

Dilip Paul Vs Union Of India And 3 Ors

Court: Gauhati High Court

Date of Decision: May 15, 2019

Acts Referred: Information Technology Act, 2000 â€” Section 66A(c)

Indian Penal Code, 1860 â€” Section 354, 506

Central Civil Services (Classification, Control And Appeal) Rules, 1965 â€” Rule 14, 14(2), 14(3), 14(4), 14(5)(a), 14(5)(b), 14(5)(c), 15

Central Civil Services (Conduct) Rules, 1964 â€” Rule 3(c)

Constitution Of India, 1950 â€” Article 311(2)

Hon'ble Judges: Arup Kumar Goswami, J

Bench: Single Bench

Advocate: M Chanda

Final Decision: Allowed

Judgement

1. A. K. Goswami, J The challenge in this writ petition is to the judgement and order dated 03.07.2015, passed by the learned Central Administrative

Tribunal (CAT), Guwahati Bench, in an Original Application, being O.A. 181/2013, dismissing the Original Application filed by the petitioner.

2. The petitioner retired on 31.03.2013 as Deputy Inspector General (DIG), Frontier Headquarters, Sashastra Seema Bal (SSB). During the pendency

of the writ petition, an order dated 05.01.2016 was passed imposing penalty of withholding of 50% of monthly pension of the petitioner on permanent

basis. The penalty so imposed had its roots on a complaint dated 30.08.2011 of sexual harassment made by one Smti. Sunita Singha, Field Assistant

(Lady) while the petitioner was serving as Area Organizer, SSB, Rangia. The writ petition was accordingly amended and the said order of penalty

was also impugned. Relief is also sought for with regard to the prayers made before the CAT. The petitioner had prayed before the CAT for setting

aside and quashing the following:

(i) FAX message dated 03.09.2012 and the constitution of the Central Legal Complaint Committee under the Chairperson of Smti. B. Radhika, IPS;

(ii) Memorandum dated 10.12.2012 and cancellation of the enquiry report of the Frontier Level Complaint Committee, and

(iii) the enquiry report dated 28.12.2012 of the Central Complaint Committee.

3. By the FAX message dated 03.09.2012, the petitioner was directed to be intimated to keep himself available before the Central Legal Complaints

Committee of which one Smt. B. Radhika, Joint Director, CCTNS-II, had been nominated as Chairman by the Ministry of Home Affairs for

conducting enquiry against the petitioner in respect of complaint made by Smt. Sunita Singha and also indicating the names of the other Board

Members, who were from SSB. By a Memorandum dated 10.12.2012, it was conveyed that the enquiry report dated 17.01.2012 submitted by Dr. K.

S. Devi, Chairperson of the Complaints Committee on the complaint of Smti. Sunita Singha had been cancelled by the competent authority on the

ground that as per the Standard Operating Procedure on sexual harassment, while the Chairperson of the enquiry committee was required to be one

rank above the Government employee against whom the complaint is made, the Chairperson and the petitioner were of the same status.

4. While dismissing the Original Application, the respondents were directed to complete the departmental proceeding within four months from the date

of receipt of the order keeping in view the observations made therein. When the writ petition was moved on 22.01.2016, an interim order was passed

staying further proceedings pursuant to the order dated 03.07.2015 passed by the CAT in O.A. No. 181/2013. However, as noticed above, an order

imposing penalty had already been passed on 05.01.2016.

5. In the Original Application filed before the CAT, the case of the petitioner is, in short, as follows:

(a) The petitioner was serving as Area Organizer, i.e., Local Head of Office, in the Area Office, Rangiya, Assam, from September, 2006 to May,

2012. Smti. Sunita Singha was also serving as Field Assistant (Lady) in the same office since March, 2009. In the month of August, 2011, Smti. Sunita

Singha applied for transfer from Rangiya to Frontier Headquarters, Guwahati, for facilitating medical treatment of her mentally challenged mother-in-

law. Her application for transfer was turned down by the Inspector General, Frontier Headquarters, on 24.08.2011 on the ground of non-availability of

vacant post of Field Assistant (Lady). Smti. Sunita Singha harboured a misconception that the petitioner had a hand in the rejection of her transfer

application as a result of which she became hostile to the petitioner. On that very day, i.e., 24.08.2011, the petitioner had suffered a mild heart attack

and was shifted to hospital and while in the hospital, he received a message on 25.08.2011 on his official as well as personal mobile phone, which read

as

“I am hubby of one of your lady staff, wait and watch the end of your career. There were two ladies working under the petitioner at Rangia and,

apart from Smti. Sunita Singha, the other lady was one Smti. Prema Narzary. The petitioner lodged an ejahar before the Rangia Police Station on

26.08.2011 in connection with the said telephonic message indicating the mobile phone number from which the message was received and,

accordingly, Rangia Police Station Case No. 348/2011, under Section 66A(c) of the Information Technology Act, 2000 (as amended in 2008) was

registered. The petitioner had also informed about the aforesaid threatening message to the Inspector General, SSB, Guwahati, and, by his letter dated

27.08.2011 had also requested him to transfer Smti. Sunita Singha from Rangia immediately. On 01.09.2011, Smti. Sunita Singha was transferred from

Rangia against a vacant post of Senior Field Assistant (G), at her request. Consequent upon such lodging of the ejahar, Smti. Sunita Singha and her

husband, who was a teacher in Manipur, had obtained anticipatory bail from this court. On 30.08.2011, Smti. Sunita Singha submitted a complaint to

the Inspector General, Frontier Headquarters, Guwahati, making certain allegations against the petitioner. The husband of Smti. Sunita Singha also

filed an ejahar before the Officer-in-Charge, Rangia Police Station, on 26.09.2011, wherein he acknowledged to have sent the message on 25.08.2011

out of frustration as the petitioner had subjected his wife to mental torture and had also tried to influence his wife to indulge in immoral activities. It

was alleged that the petitioner had threatened to shoot him dead. Based on the said ejahar, Rangia Police Station Case No. 392/2011, under Section

354/506 IPC was registered.

(b) On the basis of the complaint dated 30.08.2011, the Inspector General, SSB, Frontier Headquarters, conducted an on-the-spot fact finding enquiry

through the DIG, SSB, Sector Headquarters, Tezpur, and statements of all staff members were taken separately. By a message dated 02.11.2011, the

petitioner was asked by the DIG, SSB, Frontier Headquarters to submit his para-wise reply. The petitioner submitted his para-wise comments. One

Frontier Level Complaints Committee (FLCC) was also constituted with Dr. Smti. K.S. Devi, Commandant (Medical), SSB, as the Chairperson. An

Advocate, who is a member of State Women Commission of Assam, was appointed as a Member along with the Sub-Area Organiser (Legal), SSB,

as the other Member of the Committee. The said FLCC conducted enquiry proceedings on 03.11.2011 and 17.11.2011. Smti. Sunita Singha had

examined herself and five witnesses on her behalf were also examined. Though the report of the enquiry was submitted on 17.01.2012, copy of the

report was not furnished to the petitioner. However, later on by a Memorandum dated 10.12.2012, the enquiry report dated 17.01.2012 submitted by

the FLCC was cancelled.

(c) During the pendency of these enquiries, the petitioner was promoted to the rank of DIG with effect from 03.07.2012. The petitioner was the most

decorated officer in his cadre in SSB, Best Performing Officer in SSB for four consecutive years from 2009 to 2012 and recipient of Indian Police

Metal, etc.

