either the statements made before the said Committee or the conclusions arrived at by it for the simple reason that the constitution of the Committee was not in accordance with the guidelines framed by the Apex Court in Vishaka (supra). The Chairperson of the Committee was not a woman, as it was headed by Mr. R.K. Sarkar/CAO/C. Though out of the remaining Members, one member was a woman. Secondly, the committee did not have any third party, be it either from NGO or other body, who was familiar with the abuse of the sexual harassment.

To this extent the contention of the appellant as to the constitution of the said Committee merits acceptance. Accordingly, we hold that the first Fact Finding Committee was not in accordance with the guidelines by the Supreme Court made in Vishakha (supra) and for that reason, the entire proceedings including the conclusion and the recommendations are vitiated.

21. When the appellant made a complaint regarding the constitution of the said Committee to the National Commission for Women, in response to the said complaint, it appears that vide letter dated 03.7.1999, the Member Secretary of the said Commission addressed communication to the Chairman, Railway Board stating inter alia that the purported Committee set up by the Railways was not in accordance with the directives given by the Apex Court in Vishaka (supra) and the Committee should be headed by a woman and not less than half of its members should also be women. Thereafter, second committee consisting of the following members was constituted vide orders of General Manager/Railway Board on 5.8.1998:

22. The said Committee was modified and re-constituted by a subsequent order of General Manager/Northern Railway on 20.8.1998 and final composition of the Committee was as follows:

23. The above committee with the final composition shows that it was headed by a woman, viz., Smt. Padmakshi Raheja. Out of the remaining four Members, two Members, viz., Dr. Manorama Bawa and Smt. Deepali Khanna were women leaving the other as male Members. Apart from the Chairperson being a woman, the remaining Members were 50% of the composition of women. The above composition of the Committee was in accordance with the Vishaka (supra). It may also be noticed that the above Committee was constituted only on the grievance of the appellant that the composition of the first Committee was not in accordance with Vishaka (supra) and to the extent that the appellant also made a complaint to National Commission for Woman and to her complaint the said commission wrote a letter to the General Manager/Northern Railway to constitute a committee in accordance with the guidelines of the Supreme Court in Vishaka (supra). After the constitution of the above Committee, the appellant raised the objection for the constitution of a new committee also on the ground that she was not put on notice before such constitution. We may point out that the guideline in Vishaka (supra) case nowhere contemplates a prior notice to the complainant as the constitution of the committee. All that the guidelines require is that the employer should constitute a permanent standing committee to look into the complaints made by women in the workplace.

24. In view of the above, the appellant cannot be heard to say that the constitution of the Committee was without due notice to her. Accordingly, the said contention of the appellant is liable to be rejected. Moreover, the thrust of challenge to the composition of the committee is that it is not in accordance with the Vishaka (supra) which we find unacceptable inasmuch as the composition of the committee is in accordance with the guideline of the Supreme Court in

Vishaka (supra). Hence, the challenge to the constitution of the second committee is liable to be rejected. Accordingly, the same is rejected.

De Novo Inquiry:

25. The next contention of the appellant is that the second committee should have conducted a de novo inquiry and should not have taken recommendations of the earlier committee. The further contention is that there was no proper inquiry as required. In our opinion, these contentions are also liable to be rejected. We have gone through the proceedings of the Standing Complaints Committee which culminated into the conclusion dated 15.1.1999, which reads as under:

7.1 The Committee afforded full opportunity to both Smt. Manisha Sharma and Sh. Raj Kumar to present their cases. After meeting them and other officials a consensus view point has emerged. The vast experience and knowledge of Dr. Manorama Bawa in dealing with such cases proved not only the needed objectivity but also immensely contributed in expeditiously finalizing the case. The conclusions and recommendations are as follows:

(a) The charges of the sexual harassment made by Smt. Manisha Sharma are indeed grave and serious, particularly centering around the incidents at Beas in the carriage at Kotkapura and construction of toilet facilities. The Committee tried to re-construct the sequence of events and took note of the circumstantial evidence available. Having regard to the depositions of other officers particularly lady officers (contemporaries of Mrs. Manish Sharma) the Committee has come to the conclusion that the allegations of sexual harassment against Sh. Raj Kumar are not established. Also, even the track record of Sh. Raj Kumar, he does not appear to have any proclivity, whatsoever, towards sexual harassment and misconduct with women.

