
(2008) 05 DEL CK 0252

In the Delhi High Court

Case No : WP (C) No. 8649 of 2007

Saurabh Kumar Mallick

APPELLANT

Vs

The Comptroller and Auditor General of India and Another

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 20
Penal Code, 1860 (IPC) — Section 354, 451, 452

Citation : (2008) 151 DLT 261

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.K. Handoo and Manish Shukla, for the Appellant; Rajiv Shakhthar and Sunil Kr. Rai, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner herein, who is an employee of Indian Audit and Accounts Service (IA&AS) and is holding the position of Director, is facing the charge of sexual harassment at workplace. Disciplinary proceedings on this charge are instituted against the petitioner on the basis of complaint dated 12.4.2007 by one of his senior officers, namely, Ms. Geetali Tare. A committee constituted by the disciplinary authority with one Ms. Pravin Tripathy (IA&AS) had been constituted to look into the allegations and the inquiry by the said committee is underway. We may mention at this stage that an FIR No. 75/2007 dated 31.3.2007 is also registered against the petitioner u/s 451/354 of the IPC. The petitioner was also placed under suspension with immediate effect vide orders dated 3.5.2007. The petitioner is not satisfied with the manner in which the Inquiry Committee is holding the inquiry and Therefore, he filed OA before the Central Administrative Tribunal, Principal Bench, New Delhi (in short the "Tribunal") on 26.7.2007 seeking quashing of the suspension order dated 3.5.2007 as well as order dated 14.7.2007 vide which the complaint made by the

complainant is deemed to be the chargesheet as per the letter of the Chairperson of the Inquiry Committee. It was also his submission that no such charge could at all be leveled. The said OA has been dismissed by the Tribunal vide order dated 9.10.2007 and assailing that order, present petition is filed. We may mention at this stage itself that in the meantime the respondents have issued another chargesheet on 30.10.2007 under the CCS (CCA) Rules.

2. Before we advert to the grounds of challenge, we may take stock of the material events. At the relevant time when the alleged episode occurred, the petitioner was positioned as Director (Administration) at the National Academy of Audit and Account (in short "NAAA"), Shimla. Ms. Geetali Tare was also working in the same Academy as Director (Training). Thus, both were holding equivalent post, namely, that of Director, though Ms. Geetali Tare (hereinafter referred to as the "complainant") was senior to the petitioner. On 31.3.2007, the complainant lodged FIR against the petitioner herein u/s 451/354 IPC. Simultaneously, a complaint was also made to the Director General of the NAAA. A supplementary complaint dated 12.4.2007 was also made to the office of the Comptroller General of India wherein the complainant stated certain additional facts which she could not mention in her original complaint.

3. Section 451 relates to house-trespass in order to commit any offence punishable with imprisonment and Section 354 deals with assault or criminal force to woman with intent to outrage her modesty.

4. Within four days of the lodging of this FIR, the petitioner was transferred from Shimla to Kerala. In the first undated complaint, the complainant alleged that on 30.3.2007, there was an official dinner at Radisson Hotel. After the dinner, she returned to the Academy along with certain officials/colleagues, including the petitioner at around 11:30 pm by staff car. Other officers were dropped at their residence and thereafter, the complainant and the petitioner proceeded to Glen Mess where the petitioner was occupying Room Nos. 11 and 12 with his family on the ground floor and the complaint was residing in Room No. 21 on the first floor. When she proceeded towards her room the petitioner followed and entered her room forcibly. The incident which took place is narrated in the complaint in the following words:

Inside the room, he said to me "I want you". He repeated this statement four times. I replied "Saurabh, you have insulted me in the worst way that a man can insult a woman. Please leave the room at once. He replied to this by saying "Have I said anything wrong? Is it so unnatural?" I said "mujhe kuchh pata nahin, aap please mere room se baahar niklo." (I don't know anything, you please leave my room). I have repeated this statement six times. Upon hearing this, he approached me and caught hold of my wrists. He forced me onto the bed in a sitting position. I pushed him back and shouted "Get out of here! Get out of my room." All this happened inside Room No. 21 of Glen officers' mess. We were all alone in the room. There was no one on the entire floor as all participants of an in-service course had left. Since Mr. Mallick was not listening to my shouts of