(d) While the matter rested at that, a Central Legal Complaints Committee (subsequently also indicated as Central Complaint Committee), hereinafter

referred to as CCC, was constituted on 06.08.2012 with Smti. B. Radhika, Joint Director, CCTNS-II, NCRB, Ministry of Home Affairs, as the

Chairperson and three Members out of whom two were from the SSB and one Associate Professor of Jawaharlal Nehru University, to conduct the

enquiry against the petitioner in respect of the sexual harassment complaint made by Smti. Sunita Singha. In the said proceeding Smti. Sunita Singha

submitted a fresh list of allegations and brought 15 more witnesses in addition to her earlier 5 witnesses. The CCC submitted its report on 28.12.2012,

which was forwarded to the petitioner vide Memorandum dated 16.01.2013 asking him to submit representation to the Disciplinary Authority within

fifteen days. The petitioner, by an application dated 23.01.2013, had sought for the enquiry reports submitted by the earlier two enquiry committees as

well as for grant of further time, but the same was rejected by letter dated 29.01.2013. The petitioner submitted a representation on 30.01.2013 against

the enquiry report submitted by the CCC praying for quashing of the enquiry report as well as for dropping the proceeding.

6. It was at that stage the petitioner approached the CAT, Guwahati, praying for the reliefs which have already been noticed, contending, amongst

others, that a totally false case is hoisted against the petitioner; no Charge-sheet was served upon the petitioner and no opportunity was also given to

submit detailed written statement; Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rule, 1965 (for short "the Rules of

1965") was violated; constitution of the CCC is wholly impermissible in law; there were gross procedural irregularities in the proceedings conducted

by the CCC as well as violation of principle of natural justice; absence of Presenting Officer, the Chairperson of the CCC was biased and vindictive;

denial of assistance of Defence Assistant, etc.

7. In the written statement submitted on behalf of the respondents before the CAT, it is pleaded that the CCC was constituted as per the Standard

Operating Procedure (SOP) and that the enquiry was not conducted under the SSB Act and Rules. The enquiry report submitted by the FLCC was

annulled as the Chairperson of the enquiry committee was not senior to the charged officer as required under Clause 9B(1) of the Departmental

Standard Operating Procedure of Sexual Harassment. Smti. Sunita Singha had applied for transfer on the ground of medical treatment of her mother-

in-law and that initially the same was rejected by the Inspector General, Frontier Headquarters, Guwahati, and that the petitioner had requested for

transfer of Smti. Sunita Singha by letter dated 27.08.2011. The departmental enquiry against the petitioner was initiated on receipt of her complaint on

30.08.2011 as per Standard Operating Procedure of Sexual Harassment and the CCC was asked to enquire into the allegations. As the enquiry report

of the FLCC was annulled, the finding of the committee has no practical value and, as such, the enquiry report of the FLCC cannot be provided as the

same might provide undue advantage to the petitioner during the departmental enquiry and the same would be against the interest of the complainant.

The enquiry report of the Fact Finding Authority cannot also be furnished as the petitioner has no right to receive it. Further plea taken is that the

Original Application before the CAT was premature and the authority had sanctioned provisional pension during the pendency of the departmental

proceeding. The allegation of depriving the petitioner of the assistance of a Defence Assistant was also denied. While denying that there were

procedural infirmities, it is stated that the complaint dated 30.08.2011 submitted by the complainant was taken as Charge-sheet by the CCC.

8. The petitioner had also filed a reply to the written statement filed by the respondents. It was averred that the enquiry report dated 28.12.2012 itself

demonstrates that the enquiry was conducted in terms of Rule 14 of the Rules of 1965 but the mandatory provisions had not been adhered to.

9. During the hearing of the Original Application, the report dated 13.12.2011 of the Fact Finding Enquiry Committee and the enquiry report dated

27.01.2012, submitted by the FLCC were produced. In the Fact Finding Enquiry Report dated 13.12.2011, it is noted that all the staff in the office

were summoned one after another individually, but none of them stated to have seen or known the petitioner misbehaving with Smti. Sunita Singha.

Further, it is also stated that most of the staff reported that due to reasons best known to the petitioner, he did not allot any work to her for about three

months and, therefore, she was found very depressed. It was observed by the enquiry officer that the petitioner had failed to motivate and get work

from her. However, with regard to the allegation of teasing and harassment, it was mentioned that as none of the staff had stated to have ever seen

such a situation in the office, the allegation of teasing and harassment could not be ascertained. In the report of the FLCC, it was recorded that on

going through the statements of the complainant, the charged officer and the statements of prosecution as well as defence witnesses, the points raised

by the complainant could not be fully established or proved. It was also noted that the complainant had lodged the complaint after a gap of two years.

10. In the present writ proceeding, the respondents had filed two affidavits-in-opposition: one was filed on 18.06.2017 by the Commandant in the office

of the Inspector General, Frontier Headquarters, SSB, stating that he has been authorized by respondent Nos. 1 to 3. The other was filed on

28.07.2017 by one Deputy Inspector General, Frontier Headquarters, SSB, wherein also it is stated that he has been authorized to swear the affidavit

on behalf of the respondents.

11. Mr. S. Dutta, learned counsel for the petitioner submits that the complaint dated 30.08.2011 was not submitted before the Complaints Committee

as required under the Standing Order No. 1/2006 and, therefore, such a complaint cannot be entertained and, in any event, the vague and bald

allegations made therein do not come within the definition of sexual harassment. He submits that the respondent authorities were determined to see to

it that penalty is imposed upon the petitioner and, therefore, even though the two enquiry committees had found that the allegations were not

substantiated, a third enquiry committee was constituted through the CCC even when the report submitted by the FLCC was pending consideration

and, later on, on a specious ground that the FLCC was not headed by an officer senior to the petitioner, the enquiry report dated 17.01.2012 submitted

by the FLCC was cancelled though it was the respondent authorities who had appointed the Chairperson of the FLCC. It is contended by Mr. Dutta

that the Chairperson belongs to a different stream and, therefore, comparison of rank of the Chairperson with the petitioner does not arise. Under the

Standing Order, in any event, the allegations of Frontier Headquarters are required to be examined and enquired by the FLCC and, therefore, the

enquiry made by the CCC, in the facts and circumstances of the case, is wholly impermissible in law. That apart, it is submitted that in any view of the

matter, the findings recorded by the CCC cannot be construed to be a finding recorded in a disciplinary proceeding inasmuch as no Charge-sheet was

submitted and served upon the petitioner calling upon the petitioner to submit written statement thereto and no list of witnesses or documents were

also furnished to the petitioner. Even if the allegations are pertaining to sexual harassment, the mandatory provisions of the Rules of 1965 cannot be

dispensed with and, therefore, entire proceeding is vitiated, he contends. The Presenting Officer was also not appointed and the enquiry report

submitted by the CCC itself demonstrates that examination-in-chief was done by the CCC. While the complaint dated 30.08.2011, even if taken on its

face value, contains two-fold allegations but the CCC formulated ten points with allegations brought in by the complainant during such proceeding and,

therefore, the enquiry was a farce and was a mere window dressing. Even the copy of the complaint dated 30.08.2011 was served on the petitioner

on the second day of enquiry on 26.09.2012. It is further submitted by Mr. Dutta that the evidence of witnesses examined on behalf of the

complainant in the CCC cannot be considered to be trustworthy inasmuch as in the enquiry before the FLCC, they had not indicted the petitioner with

any wrong doing. The petitioner was also given only one hour time to nominate his Defence Assistant on 26.09.2012 and, that too, in New Delhi,

which was not his place of posting and, therefore, he is gravely prejudiced. Even the Standing Order No. 1/2006 required serving of the gist of the

complaint in the form of Articles of Charge and that the complaint is required to contain all the material and details concerning the alleged sexual

harassment at the earliest point of time. It is further submitted by him that even at the time of seeking transfer by the complainant, no allegation of any

sexual harassment was indicated and, in the complaint that was made by the complainant before the Inspector General Mr. Katoch, the only complaint

made was that she was detained till after office hours which was also a grievance of many of the witnesses before the enquiry committee. He further

submits that the CCC had adopted a partisan role and the witnesses examined on behalf of the petitioner had not even been discussed. It is

strenuously urged by Mr. Dutta that the allegation of sexual harassment was levelled only after the petitioner had lodged the *ejahar* against the

husband of the complainant and all the allegations are concocted for illegal gain and wrongful bargain. It is also contended by him that the petitioner

having retired, even otherwise, his pension could have been withheld only if it was a case of grave misconduct and it is not indicated anywhere that the

allegations made against the petitioner, even if construed to be true, constituted grave misconduct. In support of his submissions, he has placed reliance

on the decisions of the Supreme Court in the cases of *Delhi Development Authority vs. H.C. Khurana.*, reported in (1993) 3 SCC 19,6 K. R. Deb vs.