(b) However, evidence available, written or oral indicates that the chain of events that led to this case being referred to the Committee could have been avoided through a more mature handling of a delicate situation by the DRM Shr. Raj Kumar. As soon Sh. Raj Kumar came to know about the charge, even though orally, he could have cleared the air by a process of reconciliation and dialogue rather than allowing things to drift along and mutual acrimony to compound.

(c) The issue relating to Smt. Sharma's transfer out of Firozpur to Delhi does not strictly fall within the terms of reference of this Committee. In any case, based on Sh. Murali's deposition and evidence given by others, the Committee is of the view that Smt. Sharma's transfer out of FZR was at her request. There is no evidence of deliberate victimization of Mrs. Sharma by transferring her to Delhi-a place where a large number of officers of her seniority are waiting to be posted and vacancies are hard to come by.

(d) Having regard to the sensitivity of the situation and considering the immense emotional and physical trauma experienced by both the parties, more particularly

Smt. Manish Sharma, the Committee feels that a rapprochement may be attempted between them at a sufficiently senior level in other than the misunderstandings and misapprehensions between the two of them are sorted out. It should be endeavoured that both parties put the entire episode behind them and get back to their respective official routines with a clean slate.

(e) The Committee wishes to place on record its sympathies for the deep emotional stress experienced by Mrs. Manisha Sharma in pursuing this case. In the process, she and her family have suffered hardship and inconvenience. The Committee recommends that the Administration should consider posting her to a place from where she can re-start her official career with dignity and respect which she, as also other women members of the society, so richly deserve.

(f) With the spread of education and literacy during the past several years women have dislodged male supremacy. There is hardly any sphere of economic, social or political activity which is purely male-dominated, thanks to the awareness and opportunities which today's socio-economic milieu affords. In harmony with this favourable trend a gradual replacement of the tradition bound society with a more liberal dispensation where men and women are seen working together, virtually hand in hand, has taken place. Yet, in this context, often men and women continue to be insensitive to these changes. In this environment it becomes necessary that there is gender-sensitivity in the work culture. The Department should consider organizing gender-sensitive training capsules for both middle and senior level personnel.

26. For our purpose, whether the second committee had conducted a de novo inquiry or it was persuaded with the conclusions arrived at by the earlier committee, the proceedings of the committee require scrutiny. The Committee had its first sitting worked out its strategy and modus operandi in paragraph 2.3 of the report. In paragraph 3, the Committee referred the complaint of the appellant dated 19.3.1998 with regard to the alleged incidents apart from some other complaints relating to the transfer and other administrative lapses. In para 4, the committee referred a brief account of the committee's telephonic and personal contact with the appellant. In para 5, the Committee referred the action taken by General Manager/Northern Railway on various issues raised by the appellant. In para 5.2, the deposition of Mr. Raj Kumar against whom the complaint was referred. The committee met Mr. Raj Kumar on 10.11.1998 and he had also submitted his letter dated 17.11.1998 giving a written deposition as well. The Committee had also examined Ms. Seema Dhir, Dy. COM, Ms. Aradhana Chak, Sr. DAO/LKO, Sh. S. Murali, FA & Cao, Sh. K.K. Sharma, ADRM/FZR, Sh. R.K. Kapoor, PA/DRM/FZR and Sh. Sultan Singh, Dak Khallasi/FZR. We have referred the above only for the purpose to find out as to whether the Committee had merely concluded and recommended following the earlier recommendation of the Committee or not or was there independent inquiry. The proceedings of the Committee show that the Committee had independently conducted inquiry by recording the depositions of the above officers including the complainant, viz.,