"Get out of my room". I myself walked out of room No. 21. Mr. Mallick followed me out of the room, all this while saying "I am sorry. I am sorry." I replied by saying "Aap ne mere saath bahut badi badtameezi ki hai." (You have misbehaved terribly with me). I then went back to Room No. 21. Mr. Mallick followed me there. However, I pushed him out of the room and locked the door from inside. For 10 minutes after that he kept knocking on my door saying "Ma'am, ek minute baahar aayiye. I am sorry." (Please come out for a minute). The time could be more or less. I was not paying any attention to the clock. I then called Mr. Deepak Kappor & Mr. S.K. Thakur on the internal telephone. They both came within a few minutes.

5. She has also narrated as to what happened thereafter but it may not be necessary to record that at this stage since the departmental inquiry is still on. In the supplementary complaint dated 12.4.2007, the complainant had stated that there were some more facts which she could not bring to the notice of the authorities and her narrative is to the following effect:

Mr. Mallick was drunk not just during the episode when he tried to assault me, but throughout the evening of 30th march 2007. He had caused a commotion in the course of the dinner at Radisson Hotel earlier that evening. This was in the presence of Mr. B.S. Gill, Additional Deputy Controller & Auditor General, Mr. Samar Ray, Director General, National Academy of Audit & Accounts, Smt. Suman Saxena, Accountant General (Himachal Pradesh), M/s. Sushil Thakur and Deepak Kapoor, Directors, National Academy of Audit & Accounts.

Mr. Mallick had also got inebriated at two other dinners: the first, hosted by DG, NAAA on 14th March 2007 and the second one hosted by AG (HP) at Radisson Hotel on 15th March 2007 in honour of the hon"ble Auditor General of Pakistan.

6. On the aforesaid complaint of the complainant, the disciplinary authority vide its order dated 16.4.2007 nominated a Committee with Ms. Pravin Tripathi (IA&AS) to look into these allegations. The committee served a notice dated 24.4.2007 upon the petitioner asking him to appear before it and submit his statement in writing along with a list of witnesses or additional documents. Vide letter dated 30.4.2007, the petitioner, however, asked the Chairperson of the committee to provide him certain documents/information in order to defend him properly, which was followed by reminder dated 6.5.2007.

7. In the meantime, the petitioner was placed under suspension on 3.5.2007 with immediate effect on the basis of criminal case pending against him. It was directed that during the suspension period his headquarters would remain in Lucknow. The competent authority on 7.5.2007 cancelled the transfer and posting order of the petitioner. The petitioner made request dated 3.5.2007 for keeping the departmental proceedings in abeyance till the pendency of the criminal case before the trial court. However, this request was not acceded to and on 3.7.2007 the disciplinary authority informed the petitioner that the committee constituted by him on 16.4.2007 shall be deemed to be the inquiry

authority and report of the said committee shall be deemed to be an inquiry report under the CCS (CCA) Rules.

8. The petitioner at this stage gave representation to the disciplinary authority on 14.7.2007 stating that the departmental proceedings should be conducted as per the CCS (CCA) Rules. However, vide order of even date, the Chairperson of the committee issued letter informing the petitioner that the complaint made by the complainant is deemed to be the chargesheet and asked him to submit his defense statement within two weeks, i.e. before 30.7.2007.

9. It is the petitioner's perception that the manner in which the inquiry was conducted was not proper and in accordance with Rule 3(c) of the CCS (Conduct) Rules (hereinafter referred to as the "Conduct Rules"). Thus, he challenged the actions of the respondents by filing OA No. 1279/2007. His specific challenge was that the order dated 14.7.2007 regarding complaint being deemed to be the chargesheet was illegal. He prayed for stay of the departmental proceedings pending decision of the criminal case filed against him. The Tribunal has dismissed this OA of the petitioner vide the impugned order.

10. The submissions made by the learned Counsel for the petitioner challenging the enquiry proceedings can be summarized in the following form:

(i) Rule 3(c)(i) of the CCS (Conduct) Rules reads as follows:

No government servant shall indulge in any act of sexual harassment of any woman at her workplace.