Collector Of Central Excise, reported in (1971) 2 SCC 102, *Union of India vs. K.D. Pandey and Ors.*, reported in (2002) 10 SCC 471V, *ijay Shankar*

Pandey Vs. Union of India, reported in (2014) 10 SCC 589, *Narinder Mohan Arya Vs. United India Insurance Co. Ltd.*, reported in (2006) 4 SCC 713

as well as on the case of *Sandeep Khurana vs. Delhi Transco Ltd. & Ors.*, decided by the High Court of Delhi on 17.11.2006.

12. Mr. S. C. Keyal, learned Assistant Solicitor General of India, on the other hand, submitted that in view of the amendment of Rule 14 of the Rules

of 1965, whereby the proviso to Rule 14(2) was added providing that the Complaints Committee established in each Ministry or department or office

for enquiring into the complaints of sexual harassment shall be deemed to be the enquiring authority appointed by the disciplinary authority, there is no

merit in the contention urged that no disciplinary proceeding was drawn up against the petitioner. In this connection, he also draws the attention of the

court to the Standing Order dated 01.06.2006 on the subject of "Grievances Redressal Mechanism to Redress the Grievance of Woman/Sexual

Harassment at Workplace", which provides for constitution of CCC and FLCC. By producing the record of enquiry proceedings of the CCC, Mr.

Keyal vehemently opposes the submission of Mr. Dutta that the proceeding was conducted in violation of the principle of natural justice or that the

findings recorded by the enquiry committee suffered from any legal infirmities. Justifying the annulment of the FLCC, he submits that merely because

inadvertently or erroneously a Chairperson was appointed, who is not senior to the charged officer, it cannot be countenanced that the competent

authority is precluded from setting the wrong right and it cannot be also argued that even though there is gross infirmity in the constitution of the

committee, such report has to be acted upon. He submits that in a case of sexual harassment formal drawal of Charge-sheet is not required and the

complaint itself can be treated as Charge-sheet. In order to support his contentions, Mr. Keyal has cited a judgement of this court in the case of

Tezpur University vs. C.S.H.N. Murthy (Dr), reported in 2016 (3) GLT 569 .He has also cited the decisions of the Supreme Court in the cases of

Vishaka and others v. State of Rajasthan and Ors., reported in (1997) 6 SCC 241 and Medha Kotwal Lele vs. Union of India & others, reported in

(2013) 1 SCC 297.

13. We have considered the submissions of the learned counsel for the parties and have perused the materials on record as well as the record of the

proceedings of the CCC produced by Mr. Keyal.

14. In Vishaka (supra), which is a path breaking judgement, in absence of any enacted law providing for effective enforcement of the basic human

right of gender equality and guarantee against sexual harassment and abuse, more particularly, against sexual harassment at workplace, guidelines and

norms were laid down for strict observance at all workplaces or other institutions until a legislation was enacted for the purpose. Where such conduct

amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action shall be initiated by the employer in

accordance with the relevant rules. Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate

mechanism including constitution of Complaints Committee, to be headed by a woman and not less than half of its members being women, should be

created in the employer's organization for redressal of the complaint made by the victim and that such Complaint Mechanism should ensure time-

bound treatment of complaints.

15. In *Medha Kotwal Lele and Ors. vs. Union of India and Ors.* and other batch of writ petitions, guidelines and norms set out in *Vishaka* having not

been followed, the Hon'ble Supreme Court by way of an interim direction dated 26.04.2004, which is reported in (2013)1 SCC 311, had directed

as follows:

"Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka* case, SCC at p. 253, will be deemed to be an inquiry

authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter call 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."

Pursuant to the aforesaid order dated 26.04.2004, the Rules of 1965 was amended and a proviso to Rule 14(2) was inserted vide Notification dated

01.07.2004, which was published in the Gazette of India on 10.07.2004. Proviso to Rule 14(2) reads as under:

"Provided that where there is a complaint of sexual harassment within the meaning of rule 3-C of the Central Civil Services (Conduct) Rules, 1964,

the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring

authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not

been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in

accordance with the procedure laid down in these rules."

16. The Government had also made amendments in the Central Civil Services (Conduct) Rules, 1964, incorporating therein Rule 3-C, which forbids

Government servants from indulging into sexual harassment.

17. Thus, by virtue of the above provision, where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil

Services (Conduct) Rules, 1964, a Complaints Committee shall be deemed to be the Inquiring Authority for the purpose of the Rules of 1965 and the

Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee to enquire into the complaint of sexual

harassment, the inquiry as far as practicable in accordance with the procedure laid down in the Rules of 1965.

18. *Medha Kotwal Lele* along with other connected cases were disposed of on 19.10.2012 and reported in (2013)1 SCC 297. While disposing, the

Supreme Court noted that even after fifteen years of issuance of the guidelines in Vishaka (supra) statutory law had not been enacted. Observing that

the guidelines in Vishaka (supra) should not remain symbolic and that further directions are necessary, directions were issued to the States and the

Union Territories, which were yet to carry out adequate and appropriate amendments in their Civil Service Conduct Rules, to do so within two months

from the date of the judgement by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary

action under such Civil Service Conduct Rules. It was observed that disciplinary authority shall treat the reports/findings, etc., of the Complaints

Committee as the findings in the disciplinary inquiry against the delinquent employee and shall act on such report accordingly and that the findings and

the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to disciplinary action but shall be

treated as a finding/report in an inquiry into the misconduct of the delinquent.

19. It will be appropriate to note that thereafter the Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Act, 2013, and the Act came into force on 09.12.2013.

20. It appears that on the subject of grievance redressal mechanism to redress grievance of woman/sexual harassment at workplace, the Director

General of SSB had issued a Standing Order, numbered as Standing Order No. 1/06, formulating a scheme to deal with the issue. It envisages

Complaints Committees at two levels in SSB: (i) Central Complaints Committee (CCC) at Directorate level and (ii) Frontier Complaints Committee

(FLCC) at the frontier level. It provides that the Chairperson of the committee should be senior to the officer/official against whom the complaint is

made. Whenever Frontier IG does not have a higher ranked woman officer to be appointed in the FLCC, the Frontier IG is required to get in touch

with IG, Personnel (PRS) and seek placement of an officer from any Central Government organization. It also provides that where the required

number of senior officers are not available within the organization, members should be co-opted from other Central Government Departments. In case

the complaint is against the Frontier IG himself, the matter is required to be viewed/looked into at the level of CCC.

