2023 SCC OnLine SC 1423

In the Supreme Court of India

(BEFORE DR D.Y. CHANDRACHUD, C.J. AND J.B. PARDIWALA AND MANOJ MISRA, JJ.)

Union of India and Others ... Appellant(s);

Versus

Dilip Paul ... Respondent(s).

Civil Appeal No. 6190 of 2023

Decided on November 6, 2023

Advocates who appeared in this case :

For Appellant(s) Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. Avijit Roy, AOR

The Judgment of the Court was delivered by

J.B. PARDIWALA, J.:— For the convenience of the exposition, this judgment is divided in the following parts:—

INDEX

2. The Registry is directed to anonymize the name of the complainant in this Judgment, all orders that have been passed as well as in the records which are publicly available.

3. This appeal is at the instance of the Union of India and others being the unsuccessful respondents before the High Court and is directed against the judgment and order dated 15.05.2019 passed by the Gauhati High Court in Writ Petition (C) No. 7876 of 2015 by which the High Court allowed the writ petition filed by the respondent herein (original petitioner) and thereby set aside the order of penalty of withholding of 50% pension for all times to come, imposed upon the respondent herein in connection with the disciplinary proceedings initiated on the allegations of sexual harassment.

4. We are dealing with a litigation relating to sexual harassment. Sexual harassment in any form at the work place must be viewed seriously and the harasser should not be allowed to escape from the clutches of law. We say so because the same humiliates and frustrates a victim of sexual harassment, more particularly when the harasser goes unpunished or is let off with a relatively minor penalty. However, at the same time, it should be kept in mind that the charge of this nature is very easy to make and is very difficult to rebut. When a plea is taken of false implication for extraneous reasons, the courts have a duty to make deeper scrutiny of the evidence and decide the acceptability or otherwise of the accusations. Every care should be taken to separate the chaff from the grain. The veracity and genuineness of the complaint should be scrutinised to prevent any misuse of such laudable laws enunciated for the upliftment of the society and for equal rights of people without gender discrimination by anybody under the garb of

"sexual harassment", lest justice rendering system would become a mockery. In such circumstances, we have decided to look into this matter closely and in details.

A. FACTUAL MATRIX

5. The respondent herein was serving as the Area Organizer i.e., the Local Head of Office of the Service Selection Board (for short, "the SSB"), Rangia, State of Assam between September, 2006 to May, 2012. In the very same office, a lady employee was serving as the Field Assistant (Lady) (hereinafter referred to as the "complainant"). She lodged a complaint (hereinafter referred to as the "first complaint") addressed to the Inspector General (for short, "IG"), Frontier Headquarters, Guwahati with one copy each forwarded to the DG SSB, New Delhi, Dy. IG, SSB, SHQ, Tezpur and the Chairperson of the National Women Rights Commission, New Delhi *inter alia* alleging sexual harassment at the hands of the respondent. The first complaint dated 30.08.2011 reads thus:—

"To,

The Inspector General,

Frontier Hqrs. SSB Guwahati

Subject : Regarding information of personal grievances thereof.

Hon'ble Sir,

With due respect and humility, I the undersigned to draw your kind attention to the following matter.

1. I have joined 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. Having just started discharging my duties devotedly the AO Mr. Dilip Paul started teasing me tactically. He started making phone calls to me sometimes at night using unofficial and multimeaninged 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 me 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 lodge any written complaint against such acts 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 altitude. The DIG did a favour and warned Mr. Paul of severe consequences if he did not stopped misbehaving.

5. Since then, he stopped teasing but instead began torturing me mentally. I have not been entrusted any work and excommunicated 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 would immediately call him and scold him

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 am not in position to work even for a day under him. It also began affecting my family life.

In view of the 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 problem as soon as possible for which I shall remain ever grateful to you.

Yours faithfully,
Sd/- 30.8.2011
(Smt. X)
FA (Lady)
A.O. Office, SSB Rangia"

A.1 On-Spot/Preliminary Inquiry Report

6. The Dy. IG, SSB, SHQ, Tezpur held a common "on-the-spot" fact finding inquiry in relation to the first complaint dated 30.08.2011 and recorded the statements of the employees working in the office of the respondent. The respondent was given an opportunity to file his reply to the allegations levelled in the complaints. On 13.12.2011, the "on-the-spot" fact finding inquiry was concluded, and two reports in that regard were submitted to the IG, Frontier HQ, Guwahati.

a) On the first complaint of sexual harassment, the staff members stated that they had not seen anything in the office which could be termed as indirect teasing or harassment to the complainant. The report reads as under:—

"To

The Inspector General,

Frontier Hqrs. SSB

Guwahati,

Sub : Inquiry on complaints lodged by Smt. X FA (Lady) against Shri D. Paul, Area Organiser, SSB Rangia.

Sir,

With reference to Ftr. Hqrs. Ghy. letter No. FG-II/VCVIG/08 (Part)/15293 dt. 01-09-11, I visited the Office of the Area Organiser, SSB Rangia on 1st November, 2011 and enquired into the matter. All the staff available in the office on the date, were summoned one after another individually, but none of them stated to have seen or known Shri Dilip Paul, Area Organiser misbehaving with Smt. X, FA(Lady) in the office. Further most of them stated that due to reasons best known to Shri Paul, Area Organiser, she was not allotted with any work for about 3 months before her release on transfer to Ftr. Hqrs. Ghy. and hence she was often seen depress.

On the other hand, in his written statement Shri Dilip Paul, Area Organiser pointed out that she was found even unfit in any kind of

assignment, and therefore, she was not assigned with any work just before her transfer i.e. from 18-08-11. But it is also duty of supervisory officer as administrator and manager to somehow motivate his sub-ordinate staff and take work from them.

In the case of Smt. X, FA(Lady), Shri Dilip Paul, Area Organiser, is found to have failed to motivate her and get work from her.

Regarding allegation of tactical and indirect teasing and making her to sit in the office chamber of Area Organiser, hours together, none of the staff have stated to have ever seen such situation in the office.

Hence the allegation of direct/indirect teasing and harassments to Smt. X, FA(L) by Shri Dilip Paul could not be ascertained. However, since Smt. X referred the case to National Women Rights Commission, New Delhi the matter may be under investigation by them.

Yours faithfully
Deputy Inspector General
SHQ, SSB, Tezpur"

b) Similarly, as per the report on the anonymous complaints, nothing substantive was found as regards the allegations. The said report further noted that during the inquiry the only thing that surfaced was the occasional rudeness and uncordial inter-personal relations of the respondent with three of his subordinate employees. Accordingly, the respondent was advised to improve his personnel management and administration of the office. The said report reads as under:—

"To

The Inspector General,

Frontier Hqrs. SSB

Guwahati.

Sub : Enquiry report on Anonymous Complaint against Shri D. Paul, Area Organiser, SSB, Rangia

Sir,

With reference to Ftr. Hqrs. Ghy. letter No. FG-II/VCVIG/08(Part)/5660 dt 08 -09-11, I visited Office •Of the Area Organiser, SSB, Rangia on 1st November, 2011 and enquired into the matter. All the staff present in the office on the date, were summoned one after another individually. I obtained their statements individually and on the basis of the interaction with each of them; I opine as follow:

i) From the statements of the staff it is observed that Shri Dilip Paul, Area Organiser sometimes shout to some of the staff in the office, for the purpose of official work only. No proof has been found regarding use of unofficial language. One or two official stated that the Area Organiser used to be rude and shouted at them on some occasions on matters of official work only.

ii) Regarding passing of TA/DA, MR Bills etc. it is found that these works are

going smoothly. There has been no occasion when he took interest of passing his own bill by neglecting that of others.

iii) Regarding granting of leave to staff and passing of bills etc. it is found that no refusal or delay occurred. However, while granting leave sometimes staff position and administrative convenience has been taken in to account.

iv) It is observed that Area Organiser is using his own vehicle to attend office.

v) On the basis of statement given by each staff and from the para-wise reply given by the Area Organiser, it is observed that there is no evidence regarding use of unnecessary slang language by the Area Organiser, to his sub-ordinate staff but at times he used to be rude to get the work done within the time limit, from some of the subordinate staff.

It is further observed that there is no cordial inter personal relation between Shri P.B. Gohain, SAO, Shri K. Siga, SAO, Shri J Singh, UDC and Area Organiser, Shri Dilip Paul. Therefore, these officers/officials may be shifted out in order to bring back cordial working atmosphere in the Area Office. At the same time, Shri Dilip Paul, Area Organiser may be advised to improve upon his man management, administration and other official dealings, skills and tactics with his sub-ordinate staff to bring back congenial atmosphere in the office.

Yours faithfully

Sd/-

Deputy Inspector General

Sector Hqrs. SSB, Tezpur"

A.2 Frontier Complaints Committee's Inquiry Report

7. Simultaneously, a Frontier Complaints Committee comprising of three women members was constituted by the IG, Frontier HQ, Guwahati to inquire into the allegations of sexual harassment levelled by the complainant in her first complaint dated 30.08.2011. The Frontier Complaints Committee upon completion of the inquiry, submitted its report dated 17.01.2012 to the Frontier Headquarters SSB, New Delhi through the IG, Guwahati, stating that the allegations levelled by the complainant could not be said to have been fully established or proved. The Committee further observed that the complainant had lodged her first complaint after a delay of more than two years and had also failed to produce any documentary evidence in support of her allegations. The relevant observations of the Frontier Complaints Committee's Inquiry Report are reproduced below:—

"7) Finding of inquiring authority:— The inquiry committee assembled at FTR HQRs Guwahati on 25.01.2012 to ascertain the fact of the case. The committee has gone through the statements of complainant, charged officer, and the statements of prosecution/defense witnesses but the point raised in the complaint could not be fully established/proved. The statement given by all the prosecution witnesses are not enough to prove the complaint. She has lodged a complaint after a gap of more than two years. The complainant failed to produce any documentary evidence based on the allegations levelled against

the charged officer"

A.3 Central Complaints Committee's Inquiry Report

8. While the Frontier Complaints Committee's Report dated 17.01.2012 was pending for consideration, the Ministry of Home Affairs/Competent Authority, constituted another inquiry committee on 06.08.2012 being the Central Complaints Committee to conduct an appropriate inquiry into the complainant's allegations of sexual harassment.

9. Prima facie, it appears from the materials on record that the Central Complaints Committee had to be constituted, in view of Clause 9 of the 2006 Standing Order. Clause 9 of the 2006 Standing Order envisages two levels of complaints committee; (i) a Frontier Complaints Committee for the "combatised and in-field officers" (ii) a Central Complaints Committee for the "non-combatised officers". At the time of lodging of the complaint, the respondent was serving as a non-combatised officer i.e., Area Organizer. For such reason, the decision to constitute the Central Complaints Committee had to be taken.

10. On 18.09.2012, the complainant through fax submitted a second complaint containing additional allegations against the respondent (hereinafter referred to as the "second complaint") along with few other documents including the anonymous complaints made against the respondent in October 2011.

11. Accordingly, the Central Complaints Committee undertook the inquiry, and in the preliminary hearing held on 27.09.2012, it decided to treat the complaint as the charge-sheet in view of the fact that no specific charges were framed against the respondent. The respondent was provided with all the relevant documents including the original copy of the first complaint dated 30.08.2011. After, confirming with the respondent as regards the receipt of all relevant documents, the Central Complaints Committee inquired with the respondent whether he pleaded guilty to the charges or not. The respondent pleaded not guilty and categorically denied the charges levelled against him. The relevant portion of the Central Complaints Committee's Report reads as under:—

"VI. CHARGES WHICH WERE ADMITTED/DROPPED/NOT PRESSED:

Shri Dilip Paul, the charged officer did not plead guilty to any of the allegations made by Smt. X, FA (Lady) vide complaint dated 30.08.2011 framed against him."