Based on this it was the submission of the petitioner that he cannot be charged for sexual harassment "at workplace" inasmuch as, even as per the allegations in the complaint, the incident allegedly took place at the residence of the complainant, which is not a workplace and Therefore, Rule 3(c) of the Conduct Rules had no application.

(ii) The introduction of Rule 3(c) of the Conduct Rules vide notification dated 13.2.1998 was the result of the mandate given by the Supreme Court in the case of Vishaka and others Vs. State of Rajasthan and Others, . The main thrust of the said judgment was to deal with sexual harassment of the women at workplace whereby the delinquent could take advantage of the position in which a woman colleague is placed. In the present case, not only the petitioner and the complainant were of the same rank, but the complainant was even senior to the petitioner and Therefore, no favor could be extracted by the petitioner from her. Learned Counsel submitted that in these circumstances, there was no causal connection between "conduct" and "favour" and Therefore, the alleged act could not be treated as misconduct under Rule 3(c) on this ground also. It was the submission of the petitioner that for the purpose of bringing the case within the ambit of law as laid down by the Hon'ble Supreme Court in the case of Vishakha (supra), the act of sexual harassment has to be at the workplace and in relation to work, otherwise it would lead to absurdity. He submitted that sexual

harassment is invariably linked with altering the terms of employment between the employer and the employee. If one is subject to sexual harassment at the workplace, it changes the victim's term of employment, affecting her promotion. Therefore, the nexus is between the term of employment and the employer-employee relationship and does not cover private disputes. In the present case, since the alleged incident occurred at the residence of the complainant, Therefore, even in the mind of the complainant, the act was of trespass in her private residence and outraging the modesty. Therefore, the alleged harassment outside the workplace does not fall within the ambit of the judgment of the Supreme Court in Vishakha (supra).

(iii) The Supreme Court in Vishakha (supra), while laying down guidelines for dealing with such misconducts clearly held that the action in such cases could be initiated by the employer in accordance with the relevant service rules, thereby forming sanctity of the service rules and the procedure laid down for conducting inquiries for misconduct against the erring employee. It was, Therefore, incumbent upon the disciplinary authority as well as the inquiry committee to follow the procedure laid down in CCS (Appeal) Rules (hereinafter referred to as the "Appeal Rules"), which was violated in the instant case.

(iv) Since the criminal prosecution was also launched on the same allegation, the departmental inquiry should not be allowed to proceed as that would force the petitioner to disclose his defence, which shall be vocative of Article 20 of the Constitution.

(v) The Tribunal in the impugned judgment, while dismissing the OA of the petitioner, had, in fact, ventured to travel into the merits of the case as well and had given the opinion that the petitioner was guilty of the charge and such observations of the Tribunal contained in para 45 of the impugned judgment would prejudice the defense of the petitioner in the departmental inquiry.

11. We shall now consider each submission in the same order in which they are noted above.

Meaning of "Workplace":

12. We have already extracted the provisions of Rule 3(c) (i) of the Conduct Rules. This conduct rule mandates that a Government servant shall not indulge in any act of sexual harassment of any woman "at her workplace". Therefore, the question is as to whether the place where the alleged incident took place can be treated as the "workplace" of the complainant. His submission was that allegation of trespass into room No. 21 of Glen Mess where the complainant was residing could not be treated as a "workplace" as the place was meant for her residence and not a place of work. He submitted that the expression "workplace" would connote a place where any person of the public could have access. He further submitted that the complainant had herself lodged the FIR alleging violation of Section 451 of the IPC whereby charge of trespass into her room was leveled against the petitioner. It would, Therefore, be an absurd situation where

in the criminal case the petitioner faces the charge of house trespass whereas in the departmental proceedings on the same ground it is treated as harassment at workplace. His further submission was that workplace cannot be, by way of contiguity, a place of residence. The test would be the nature of place rather than contiguity or control of the management, as wrongly held by the Tribunal.