21. The Charter of the CCC and the FLCC is also well demarcated. Amongst others, the CCC is to enquire into any matter of sexual abuse in the

organization "suo moto or on complaint with the option to enquire at its own level or assign the task to FLCC and monitor all cases including reports

received from the Frontiers. The role of the FLCC is to enquire into any matter of sexual abuse under the Frontier and to submit enquiry report to the

Frontier IG. The Complaint Mechanism is delineated at Clause 10 of the Standing Order. The Complaint Mechanism reads as under:

10. COMPLAINT MECHANISM

This procedure/mechanism has been devised in pursuance of Hon'ble Supreme Court Judgement dated 26.04.2004 in the matter of Medha

Kotwal Lele & Ors. Versus UOI & Ors. WP(Crl) No. 173-177-1999 and Govt. Of India, Ministry of Personnel, Public Grievances & Pensions,

DOP&T Notification dated 01.07.2004 signed by Smt. Pratibha Mohan, Director from file No. 11012/5/2001/Estt.(A), Para 6 (Complaint Mechanism)

is as under:

- i) Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time.
- ii) The complaint shall contain all material and details concerning the alleged sexual harassment including the names of the contravener and the

complaint shall be addressed to the Complaints Committee.

- iii) If the complainant feels that she cannot disclose her identity for any particular reason, the complainant shall address the complaint to the Frontier

IG/IF (Pers, FHQ) and handover the same in person or in a sealed cover. Upon receipt of such complaint, Frontier IG/IF (Pers, FHQ) shall retain the

original complaint with himself and send to the Complaints Committee, a gist of the complaint containing all material and relevant details other than the

name of the complainant and other details, which might disclose the identity of the complainant.

- iv) As soon as an enquiry into any complaint of women regarding sexual harassment is entrusted to the Complaints Committee, the Chairperson shall

open a daily order sheet to proceed with the case as envisaged in Rule 14 of CCS (CCA) Rules 1965 and maintain the same during the course of

entire enquiry.

- v) The entries in the daily order sheet are to be signed by the Chairperson of Complaints Committee, alleged

Officer/official and witnesses as the case may be.

- vi) In the preliminary hearing the Chairperson should serve gist of complaint to the alleged officer/official (in the form of articles of charge) and he

should formally be asked whether he pleads guilty or not based on the complaint.

- vii) If the charges are denied, the complainant should be asked to produce her witnesses if any before the Complaints Committee for recording their

statements.

- viii) Cross-examination of the witnesses should be allowed by the complainant and alleged officer. However, cross-examination of complainant by the

alleged officer is permissible as per Indian Evidence Act, 1872 subject to the directions as laid down by Hon'ble Supreme Court of India in A IR

2004 SC 3566-Sakshi vs. UOI & Others, s i.e. to say “Questions put in cross-examination on behalf of accused (charged officer in our case), which

relate directly to incident, should be given in writing to the Chairperson of the Complaints Committee who may put them to victim or witnesses in a

language which is clear and NOT EMBARRASSING. The questions shall thus be vetted by the Chairperson of such Complaints Committee.

ix) The cross-examination of witnesses should be with strict regard to decency and should not be against the dignity of the women.

x) During the course of enquiry by the Complaints Committee, the question of relevance is to be decided by the Chairperson and aggrieved provided

with opportunity of being heard.

xi) There may not be any Presenting Officer but a Defence Assistant shall be provided during the course of enquiry and rest of the enquiry shall be

completed as per the provisions provided in CCS (CCA) Rules 1965 or as per the provisions of any other Rules.

xii) The statement of witnesses to be authenticated by the signature of witnesses, the alleged officer/official and the Complaints Committee

Chairperson.

xiii) After completion of recording statement of witnesses (say from the prosecution side), the alleged officer/official should be given opportunity to

produce defence, if any. It shall be ensured that the Rule of Law & Principles of natural justice are strictly followed.

xiv) The Committee to give the findings/opinion after recording the defence and proceedings of cross-examination of Defence Witnesses, documents,

etc., if any.

xv) In the order dated 26.04.2004 in Writ Petition (Crl.) No. 173-177/1999 (Medha Kotwal Lele & Others vs. Union of India and Others) the

Supreme Court has directed that “the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS (CCA) Rules.

Thereafter the disciplinary authority will act on the report in accordance with the rules. Sub-rule (2) of Rule 14 of the CCS (CCA) Rules, 1965 has

accordingly been amended to provide that the Complaints Committee shall be deemed to be in the inquiring authority appointed by the disciplinary

authority for the purpose of these Rules by the Notification No. 11012/5/2001-Estt.(A) dated 01.07.2004 (GSR 225 dated 10th July, 2004) and the

report of the Complaints Committee should be treated as an enquiry report.

xvi) On receipt of the findings from Complaints Committee, copy of the same should be provided to the alleged officer/official for his reply

representation by the disciplinary authority (Govt. In the case of the Group Officers).

xvii) On receipt of representation if any submitted by the alleged officer/official, the case should be finally decided by the competent authority as per

procedure laid in CCS (CCA) Rules or CRPF Act & Rules as the case may be.â€

22. The report dated 13.12.2011 was submitted pursuant to conducting of an on-the-spot enquiry. On-the-spot enquiry, by the very nature of it, is

summary in nature. Such enquiry cannot be equated with a disciplinary enquiry. It will be relevant to note that before the report of the on-the-spot

enquiry was submitted, the competent authority had constituted FLCC, which had also commenced its proceedings. In that context, even if in such an

on-the-spot enquiry, no allegation was found to have been established, same would not have any material bearing in the facts of the instant case. It is

not in dispute that the petitioner was posted at the frontier and, accordingly, in terms of the Standing Order No. 1/06, FLCC was constituted to enquire

into the allegation of sexual harassment. As noticed earlier, though the FLCC had submitted report on 17.01.2012, the same was cancelled by

Memorandum dated 10.12.2012 on the ground that the Chairperson of the FLCC was not an officer who was senior to the petitioner against whom

the complaint was made.

23. We are unable to subscribe to the submission of the learned counsel for the petitioner that report of FLCC could not have been cancelled and the

report was required to be acted upon as the Chairperson of the FLCC being from a different stream, the question of comparison of seniority did not

arise. It is not the contention of the petitioner that the Chairperson was, indeed, higher in rank than the petitioner. Therefore, the significance of

appropriate constitution of the Complaints Committee, in terms of the norms laid down, cannot be lost sight of. True, the authorities themselves had

constituted the Complaints Committee, but the fact by itself cannot detract the competent authority from cancelling the proceeding or the report of an

improperly constituted committee. It was in this background the CCC had come into the picture. Though earlier the FLCC had conducted enquiry, we

find that the CCC can also enquire into any matter of sexual abuse in the organization which necessarily includes the frontier also and, therefore, it

cannot be said that the CCC could not have exercised authority in the instant case. The decision in K. D. Pandey (supra), wherein it was held that

when specific findings have been given in respect of charges by the inquiry officer, the matter could not have been remitted to the inquiring authority

for further inquiry as it would have resulted in a second inquiry and not a further inquiry on the same set of charges and the materials on record, will

not be applicable in the facts and circumstances of the case. In K. R. Deb (supra), the Supreme Court observed in the context of the rules in question

that though it may be possible in certain circumstances for the disciplinary authority to record further evidence, because of some serious defects that

had crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, no

power is vested in the disciplinary authority to completely set aside previous inquiry on the ground that the report does not appeal to the disciplinary

authority. It was also observed that disciplinary authority in terms of the rules had enough power to reconsider the evidence and come to its own

conclusion. In Vijay Shankar Pandey (supra), the Supreme Court followed K.R. Deb (supra) and reiterated the principle laid down therein. The said

decisions are also not applicable to the facts of the present case. We also find no merit in the contention urged on behalf of the petitioner that

complaint dated 30.08.2011 having not been submitted to the Complaints Committee, the same could not have been acted upon. Materials on record do

not indicate that at the time of submission of the complaint dated 30.08.2011, there was any specific Complaints Committee in place and on the

contrary, it appears that only after the complaint was received by the authority, FLCC was constituted to go into the complaint. Even otherwise, the

Standing Order No.1/2006 itself visualizes submission of complaint directly to the Frontier IG/IF under certain circumstances.