12. The Central Complaints Committee in the course of its inquiry examined in all 20 witnesses produced by the complainant (incl. 5 witnesses who were earlier examined by the Frontier Level Complaints Committee) and 6 witnesses on behalf of the respondent (incl. 1 witness earlier examined by the Frontier Level Complaints Committee). Later, the Central Complaints Committee delineated the charges to be inquired by it into 10 distinct points. The points of determination framed by the Committee reads thus:—

"VII. CHARGES ACTUALLY INQUIRED INTO AND POINTS TO BE DETERMINED

The Complaints Committee is aware that aspects of this complaint are implicated in the FIR that Shri Dilip Paul lodged on 26.08.2011 at P.S. Rangia,

on the matter of an allegedly threatening message sent to him on his mobile phones by Smt. X's husband. In the counter-case filed by Smt. X's husband, similar allegations of sexual harassment have been raised. The Committee has ascertained from the SP Kamrup that both the cases are still pending investigation. Nevertheless, going by what has been stated in the CCS, CCA Rules 14(3), which states that action of prosecution in a court and departmental proceedings can go on simultaneously. The CCS CCA Rules require the fact that the approach and objective in the criminal and disciplinary proceedings are altogether distinct and different, be kept in view, as is laid down by the various Supreme Court rulings to this effect. Accordingly, the Committee decide to proceed with enquiry and submit its findings.

Smt. X has alleged that a few months after she joined Area Office, Rangia in April 2009, Shri Dilip Paul, then A.O. Rangia, started making unwelcome sexual advances to her, and that upon her refusal to submit to his advances and his sexually determined misconduct, he withdrew all work from her. She has cited the following incidents as the substance of her complaint.

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 a 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. X 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 stare 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 an unwelcome sexually determined manner in the workplace, such as an incident when, on the pretext of teaching her to operate a laptop, he come close 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. X believed that her objection to Shri Dilip Paul's

conduct would disadvantage her in connection with her employment and her apprehension that if would create a hostile work environment.

Point 4: That Shri Dilip Paul would often make her work much beyond office hours, often after 2000 hours. He would then offer to drop here 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.

Point 5: That Shri Dilip Paul, on the occasion that Smt. X 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, Shri Dilip Paul came to stand next to her and putt his arm around her shoulder and tried to hug her close to his body. 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.

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, Shri Dilip Paul came into the train compartment and said to Smt. X "tum jaa rahe ho to mari jaan jaa rahi hai. Ham ka saath jaanaa hi acchaa hota. Koi baat nahiin, tum study tour se waapas aa jaaoo, to tum Mrs Paul banogi."

Point 7: That Shri Dilip Paul made unwelcome sexual advances to her outside the workplace as well, where on 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 and 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 insisted on speaking to her for long durations, sometime up to half and hour. The phone calls were usually made between 19 : 00 and 20 : 00 hours, but occasionally, she also received calls from Shri Dilip Paul as late as 4.30 a.m. The substance of these calls mostly consisted of unwelcome comments of sexual nature with the objective of making her submit to his unwelcome sexual advances.

b. On one occasion, Shri Dilip Paul came to Smt. X'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. X'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 out the house, and remained there until Shri D. Paul left the house.

d. That on his uninvited visits to Smt. X'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. X 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 advances 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. X 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.

Point 8: That 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 DIG of another area. Smt. X 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. Smt. X 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. X was made to sit idle in the office.

Point 9: In late August 2010, Smt. X approached IG 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. X 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 statements. 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."

13. While the Central Complaints Committee's Inquiry was still pending, the Ministry of Home Affairs i.e., the Competent Authority vide its order dated 30.11.2012 annulled the Frontier Level Complaints Committee's Inquiry Report on the ground that, the Chairperson of the said Frontier Level Complaints Committee was of an equivalent rank as that of the respondent and the same was in violation of the statutory provisions, more particularly the Standing Order No. 1 of 2006 (Grievances Redressal Mechanism : To Redress Grievances of Women/Sexual Harassment at Work Place) (for short, "the 2006 Standing Order").

14. Clause 9(1) of the 2006 Standing Order mandates that the chairperson of the inquiry committee must be senior in rank to the delinquent/charged officer and reads as under:—

"9. <u>COMPLAINT COMMITTEES</u>

1. Chairman of committee should be senior to the officer/official against whom the complaint is made.

xxx xxx xxx

"TO : I) SO(ADMN), FTR HQR GUWAHATI

II) DR-K.S. DEVI, CHAIRPERSON, COMPLAINT COMMITTEE, FTR HQR GUWAHATI

FM : AD(PERS-m), FHQ NEW DELHI

REF. FTR, HQR GUWAHATI LETTER NO. GF-II/VCVIG/O8(PART)/3270 DATED 17.02.2012 REG. SUBMISSION OF INQUIRY SUBMITIED BY THE CHAIRPERSON OF THE COMPLAINT COMMITIEE DR. K.S. DEVI ON 17.01.2012 ON COMPLAINT OF SEXUAL HARASSMENT MADE BY SMT. X, FA (LADY) FTR HQR GUWAHATI AGAINST SHRI D. PAUL, AO RANGIA NOW DIG, FTR HQR SILIGURI (.) IT IS OBSERVED THAT AS PER SOP ON SEXUAL HARASSMENT THE CHAIRPERSON OF THE INQUIRY SHALL BE ONE RANK ABOVE OF THE GOVT. EMPLOYEE AGAINST WHOM HIS COMPLAINT IS MADE (.) IN THE SAID INQUIRY THE CHAIRPERSON AND SH. D. PAUL AGAINST WHOM THE COMPLAINT/INQUIRY WAS MADE WERE IN THE SAME STATUS AND IN THE MEAN TIME SHRI DILIP PAUL WAS ALSO PROMOTED TO THE RANK OF DIG (.) AS SUCH THE INQUIRY REPORT DATED 27.01.2012 OF SEXUAL HARASSMENT AGAINST SHRI D. PAUL, THE THEN A.O. NOW DIG WHICH WAS CONDUCTED BY THE BOARD UNDER BELOW STATUS

CHAIRPERSON AS PRESCRIBED IN THE STANDING INSTRUCTIONS IS HEREBY CANCELLED BY THE COMPETENT AUTHORITY ALONGWITH BOARD (.) FTR. HQR GUWAHATI IS REQUESTED INFORM ALL CONCERNED ACCORDINGLY(.)

NO. 20/SSB. P-III/2011(4)-11606

DATED. THE 30.11.2012

SD/- 30/11/2012

ASSITANT DIRECTOR (PERS-M1)"

15. The Central Complaints Committee submitted its inquiry report on 28.12.2012 to the Ministry of Home Affairs, wherein after recording its findings on the aforesaid 10 points, held the charges of sexual harassment against the respondent to have been proved. The committee concluded its report with the following recommendations being reproduced below:—

"XI. RECOMMENDATIONS

The Complaints Committee finds that the charges of sexual harassment in the workplace have been well proven. Moreover a perusal of the charged officer's defence statement, in which Shri Dilip Paul attempts to slander and assassinate the complainant, alone speaks volumes about his respect for women. In view of its findings, the Complaints Committee makes the following recommendations:

1. *That Shri Dilip Paul be given exemplary punishment for his sustained sexual harassment of Smt. X in the form of dismissal from service, and he be stripped of promotion to DIG and the Police medal awarded to him.*
2. *That Smt. X be reimbursed for the TA/DA that was denied to her in her transfer to Ftr Hqrs Guwahati.*
3. *That Smt. X be provided a copy of the Complaints Committee report.*
4. *That the SSB implement on a war-footing its standing order 1/2006 by organizing regular workshops for women employees to sensitise them about the nature of sexual harassment and their rights as women employees, as well as the procedures detailed by the said order. Members of the Complaints Committees instituted by the SSB should regularly tour the various divisions and area offices of the SSB for such meetings.*
5. *Further, regular workshops must be held for senior officers of the SSB to sensitise them with regards to their role and responsibilities regarding the implementation of the standing order 1/2006."*

16. On 16.01.2013. the respondent was provided with the Central Complaints Committee's Inquiry Report and was asked by the Disciplinary Authority to submit his reply/written representation, which was submitted by him on 30.01.2013. The Inquiry Report along with the written representation of the respondent was forwarded by the Ministry of Home Affairs in accordance with the relevant rules to the Union Public Service Commission for the purpose of seeking advice on the penalty that was proposed to be imposed.

17. The order imposing penalty passed by the Disciplinary Authority reads

thus:

"GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIR
DIRECTORATE GENERAL, SSB
EAST BLOCK-V, R.K. PURAM
NEW DELHI - 110066

Date 05.01.2016

Order No. 14/SSB/PERS-I/2013(1) 69-79

WHEREAS, a complaint of sexual harassment at workplace was made by Smt. X, FA (Lady) vide her complaint dated 30.08.2011 against Shri Dilip Paul, Area Organiser who had superannuated from government service on 31.03.2013 as DIG.

AND WHEREAS, Ministry of Home Affairs being the disciplinary authority in respect of Group 'A' Officers vide their UO No. 20/SSB/Pers.III/11 (4)/Pers.III dated 06.08.2012 had appointed Smt. B. Radhika, Joint Director, CCTNS-II, NCRB, New Delhi as Chairman of the Complaint Committee to enquire into the said complaint of sexual harassment against Shri Dilip Paul.

AND WHEREAS, the Chairman of the complaint committee had handed over the complaint of sexual harassment dated 30.08.2011 submitted by the Complainant to Shri Dilip Paul, DIG during the course of 1st hearing of enquiry held on 26.09.2012 at New Delhi.

Shri Dilip Paul, DIG had denied the allegations of sexual harassment levelled against him by the complainant.

AND WHEREAS, the complainant had levelled various allegations of sexual harassment against the said Shri Dilip Paul, Area Organiser (now retired DIG), which are summarised here as under -

(a) That the said Shri Dilip Paul started teasing her tactically. He started making phone calls at night using unofficial and multi-meaning words. At times, he would visit her residence, when she was alone. Further, he would summon her into his room in his official capacity and would make her sit for hours. That the said Shri Paul on one pretext or the other used to make personal contact with her body.

(b) That repeatedly, he used to tell the complainant that if she kept him satisfied by cooperating with the sexual activities, she shall be protected from all corners.

(c) That in one of the incident, when he had visited her residence, he had entered the kitchen and embraced her.

(d) That he repeatedly proposed marriage to her.

(e) That the said Shri Paul had many a times tried to outrage her modesty.

(f) That she had complained against the Officer to the then DIG Shri S.C. Katoch, who had also warned the officer to desist from doing such activities.

(g) That during the course of the proceedings, some additional allegations

were also levelled.

On these allegations, the Complaint Committee examined all the relevant witnesses in presence of the accused. The accused was afforded all the opportunities of defense.

AND WHEREAS, Smt. B. Radhika, Joint Director, CCTNS-II, NCRB, New Delhi, Chairman of the complaint committee submitted the inquiry report dated 28.12.2012 to the disciplinary authority i.e. Ministry of Home Affairs. The Inquiry Officer in its findings has proved all the charges levelled against the Charged Officer.

AND WHEREAS, in terms of DoP&T OM No. 11013/2009-Estt.(A) dated 03.08.2009, the report of Complaint Committee is to be treated as the enquiry report under the CCS (CCA) Rules, 1965 and the disciplinary authority is to take action on that report as per the procedure prescribed in Rule 14 of CCS (CCA) Rules, 1965.

AND WHEREAS, a copy of enquiry report after its acceptance was served upon the Charged Officer, Shri Dilip Paul, DIG for making his representation vide Memo No. 14/SSB/Pers-1/2013(1)/437-39 dated 16.01.2013. The Charged Officer had submitted his reply vide letter dated 30.01.2013 denying all the charges levelled against him.

AND WHEREAS, the representation of the accused officer on the inquiry report was examined and considered by the Disciplinary Authority, whereafter the advice of Union Public Service Commission regarding quantum of punishment to be imposed upon the charged Officer vide letter No. 14/SSB/Per.I/2013(1)/Pers-III dated 26.04.2013 was sought.