13. It is not in dispute that the alleged incident took place in the Glen Mess. It appears that different rooms of this mess are allotted to various employees of the Academy, who are residing there. The learned Tribunal held that the mess is a part and parcel of the Academy complex and is not a residential place. The Tribunal observed that there was no definition of "workplace" provided either in the Conduct Rules or in the decision of the Apex Court in Vishakha's case (supra). The Tribunal, thus, proceeded to determine the meaning of workplace with reference to the dictionaries with advice to itself that to find the general sense in common parlance but selecting one out of the various words, the context and meaning of the words and expression used in the Act must have to take colour from that context in which it appears and should not be made otiose. It referred to certain dictionaries where this expression is defined as is clear from para 27 reading as under:

27. As per Black's Law Dictionary (Fifth Edition), place of employment is defined as place where active work either temporary or permanent is being conducted in connection of a business for private or where any person is directly or indirectly employed by another. Chamber's 20th Dictionary defines workplace as an office, factory or where one works. As per Oxford English Dictionary (10th Edition Revised) workplace is defined as a place where people work.

14. The learned Tribunal opined that having regard to the objective with which Vishakha (supra) was decided, a definition of "workplace" should not have to be narrowed down and constructed in its applicability. It was to be interpreted for achievement of the objects sought to be fulfilled, namely, to protect working women from sexual harassment. The prevention of sexual harassment of working women on all workplaces was with a purpose that by sexual harassment no reasonable apprehension should be borne in the mind of the victim in relation to the victim's employment or work. The Tribunal was of the opinion that "an employment and work when connected with a conjunction "or" gives it a wider scope and has to be liberally construed for achieving the object, i.e. to prevent sexual harassment of working women.

15. On the basis of the aforesaid discussion, the test laid down by the Tribunal is that of proximity from the place of work and control of the management over such residence with further rider that such residence has to be an extension or a contiguous part of the working place to come within the ambit of workplace. This is clear from reading of para 30 of the impugned judgment:

30. Though we have our own doubt as to the definition of residence but the proximity from the place of work and the control of the management over such

residence where working woman is residing, is relevant and determining factor. A residence has to be an extension or a contiguous part of the working place to come within the ambit of workplace. Any incident of sexual harassment would ipso facto bring it within the definition as if the misconduct of sexual harassment has taken place in the workplace. Though when sexual harassment, i.e., outraging the modesty of woman by trespassing her room in the Mess, is made a punishable offence under Sections 452/354 of IPC and other sexually related act, maybe, a misconduct of unbecoming of a government servant, as the government servant has to maintain morality, i.e., not to have depravity of character even in private life, yet there is a separate mechanism to subject this misconduct in a disciplinary proceeding under Rule 14 of Rules 1965 and also for an offence in a criminal trial. The definition of workplace cannot be generalized to include all residences within the meaning and ambit of workplace, as it would lead to an absurdity and also an anomalous situation, which maybe chaotic due to the fact that sometimes an employee resides in his own arranged accommodation far from the workplace. Another instance is of Government pool accommodation away from the workplace. In such an event, any sexual harassment of working women would not come within the ambit of a workplace.

16. The Tribunal was, thus, of the view that it was not necessary that a workplace would be only a place where actually office work is performed. Any extension of place of work or any institution whether a hostel or a mess where the employer has control of management would be treated as workplace by giving wider connotation of the expression. The precise test on the basis of the aforesaid discussion is formulated in para 31 in the following words:

31. ...The test of a workplace is that the place where sexual harassment has been alleged is a place in the proximity of working activity and under immediate control of the employer, relating to which affairs have been managed by the Government.

17. The Tribunal clarified that each incident of sexual harassment in the context of workplace has to be determined in its facts and circumstances. A word of caution is given by expressing an opinion that even when a government servant remains a public servant even after the working hours, an act, which may amount to misconduct in his private life, cannot be said to be a conduct or misconduct in discharge of performance of official duties. Applying the aforesaid test on the facts of this case, the Tribunal was of the opinion that Glen Officers' Mess should be treated as a workplace. The observations of the learned Tribunal in this regard read as under:

32. ...Accordingly, in the instant case, as per the complaint Ms. Geetali Tare as well as the applicant have been functioning as Directors in the Academy, which houses in the close proximity. Glen Officers' Mess, which as per the information on website, defines Glen as a hostel used for probationers, which is being used by the visiting faculty in-service course and participants and visitors and this Mess is considered not just a place of eating but also a place for social interaction

where officers meet for formal and informal dinners and get-togethers. House rent allowance is not given to those who stay in the hostels.