24. This brings us to the question as to whether a disciplinary proceeding was initiated against the petitioner and, if that was so initiated, whether the

submissions advanced by Mr. Dutta with regard to the alleged infirmities in the proceeding of the CCC have substance.

25. The scope of judicial review in case of misconduct and imposition of penalty under the service jurisprudence is circumscribed as the court is only

required to examine as to whether the charges have been established on the basis of a fair enquiry. We are also conscious of the fact that judicial

review is not against the decision but the decision making process.

26. Mr. Dutta had submitted that no disciplinary proceeding had been initiated against the petitioner, as a disciplinary proceeding is initiated only on

drawing up of substance of imputation of misconduct and misbehaviour into definite and distinct articles of charge. As, admittedly, no charge was

framed, which is noted by the CCC itself, imposition of penalty of withholding of 50% monthly pension on permanent basis is wholly without

jurisdiction, he contended.

27. In the case of Sandeep Khurana (supra), submission made on behalf of the employer that although no specific charges were framed against the

petitioner, the petitioner was aware of the allegations against him inasmuch as copy of the complaint had been given to him, did not find favour with

the Delhi High Court. It was further noted that no opportunity was granted to the petitioner therein to submit a written reply to the allegations. It is

further observed therein that a Complaints Committee, which is to function as an enquiry authority, cannot return the finding of guilt against a

government servant without adopting the procedure under Rule 14 of the Rules of 1965, i.e., without giving a Charge-sheet or Memorandum

delineating the allegations on which the charges are framed along with the list of witnesses and documents relied upon. In this context, the Delhi High

Court had also taken note of Article 311(2) of the Constitution of India. It was also held that prejudice was caused to the petitioner by not giving him a

notice or intimation that the proceedings of the Complaints Committee are going to be for imposition of a major penalty.

28. Under Rule 14(3) of the Rules of 1965, where it is proposed to hold an enquiry against a Government servant under Rule 14 and Rule 15, the

disciplinary authority is required to draw up or cause to be drawn up (i) the substance of the imputations of misconduct or misbehaviour into definite

and distinct articles of charge, (ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge, which shall contain

“ (a) a statement of all relevant facts including any admission or confession made by the Government servant; (b) a list of documents by which, and

the list of witnesses by whom, the articles of charge are proposed to be sustained. Rule 14(4) requires the disciplinary authority to deliver or cause to

be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of

documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such

time as may be specified, a written statement of his defence and state whether he desires to be heard in person.

29. On receipt of the written statement of defence, the disciplinary authority may itself enquire into such of the articles of charge as are not admitted

or appoint an Inquiring Authority in terms of Rule 14(5)(a). Rule 14(5)(a) also prescribes the procedure when charges have been admitted. Rule 14(5)

(b) prescribes the procedure when no written statement is submitted. Rule 14(5)(c) provides that the disciplinary authority may appoint a Government

servant or a legal practitioner, to be known as “Presenting Officer” to present on his behalf the case in support of the articles of charge.

30. In respect of a complaint of sexual harassment, the proviso to Rule 14(2) provides that if a separate procedure has not been prescribed for the

Complaints Committee for holding the inquiry into the complaints of sexual harassment, the Complaints Committee will hold the inquiry as far as

practicable in accordance with the procedure laid down in the Rules of 1965, which necessarily implies that the Complaints Committee is not wholly

and in its entirety bound by the procedure prescribed. At the same time, it cannot be countenanced that even if a separate procedure is prescribed, the

same can be in derogation to principles of fairness in action. In the instant case, the Complaint Mechanism in the Standing Order provides some

guidelines in the form of procedure to be adopted.

31. To whom the complaint is to be normally submitted is already indicated in an earlier part of this judgment, which is, to the Complaints Committee.

But at the same time, Clause 10(iv) of the Standing Order provides entrustment of the inquiry to the Complaints Committee. It is not provided therein

that when a complaint is received by the Complaints Committee, it has to forward the same to the disciplinary authority. A composite and harmonious

reading of the Complaint Mechanism seems to indicate that assuming that a Complaints Committee is already in place, on receipt of a complaint by it,

it has to deliver up the same to the disciplinary authority for consequent entrustment to it for the purpose of conducting the inquiry in its role as

Inquiring Authority.

32. In normal course, before appointment of the Inquiring Authority, steps in terms of provisions contained in Rule 14(3) and (4) would have been

completed. In other words, articles of charge, etc. would have been framed. However, in respect of allegations of sexual harassment, such allegations

being personal in character, it will not be unreasonable to hold that the complaint itself can be treated to be the article of charge. Proviso to Rule 14(2)

makes the position clear by indicating that the Complaints Committee is to inquire into complaints for the purpose of disciplinary proceeding. The

decision in Delhi Development Authority (supra) that framing of charge sheet is the first step taken for holding the inquiry into the allegation may not

be wholly applicable in the context of allegations relating to sexual harassment in workplace, having regard to insertion of proviso to Rule 14(2) of

Rules of 1965.

33. In Tezpur University (supra), the petitioner, who was a Professor of Tezpur University, had challenged an order removing him from the post of

Professor, proceedings of the departmental enquiry in connection thereof as well as the direction requiring him to leave the university campus

forthwith. Based on a complaint of a student, the Complaints Committee on Sexual Harassment (CCSH), on the basis of an enquiry after examination

of witnesses including the complainant, the writ petitioner and others, had come to the conclusion that the petitioner was guilty of committing sexual

harassment to one lady student and, accordingly, had made recommendation that the petitioner be terminated from service as per the University

Service Rules and guidelines. Based on the recommendation, a disciplinary proceeding was initiated by issuing a Show Cause notice asking him to

submit written statement. Copies of the documents to be relied upon and the names of the witnesses to be examined were also furnished to the

petitioner. But the reply having not been found satisfactory, an enquiry officer was appointed and, on completion of the enquiry, enquiry report dated

11.09.2013 was submitted and, thereafter, the order dated 08.11.2013 was issued. The learned Single Judge held that there was no material to lend

support to the conclusion arrived at by the CCSH. It was further observed that the respondent authorities should have examined the report of the

CCSH as to whether the findings recorded therein constituted sufficient evidence to hold the petitioner guilty of the charge and, instead of doing so,

treated the report of the CCSH as merely a preliminary investigation or enquiry and then initiated a disciplinary proceeding. The learned Single Judge

further observed that the initiation of the disciplinary proceeding was a de novo enquiry and, even if it was considered that the same was permissible,

there were procedural improprieties and, accordingly, the writ petition was allowed. The writ appellate court, in paragraph 22 of its judgement,

observed that the enquiry conducted by the CCSH was in the nature of a fact finding enquiry. It was also observed that from the pleadings contained

in the writ petition that the petitioner had not assailed the report of the CCSH and that he had not also alleged that the said proceeding was concluded

by denying proper opportunity to defend his case. The Division Bench concluded that the enquiry proceeding initiated through the Show Cause Notice

dated 18.06.2013 had been conducted giving full procedural safeguard to the petitioner during the enquiry proceeding and that the enquiry report dated

11.09.2013 was based on the evidence on record. Referring to the case of Medha Kotwal Lele (supra), it was also observed that it was permissible

for the University to take action against the petitioner treating the report of the CCSH as the enquiry report and, in that view, the subsequent enquiry

proceeding was not necessary. The observations made by the Division Bench in this regard has to be understood in the context of the case as the

removal order was passed on the basis of the departmental proceeding initiated vide Show Cause notice dated 18.06.2013.