AND WHEREAS, the Union Public Service Commission vide its letter dated 22.08.2013 has advised imposition of penalty of withholding of 50% (fifty percent), of monthly pension on permanent basis. The gratuity amount, if not otherwise, required may be released to him.

AND WHEREAS, Charged Officer Shri Dilip Paul, Ex-DIG had filed an OA No. 181/2013 before the Hon'ble CAT Bench Guwahati challenging there under constitution of Central Complaint Committee and its report dated 28.12.2012. Hon'ble CAT Guwahati vide its interim judgment dated 28.06.2013 had imposed STAY on operation of enquiry report dated 28.12.2012 of Central Complaint Committee. The said OA was disposed by Hon'ble CAT, Guwahati vide its judgment dated 03.07.2015 directing therein to complete the disciplinary proceedings within four months from the date of receipt of the order.

After the disposal of the case by the Hon'ble CAT and vacation of the interim directions of the Hon'ble Court, a copy of UPSC advice dated 22.08.2013 was served upon the Charged Officer vide Memorandum No. 14/SSB/Pers-1/2013 (1)/9923-24 dated 04.08.2015, which was duly acknowledged by the Charged Officer. The Charged Officer vide his letter dated 25.08.2015 had submitted representation against the UPSC advice. All the relevant issues have been accordingly examined by the Ministry of Home Affairs being the Competent

Disciplinary Authority. The issues agitated by the Charged Officer were found devoid of merit by the Disciplinary Authority. Accordingly, the charge of sexual harassment of a woman at work place levelled against the Charged Officer has been proved beyond shadow of doubt by a Committee headed by Jt. Director, NCRB, which has been upheld by the Disciplinary Authority.

NOW, THEREFORE, after careful consideration on the findings of inquiry report, UPSC advice, written submission of Charged Officer and other related records of the case, the President of India has come to the conclusion that justice would be met if the penalty of "withholding of 50% (fifty percent) of monthly pension on permanent basis" is imposed upon the Charged Officer Shri Dilip Paul, the then Area Organiser, now Ex-DIG, SSB.

ACCORDINGLY, the aforesaid penalty is hereby imposed upon Shri Dilip Paul, Ex-DIG who had superannuated on 31.03.2013. The gratuity amount, if not otherwise required may be released to him.

(By order and in the name of the President)

Sd/-

(Vandan Saxena)

Assistant Director (Pers-I)"

18. It appears that during the pendency of the disciplinary proceedings, the respondent superannuated on 31.03.2013 as Dy. IG, Frontier Headquarters, SSB, Ranidanga, Siliguri, Darjeeling, West Bengal, and subject to the final outcome of the disciplinary proceedings, he was granted provisional pension without retirement gratuity.

A.4 Defence of the Respondent

19. It is the case of the respondent that the complainant had preferred one application in August, 2011 with a request to transfer her from the Rangia Office to the Frontier Headquarter Guwahati. The request for transfer was made on the ground that the complainant needed to look after her ailing mother-in-law. However, her application was rejected by the IG, Frontier Headquarters on 24.08.2011 on the ground of non-availability of corresponding vacant post. It is the case of the respondent that on the very next day, he received a message on his mobile phone which read as follows; "*I am hubby of one of your lady staff, wait and watch the end of your career*."

20. According to the respondent the message was forwarded by the husband of the complainant as she harboured a grudge on the misconception that it was the respondent who was instrumental in getting her transfer application rejected.

21. It is also the case of the respondent that he had lodged the first information report at the Rangia Police Station being Case No. 348 of 2011 in connection with the threats administered to him by way of a telephonic message.

A.5 Proceedings before the CAT

22. The respondent preferred OA No. 181 of 2013 before the Central Administrative Tribunal, Guwahati (CAT), assailing (i) the constitution of the Central Complaints Committee vide order dated 06.08.2012 (received via fax dated 03.09.2012), (ii) cancellation of the Frontier Complaints Committee's

Inquiry Report vide order dated 30.11.2011 (received via Memorandum dated 10.12.2012 of the Frontier, Headquarters, SSB, Guwahati) and the (iii) Central Complaints Committee's Inquiry Report dated 28.12.2012. The reliefs which were *inter-alia* prayed for by the respondent in the captioned OA are reproduced below: —

> *"8. Relief(s) sought for:*
>
> *The Hon'ble Tribunal be pleased to. set aside and quash the impugned -*
>
> *(i) FAX message dated 03.09.2012 (Anexure-11) and the constitution of the Central Legal Complaint Committee under the Chairperson Smt. S. Radhika, IPS there under;*
>
> *(ii) Memorandum dated 10.12.2012 (Annexure-16) and cancellation of the enquiry report of the Frontier Level Complaint Committee there under, and*
>
> *(iii) the Enquiry report dated 28.12.2012. (Annexure-17) of the • Central Complaint Committee."*

23. The CAT, Guwahati *vide* its final judgment & order dated 03.07.2015 dismissed the said OA No. 181 of 2013 observing that the Frontier Complaints Committee had not been constituted as per the 2006 Standing Order, and as the disciplinary proceedings were still pending, it refrained from expressing any opinion in regard to the Central Complaints Committee's Inquiry (except expressing some reservations on the issue of penalty recommended therein) and directed that the disciplinary proceedings be completed within 4-months. The relevant portion reads as under:—

> *"61. Undisputedly, the Chairperson of the Frontier Level Complaint Committee was Junior in the rank to the applicant, inasmuch as the applicant got promotion in the rank of Area Organizer on 22.12.2005, whereas the Chairperson was promoted to the rank of complainant, which is not prescribed as per Standing Operating Procedure of the department. The fact that the Chairperson of the said committee was junior to the applicant was not unknown to the respondents and the respondents knowingly constituted the Frontier Level Complaints Committee with a Chairperson junior to the applicant and therefore there was no valid reason to annul the report of the FLCC.*
>
> *62. We are unable to accept the said submission by expressing that if there is a procedural irregularity even accrued unknowingly or unfortunately that could not be encouraged when we go into the proper adjudication of the matter. The Central Complaint Committee by going to the thorough enquiry by giving opportunity to the applicant and others with due examination as well as cross examination with the witness culminated into the opinion.*
>
> *xxx xxx xxx*
>
> *64. We have given our thoughtful consideration in the matter by taking into account the entire conspectus of the case, to the conclusion on the point that the consideration of Central Complaints Committee as per law laid down and in terms of the guidelines which has been duly followed by the department by taking care of the earlier observation by giving our view that the Frontier Level Standing Committee findings was not as per SOP reason as already given. We*

are not finding any infirmity in the enquiry apropos sexual harassment of the women in work place and to that context, we are not giving any findings or any opinion.

xxx *xxx* *xxx*

66. However, respondents are directed to complete the Departmental Proceedings within four months from the date of receipt of the order. …"

A.6 Proceedings before the High Court

24. Aggrieved with the aforesaid, the respondent preferred writ petition being WP (C) No. 7876 of 2015 before the Guwahati High Court challenging the judgment and order dated 03.07.2015 passed by the CAT, Guwahati.

25. During the pendency of the said writ petition, the Ministry of Home Affairs *vide* its Order dated 05.01.2016 referred to above held that the charges of sexual harassment levelled against the respondent stood duly proved and after due consideration of the respondent's representation and the advice of the UPSC imposed a penalty of withholding 50% of the monthly pension on permanent basis.

26. In such circumstances referred to above, the respondent amended his writ petition pending before the Gauhati High Court and challenged the final order of penalty dated 05.01.2016 in addition to the original reliefs prayed before the CAT, Guwahati.

B. IMPUGNED ORDER PASSED BY THE HIGH COURT

27. The impugned judgment of the High Court is in three parts. In other words, the High Court allowed the writ petition and set aside the order of penalty on three grounds:—

(i) *First*, the High Court took the view that the Central Complaints Committee was constituted by the competent authority to inquire into only the first complaint dated 30.08.2011, however, the Central Complaints Committee during the course of its inquiry also looked into the allegations levelled in the second Complaint dated 18.09.2012 which it could not have. The relevant observations on this issue read as under:—

"41. What is important to note is that a complaint dated 18.09.2012 along with five Annexures was submitted by Smt. X 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.

xxx xxx xxx

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 I 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."

(Emphasis supplied)

(ii) *Secondly*, the Central Complaints Committee while conducting the inquiry, could not have assumed the role of a prosecutor by putting questions to the witnesses. According to the High Court, the same vitiated the inquiry proceedings. The relevant observations on this issue are as under:—

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". ...

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."

(Emphasis supplied)

(iii) *Thirdly*, the Central Complaints Committee could be said to have based its findings on surmises and conjectures. The High Court recorded that the case was one of "No Evidence". The relevant observations on this issue are under:

"47. With regard to Point No. 7(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."

(Emphasis supplied)

28. The High Court accordingly, allowed the writ petition *vide* its Impugned Judgment and Order and set-aside the penalty of permanently withholding 50% of the pension imposed upon the respondent.

29. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

C. SUBMISSIONS ON BEHALF OF THE APPELLANT

30. Mr. K. Parmeshwar, the learned counsel appearing for the appellant in his written submissions has stated thus:—

"I. There has been no violation of the principles of natural justice as the Respondent was given an opportunity to defend himself at every stage of the case.

a. It is submitted that the Central Complaints Committee was constituted to look into the allegations made against the Respondent as prescribed under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

b. The said Committee conducted its first hearing on 26.09.2012 at 10 : 00 am. The Respondent was served with all the relevant documents including the complaint dated 20.08.2011. Further, the list of 'witnesses to be

examined' submitted by the Complainant on 18.09.2012 was also supplied to the Respondent. The Respondent appeared and submitted that he will provide the name of his counsel within an hour. Therefore, on his request, the proceedings were adjourned to 2 PM. At 2 PM, he submitted an application seeking 30 days' time for engagement of counsel. The Committee after taking into account his request granted one week's time to provide name of his counsel in order to complete the proceedings within the stipulated time period.

c. It is important to mention that the next date of the hearing was fixed for 26.11.2012 i.e., after 2 months. When the Respondent was enquired about the name of his counsel, he submitted before the Committee that he will represent himself and cross-examine the witnesses and he himself examined as many as 11 witnesses. Thus, the Respondent participated in the enquiry proceedings and chose to defend himself despite sufficient time being given.

d. The allegation made by the Respondent that the Complainant submitted a list of witnesses later on 18.09.2012, which the Committee could not look into is misconceived. It is submitted that the Complainant can't be denied to produced witnesses to provide her claim and that too, even before the preliminary hearing was conducted by the Committee on 26.09.2011.

e. The allegation raised by the Respondent that he was not informed of the charges in the form of a 'charge-sheet' is frivolous as he was supplied with the copies of all the complaints and all other relevant documents. This goes to show that he was well acquainted with the nature of allegations levelled against him and knew what he had to state in his defence. Given the above position, non-framing of the articles of charge cannot be said to be detrimental to the interest of the Appellants herein.

f. Therefore, it is submitted few infirmities here and there would not vitiate entire proceedings unless it is shown that some prejudice has been caused to the Respondent as has been held by this Hon'ble Court in State of U.P. *v.* Sudhir Kumar Singh, *2020 SCC OnLine SC 847 (Para 39). In the present case, adequate opportunity was afforded to the appellant not just by the Committee, but also by the Disciplinary Authority and the Appellate Authority before taking any action against him. Therefore, this was not a case of "no opportunity" or "no hearing" but a case of "adequate opportunity" and "fair hearing" afforded to the appellant before imposing a penalty of withholding 50% pension amount.*

II. No prejudice has been caused to the Respondent due to non-supply of the Reports submitted in pursuance of an on-spot enquiry and Frontier Level Complaint Committee.

a. It is submitted that the first alleged inquiry dated 13.12.2011 was pursuant to conducting of an on-spot enquiry and by the very nature of it, is summary in nature and not an inquiry of the nature envisaged in Vishaka *v.* State of Rajasthan, *(1997) 6 SCC 241 line of cases and the*

SSB Standard Operating Procedure on sexual harassment. Therefore, it cannot be equated with a disciplinary enquiry.

b. It is relevant to note that before the report of on-the-spot enquiry was submitted, Frontier Level Complaint Committee (FLCC) was already constituted. The FLCC submitted its report on 17.01.2012. However, 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 as required under Rule 9 (b)(a) of the Departmental Standard Operating Procedure on Sexual Harassment. The said decision was conveyed to the Respondent vide Memo dated 10.12.2012.

c. Further, it is submitted that even if in the FLCC reports no allegations were found to be proved against the Respondent, same would not have any material bearing on the facts as the said report were subsequently annulled by the competent authority and a fresh committee was constituted as per the rules.