18. The Tribunal for this purpose took aid from the judgment of the Supreme Court in the case of Regional Director, ESI Corporation and Anr. v. Francis De Costa and Anr. 1994 SCC (L&S) 195 wherein the Court gave wider interpretation to the expression "arising out of and in the course of employment" in the context of injury suffered by an employee.

19. We are of the opinion that the approach adopted by the learned Tribunal viz. the expression "workplace" is to be defined having regard to the objective with which Vishakha (supra) was decided is correct in law. In Vishakha (supra), the Apex Court while issuing its concern to the problem of sexual harassment of women at workplace went to the extent of formulating guidelines for taking action against the erring officials in the absence of proper legislation and mandated that till such legislation is enacted, the guidelines provided therein would be binding law. The aim and objective of formulating these guidelines was obvious, namely, in order to ensure that such sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view this objective behind the said judgment, a narrow and pedantic approach cannot be taken in defining the term "workplace" by confining the meaning to the commonly understood expression "office" that is a place where any person of the public could have access.

20. As Dias puts it, in his book on "Jurisprudence", that one of the task in the achieving of justice is adapting to change. No society is static. Changes develop gradually over the years in practically every sphere brought about by evolution in environmental, economic and political circumstances, national and global, as well as in religious and moral ideas. They may occur slowly or rapidly, they may be ephemeral as with passing fashions, or permanent. The technological and scientific developments which are taking place at a much rapid pace is known to everybody. It has influenced the society as well as the manner in which the business is transacted or the offices are run.

21. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with other person while sitting in some other country by means of video-conferencing. It is also becoming a trend that office is run by certain CEOs from their residence. Obviously members of public would not have access to that place, though personal staff of such an officer would be present there. In a case like, this if such an officer indulges into an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at "workplace", but at his "residence" and get away with the same. It is also a matter of common knowledge that in educational institutions, hostel accommodation is provided to students and teachers are also provided the residential flats. These may be within the vicinity of the college

complex. An officer or teacher may work from the accommodation allotted to him. He would not be allowed to say that it is not a workplace. These are some of the illustrations which are given to bring home the point that we cannot accept the narrow definition of the expression "workplace" as sought to be projected by the learned Counsel for the petitioner.

22. Once it is accepted that for achieving justice adapting to such changes is imperative, the question that arises is as to how these changes may be effected. No doubt, one method is to incorporate such changes through legislation. However, in the absence of legislation, as in the present case where the term "workplace" is not defined, that would not mean that such changes are not to be judicially recognized and taken note of while defining such an expression. In the process one of the conceptual tinkering and use of equity are the accepted judicial methods. Sir Henry Maine propounded the classic thesis that what he called "progressive societies" develop beyond the point at which "static societies" stop through the use of fiction, equity and finally legislation. The judgment in the case of *Vishaka* (supra) itself is a recognition of change through judicial method.

23. In so far as the office complex is concerned, it would definitely come within the sweep of workplace. However, whether any other place is to fall within the said definition or not would depend upon the facts and circumstances of each case. The Tribunal is, Therefore, right in even observing that each incident of sexual harassment at the workplace has to be considered in the facts and circumstances of that particular case. At the same time, definition of workplace cannot be generalized to include all residences within the meaning and ambit of workplace, at it may lead to absurdity. The Tribunal has itself observed that the notion of workplace would not extend to those accommodation, which may be even government pool accommodation but far away from the workplace. The test laid down to determine a particular place is workplace or not, as per the Tribunal, are the following:

- (a) Proximity from the place of work;
- (b) Control of management over such place/residence where working woman is residing; and
- (c) Such a "residence" has to be an extension or contiguous part of working place.