the appellant and had come to its own conclusion and thereafter had made its recommendations. Hence, it can be said that de novo inquiry was conducted irrespective of statements, conclusion and recommendations of the first committee. In fact, we may point out that the second committee had also inquired one Ms. Aradhana Chak, Ms. Seema Dhir, Mr. K.K. Sharma, Mr. R.K. Kapoor and Mr. Sultan Singh. The above individuals were not examined by the previous committee. Hence, it could be safely said that the subsequent Committee had independently considered the complaint of the appellant and had given its conclusion.

27. For the above reason, the grievance of the appellant that the second Committee had persuaded by the recommendations of the earlier committee without conducting a de novo inquiry merits no acceptance. Accordingly, the same is rejected.

Scope of Inquiry:

28. Further grievance of the appellant is that the inquiry was not conducted in a fair manner as she was not given an opportunity to put forth a grievance by pleading evidence and she was not given a copy of the proceedings. She was not allowed to sign the deposition and particularly she was not allowed to cross examine the witnesses. Before going into the above submissions, we must consider the scope of the Committee to go into complaint. It is true that the committee is mandated to look into the grievance and in case it finds the complaint as having been made out, it should submit a report to the Government as well as to the employer. On receipt of the said report and in the event the report suggested the complaint was made out, the employer should lodge a complaint to the police disclosing the offences under IPC or any other law in force. Apart from the above, the employer is duty bound to initiate disciplinary action against the officer involved in sexual harassment, as it involves human dignity of women enshrined under Articles 14, 15 and 21 of the Constitution and the inquiry must be fair and reasonable.

29. The question is as to whether such an inquiry would amount to an adjudication of a dispute or only a fact finding procedure. The object of the constitution of the Standing Complaints Committee was two-fold:

- (i) to prevent sexual harassment against women at work place; and
- (ii) to take action both by lodging a complaint and initiating disciplinary proceedings in the event a complaint relating to sexual harassment is made out.

30. In so far as the first committee is concerned, the appellant had made a grievance that she was not afforded an opportunity to lead evidence. None of the statements were recorded and the statements were only oral and not in writing and her signature was not obtained and further she was not supplied even a copy of the proceedings. These contentions require no consideration, as the constitution of the first committee was itself bad and for that reason either the

finding or the recommendation can be taken into consideration. Hence, we refrain from the first question insofar as first inquiry is concerned.

31. As far as the second inquiry is concerned, as has been stated, statements were recorded from various officers. We are conscious of the fact that the judicial review is not available to find out whether those statements were true or untrue, as power of judicial review can be exercised only with regard to whether the constitution of the committee was in accordance with the guidelines in Vishaka (supra), the inquiry was conducted within the principles of natural justice and, of course, in the event the findings of the committee are perverse. The grievance of the appellant, as far as second inquiry is concerned, that Mr. Raj Kumar was not examined by the Committee in person and his deposition in writing containing 46 pages was relied upon and that too without furnishing a copy to her. Proceedings of the second committee relating to the deposition of Mr. Raj Kumar have been referred to in Paras 5.2, 5.3, 5.4, 5.5, 5.6 and 5.7. The relevant portion of the said deposition reads as under:

5.2 Sh. Raj Kumar's deposition with the Committee

The Committee met Sh. Raj Kumar on 10.11.98 and later Sh. Raj Kumar vide his letter 17.11.98 (Annexure 11) gave a written deposition also to the Committee. Sh. Raj Kumar's deposition is summarized below:

(a) Smt. Manisha Sharma was posted to FZR division having been shifted from previous postings due to alleged problems in her behaviour.