III. The punishment imposed is proportionate to the offence committed by the Respondent.

a. It is submitted that this Hon'ble Court in a number of cases has held that the High Court while exercising its powers under Article 226 would not interfere with the quantum of punishment unless it shocks the conscience of the court.

b. Further, it has been held in catena of cases that scope of judicial review in case of misconduct and imposition of penalty under the service jurisprudence is limited as to whether the charges have been established on the basis of a fair enquiry. The scope is limited to the decision-making process, not the decision per se. This Hon'ble Court in a recent judgment Aureliano Fernandes *v.* State of Goa *2023 SCC OnLine SC 621 while pondering upon the extent to which a High Court can interfere with respect to the departmental proceedings and findings thereof, observed the following:*

> *"62…Disciplinary Authority is the sole judge of facts and once findings of fact, based on appreciation of evidence are recorded, the High Court in its writ jurisdiction should not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The Court is under a duty to satisfy itself that an inquiry into the allegations of sexual harassment by a Committee is conducted in terms of the service rules and that the concerned employee gets a reasonable opportunity to vindicate his position and establish his innocence."*

c. The Respondent herein was a member of the disciplined force and was holding a significant post at the time of commission of offence. He harassed the Complainant continuously for a period of more than 2 years

despite warning issued by his superior. He did not stop despite the warning and started torturing the Complainant by not giving her work and making her sit idle till late in the night. Having superannuated during the pendency of the proceedings before the disciplinary authority, the Respondent superannuated on 31.03.2013 as DIG. In such circumstances, it is submitted that the punishment imposed by the disciplinary authority for withholding 50% of monthly pension is proportionate to the offence committed by the Respondent."

D. SUBMISSIONS ON BEHALF OF THE RESPONDENT

31. Mr. Avijit Roy, the learned counsel appearing for the respondent in his written submissions has stated thus:—

"1. The Hon'ble High Court in para 25 of the its judgment (Page-39 of SLP) rightly held that 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 as the Hon'ble High Court was also conscious of the fact that judicial review is not against the decision but the decision making process.

2. It is relevant to mention here that Rule 15 of the CCS (CCA) Rules, 1965, more particularly sub-rule 1 and 2 of Rule 15 imposed a categorical restriction on holding of a 2nd and further statutory inquiry. But in the instant case, in spite of the fact that the sole respondent was exonerated from the alleged complaint by three successive enquiries i.e. i) the Fact Finding enquiry, ii) first the statutory enquiry conducted by the duly constituted Frontier Level Committee and iii) a second statutory enquiry (in fact it was 4th enquiry in the series which includes inquiry on the basis of another anonymous complaint) by the Central Complaint Committee was instituted. Subject matter of all the facts were on the same set of allegations."

3. That, this Hon'ble Court in Vijay Shankar Pandey *v.* U.O.I., *(2014) 10 SCC 589, held as follows:—*

"26. It can be seen from the above that the normal rule is that there can be only one enquiry. This court has also recognized the possibility of a further enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry."

4. Further, in K.R. Deb *v.* The Controller, Central Excise, Shillong, *[(1971) 2 SCC 102], this Hon'ble Court has laid down that a 2nd enquiry is not permissible under the statutory provision of the Rule 15(1) of the CCS (CCA) Rules, 1965. The above decision was reiterated by this Hon'ble Court in* U.O.I *v.* Shri K.D. Pandey, *[(2002) 10 SCC 471].*

5. The above quoted decisions of the Apex Court conclusively mandate that -

(1) A second enquiry is not permissible, and (2) It is the correctness of the conclusion recorded in the enquiry report which determines the legality of the conclusions and not the mere technical flaws. These principles are fit to be extrapolated in the instant case.

6. That, the complaint dated 30.08.2011 contained only 2 (two) allegations, but the Central Complaint Committee extrapolated the allegations to as many as 10 nos. incorporating therein the newly added exaggerated versions of the complainant and delved into those, thus travelling beyond the allegations in the complaint dated 30.08.2011 and overstepping its jurisdiction in violation of procedure laid down in CCS (CCA) Rules, 1965.

7. The Hon'ble High Court in para 41 of its impugned judgment (Page 54 of the SLP) rightly observed that a complaint dated 18.09.2012 along with five Annexures was submitted by Smt. X (Complainant) to the Chairperson of the Central Complaint Committee (CCC) and copy of such complaint was also made available to the sole respondent. 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 Hon'ble High Court rightly held that the Central Complaint Committee (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 was also noted by the Hon'ble High Court that 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. The Hon'ble High Court held that 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.

8. That, the Hon'ble High Court at para 43 of its judgment (Page 70-71 of the SLP) rightly held that few points of allegations are no way connected to the complaint dated 30.08.2011. The Hon'ble High Court held that 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. Accordingly the Hon'ble High Court rightly held that 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.

9. That, the Hon'ble High Court at para 44 & 45 of its judgment (Page 71-74 of the SLP) rightly held that 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 sole respondent 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 sole respondent. 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"

10. That, the Hon'ble High Court at para 46 of its judgment (Page 74 of the SLP) rightly held 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.

11. That the Hon'ble High Court at para 47 of its judgment (Page 75-76 of the SLP) rightly held that the CCC had recorded that it had noted that no witness examined by it had specific knowledge of the events listed in. The Hon'ble High Court observed that events alleged 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. In this regard, the Hon'ble High Court correctly held that the Central Complaint Committee (CCC) ought to have recorded its finding based on evidence on record and not on surmises and conjectures.

12. That, it may be mentioned here that the sole respondent was most decorated officer in his cadre in SSB. He was awarded by the President of India for his exemplary services. He was a recipient of Indian Police Medal, DG's Disc with Commendation (2 times), Best Performing Officer in SSB (Best Area) for 04 consecutive years from 2009, 2010, 2011 and 2012, recipient of various appreciations in each month from all senior controlling officers including DG of SSB. Now after putting in 35 glorious years of service in SSB, he has been victimized and forced to proceed on superannuation without a single penny from the department. Even his personal accumulation under different heads has also not been sanctioned to him. The sole respondent is still deprived of his retiral benefit like gratuity and others as the gratuity due to him cannot be withheld as the nature of allegation is not related any financial issues and there

was no order by any quarter about any such withholding of his retiral benefit. Moreso, the Punishment order dated 05.01.2016 (@ page 447-453 of Vol-II of present SLP) passed by the Authority concerned clearly directed that the gratuity amount shall be released to the sole respondent and the said order of release of gratuity by the respondent authority is not opposed or assailed by the petitioner authority. However, till date no Gratuity amount was released to the sole respondent. Due to such order, commutation value of pension has also not been paid till date.

13. Sole respondent is the victim of circumstances as there was never any blemish in his entire service career and he was exonerated in all first three inquiries on same allegation. That too with a type of punishment which was not at all recommended by the Central Level Complaint Committee. Surprisingly, the authority on same allegations instituted 4th inquiry and imposed penalty just to victimize the sole respondent for reasons best known to them. The sole respondent was the unfortunate victim of interdepartmental rivalry and he was traumatized due to unproved allegations and his innocence was upheld time to time by the first three inquiries and same was discussed in detail by the Hon'ble High Court at para 40, 43, 46 and 47 of the impugned judgment while rightly setting aside the impugned order of penalty. (Page no.-54, 70-74, 75-76 of the SLP)

14. The contention of the petitioner authority that the penalty of withholding of 50% of pension is just and sufficient. In this regard, the sole respondent submits that when all three inquiry reports exonerated him and even Hon'ble High Court acquitted him all his charges and set aside the impugned order of penalty then the sole respondent has proved his honesty and agitating his case for his reputation and honour as a decorated retired officer as DIG of SSB apart from unjustified penalty withholding 50% of pension."

E. ANALYSIS

32. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following four questions fall for our consideration:—

I. Whether the Central Complaints Committee committed any egregious error in looking into the second complaint dated 18.09.2012?

II. Whether the Central Complaints Committee committed any egregious error in putting questions to the witnesses in the course of the departmental enquiry and thereby vitiating the disciplinary proceedings?

III. Whether the Central Complaints Committee could be said to have based its findings on mere conjectures and surmises? Whether the case on hand is one of "No Evidence"?

IV. Whether the High Court committed any egregious error in passing the impugned judgment and order?

E.1 Relevant Statutory Scheme and Case Law

33. Before adverting to the rival contentions canvassed on either side, we must look into the statutory scheme relating to the complaints of sexual harassment.

34. Sexual harassment is a pervasive and deeply rooted issue that has plagued the societies worldwide. In India, it has been a matter of serious concern, and the development of laws to combat sexual harassment is a testament to the nation's commitment towards addressing this problem. Sexual harassment has existed in India for centuries, but it was only in the latter half of the 20th century that it began to gain legal recognition.

35. The turning point against the growing social menace of sexual harassment of women at work place could be traced back to the pathbreaking decision of this Court in *Vishaka* v. *State of Rajasthan*, (1997) 6 SCC 241, whereby this Court recognized sexual harassment at the workplace as a violation of a woman's fundamental right to equality and dignity. The relevant observations are as under:

> *"1. This writ petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of "gender equality"; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.*
>
> *2. The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject-matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.*
>
> *3. Each such incident results in violation of the fundamental rights of "Gender Equality" and the "Right to Life and Liberty". It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) "to practice any profession or to carry out any occupation, trade or business". Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention, as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for*

ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

xxx xxx xxx

7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil."

(Emphasis supplied)

36. This Court in *Vishaka* (supra) further embarked on an innovative judicial process for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse by laying down the essential principles for preventing and redressing sexual harassment, including the creation of internal complaints committee at workplaces, awareness programs, and punitive measures against the offenders. These guidelines now popularly known as the 'Vishaka Guidelines' set a foundation for the development of comprehensive legislation on sexual harassment. The relevant observations are as under:—

"16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

17. The GUIDELINES and NORMS pre-scribed herein are as under:

HAVING REGARD to the definition of "human rights" in Section 2(d) of the Protection of Human Rights Act, 1993.

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time,

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

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

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

2. Definition

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

a) physical contact and advances;

b) a demand or request for sexual favours;

c) sexually coloured remarks;

d) showing pornography;

e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

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

3. Preventive Steps:

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

(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of government and public sector bodies relating to

conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

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

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

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Penal Code, 1860 or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

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

5. Disciplinary Action:

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

6. Complaint Mechanism:

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

7. Complaints Committee

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' initiative

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

9. Awareness:

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

10. Third-party Harassment:

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

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

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

18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly."

37. This was followed by another decision of this Court in *Medha Kotwal Lele* v. *Union of India*, (2013) 1 SCC 297, decided on 19.10.2012, wherein this Court anguished by the failure of the Union & State Governments in complying with the Vishaka guidelines, more particularly, the constitution of the complaints committee, issued a writ of continuing mandamus to ensure due compliance of the guidelines. The relevant observations are reproduced below:—

"43. As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence— domestic violence, sexual assault, sexual harassment at the workplace, etc.—and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population— the women.

44. In what we have discussed above, we are of the considered view that guidelines in Vishaka (Vishaka *v.* State of Rajasthan, *(1997) 6 SCC 241 : 1997 SCC (Cri) 932) should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:*

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.

44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.