34. Fax Message dated 03.09.2012 indicates constitution of a Central Complaints Committee (referred to as "Central Legal Complaint

Committee" for conducting inquiry against the petitioner in respect of sexual harassment complaint made by Smti. Sunita Singha. As on the date of

constitution of the said committee, there was one complaint made by her which is dated 30.08.2011. Such complaint was entrusted to the CCC and,

therefore, having regard to decision in Medha Kotwal Lele as well as proviso to Rule 14(2), there is no escape from the conclusion that a disciplinary

proceeding had commenced.

35. It is, be, appropriate, to, extract, the, relevant, portion, of, the, complaint, dated 30.08.2011, which reads as follows:

To

The Inspector General,

Frontier Hqrs, SSB, Guwahati.

Subject: Regarding information of personal Grievances thereof.

Honorable Sir,

With due respect and humble submission, I the undersigned have the pleasure to draw your kind attention to the following matter.

1. I have joined in the office of the A.O. Rangia in March, 2009. Since my joining I have been entrusted the task of receiving telephones and Mobiles

in the Control Room, CAP, Training, Sports. Then I was the only female employee in the Office.

2. I have just started devotion on my duties the AO Mr. Dilip Paul started teasing me tactically. He started making phone calls to me sometimes at

night using unofficial and multimeaning word. Even he went to the extent of visiting my residence where I stay alone with two of my children as my

husband is a state Government employee in Manipur.

3. Sometimes CAP work needs close working with the officers. Taking the advantage he used to call me in his room and started teasing indirectly and

unnecessarily makes to sit for hours. One day he went to the extent of saying "If you want to work happily in my office, then agree to my

saying."

4. I have been tolerating his acts since the last two and half years. I could neither inform my husband nor launch any written complaint against his act

as it will be difficult to give evidence. Unable to bear the situation I have verbally complaint to the then DIG Shri S. C. Katoch over telephone in May,

2010 about Mr. Paul uncivilized attitudes. The DIG did a favour and warned Mr. Paul for fatal consequences if he not stopped the act of teasing.

5. Since then, he stopped teasing instead begun torturing me mentally. I have not been entrusted any work and ex-communicated in the office.

Throughout the day all I have to do is sit silently in the office. If any of my colleagues talk with me Mr. Paul immediately called him to scold bitterly.

Sir, I am now so much depressed and mentally disturbed I have visited to the Doctors many times for which I have taken many medical leaves. Now,

I have not in a position to work even a day under him. It also began infecting my family life.

In view above, I request your kind honour to look into the matter sympathetically and it is also requested to take necessary action against the Shri D.

Paul, AO Rangia to get rid of this problems as soon as possible for which I shall remain ever grateful to you.

36. Thus, the allegations against the petitioner are spelt out in paragraphs 2 and 3 of the aforesaid complaint. What is also important to note is that it is

stated that on being verbally complained in the month of May, 2010, Shri S. C. Katoch had warned the petitioner of severe consequences if he did not

stop the act of teasing. Though, on being warned, the petitioner had stopped the act of teasing, he had begun torturing the complainant mentally. In the

background of the assertions in the complaint, Shri S. C. Katoch is an important and key person who was aware of the allegations.

37. Clause 10(vi) of the Complaint Mechanism provides that in the preliminary hearing the Chairperson should serve gist of complaint to the alleged

officer/official (in the form of articles of charge) and he should formally be asked whether he pleads guilty or not based on the complaint.

38. In the report of the CCC under the heading "II. Constitution of Committee", it was observed as follows:

"The Complaints Committee decided to treat the complaint filed by Smti. Sunit Singha as the charge-sheet in the absence of charges framed and

given to the committee for the purpose of inquiry. After having confirmed the receipt of the copies of all the documents along with the original

complaint by the Charged Officer, the complaint committee decided to go ahead with the inquiry and asked both the complainant and the charged

officer to submit their list of witnesses as well as their statements if any in their support. Thereafter, the Charged Officer, complainant and prosecution

witnesses were directed to appear before the complaint committee at NCRB Hqrs, R. K. Puram, New Delhi for recording their statements.

In the preliminary hearing held on 27.09.2012, the Complaints Committee, briefed the Charged Officer, Complainant and the prosecution witnesses

regarding the complaint mechanism and the procedure which would be followed in the inquiry, given that it is a case of sexual harassment in the

workplace by presenting the guidelines of the Supreme Court in "Visakha and Others Vs. State of Rajasthan and Others" (AIR 1997

Supreme Court 3011) and another case title "Medha Kotwal Lele and Ors Vs. UOI and Ors (Writ Petition/Crl. No. 173-177/1999 dated

26.04.2004).

39. Under the heading "III. Complaint Mechanism to Redress the Grievances of Women/Sexual Harassment in the Workplace", it was observed

by the CCC as follows:

"In the preliminary hearing on 27.09.2012, Shri Dilip Paul, the Charged Officer was served all the relevant documents including original complaint

dated 30.08.2011 as the charge sheet. The list of documents handed over on different dates have been appended to this report. On the question of

pleading guilty/not guilty of the charges leveled against him, the Charged Officer categorically denied the charges leveled against him.

40. A perusal of the Daily Order sheets of the CCC goes to show that the first sitting of the committee took place on 26.09.2012. The petitioner was

provided with copy of the complaint dated 30.08.2011 lodged by Smti. Sunita Singha. It also appears that a complaint dated 18.09.2012 along with five

Annexures was submitted by Smti. Sunita Singha to the Chairperson of the CCC and copy of such complaint was also made available to the petitioner.

The petitioner was asked whether he pleaded guilty of the charges made in the complaint. It also appears from the proceeding on that day that, on

being asked as to whether he would like to engage a Defence Assistant, he had initially stated that he would come up with the name and address of

the Defence Assistant by 1:00 P.M, but, subsequently, had prayed for one month's time to engage a Defence Assistant. The CCC granted one

week's time for the purpose of securing the assistance of a Defence Assistant. Though seven days' time was granted to the petitioner, yet

the committee on 27.09.2012, examined five witnesses. The order-sheet dated 28.09.2012 goes to show that on that day the committee noted that list

of witnesses and documents should be ascertained by going through the original complaint and the subsequent complaint as well as by perusing the

statements recorded till then. From the above observation of the CCC quoted in paragraph 39 above, it is evident that documents were being

entertained as the inquiry progressed. There has to be certainty in a disciplinary proceeding and the procedure adopted cannot be said to be a fair

procedure. The order-sheet dated 26.11.2012 goes to show that the petitioner had stated that he could not secure the service of Defence Assistant

and indicated that he would cross-examine the witnesses without the service of Defence Assistant. On 28.11.2012, eleven witnesses were cross-

examined by the petitioner including the ones who were examined earlier. In between, on 27.11.2012, on the request of the petitioner, two persons,

namely, Kapil Nath and Mohan Chandra Sarania, who were villagers and were cited as defence witnesses, were examined and the complainant had

also cross-examined the said two defence witnesses. On 10.12.2012, five witnesses were examined on behalf of the prosecution and the complainant

sought to cross-examine Sri S. C. Katoch, a prosecution witness, which was allowed. After examination of one Mr. S. K. Singha on 11.12.2012,

prosecution evidence was closed and, on the same very day, after three witnesses were examined and cross-examined on behalf of the petitioner,

defence evidence was closed. However, the order-sheet dated 18.12.2012 goes to show that opportunity was granted to the petitioner to cross-

examine the complainant on the basis of records provided to him by the CCC.