24. At the same time it is also to be borne in mind that for proceeding against an employee in a departmental inquiry, one does not have to give such a sweeping definition of "workplace" where it is interpreted to include the conduct of an employee which would have no relation to work. Obviously, private disputes are not to be included. Thus, we only clarify that the aforesaid parameters laid down by the Tribunal would only provide general guidelines and would not be determinative factors. It is difficult to define the term "workplace" in straight jacket and as mentioned above, in the facts and circumstances of each and every

case one will have to determine as to whether a particular place where the alleged incident happened can be treated as workplace or not.

25. When we consider the facts of the present case, it does not provide much difficulty. Glen Mess is in the vicinity of the workplace/office complex. These are not even in the nature of residential accommodations as allotted to the employees and understood in that manner. It is a part of Mess where the employees stay temporarily. Control of the employer over this Mess/place is absolute. The Mess was in close vicinity. We are, Therefore, of the opinion that the place where the alleged incident happened would be treated as workplace.

Whether the alleged act constitutes misconduct:

26. The argument of the learned Counsel for the petitioner that since both the petitioner and the complainant are not only of the same rank but the complainant was even senior to the petitioner and Therefore, no "favour" could be extracted by the petitioner from her and thus, the alleged act would not come within the ambit of sexual harassment, is clearly misconceived. No doubt, when a senior wants to sexually exploit a junior or subordinate woman colleague, taking advantage of his position, it would constitute sexual harassment. However, the ambit and scope of act of sexual harassment cannot be confined to this alone. Rule 3(c)(i) of the Conduct Rules clearly stipulates that a Government servant shall not indulge in any act of sexual harassment "of any woman" at her workplace. It is clear from this that the expression "any woman" is broad enough to include a woman who may be senior in status as well. There is no restriction imposed by the said Rule that woman employee has to be inferior in status. This contention of the petitioner, Therefore, has no substance.

27. The next contention was that the inquiry is to be conducted in accordance with the relevant service rules, i.e. CCS (CCA) Rules and procedure contained in Rule 14 there has not been adhered to.

Procedure of Inquiry

28. We may note that in *Medha Kotwal Lele and Ors. v. Union of India and Ors.* WP (Crl.) No. 173-177 of 1999 decided on 26.4.2004, the Supreme Court held that the report of the complaint committee has to be treated as per Rule 14 of the CCS(CCA) Rules as a final report in the inquiry. The relevant observations in this behalf are as under:

Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka and others Vs. State of Rajasthan and Others*, , will be deemed to be an inquiry authority for the purposes of 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.

29. The Tribunal taking note of the aforesaid judgment still pointed out that the issue of procedure to be adopted has not been commented upon. On the other

hand, noted the learned Tribunal, in Sandeep Khurana v. Delhi Transco Limited and Ors. WP(C) No. 7849/2006 decided on 17.11.2006, when a State complaint committee had given its finding and the department had not followed the procedure laid down under Rule 14 of the CCS(CCA) Rules, penalty was set aside by the Single Bench and LPA there against is pending. Under these circumstances, the Tribunal was of the view that when it comes to procedure, it would be better that procedure under Rule 14 is followed as it is trite that when a Government servant is to be inflicted a penalty, due procedure in law has to be adopted which would be in consonance with the natural justice as well. The position was summed up by the Tribunal, Therefore, in the following words:

52. Necessary corollary, which emerges from the above when pointed out to learned senior counsel for the respondents, he had fairly stated to incorporate as a procedure the safeguards as per the principles of natural justice in holding of the disciplinary proceedings. In the above view of the fact, we have no hesitation to rule that though the complaint mechanism and the committee formed therein, has to be treated as an inquiring authority with its report to be a deemed inquiry report within the ambit of Rule 14 of Rules 1965, yet the respondents are not absolved from as an obligation to hold the inquiry by following the procedure as laid down under Rule 14 of Rules 1965.