44.4. The State functionaries and private and public sector undertakings/organisations/bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of Vishaka (Vishaka *v.* State of Rajasthan, *(1997) 6 SCC 241 : 1997 SCC (Cri) 932) guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.*

44.5. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow Vishaka (Vishaka *v.* State of Rajasthan, *(1997) 6 SCC 241 : 1997 SCC (Cri) 932) guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by* Vishaka (Vishaka *v.* State of Rajasthan, *(1997) 6 SCC 241 : 1997 SCC (Cri) 932). To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt*

of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with Vishaka (Vishaka *v.* State of Rajasthan, *(1997) 6 SCC 241 : 1997 SCC (Cri) 932), guidelines and the guidelines in the present order."*

(Emphasis supplied)

38. The relevant statutory rules, applicable to the case on hand, are the Central Civil Services (Conduct) Rules, 1964 (for short, "the 1964 CCS Rules") and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, "the 1965 CCS Rules") enacted in exercise of the powers conferred by the proviso to Article 309 and Clause 5 of Article 148 of the Constitution of India.

39. Part VI of the 1965 CCS Rules contains the relevant provisions relating to the disciplinary proceedings and imposition of penalties for government servants in the central civil services and posts and Rule 14 therein stipulates the ordinary procedure and process for imposition of major penalties.

40. Pursuant to the decisions of this Court in *Vishaka* (supra) and *Medha Kotwal Lele* (supra) referred to above, the CCS Rules underwent several amendments whereby new provisions specifically dealing with sexual harassment came to be inserted, more particularly Rule 3C in the 1964 CCS Rules along with a new Proviso to Rule 14(2) of the 1965 CCS Rules. The said provisions conjointly made sexual harassment punishable with major penalties and specifically made the Vishaka Guidelines applicable to the disciplinary proceedings in relation to complaints of sexual harassment. The said provisions are enumerated below:—

"3C. Prohibition of sexual harassment of working women.

(1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.

Explanation. - (I) For the purpose of this rule, -

(a) "sexual harassment" includes any one or more of the following acts or behaviour (whether directly or by implication) namely -

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

(b) the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—

(i) implied or explicit promise of preferential treatment in employment; or

(ii) implied or explicit threat of detrimental treatment in employment; or

(iii) implied or explicit threat about her present or future employment

status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes:—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;

(ii) hospitals or nursing homes;

(iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(v) a dwelling place or a house.

xxx xxx xxx

14. Procedure for imposing major penalties.-

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

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

Provided that where there is a complaint of sexual harassment within the meaning of rule 3C 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."

(Emphasis supplied)

41. In addition to the aforesaid amendments in the CCS Rules, the Standing Order No. 1 of 2006 (Grievances Redressal Mechanism : To Redress Grievances of Women/Sexual Harassment at Work Place) was also issued by the Directorate

General, SSB, New Delhi delineating the entire framework and procedure of the grievances redressal mechanism relating to sexual harassment at workplace. The 2006 Standing Order is reproduced below:—

"DIRECTORATE GENERAL, SASHASTRA SEEMA BAL (SSB), R.K. PURAM, NEW DELHI-110066

2006

STANDING ORDER 1/2006

SUB : GRIEVANCES REDRESSAL MECHANISM : TO REDRESS GRIEVANCES OF WOMEN/SEXUAL HARASSMENT AT WORK PLACE.

1. The Constitution of India has given to women, the Fundamental Right to equality and the Right not to be discriminated against on grounds of religion, caste and sex. The constitution includes a special provision in Article 15(3), permitting the State to make special provisions in favour of women by enacting Laws/provisions so as to advance their social economic and political condition and to accord them parity.

2. Sexual harassment of women at the workplace violates their sense of dignity and right to earn a living with dignity and is against their fundamental rights and their basic human rights. The International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) adopted in 1979 at Beijing also recognized the right of women to equality at the work place and it states that women shall not be subjected to sexual harassment at work places; as such harassment vitiates the working environment.

3. The Hon'ble Supreme Court in the matter of Vishaka *v.* State of Rajasthan *((1997) 6 SCC 241 : AIR 1997 SC 3011) while recognizing the International Convention and norms has interpreted gender of women, in relation to work and held that sexual harassment of women at the workplace, which is against their dignity is a clear violation of the fundamental rights of "Gender Equality" and the "Right to Life and Liberty" enshrined in Article-14, 15 and 21 of the Constitution of India. Other logical consequences of such an incident is also the violation of the victim's fundamental right under Article-19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Gender equality includes protection from sexual harassment and right to work with dignity.*

4. In absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse more particularly against harassment at work place, the Hon'ble Supreme Court has laid down the guidelines and norms for compliance at all workplaces and institutions. Under Article 141 of the Constitution, these guidelines and norms of the Hon'ble Supreme Court are required to be treated as THE LAW OF THE LAND.

5. The National Commission for Women, a statutory and autonomous body constituted by the Government of India is working for justice for women, safeguarding their rights, and promoting women's empowerment. The NCW consequently formulated a code of conduct for work place putting down the

Supreme Court guidelines in a simple manner which has been widely circulated.

Arrangements at various levels have been made to ensure that the women employed in Departments work with utmost dignity and are free from all types of sexual harassment. Accordingly, following scheme of arrangements has been devised for SSB:

6. DEFINITION

Sexual harassment will include such unwelcome sexually determined behaviour by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as:—

i) Physical contact and advances.

ii) A demand or request for sexual favours.

iii) Sexually coloured remarks.

iv) Eve-teasing.

v) Unsavoury remarks.

vi) Jokes causing or likely to cause awkwardness or embarrassment.

vii) Innuendos and taunts.

viii) Gender based insults or sexist remarks.

ix) Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like.

x) Touching or brushing against any part of the body and the like.

xi) Displaying pornographic or other offensive or derogatory pictures cartoons, pamphlets or sayings.

xii) Forcible physical touch or molestation.

xiii) Physical confinement against one's will and other act likely to violate one's privacy.

xiv) Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

And includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of sex.

For any further interpretation, elaboration or explanation in the, matter or any of its ingredient thereto, the judgment of Hon'ble Supreme Court or the guidelines of National Commission for Women may be referred to which are being annexed.

7. DUTY OF THE HEAD OF THE UNIT/OTHER RESPONSIBLE PERSONS IN WORK PLACES

1.	*He shall take all necessary steps at work place to prevent or deter the commission of acts of sexual harassment or the acts outraging/insulting the modesty of a women employee.*

2.	*He shall ensure that women employee is not be treated as sex object.*
3.	*He shall provide for the proper grievance redressal & remedial mechanism in the unit for the purpose.*
4.	*He would enforce express prohibition of sexual harassment as defined above at the work place and get it notified, published and circulated in appropriate ways.*
5.	*He would augment appropriate work condition in respect of work, leisure, health and hygiene to further ensure that there is not hostile environment towards women at work places and no women employee should have reasonable grounds to believe that she is disadvantaged in connection with employment.*
6.	*He will ensure suitable arrangements for prevention of sexual harassment as a result of an act or omission by any third party or outsider and would provide necessary and reasonable assistance to the affected person in terms of support and preventive actions.*

8. CRIMINAL PROCEEDINGS

Where such conduct amounts to a specific offence under the Penal Code, 1860 or under any other law, the head of unit/competent authority shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

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

9. COMPLAINT COMMITTEES

Complaint Committees at two levels will exist in SSB i.e. Central Complaint Committee at the Directorate and Frontier Complaint Committee at the Frontier level.

(a) The Central Complaint Committee will consist of the following:

i)	*Chairperson*	*One lady officer of the rank of DIG/Commandant rank*

		to be appointed by IG (Pers).
ii)	*Member-I*	*One lady Gazetted Officer to be appointed by IG (Pers).*
iii)	*Member-II*	*Nomination from an NGO recognized by NCW or One Counsellor from NGO (nomination from an NGO recognized by NCW) to be solicited by the Chairperson of the Committee.*
iv)	*Member-III*	*AD (Legal) Force Headquarters or the senior most Law Officer.*

(b) Frontier level Complaint Committee will be constituted as follows:—

i)	*Chairperson*	*One Gazetted rank lady officer to be appointed by the Frontier IG.*
ii)	*Member-I*	*One counsellor from an NGO (Nomination from an NGO recognized by NCW to be solicited by the Chairperson of the Committee)*
iii)	*Member-II*	*Legal Officer of Frontier (Ex-officio member)*
1.	*Chairman of committee should be senior to the officer/official against whom the complaint is made.*	
2.	*Wherever Frontier IG does not have a higher rank woman officer to be appointed in the Frontier level committee (i.e., there is no SSB, officer of commensurate rank available, in case where complaints are against senior officers) IG shall immediately get in touch with IG (Pers) and seek placement of an officer from any Central Govt. organization.*	
3.	*Where the required number of senior officers are not available within the organization, member should be co-opted from other Central Government Departments.*	
4.	*In case complaint is against the Frontier IG himself,*	

	the matter will be viewed/looked into at the level of Central Complaint Committee.
5.	*Proper safety and security of the complainant and witnesses shall be ensured by the concerned unit/office.*

(c) The charter of the Central Complaint Committee and the Frontier Complaint Committee would, inter alia, include:—

CENTRAL COMPLAINT COMMITTEE		FRONTIER COMPLAINT COMMITTEE	
1.	*Enquiry 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 Frontier Committee.*	*1.*	*Enquiry into any matter of sexual abuse under the Frontier.*
2.	*Monitoring all such cases including reports received from Frontiers.*	*2.*	*Keeping Central Complaint Committee informed of all such matters coming to light and work in close liaison with the Central Complaint Committee seeking proper guidance as required.*
3.	*Ensuring follow up action to its logical end.*	*3.*	*Submitting enquiry report to the Frontier IG and to solicit further required action.*
4.	*Submitting annual report to MHA, other bodies as required.*	*4.*	*Submission of periodical reports to central complaint committee as may be prescribed by*

			the Central Committee from time to time.
5.	*Any other duties assigned by DG.*	*5.*	*Any other duties assigned by the Frontier I'sG*
6.	*Secretarial and logistical assistance to the Central Complaint Committee will be provided by Pers Branch of Directorate General. Central Complaint Committee shall route its reports through IG (Pers) who would keep ADG and DG, SSB apprised and ensure proper action.*	*6.*	*The secretarial and logistical assistance to FTR Committees would be provided by Frontier I'sG from its local resources. Frontier IG shall ensure that all complaints are properly disposed of to their logical end. He would exercise all powers of the head of the department in this respect under his jurisdiction unless a particular matter falls within the jurisdiction of the Central Committee or it would otherwise be appropriate for the Central Committee to take up the matter or it requires further action at the level of IG (Pers/FHQ)/DG, SSB.*

10. COMPLAINT MECHANISM

This procedure/mechanism has been devised in pursuance of Hon'ble Supreme Court Judgment dated 26.04.2004 in the matter of Medha Kotwal Lele *v.* UOI *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 the 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/IG (Pers, FHQ) and handover the same in person or in a sealed cover. Upon receipt of such complaint, Frontier IG/IG (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 (2004) 5 SCC 518 : AIR 2004 SC 3566-*Sakshi *v.* UOI *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 26.4.2004 in Writ Petition (Crl.) No. 173-177/1999 (Medha Kotwal Lele *v.* Union of India) *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 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 'A' 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.

11. PERIODICAL REPORT

The Frontier Complaints Committee shall prepare periodical reports giving a full account of its activities during the period and forward a copy thereof to the Central Complaint Committee in the following format:—

1. Date of incident.

2. Place of incident.

3. Name of complainant with Rank/Unit/GC/Office.

4. Name against whom complaint is made with rank/unit/GC/office.

5. Allegation in brief.

6. Date of receipt of complaint.

7. Whether any FIR lodged to Police, if so, outcome of Police investigation report.

8. Action taken on the complaint/present status supported with authenticated copy of relevant documents.

The Central Complaint Committee will submit annual report to the Ministry of Home Affairs and other bodies wherever required. The Frontiers will submit report to Directorate half yearly i.e. in June and December.