41. What is important to note is that a complaint dated 18.09.2012 along with five Annexures was submitted by Smti. Sunita Singha to the Chairperson

of the CCC and copy of such complaint was also made available to the petitioner. In the inquiry report the above fact is not mentioned. It also does

not appear that the said complaint was brought to the notice of the disciplinary authority. The CCC was mandated by the authority to inquire into the

complaint dated 30.08.2011. However, it is manifest from the inquiry report that the complaint submitted on 18.09.2012 was also taken into

consideration. It is noted by the CCC in the report under the heading "VI. Charges which were admitted/dropped/not pressed" that the petitioner

did not plead guilty to any of the allegations made by the complainant in her complaint dated 30.08.2011. Though the copy of the complaint dated

30.08.2011 was furnished, the same was not given in the form of articles of charge. The requirement of the officer proceeded against to be formally

asked whether he pleads guilty or not would, according to the understanding of the court, is not an opportunity to such officer only to answer the same

in a mono-syllable. To give meaning to the word "formally", a real and effective opportunity has to be granted to the officer concerned to make

his comment in writing in response to the complaint. Apparently, no such opportunity was afforded. There is no indication that in respect of the

complaint dated 18.09.2012, the officer was even asked as to whether he pleads guilty to the allegations made therein or not.

42. Under the heading "VII. Charges actually inquired into and points to be determined", the CCC had cited the incidents as indicated therein as

the substance of her complaint. Ten points were accordingly formulated. The points formulated are as follows:

"Point 1. That Shri Dilip Paul would use the pretext of summoning into his room with work-related files in order to make comments of a sexually

loaded and personal nature such as remarks about her personal appearance and her looks, about how he wanted to marry a Manipuri girl like her. He

would also boast at times about his sexual prowess and abilities in satisfying women who were unhappy with their husbands. He would also make

comments that had a double meaning (of sexual nature). On such occasions, he would detain her in his office for inordinately long periods. This

charge, if substantiated, is admissible under the Vishaka definition of sexual harassment as it involves sexually coloured remarks and other unwelcome

physical, verbal or non-verbal conduct of sexual nature. Furthermore, it may also be shown to be discriminatory if it is substantiated that Smt. Sunit

Singha believed that her objection to Shri Dilip Paul's conduct would disadvantage her in connection with her employment and her apprehension

that it would create a hostile work environment.

Point 2. That Shri Dilip Paul would share at her in the workplace, such as the repeated incidents in which he would come out from his office into the

room that she was sitting, on the pretext of drinking water. This charge, if substantiated, is admissible under the Vishaka definition of sexual

harassment as it involves sexually coloured remarks and other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Point 3. That Shri Dilip Paul would attempt to touch her in unwelcome sexually determined manner in the workplace, such as an incident when, on the

pretext of teaching her to operate a laptop, he came closer to her and touched her shoulder and body. This charge, if substantiated, is admissible under

the Vishaka definition of sexual harassment as it involves physical contact and advances and other unwelcome physical, verbal or non-verbal conduct

of sexual nature. Furthermore, it may also be shown to be discriminatory if it is substantiated that Smt. Sunita Singha believed that her objection Shri

Dilip Paul's conduct would disadvantage her in connection with her employment and her apprehension that it would create a hostile work

environment.

Point 4. That Shri Dilip Paul would often make her work much beyond office hours, often after 20:00 hours. He would then offer to drop her in his

vehicle to her home. In general, Shri Dilip Paul would pressure her to drive with him in his vehicle, either when she was returning from work or in the

town. This charge, if substantiated, is admissible under the Vishaka definition of sexual harassment as it involves other unwelcome physical, verbal or

non-verbal conduct of sexual nature. Furthermore, it may also be shown to be discriminatory if it is substantiated that Smt. Sunita Singha believed that

her objection Shri Dilip Paul's conduct would disadvantage her in connection with her employment and her apprehension that it would create a

hostile work environment.

Point 5. That Shri Dilip Paul, on the occasion that Smt. Sunita Singha with other office colleagues had accompanied him to the railway station to book

train tickets for the study tour to South India in March 2010, made an unwelcome sexual advance to her in full public view. While she was standing in

the queue at the ticket booking counter, That Shri Dilip Paul came to stand next to her and put his arm around her shoulder and tried to hug her close

to his body. That Shri Dilip Paul said to her that he is sending her on the study tour to make her "mind fresh" so that she may forget her previous

life and when she returned, begin a new one as Mrs. Paul. This charge, if substantiated, is admissible under the Vishaka definition of sexual

harassment as it involves unwelcome physical contact and advances. Furthermore, it may also be shown to be discriminatory if it is substantiated that

Smt. Sunita Singha believed that her objection Shri Dilip Paul's conduct would disadvantage her in connection with her employment and her

apprehension that it would create a hostile work environment.

Point 6. That Shri Dilip Paul subjected her to further unwelcome sexually determined conduct by the statements that he made when he came to the

railway station to see off the group departing for the study tour. After the luggage had been loaded onto the train, That Shri Dilip Paul came into the

train compartment and said to Smt. Sunita Singha "tum jaa rahe ho to meri jaan jaa rahi hai. Ham ka saath jaanaa hi acchaa hota. Koi baat nahi,

tum study tour se waapas aa jaaoo, to tim Mrs. Paul banogi". This charge, if substantiated, is admissible under the Vishaka definition of sexual

harassment as it involves sexually coloured remarks, and a demand or request for sexual favours. Furthermore, it may also be shown to be

discriminatory if it is substantiated that Smt. Sunita Singha believed that her objection Shri Dilip Paul's conduct would disadvantage her in

connection with her employment and her apprehension that it would create a hostile work environment.

Point 7. That Shri Dilip Paul made unwelcome sexual advances to her outside the workplace as well whereon several occasions, he propositioned her,

asking her to leave her husband and marry him on the assurance that he would adopt her children as his own. Since July, 2009, Shri Dilip Paul made it

a habit to visit her uninvited at her residence. Smt. Sunita Singha resided in Rangia with her two children alone, she felt unable to refuse entry to her

hierarchically superior officer, fearing future discrimination. These visits took place even late at night. Several incidents have been cited in the

complaint in this connection.

a. That Shri Dilip Paul used to make unsolicited phone calls to her, frequently at night and insist on speaking to her for long durations, sometimes up to

half an hour. The phone calls were usually made between 1900 and 2000 hours, but on occasion, she also received calls from That Shri Dilip Paul as

late as 4.30 a.m. The substance of these calls mostly consisted of unwelcome comments of a sexual nature with the objective of making her submit to

his unwelcome sexual advances.

b. On one occasion, Shri Dilip Paul came to Smt. Sunita Singha's home at around 4.45 a.m. and insisted that she came out for a morning walk

with him. Fearful that if she refused, he would insist on coming into her house at that hour, she accompanied him for a short distance.

c. That on one uninvited visit to Smt. Sunita Singha's home, Shri Dilip Paul came with a bottle of alcohol and sought to pressure her to join him in

drinking. When she tried to get away from him by going to the kitchen, Shri D. Paul followed her and tried to force himself upon her by embracing

her. She somehow managed to extricate herself and ran outside the house, and remained there until Shri D. Paul left the house.

d. That on his uninvited visits to Smt. Sunita Singha's home, Shri Dilip Paul showed an unnatural and unhealthy interest in her daughter. He would

call the child and draw her to him and would then attempt to hold her in a very "dirty" manner. On the occasion that this happened, he only let

go of the child when Smt. Sunita Singha called the child to her in Manipuri.

e. That when Shri Dilip Paul visited her house one evening in April 2010, shortly after her return from the Study Tour to South India, he made

unwelcome sexual advance to her by his statement that they would become one in a few days time and that she should stop resisting. He also tried to

forcibly embrace her, but she extricated herself and ran into the room that her children were sleeping in.

f. That Shri Dilip Paul, during an official trip to Nagrijuli in connection with the Civic action Programme, made her sit next to him and tried to hold

her hand and touch her, all of which behaviour was sexually determined, unwelcome and insulting. Smt. Sunita Singha also stated that there were no

eyewitnesses to these acts, as only she and Shri Dilip Paul were seated in the middle seat of the car.