(b) He has worked with lady offices in other places and by nature and character the was such a person that the then FA&CAO, Mrs. Indu Chopra felt that Sh. Raj Kumar, who is capable of managing difficult type of people, would be able to manage with Mrs. Manish Sharma as well.

(c) There was constant animosity both personal and official between Mrs. Manisha Sharma and DSC/C which came to light through several incidents such as construction of boundary wall, inspection of IOW/FZR office by Mrs. Manish Sharma, TC meetings etc. quoted by Sh. Raj Kumar in his deposition.

(d) There were a lot of arrears in the work of Mrs. Sharma and abnormal delays in finalization of Estimates and Tenders which were adversely affecting the work of Division.

(e) Sh. Raj Kumar had been bringing these matters to the notice of FA&CAO from time to time.

5.3 The detailed comments of Sh. Raj Kumar on specific instances quoted by Mrs. Sharma in her complaint are discussed in the subsequent paragraphs:

(a) The Beas incident on 18.12.97

Sh. Raj Kumar has inter alia contended that in the company of Babaji only high ranking senior officials from the Board and HQs. could be accommodated on

sofas and chairs. Smt. Sharma was noticed by one of the Hd. Qrs. Officers peeping from the doorway and he beckoned her to come inside. The only sitting space happened to be on sofa, where GM/NR and DMR were sitting, which was diagonally opposite the high chair of Babaji. Smt. Sharma in and sat on the sofa which was at very close proximity to that of PHODs. Discussions in the room related to improvement in the environment of our country to international standards. It would appear highly improbable on the part of the DRM, in charge of the Division to Marshall courage for any indecent or improper behaviors, leave aside serious misdemeanor and misconduct as has been construed by the senior lady officer. In fact, in the direct presence of a religious dignitary such misbehavior would have attracted immediate attention of senior government officials present there. More importantly, Sh. Raj Kumar stressed that Mrs. Sharma voluntarily came and sat by his side on the sofa where a number of people were already sitting. He also added that presumably because of lack of space he may have already sitting. He also added that presumably because of lack of space he may have touched Mrs. Sharma's body inadvertently and put his arms behind on the sofa.

Sh. Raj Kumar has further stated that it is ridiculous to even think of a DRM doing the alleged act in public when his bosses, CRB & GM were present as also a number of distinguished guests and public that too in such a holy place like Hazur Maharaj's house in his presence. It is clear that even if a fraction of which has been alleged took place in such surroundings, the commotion the same would have caused could be imagined.

32. A reading of the above would undoubtedly show that Mr. Raj Kumar met the Committee on 10.11.1998. There is nothing to indicate that on the said, his statement was recorded by the Committee. Equally, there is nothing to indicate as to the complainant was present on that date. In the absence of statement recorded by the Committee, the necessary conclusion would be that there was no opportunity for the appellant to rebut any of his statement. Further, it is seen from the above report that Mr. Raj Kumar had vide letter dated 17.11.1998, that is after seven days from 10.11.1998, submitted a written deposition to the Committee. The said deposition had been summarized by the Committee as extracted above. Except summing up the deposition of Mr. Raj Kumar, there is nothing to indicate as to whether the copy of the said deposition was furnished to the appellant to rebut the same. It is not the case of the Committee as well that the deposition of Mr. Raj Kumar containing 46 pages (annexure 1 to 15) to the report of the finding was furnished to the appellant. A reference to the deposition made in writing without there being any opportunity to the complainant, viz., the appellant is of no use as such statements/deposition cannot be the basis to arrive at any conclusion to make any recommendation. It is true that it is a fact finding inquiry. Nevertheless, it has been held by the Supreme Court that human right is inbuilt with the principles of natural justice. This principle should be more vigorously applied in a case of complaint relating to sexual harassment at work place. The findings and the consequential recommendation of the fact finding

recommendation would be the basis for employer either to take action under penal laws against the officer against whom the complaint was made and as to whether a disciplinary proceeding should also be initiated against him or not. Hence, the inquiry, the findings and the recommendations assume more importance and the inquiry cannot be an empty formality particularly when it deals a complaint of sexual harassment at the work place. In his deposition, Mr. Raj Kumar has simply denied the allegations.