12. ONUS OF THE SUPERVISORY/INSPECTING OFFICERS

- The senior officers during their visit/inspections of the subordinate formations will reiterate the instruction in their meeting and Sainik Sammelans.
- They will review the complaints received by them in their respective offices.
- They will ensure that proper working environment is provided in their subordinate offices for the women and they are not discriminated on any point.

13. AWARENESS

- Awareness of the right of female employees in this regard should be created in particular by prominently notifying and displaying the guidelines at appropriate places.
- Women employees should be allowed to raise issues of sexual harassment at work places through personal interviews, orderly rooms, welfare meetings, Sainik Sammelans etc.

14. SAVINGS

Nothing contained in these standing orders shall prejudice any right available to the employee or prevent any person from seeking any legal remedy under the National Commission for Women Act, 1990, Protection of Human Rights Commission Act, 1993 or under any other law for the time being in force.

15. INTERACTION OF COMMITTEE WITH WOMEN

1. The National Commission for Women has recommended that Proactive steps such as meeting with women officers and members of Complaints Committee with all women in the Force in small groups should be organized. This would help them to informally exchanging views on handling sexual harassment related matters and draw mutual strength. This would build confidence for women to go forward professionally.
2. Keeping in view of this aspect it has been decided that henceforth the members of the Frontier level Complaints Committee will organize the meeting with all women as well as women employees within their operational jurisdiction of the Frontier in small groups and exchange their views on handling sexual harassment related matters as frequently as possible.
3. The Committee will also include a progress report about the number of such meetings organized, number of women present participated points if

any, projected and its solution in the half yearly report to be submitted to Central Committee Directorate General as per para 7 of above SOP.

4. *The IsG concerned will monitor such visits of the committee members to ensure positive results."*

42. Rule 3C of the 1964 CCS Rules and the Proviso to Rule 14(2) of the 1965 CCS Rules along with the 2006 Standing Order encompass the entire legislative scheme for dealing with sexual harassment at workplace in connection with the Central civil services and posts.

43. The Proviso to Rule 14(2) of the 1965 CCS Rules, provides that in an inquiry into sexual harassment under the 2006 Standing Order, the general procedure laid down in the 1965 CCS Rules shall also be applicable as far as practicable. The expression "*as far as practicable*" was examined by this Court in *Aureliano Fernandes* v. *State of Goa*, 2023 SCC OnLine SC 621 wherein it was held that the same is to provide flexibility for achieving a balance between sensitivity and fairness in an inquiry into sexual harassment. It further held that while a detour may be made from the CCS Rules however the same must not be unreasonable. The relevant observations are given below:—

"51. As can be seen from the above, when the misconduct relates to a complaint of sexual harassment at the work place, the Complaints Committee constituted by the respondent no. 2-University to examine such a complaint, dons the mantle of the inquiring authority and is expected to conduct an inquiry in accordance with the procedure prescribed in the rules, as far as may be practicable. The use of the expression "as far as is practicable" indicates a play in the joints available to the Complaints Committee to adopt a fair procedure that is feasible and elastic for conducting an inquiry in a sensitive matter like sexual harassment at the workplace, without compromising on the principles of natural justice. Needless to state that the fact situation in each case will vary and therefore no set standards or yardstick can be laid down for conducting the inquiry in complaints of this nature. However, having regard to the serious ramifications with which the delinquent employee may be visited at the end of the inquiry, any discordant note or unreasonable deviation from the settled procedures required to be followed, would however strike at the core of the principles of natural justice, notwithstanding the final outcome."

(Emphasis supplied)

44. It is well settled that when it comes to disciplinary proceedings, it is the inquiry authority and the disciplinary authority who could be said to be the fact-finding authority and the courts in exercise of their powers of judicial review should not sit in appeal and reappreciate the evidence or substitute its own findings. The scope of judicial review of the courts is limited only to the propriety of the decision-making process and the fairness of the inquiry procedure as held by this Court in *B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749. The relevant observations are reproduced below:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to

ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(Emphasis supplied)

45. As regards the manner in which the court ought to exercise its powers of judicial review in matters of disciplinary proceedings particularly one pertaining to sexual harassment, this Court in *Apparel Export Promotion Council* v. *A.K. Chopra*, (1999) 1 SCC 759 observed that the courts should not get swayed by insignificant discrepancies or hyper-technicalities. The allegations must be appreciated in the background of the entire case, and the courts must be very cautious before any sympathy or leniency is shown towards the delinquent. It further held that the courts are obliged to rely on any evidence of the complainant that inspires confidence. The relevant observations are reproduced below:—

"28. … In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of

punishment in a case like this is bound to have demoralising effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant was thus commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review.

"29. At the conclusion of the hearing, learned counsel for the respondent submitted that the respondent was repentant of his actions and that he tenders an unqualified apology and that he was willing to also go and to apologise to Miss X. We are afraid, it is too late in the day to show any sympathy to the respondent in such a case. Any lenient action in such a case is bound to have demoralising effect on working women. Sympathy in such cases is uncalled for and mercy is misplaced."

(Emphasis supplied)

46. Similarly, in *Union of India* v. *Mudrika Singh*, 2021 SCC OnLine SC 1173, this Court speaking through one of us Dr. D.Y. Chandrachud, CJI., cautioned the courts from invalidating inquiries into sexual harassment on specious pleas and hyper-technical interpretations of the service rules. The relevant observations are reproduced hereunder:—

"47. Before we conclude our analysis, we would also like to highlight a rising trend of invalidation of proceedings inquiring into sexual misconduct, on hyper-technical interpretations of the applicable service rules. For instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 penalizes several misconducts of a sexual nature and imposes a mandate on all public and private organizations to create adequate mechanisms for redressal. However, the existence of transformative legislation may not come to the aid of persons aggrieved of sexual harassment if the appellate mechanisms turn the process into a punishment. It is important that courts uphold the spirit of the right against sexual harassment, which is vested in all persons as a part of their right to life and right to dignity under Article 21 of the Constitution. It is also important to be mindful of the power dynamics that are mired in sexual harassment at the workplace. There are several considerations and deterrents that a subordinate aggrieved of sexual harassment has to face when they consider reporting sexual misconduct of their superior. In the present case, the complainant was a constable complaining against the respondent who was the head constable - his superior. Without commenting on the merits of the case, it is evident that the discrepancy regarding the date of occurrence was of a minor nature since the event occurred soon after midnight and on the next day. Deeming such a trivial aspect to be of monumental relevance, while invalidating the entirety of the disciplinary proceedings against the respondent and reinstating him to his position renders the complainant's remedy at nought. The history of legal proceedings such as these is a major

factor that contributes to the deterrence that civil and criminal mechanisms pose to persons aggrieved of sexual harassment. The High Court, in this case, was not only incorrect in its interpretation of the jurisdiction of the Commandant and the obligation of the SSFC to furnish reasons under the BSF Act, 1968 and Rules therein, but also demonstrated a callous attitude to the gravamen of the proceedings. We implore courts to interpret service rules and statutory regulations governing the prevention of sexual harassment at the workplace in a manner that metes out procedural and substantive justice to all the parties."

(Emphasis supplied)

E.2 Whether the Central Complaints Committee could have looked into the second complaint dated 18.09.2012?

47. The High Court in its impugned judgment observed that the Disciplinary Authority had constituted the Central Complaints Committee on the basis of the complaint filed by the victim. Since, at the time when the Central Complaints Committee came to be constituted, there was only one complaint i.e., the complainant's first complaint dated 30.08.2011, it necessarily meant that the Central Complaints Committee was mandated and empowered to inquire into only that complaint to which the committee owed its existence or in other words, the complaint that was before the Disciplinary Authority which led the authority to take the decision of constituting the Central Complaints Committee in the first place.

48. At this juncture, it would be apposite to refer to the 2006 Standing Order more particularly Clause 10(i), which prescribes the first step for making a complaint of sexual harassment and provides how the complaint and redressal mechanism for sexual harassment is set-into motion. The said provision is being reproduced below:—

"10. COMPLAINT MECHANISM

i) Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time."

49. A bare perusal of the aforementioned provision makes it abundantly clear that the complaint mechanism begins with a complaint being made to the "complaints committee" and as such any inquiry into the complaint of sexual harassment under Rule 14 of the 1965 CCS Rules read with the 2006 Standing Order begins the moment any complaint is made to a complaints committee specified in Clause 9, be it a Frontier Complaints Committee or a Central Complaints Committee.

50. The use of the words "*Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time"* connotes two pertinent aspects; (i) *first*, that the word "*prefer"* stipulates that the said provision is an enabling provision that permits a person from making a complaint of sexual harassment directly to the complaints committee which is the designated committee for looking into such complaints and (ii) *secondly*, the said provision contains nothing which could be construed to inhibit the filing of a subsequent or

additional complaint before the complaints committee.

51. What emerges from the aforesaid is that irrespective of whether a prior complaint had already been made to any authority, a complaint regarding sexual harassment could be made under Clause 10(i) of the 2006 Standing Order to the complaints committee as-well. Whether the additional or second complaint should be entertained by the complaints committee is a completely different tangent and must be ascertained on the touchstone of whether it was filed at the earliest point of time and whether the same has been mischievously filed at a belated stage to cause prejudice to the person-charged. In the instant case, the Central Complaints Committee was constituted on 06.08.2012 and its first hearing took place on 25.09.2012 whereas the second complaint had been filed by the complainant before the Central Complaints Committee on 18.09.2012. Thus, the second complaint had been promptly preferred right after the Central Complaints Committee was constituted and duly before its first hearing.

52. The High Court's reasoning that as the Central Complaints Committee was constituted on the basis of the first complaint, its scope of inquiry was restricted to its content, is completely erroneous inasmuch as the Central Complaints Committee owed its existence to the 2006 Standing Order and not to the complaint. Moreover, even if it is assumed for a moment that the complaints committee owed its existence to the complaint, Clause 10(i) of the 2006 Standing Order envisages filing of a complaint to the complaints committee i.e., it envisages a situation where after a complaints committee had come into existence, a complaint may be preferred to it.

53. In the aforesaid context, we may refer to the decision of this Court in *State of Haryana* v. *Rattan Singh*, (1977) 2 SCC 491, wherein the Court held that all material that are logically probative to a prudent mind ought to be permissible in disciplinary proceedings keeping in mind the principles of fair play. The relevant observations are reproduced below:—

> *"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent*

referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."

(Emphasis supplied)

54. In view of this unequivocal and clear proposition of law set out in *Rattan Singh* (supra), it could be said that there was no legal bar on the Central Complaints Committee to look into the allegations levelled in the second complaint dated 18.09.2012. Since strict and technical rule of evidence and procedure does not apply to departmental enquiry the connotation "evidence" cannot be understood in a narrow technical sense as to include only that evidence adduced in a regular court of law when a person is examined as a witness by administering oath. There should not be any allergy to "hearsay evidence" provided it has reasonable nexus and credibility.

55. In our judgment, the correct principle of law is found in the following observations of Diplock, J. in *Regina* v. *Deputy Industrial Injuries Commissioner, Ex parte Moore*, [1965] 1 Q.B. 456.

"These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but that he must take into account any material which, as a matter of reason, has some probative value. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his."

(Emphasis supplied)

56. From the above case law, it becomes clear that it is open to the adjudicating authority to accept, rely and evaluate any evidence having probative value and come to its own conclusion, keeping in mind judicial approach and objectivity, exclusion of extraneous material and observance of the rule of natural justice and fair play. In short, the essence of the doctrine is that fair opportunity should be afforded to the delinquent at the enquiry and he should not be hit below the belt. Moreover, the jurisdiction of the High Court in such cases is indeed limited. The High Court should not exercise appellate powers and substitute its

findings for the findings recorded by the disciplinary authority. It is no doubt true that if there is "no evidence" or the decision is "so unreasonable that no reasonable man could have ever come to it", or the decision is "so outrageous" in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it "or that it is so absurd that one is satisfied that the decision-maker must have taken leave of his senses", it calls for interference by a competent court of law.