These charges, if substantiated, are admissible under the Vishaka definition of sexual harassment as they involve sexually coloured remarks, physical

contact and advances, and demands or request for sexual favours. Furthermore, they may also be shown to be discriminatory if it is substantiated that

Smt. Sunita Singha believed that her objection Shri Dilip Paul's conduct would disadvantage her in connection with her employment and her

apprehension that it would create a hostile work environment.

Point 8. Shri Dilip Paul began victimising her for her refusal to submit to his unwelcome sexual advances soon after he learnt that she had made a

complaint about his misconduct to Shri S. C. Katoch, who happened to be the DIG of another area. Mrs. Sunita Singha had telephoned Shri S. C.

Katoch after the incident reported in point 10, and told him all that had been taking place. She stated that Shri Katoch informed her in a subsequent

phone call that she made to him that he had issued a verbal reprimand to Shri Dilip Paul. However, a few days after the incident, Shri Dilip Paul called

her into his office and asked her whether she had made a complaint against him to Shri Katoch. Mrs. Sunita Singha confirmed to him that she had

indeed done so, and to scare him, told him that she had made a written complaint. From that day on, Shri Dilip Paul withdrew all the work that was

assigned to her and assigned it to another employee. Thereafter, and for the next three months, Smt. Sunita Singha was made to sit idle in the office.

This charge, if substantiated, is admissible under the Vishaka definition of sexual harassment as it is discriminatory in that it instantiates the visiting of

adverse circumstances upon the victim because she did not consent to sexual harassment and raised objections to it.

Besides these points, the Complaints Committee had decided to take cognizance of the following additional points of complaint made by the

complainant:

Point 9. In late August 2010, Smt. Sunita Singha approached I.G. S. K. Singhal with a written complaint of sexual harassment in the workplace, which

also contained an application for her transfer to Ftr. Hqr. Guwahati. Shri Singhal asked her to separate the two complaints of sexual harassment in the

workplace from the transfer request and issued an order transferring her to Ftr. Hqr. Guwahati on 1 September 2011. However, the transfer order did

not contain directions for the payment of TA/DA and did not provide her any joining time.

Point 10. Smt. Sunita Singha has also complained that the now-quashed enquiry into her complaint of sexual harassment in November 2011 did not

provide her sufficient time or opportunity to submit additional documents and produce additional witnesses relating to the past history of the accused.

She has also stated that she was not afforded the right of cross-examination of Shri Paul, or a chance to rebut his alleged false statement. After the

completion of the thereafter quashed enquiry, she was not also provided a copy of the enquiry report. In her deposition as well as the written

submissions made to the Complaints Committee, she also pleaded that due cognizance be taken of the fact that, as a woman employee of the SSB,

she was entirely unaware of that a Complaints Committee mechanism for dealing with complaints of sexual harassment was in place and that as a

complainant, she had the right to submit a request for either her own transfer or the transfer of the defendant. She has also queried whether the

promotion of Shri Dilip Paul on 11 September 2012 to the rank of DIG is maintainable when a complaint of sexual harassment in the workplace

against him was pending.

43. Clause 10(II) of the Complaint Mechanism provides that complaint shall contain all the material and details concerning the alleged sexual

harassment. What were the allegations in the complaint filed on 30.08.2011 after the petitioner had filed an ejahar on 26.08.2011 have already been

taken note of. A perusal of the above ten points would go to show that Point Nos. 1 to 6, 7 (b) to (f), 9 and 10 are no way connected to the complaint

dated 30.08.2011. Two inquiries had also taken place and, after more than a year later, after lodging of the complaint dated 30.08.2011, another

complaint with many allegations was submitted to the Chairperson of the CCC on 18.09.2012. In our considered opinion, the CCC could not have

entertained such a complaint for the purpose of a disciplinary proceeding in absence of entrustment in terms of Standing Order.

44. In Narendra Mohan Arya (supra), the Supreme Court had observed that in a domestic inquiry fairness in the procedure is a part of the principles

of natural justice and that it is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstance

of each case but the concept of fair play in action is the basis and the inquiry officer is not permitted to travel beyond the charges and any punishment

imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal.

45. Perusal of the order-sheets, more particularly, the orders dated 26.11.2012, 27.11.2012, 28.11.2012 and 10.12.2012 go to show that the committee

asked questions to the prosecution witnesses and examination-in-chief was done by the committee. Prosecution witness, Mr. S. C. Katoch, who was

cross-examined by the complainant, in his statement had stated that the complainant had made only one call on his mobile and that she had mentioned

that the petitioner is harsh in his office work and had given her duty in control room for which she is to sit in the control room after office hours. He

had, in other words, negated the assertions made in the complaint that she had informed about sexual harassment meted out by the petitioner. The

CCC, however, noted that it appeared that Shri Katoch had pre-judged the complaint as untrue. When his evidence was that there was no complaint

of sexual harassment, there was no occasion for the CCC to opine that he pre-judged the complaint. He was also put fifteen questions by the CCC,

which was styled as "examination-in-chief". Some of the questions asked by the committee to Mr. S. C. Katoch are as follows:

"Question No. 3 : "Did she tell you that Mr. Paul has proposed marriage to her and he had tried to touch her and had made unwelcomed sexual

advances to her ?"

Answer : "No. During the period of three years I visited A.O. Office, Rangia, about four times where Mr. Paul and Sunita Singha were posted.

Sunita Singha never came to me with any report/complaint of sexual harassment or otherwise. Neither did Shri Paul ever made any complaint against

her."

Question No. 5 : "You have said that Smti Sunita had not complained to you about anything during your visits to A.O., Rangia Office. Having

received telephone call from Smti. Sunita, did you feel it fit as a senior and supervisor to find out whether her problems were solved or whether some

intervention was required on your part as the call had been made by a lady staff ?"

Answer : "Mr. Paul is a very hardworking officer and he has won Best Area award on three occasions. There are two types of people posted in

that office. Firstly, those who are sincere and hardworking and they will work daily up to 8/9 P.M. and there is a second lot, who are work shirkers

and indulge in anonymous complaints.

46. It is noticed that the prosecution witnesses were also put questions by the CCC, which is evident from the report of the CCC under the heading

"V. Examination of witnesses", wherein the CCC itself recorded that CCC had conducted the examination-in-chief whenever it felt necessary.

Thus, it is evident that the CCC also played the role of prosecutor, which vitiates the proceeding.

47. With regard to Point No. 5(a), the CCC had recorded that it had noted that no witness examined by it had specific knowledge of the events listed

in, wrongly recorded as 5(a) - (f). It should have been events listed in 7(a) - (f). Events at 7(a) pertain to allegation of making unsolicited phone calls

at unearthly hours and, that too, for long duration. No call records were produced. However, CCC accepted the allegations by merely holding that the

committee saw no reason what gain the complainant would have in fabricating the allegations and that it is understandable that no woman would be

expected to confide matters of sexual nature even to her female colleagues. The CCC is to record its finding based on evidence on record and not on

surmises and conjectures. It will be worthwhile to recall that the prayer of the complainant for a transfer was rejected on 24.08.2011 and based on a

threatening message issued by the husband of the complainant on 26.08.2011, the petitioner had lodged the ejahar on 26.08.2011. These aspects were,

however, not weighed by the CCC.

48. In view of the above discussions, we are of the considered opinion that the order dated 05.01.2016, imposing penalty upon the petitioner, cannot be

sustained in law. Resultantly, the order dated 05.01.2016 is set aside and quashed. Respondents are directed to release the withheld amount of

monthly pension within a period of three months.

49. The writ petition is allowed as indicated above. No cost.