33. The Fact Finding Inquiry Committee or the Standing Complaints Committee, as the case may be, required to consider the complaint to find out as to whether the complaint is genuine or not and if so, for what reasons. Though the Fact Finding Inquiry Committee cannot be equated to be one of a quasi judicial authority to adjudicate on the complaint, the minimum requirement for the Committee is to find out the genuineness of the complaint. As already noted, the complaint made by the appellant was held not to be established only in view of the deposition of Mr. Raj Kumar. The said deposition has not been made before the Committee and for that reason, the Appellant was not given any opportunity to rebut the same. Equally, the deposition running into 46 pages was not furnished to the Appellant. The deposition had been relied upon by the Fact Finding Inquiry Committee behind the back of the Appellant and she did not have an opportunity to rebut the deposition of Mr. Raj Kumar. Under these circumstances, placing reliance on the said deposition to conclude that the allegations made in the complaint were not established, cannot be accepted.

34. Some of the deponents before the Fact Finding Inquiry Committee had spoken good of Mr. Raj Kumar as an officer. In our considered opinion, merely because some of the office staff had spoken good of Mr. Raj Kumar against whom a complaint has been made by the Appellant, no presumption or inference can be drawn that he might not have indulged in an act of sexual harassment of the complainant. As indicated earlier, the allegations in the complaint must be tested, considered and a conclusion must be arrived on the basis of the materials relating to the complaint. That apart, the Committee has not given any reason to brush aside the allegations in the complaint except the deposition of Mr. Raj Kumar. For all these reasons, the Committee which ought to have followed the minimum requirement of principles of natural justice did not do so rendering its conclusion and recommendations unsustainable in the eye of law. Accordingly, we hold that the inquiry conducted by the second Standing Complaints Committee and its consequential recommendations dated 15th January, 1999 are unsustainable and are liable to be set aside. Accordingly, we set aside the inquiry report dated 15th January, 1999 made by the Standing Complaints Committee.

35. This takes us to the next prayer of the Appellant to take action against the officers for their inaction in taking action on the complaint made by her. In so far as such a relief against Mr. S. Murali, FA & CAO/Northern Railway is concerned, we notice that after the incident on 18th December, 1997, the Appellant informed Mr. Murali with a request to make arrangements for a meeting with the General

Manager. It is his deposition made on 11th December, 1998, Mr. Murali deposed that the issue had been addressed to the General Manager, Northern Railway and likewise a further grievance is made by the Appellant that inspite of Appellant's request to Mr. Gurdeep Singh to take action against Mr. Raj Kumar, he had not taken any action. We may notice that in the absence of the said Gurdeep Singh being examined by the Committee, we cannot accept the case of the Appellant and draw any adverse inference against Mr. Gurdeep Singh. The Appellant has also made a grievance against the General Manager, Northern Railway in not taking action on the complaint made by the Appellant. It is borne out from records that after the incident on 18th December, 1997, a written complaint was made only on 7th January, 1998 and the first committee was constituted by the General Manager, Northern Railway on 1st April, 1998. When it was brought to his notice that the composition of the committee was not in accordance with the Vishaka (supra) case, he constituted another committee on 5th August, 1998 which committee submitted its report dated 15th January, 1999 which we have set aside. Hence, we are of the considered view that except the fact there has been some delay in the nomination of the committee, the grievance of the Appellant that the General Manager, Northern Railway has not taken any action, cannot be accepted. Accordingly, the prayer relating to a direction to take action against the above officers is rejected.