57. As discussed before, this Court in *Apparel Export Promotion Council* (supra) had held that in sensitive matters such as sexual harassment & misconduct, there is an obligation to look into the entire evidence of the complainant that inspires confidence. What is discernible from the above is that in disciplinary proceedings documents and materials such as evidence or pleadings be it statement of defence or a complaint should be readily entertained by the courts and more so by the disciplinary & inquiry authorities irrespective of whether they are later actually relied or not in the ultimate decision making. Thus, it would be quite preposterous to hold that the complainant was precluded from making the second complaint before the Central Complaints Committee merely because she had already made one complaint to the IG, Frontier Headquarters, Guwahati.

58. In the context of the second complaint, the only relevant aspect that requires consideration is whether any serious prejudice was caused to the respondent. It is not in dispute that the respondent was provided with the copy of the second complaint. It is also not in dispute that the respondent was aware of the nature of the allegations levelled in the second complaint. It is also not in dispute that ample opportunity was given to the respondent to meet with the allegations levelled in the second complaint. It is not as if the respondent was taken by surprise. In such circumstances, this aspect of the matter should have been looked into by the High Court on the anvil of the principle of "test of prejudice".

i) Principle of "Test of Prejudice" in Service Jurisprudence

59. The "test of prejudice" is a well settled canon of law that may be applied where any procedural impropriety or violation of rule of *audi alteram* is alleged. This Court in *State Bank of Patiala* v. *S.K. Sharma*, (1996) 3 SCC 364 held that the test is to ascertain whether the violation of such procedure or process resulted in a prejudice being caused or a loss of fair hearing. The relevant observations are reproduced below:—

> *"11. … Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 CPC and Section 465 CrPC is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there*

may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefor, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words : (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is : all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.

xxx xxx xxx

28. … In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries : a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in Ridge *v.* Baldwin *[[1964] A.C. 40 : [1963] 2 All ER 66 : [1963] 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression* (Calvin *v.* Carr *[[1980] A.C. 574 : [1979] 2 All ER 440 : [1979] 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report* (Managing Director, ECIL *v.* B. Karunakar *[(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704])* or *without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is*

altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

xxx xxx xxx

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee

asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear

that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

(Emphasis supplied)

60. In the case of *State of U.P.* v. *Harendra Arora*, (2001) 6 SCC 392, this Court further expanded the applicability of the "Test of Prejudice" to even procedural provisions which are fundamental in nature with the following relevant observations being reproduced below:—

"13. The matter may be examined from another viewpoint. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the enquiry was not vitiated. <u>But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice</u>. The test would be, whether the delinquent officer had or did not have a fair hearing. …"

(Emphasis supplied)

61. We now proceed to consider the next question whether the respondent was asked by the Central Complaints Committee whether he pleaded guilty to the allegations levelled in the second complaint. The High Court after referring to the Central Complaints Committee's report found that, while the respondent was asked whether he pleaded guilty to the allegations made in the first complaint,

there was nothing to indicate that the same exercise had been undertaken in respect of the second complaint.

62. In the aforesaid context, we must look into Rule 14 sub-rule (9) of the 1965 CCS Rules. The said provision reads as under:—

> *"14. Procedure for imposing major penalties.*
>
> *(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon."*

63. The obligation on the part of the Authority to ask the delinquent whether he pleaded guilty or had any defence to make is only in the circumstances, if the delinquent had not admitted any of the articles of charge in his written statement of defence or had not submitted any written statement of defence. Indisputably, in the case on hand, the respondent had filed his written statement of defence dealing with all allegations on the ten points framed for determination that were enquired into by the Committee and also cross-examined all the witnesses on the same.

64. In our opinion, mere violation of Rule 14(9) of the 1965 CCS Rules would not vitiate the entire inquiry. Rule 14(9) is only procedural.

65. A similar view has been recently taken in *Aureliano Fernandes* (supra) wherein this Court rejected the delinquent's contention of prejudice, on the ground that all materials proposed to be used against him were duly furnished and that he had submitted his reply to the same as-well. The relevant observations are reproduced below:—

> *"64.... but it is not in dispute that all the complaints received from time to time and the depositions of the complainants were disclosed to the appellant. He was, therefore, well aware of the nature of allegations levelled against him. Not only was the material proposed to be used against him during the inquiry furnished to him, he was also called upon to explain the said material by submitting his reply and furnishing a list of witnesses, which he did. Furthermore, on perusing the Report submitted by the Committee, it transpires that depositions of some of the complainants were recorded audio-visually by the Committee, wherever consent was given and the appellant was duly afforded an opportunity to cross-examine the said witnesses including the complainants. The charges levelled by all the complainants were of sexual harassment by the appellant with a narration of specific instances. Therefore, in the given facts and circumstances, non-framing of the Articles of Charge by the Committee cannot be treated as fatal. Nor can the appellant be heard to state that he was completely in the dark as to the nature of the allegations levelled against him and was not in a position to respond appropriately."*
>
> (Emphasis supplied)

66. A four-Judge bench of this Court in *Managing Director, ECIL, Hyderabad* v. *B. Karunakar*, (1993) 4 SCC 727 held that in order to determine if prejudice had been caused by a violation of a procedural rule or facet of natural justice, it must be shown that violation had some bearing either upon the outcome or the punishment imposed. The relevant observations are as under:

> *"30.[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.*
>
> *31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. …"*
>
> (Emphasis supplied)

67. Applying the aforesaid dictum as laid by this Court no prejudice could be said to have been caused to the respondent even if we believe that he was not asked to plead guilty to the second complaint. Had the respondent been asked if he pleaded guilty to the allegations levelled in the second complaint, then in such circumstances, whether the result would have been any different? The answer to this has to be an emphatic "No". We say so because the respondent had denied all

the ten charges which were framed against him. In other words, the respondent answered to all the ten points by way of his written statement of defence and even had an opportunity to cross-examine the witnesses on each of the charges.

68. We are of the view that the High Court completely failed to advert itself to the principles laid down by this Court as aforesaid, and mechanically proceeded to set-aside the order of punishment imposed by the disciplinary authority on the ground that there was nothing to indicate that the respondent was asked whether he pleaded guilty to the charges imputed in the second complaint without applying the principle of "test of prejudice".

E.3 Whether the Central Complaints Committee could have put questions to the witnesses in a departmental inquiry?

i) "Fact Finding" Authority in Disciplinary Proceedings

69. The High Court observed that the Central Complaints Committee in the course of the inquiry had put questions to the prosecution witnesses, and even the examination-in-chief was recorded by it, and as such it played the role of a prosecutor which it could not have, thereby vitiating the inquiry proceedings.

70. Ordinarily, in a disciplinary proceeding conducted under Rule 14 of the 1965 CCS Rules, the disciplinary authority as per Rule 14 sub-rule 2 read with sub -rule 5(c) may either conduct the inquiry itself or appoint an inquiry committee to conduct the inquiry. The inquiry committee may further appoint a presenting officer to present the case on its behalf in support of the articles of charge. It is worthwhile to note that it is the Inquiry Authority and the Disciplinary Authority who are the fact finding authorities in a disciplinary proceeding. Rule 14 is reproduced below:

> *"14. Procedure for imposing major penalties.*
>
> *(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.*
>
> *xxx xxx xxx*
>
> *(5)(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."*

71. A perusal of the aforesaid makes it clear that, where a 'Presenting Officer' has been appointed by the Disciplinary Authority, such Officer shall present the case in support of the articles of charge. Conversely, what logically transpires from the aforesaid is that, where no presenting officer has been appointed, the duty or role to present the case in support of the articles of charge falls back on the Disciplinary Authority or the Inquiry Authority as the case may be.

72. This Court in *Medha Kotwal Lele* v. *Union of India*, (2013) 1 SCC 311, held

that the complaints committee under the Vishaka Guidelines shall be deemed to be the Inquiry Authority. The relevant portion is reproduced below:—

> *"Complaints Committee as envisaged by the Supreme Court in its judgment in* Vishaka case *(1997) 6 SCC 241 : 1997 SCC (Cri) 932, 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."*

(Emphasis supplied)

73. This Court in *Sakshi* v. *Union of India*, (2004) 5 SCC 518 had observed that quite often in sensitive matters particularly those involving crime against women the victims either due to fear or embarrassment were not able to openly disclose the entire incident. Often the victims during their testimony were put embarrassing questions by accused with the sole purpose of confusing or suppressing out of shame. To remedy this, directions were issued by this Court that for cross-examination of victims, the question would be given to the presiding officer who in turn would ask them in clear language which is not embarrassing. The relevant observations are reproduced below:—

> *"32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of Section 327 CrPC should also apply in inquiry or trial of offences under Sections 354 and 377 IPC.*
>
> *xxx xxx xxx*
>
> *"34. The writ petition is accordingly disposed of with the following directions:*
>
> *(1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.*
>
> *(2) In holding trial of child sex abuse or rape:*
>
> *(i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see*

the body or face of the accused;

(ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

(iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required."

(Emphasis supplied)

74. The power and discretion of the complaints committee to put question to the witnesses is further reflected though implicitly in Clause 10(viii) of the 2006 Standing Order which provides that, the delinquent officer shall not cross-examine the complainant directly and instead should hand over the questions to the chairperson of the committee who in turn would then put them to the complainant, to ensure no fear or embarrassment is caused to the complainant. The provision reads as under:

"10. COMPLAINT MECHANISM

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 (2004) 5 SCC 518 : AIR 2004 SC 3566-Sakshi *v.* UOI, *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."*

75. There appears to be neither any statutory bar nor any logic to restrict the power of the complaints committee to put questions to the witnesses only to the context enumerated in the aforesaid provision. The complaints committee being an inquiry authority and in some sense equivalent to a presiding officer of the court as inferred from *Sakshi* (supra), must be allowed to put questions on its own if a proper, fair and thorough inquiry is to take place.

76. If the observations of the High Court are accepted, it would lead to a chilling effect, whereby the complaints committee which is deemed to be an inquiry authority would be reduced to a mere recording machine.

77. We fail to understand what other purpose the complaints committee which is deemed to be an 'inquiry authority' would serve, if we are to hold that the complaints committee cannot put questions to the witnesses.

78. Even otherwise, the aforesaid issue has been answered by this Court in *Pravin Kumar* v. *Union of India*, (2020) 9 SCC 471. The very same argument was canvassed before a three-Judge Bench that the Inquiry Officer could not have put his own questions to the prosecution witnesses and could also have not cross-examined the witnesses. In the said case, it was argued that the same would amount to making the prosecutor the judge. This argument was negatived by the

Court observing in para 31 as under:

> *"31. Significant emphasis has been placed by the appellant on the fact that the enquiry officer put his own questions to the prosecution witness and that he cross-examined the witnesses brought forth by the defence. This, it is claimed, amounts to making the prosecutor the Judge, in violation of the natural justice principle of "nemo judex in sua causa". However, such a plea is misplaced. It must be recognised that, under Section 165, Evidence Act, Judges have the power to ask any question to any witness or party about any fact, in order to discover or to obtain proper proof of relevant facts. While strict rules of evidence are inapplicable to disciplinary proceedings, enquiry officers often put questions to witnesses in such proceedings in order to discover the truth. Indeed, it may be necessary to do such direct questioning in certain circumstances. Further, the learned counsel for the appellant, except for making a bald allegation that the enquiry officer has questioned the witnesses, did not point to any specific question put by the officer that would indicate that he had exceeded his jurisdiction. No specific malice or bias has been alleged against the enquiry officer, and even during the enquiry no request had been made to seek a replacement, thus, evidencing how these objections are nothing but an afterthought."*
>
> (Emphasis supplied)

79. If Section 165 of the Indian Evidence Act, 1872 permits a Judge to put questions to the parties or to the witnesses in order to discover or obtain proper proof of relevant facts and this provision being widely used by the judges throughout the country, we fail to understand as to how the complaints committee after being equated with a judge in a judicial proceeding be denied that privilege. However, it would be a different situation if a specific case of personal bias is made out against the members of the committee. After all, the very purpose of the disciplinary proceedings is to reach to the bottom of the fact while affording adequate opportunities to the affected party.