30. It is clear from the above that the Tribunal safeguarded the interest of the petitioner herein by mandating that the procedure contained in Rule 14 should be followed and the counsel for the respondents also conceded to this. It is not in dispute that thereafter a further charge-sheet had been issued to the petitioner on the basis of which inquiry is underway in accordance with the procedure prescribed under Rule 14. Therefore, at this stage, it is not open to the petitioner to challenge this aspect inasmuch as it is only after the inquiry it would be known whether there is any infraction of Rule 14 or not.

Effect of criminal proceedings

31. Next argument which needs consideration is as to whether there should be stay of departmental proceedings during the pendency of criminal case against the petitioner. The Tribunal refused to grant the stay after taking into consideration Office Memorandum dated 1.8.2007 as well as the principles laid down by the Supreme Court in V. Radhakrishna Reddy Vs. State of A.P., . The Tribunal rightly observed in this behalf as under:

57. Applying the above ratio, the allegation leveled against the applicant in the disciplinary proceedings is of sexual harassment at workplace whereas in the criminal trial, he has been charged for trespassing and outraging the modesty of a woman employee. We do neither any grave charge against the applicant in criminal trial, nor are there any complicated questions of fact and law involved in the case.

58. From the perusal of the guidelines in Vishaka's case (supra) whereas Clause 4 deals with a criminal proceeding and Clause 5 when talks of conduct, which

amounts to misconduct to be dealt with under relevant Service Rules, i.e., CCS(CCA) Rules 1965, yet Clause 6 where the complaint mechanism has been provided is irrespective of whether the conduct constitutes an offence or a breach of Service Rules, in all cases, any conduct, which amounts to sexual harassment whether at workplace or not, has to be dealt with by an appropriate complaint mechanism in a time bound manner, leaves no doubt in our mind that irrespective whether it is workplace or residence, though now Domestic Violence Act, 2005 has been promulgated, yet the complaint mechanism is a must even in other situations a condition precedent for arriving at a final view of the matter.

59. In such view of the matter, a criminal trial is conducted for an offence whereas disciplinary proceedings for alleged misconduct as per Vishaka's case (supra). Standard of proof in both the proceedings, being different, merely because the proceedings are rested on same facts and charges, it is in public interest as well as in the interest of applicant that disciplinary proceedings be proceeded expeditiously and to be brought to logical conclusion. However, on outcome of the criminal trial, law shall take its own course.

32. We are in complete agreement with the aforesaid approach of the Tribunal.

33. Last submission of the learned Counsel for the petitioner was that the Tribunal has virtually given its opinion holding the petitioner guilty of the charge which would prejudice him in his defence. This submission predicates on the observation in para 59 of the judgment, which has already been extracted above, on the basis of para 45, which reads as under:

Though we do not examine at present the merits of the case, yet at the outset in the context of right to live with dignity as a fundamental right to a woman citizen of India, an offence of such a high rank by making a complaint without any malice, animus or ulterior motive would expose her reputation and character, which would not have been expected from a prudent person as a fabrication or fictitious act. It is when the self-esteem of a person is shocked only on a complaint of this sort emanates on real happening.

34. The apprehension of the petitioner is totally ill founded. The Tribunal has made it clear in the very first sentence of the aforesaid para that the case is not examined on merits. It made general observation on the nature of such acts, which are made only for the purpose of showing the sensitivity and gravity of such charges. One should not lose the context in which those observations are made, namely, the Tribunal was discussing as to what meaning should be given to the word "workplace" and in that scenario those observations came to be passed. However, in those observations there is nothing to suggest that the petitioner has committed the act imputed upon him. That is a matter of departmental inquiry which has to be proved in the inquiry on the basis of evidence brought before the Inquiry Committee. In no manner the Inquiry Committee shall be influenced by any of the observations made by the Tribunal in so far as the merits of the allegations against the petitioner in the charge-

sheet are concerned.

35. We, thus, find no merit in any of the contentions advanced by the petitioner. The inquiry is still going on and it was a premature act of the petitioner to have approached the Tribunal at that stage. In any case, some of the jurisdictional issues stand settled. Needless to mention, if the inquiry report and/or the orders passed by the disciplinary authorities are adverse to the petitioner, it would be open to the petitioner to challenge the same.

36. With these observations, the writ petition is otherwise dismissed.