36. The next question which arises is as to the relief to be granted to the Appellant. Though we have set aside the inquiry report dated 15th January, 1999 for the procedural defects in the inquiry, but the same cannot still lead to the conclusion of the guilt of the respondent No. 5 Mr. Raj Kumar. We have wondered, whether a fresh fact finding inquiry be directed. It has however come on record that respondent No. 5 Mr. Raj Kumar retired in October, 2003, i.e., even prior to the judgment under appeal and nearly nine years ago. Further, a large number of other persons may also have in the interregnum retired/left the services. We are therefore of the opinion that no purpose will be served in directing a fresh fact finding inquiry. Not only so, even if a fresh fact finding were to be ordered and even if the respondent No. 5 were to be found guilty, the question of any disciplinary proceeding against him does not arise. That apart, in our considered opinion, it would not be justified to remit the matter to the Fact Finding Enquiry Committee once again to consider the complaint of the Appellant as the Appellant would be again forced to a long drawn litigation which may not be in her interest. Nevertheless having noticed that in spite of the complaint, the respondent constituted a Committee which was not in accordance with the judgment of the Apex Court in Vishakha case (supra), which forced the Appellant to approach the National Commission for Women. Only on her effort, a second committee was constituted, of course, in terms of the guidelines of Vishakha case (supra), but that Committee also did not follow the procedure which was expected from it. The Appellant for this reason has been put to suffering and long drawn litigation for which she is entitled to compensation. To this extent, the Appellant must be compensated.

37. We have considered granting compensation to the Appellant, for which also a relief is claimed in the appeal. However, compensation cannot be awarded to the Appellant till any merit is found in the complaint of the Appellant and the possibility of finding which merit now does not exist owing to the reasons aforesaid. It is unfortunate that the challenge by the Appellant to the inquiry report has taken so long. Corrective measures on the administrative side in this regard have been initiated, so that proceedings entailing such challenges are given a preference and the situations do not become a fate accompli.

38. That the Appellant during the course of making submissions in person had repeatedly expressed anguish at, inspite of being brave enough to take up cudgels in this regard, at the cost of bringing herself into the limelight and making herself a subject of comments and ridicule by all concerned, she at the end has been falsified. If indeed there was merit/any truth in the complaint of the Appellant and which owing to sheer lapse of time cannot now be determined, there is considerable weightage in the said submission of the Appellant. A woman complaining of sexual harassment does indeed invite undue and unfavourable attention to herself and is singled out and left friendless and which can be a harrowing experience. The plight of a woman who nevertheless undergoes such traumatic experience at work place and whose complaint remains unaddressed can well be appreciated. All that we thus deem fit to do by this judgment is to declare that the complaint of the Appellant of sexual harassment has remained to be properly looked into and thus it cannot be said that the complaint of the Appellant was false.

39. The learned Single Judge in the impugned judgment has also noticed that the Appellant remained on leave without pay for two years till September, 2001 and thereafter had also not been paid any salary for the reason of not joining at Delhi where the respondent No. 5 was also then posted. The learned Single Judge in these circumstances had directed the General Manager, Northern Railways to sympathetically consider the release of salary to the Appellant after September, 2001. The Appellant informs us that in pursuance thereto, salary of a lower grade has been released to her. The Appellant in this appeal has also sought directions for grant of increments withheld on account of being on extra ordinary leave for reasons attributable to the respondents, to count the period of her leave for the purposes of qualifying service for promotion and retiral benefits etc.

40. We, in the totality of these circumstances, find the Appellant entitled to at least the following relief. We accordingly dispose of this appeal with a direction to the respondents to count the period of leave since January, 1998 of the Appellant, for the purposes of qualifying service for promotion and retirement benefits as well as to pay to the Appellant the salary for the time she proceeded on leave. The said directions be complied within a period of six weeks from today. The Appellant is entitled to compensation in a sum of Rs. 5 Lakhs which shall be paid by the respondent Railways. We also award to the Appellant costs of Rs. 50,000/- of the legal proceedings, also payable by the respondent Railways

within six weeks from today.