80. Thus, the High Court was not correct in taking the view that the proceedings stood vitiated because the Central Complaints Committee put questions to the prosecution witnesses.

E.4 Whether the Central Complaints Committee based its findings on conjectures and surmises? Whether the case on hand is one of "no evidence"?

i) Principle of "No Evidence" in Service Jurisprudence

81. It is well settled that the findings of fact recorded in the course of any domestic inquiry, unless they are collateral or jurisdictional, are exempt from judicial review and that the court exercising writ jurisdiction should not sit in appeal over the ultimate decision based on such findings and review it on merits. However, there are two well-known exceptions to the said rule. First, the case must not be one where there is "*no evidence*" to support the findings. Secondly, the ultimate decision based on such findings must not be perverse or unreasonable. These two concepts have affinity with each other; indeed, the "no

evidence" principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised and *ultra vires*. As pointed out by Lord Radcliffe in *Edward (Inspector of Taxes, Bairstow*. (1956) Appeal Cases, 14 at page 36 "*I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination*." Rightly understood, each phrase propounds the same test, in each of these cases, according to Lord Radcliffe, there would be an error in point of law requiring the court's intervention.

82. We must explain the true meaning of the 'no evidence' principle. The rule has been adopted in India from England and we may, therefore, ascertain, in the first instance, how the rule over there is understood. Prof. H.W.R. Wade in his treatise on *Administrative Law*, Fourth Edition, has observed as follows:

> *"It is one thing to weigh conflicting evidence which might justify a conclusion either way. It is another thing altogether to make insupportable findings. This is an abuse of power and may cause grave injustice. At this point, therefore, the court is disposed to intervene.*
>
> *'No evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding; or where, in other words, no tribunal could reasonably reach that conclusion on that evidence.*
>
> *There is, indeed, the well-established rule that to find facts on no evidence is to err in law."*

(Emphasis supplied)

83. The learned Author has pointed out that the "no evidence" rule has some affinity with the substantial evidence rule of American law which, as explained by Bernard Schwartz in his treatise on *Administrative Law*, 1976 Edition, at page 595, means "*such evidence as might lead a reasonable person to make finding*." In other words, according to the learned Author, "*The evidence in support of a fact-finding is substantial when from it an inference of existence of the fact may be drawn reasonably*."

84. The earliest English decision which has touched upon the concept of "no evidence" is that of the Court of Appeal in *The King* v. *Carson Roberts*, [1908] 1 K.B. 407. The question in that case was whether the superior court having the power to issue a writ of *certiorari*, if it appeared to it that the decision of the auditor in regard to disallowances and surcharges, under the Public Health Act, 1875, was erroneous, could review the same only when such decision was erroneous in point of law and not when the auditor had come to an erroneous conclusion in fact. Fletcher Moulton L.J. observed in that case as follows:

> *"It is admitted by the appellant that if there was no evidence on which any tribunal could reasonably come to the conclusion to which the auditor has come the superior Courts have a jurisdiction to quash the surcharge, and in my opinion this is the case here."*

85. In the *Deputy Industrial Injuries Commissioner* (supra), two learned law Lords have made certain observations on the true content of the "no evidence" rule by treating the said rule as a principle of natural justice. Willmar L.J. observed as under:

> *"Where so much is left to the discretion of the Commissioner, the only real limitation, as I see it, is that the procedure must be in accordance with natural justice. This involves that any information on which the Commissioner acts, whatever its source, must be at least of some probative value."*

86. Diplock L.J. made the following pertinent observations reproduced below:

> *"Where, as in the present case, a personal bias or mala fides on the part of the deputy commissioner is not in question, the rules of natural justice which he must observe can, in my view, be reduced to two. First, he must base decision on evidence, whether a hearing is requested or not. Secondly, if a hearing is requested, he must fairly listen to the contentions of all persons who are entitled to be represented at the hearing.*
>
> *"In the context of the first rule, "evidence" is not restricted to evidence which would be admissible in a court of law....*
>
> *"... The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or none-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.""*

87. In *French Kier Developments Ltd.* v. *Secretary of State for the Environment*, [1977] 1 All ER 297, the jurisdiction of the court of Queen's Bench Division was invoked for quashing the appellate decision of the Secretary of State confirming the refusal of permission for development. The Secretary of State accepted the findings of fact recorded by the Inspector at the conclusion of the public inquiry which followed the Borough Council's refusal of permission but not his recommendation that the appeal should be allowed. The Secretary of State, in deciding the appeal, took into consideration the contents of a document and accepted them as correct, notwithstanding the fact that the Inspector had regarded the document as of no evidential value. The argument before Willis J. was that the Secretary of State should have ignored the document, or any reference to its contents, as the Inspector did, since it was not produced by any witness, its provenance was unexplained and it could not be tested by cross-examination. The learned Judge made the following observations while considering the submission:

> *"It hardly needs to be said that legal rules of evidence are not applied at local inquiries, and both oral and documentary evidence is freely admitted in circumstances where even the more relaxed rules of evidence at the present time would not allow of its admission in a court of law. Nonetheless some limit must surely be imposed in fairness to an appellant on the scope of so-called evidence which by no stretch of the imagination can be said to have the slightest evidential value. This must, I should have thought, particularly be so when if such 'evidence' is considered, it is used to support a conclusion unfavourable to the appellant. I think the Inspector was light to ignore this document and the Secretary of State was wrong in the particular circumstances to attach any weight to it or its contents."*

88. The aforesaid decisions would indicate that the English Courts have not construed the words "no evidence" narrowly. The rule of "no evidence" is there attracted not only in cases where there is complete lack of evidence, that is to say, where there is not a shred of evidence, but also in cases where the evidence, if any, is not capable of having *any* probative value, or on the basis of which no Tribunal could reasonably and logically come to the conclusion about the existence or nonexistence of facts relevant to the determination. According to the English decisions, although a domestic tribunal may act on evidence not admissible according to the legal rules in a court of law, yet unless such evidence has some probative value in the sense mentioned above, it would be a breach of natural justice and/or an error of law to base any adverse decision thereon.

89. In *State of Andhra Pradesh* v. *S. Sree Rama Rao*, AIR 1963 SC 1723, it was held at page 1726 that in considering whether a public officer is guilty of the misconduct charged against him the rule followed in criminal trials with regard to the establishment of charge by evidence beyond reasonable doubt was not applicable. In a proceeding under Art. 226, the High Court, not being a court of appeal over the decision of the domestic tribunal, was concerned to determine whether the inquiry was held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice were not violated. Then follow the following important observations: —

> *"Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence… if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."*
>
> (Emphasis supplied)

90. This decision was approvingly referred to and relied upon in *State of Andhra Pradesh* v. *Chitra Venkata Rao*, (1975) 2 SCC 557.

91. In *Union of India* v. *H.C. Goel*, AIR 1964 SC 364, the question as to the amplitude and width of the judicial review under Art. 226, fell for consideration in the context of the disciplinary proceedings against Government servants. It was observed that "*the High Court under Art. 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all*" and that there was little doubt that a writ of *Certiorari* can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceeding is based on no evidence. A conclusion on a question of fact, it was held, would be assailable if it is manifest that there is no evidence to support it even assuming *bona fides* of the disciplinary authority. The following observations made at page 369 are material from the point of view of the aspect under consideration:

> *"... In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. ..."*
>
> (Emphasis supplied)

92. In *R. Mahalingam* v. *Chairman, Tamil Nadu Public Service Commission*, (2013) 14 SCC 379, this Court laid down the scope of judicial review as regards the findings of the disciplinary proceedings with the following relevant observations being reproduced below:—

> *"11. ... The scope of judicial review in matters involving challenge to the disciplinary action taken by the employers is very limited. The courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the court."*
>
> (Emphasis supplied)

93. This Court in *Aureliano Fernandes* (supra) while discussing upon the extent

to which a court can interfere with respect to the departmental proceedings conducted pursuant to the allegations of sexual harassment, made the following relevant observations:—

> *"62. … Disciplinary Authority is the sole judge of facts and once findings of fact, based on appreciation of evidence are recorded, the High Court in its writ jurisdiction should not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The Court is under a duty to satisfy itself that an inquiry into the allegations of sexual harassment by a Committee is conducted in terms of the service rules and that the concerned employee gets a reasonable opportunity to vindicate his position and establish his innocence."*
>
> (Emphasis supplied)

ii) Standard of Proof in Disciplinary Proceedings

94. In another decision of this Court in *West Bokaro Colliery (TISCO Ltd.)* v. *Ram Pravesh Singh*, (2008) 3 SCC 729, it was held that in a departmental inquiry, the standard of proof is based on preponderance of probability and not beyond reasonable doubt. The relevant observation made in it are given below:—

> *"20. The Tribunal has set aside the report of the enquiry officer and the order of dismissal passed by the punishing authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities."*
>
> (Emphasis supplied)

95. Similarly in *Apparel Export* (supra) this Court had held that inquiries in respect of sexual harassment must be examined on broader probabilities keeping in mind the entire background of the case. Thus, in a disciplinary inquiry, the standard of proof is preponderance of probabilities and the courts must only interfere where the findings are either perverse or based on no evidence at all.

96. Bearing the aforesaid principles of law in mind, we must look into some relevant portion of the evidence taken into consideration by the Central Complaints Committee for arriving at the conclusion that the charges are held to be proved:—

a. Shri Mast Ram Thakur, SFA(H) (PW3) stated that the respondent used to quite often call the complainant in his chamber and made her sit for hours without any office work. He further stated that quite often on such occasions, the respondent would draw the curtains of his chamber. He also stated that the complainant had once conveyed to him that the respondent used to make proposals of marriage to her.

Nothing substantial could be elicited from the cross-examination of Mast Ram Thakur. In fact, what has been deposed by Mast Ram Thakur as referred above, has not even been remotely disputed in the cross-examination by way of even a suggestion.

b. Shri Rynjan Singh, peon (PW8) and Shri Chandan Sarkar (PW6) stated that they had seen the complainant being made to sit in the respondent's chamber for hours. Shri Ashok Kumar, PA (PW17) further stated that the complainant had once told him that after being called in his chamber the respondent would often comment on her beauty and clothes.

c. Shri P.K. Rawat, UDC (PW5), Shri Ranjit Patoi, Assistant (PW7) and Shri Samir Nandi, SFA(G) (PW14) have all stated that they had seen the respondent pour himself a glass of water in his chamber and then go to the complaint's room 5-6 times a day, and while drinking he would always be looking at the complainant. Shri Runjan Singh, peon (PW8) stated that earlier the respondent used to drink water in his own chamber, but once the complainant joined the office, he started frequently visiting her room to drink water.

d. Shri Rabi Ram Biswas, sweeper (PW12) stated that he had seen the respondent touching the shoulder of the complaint while teaching her to operate a laptop. Smt Pema Narzary, AFO(WI) (PW9) stated that the complainant had once told her how the respondent used to call her to his chamber on the pretext of teaching her to operate the laptop. Shri Rynjan Singh, peon (PW8) stated that on one occasion, the respondent shut the door of his Chamber while teaching the complainant and when all of a sudden he entered the respondent's chamber the respondent got startled and moved away from the complainant and instructed him to knock before entering.

e. Shri Rabi Ram Biswas, peon (PW12) stated that whenever, the complainant would leave the office, the respondent would also leave soon thereafter in a hurry. The other staff presumed that this hurry was due to the respondent's desire to drive the complainant home. Shri Rynjan Singh, peon (PW8) stated that he had seen the respondent offering a lift to the complainant and that it was only the complainant to whom the respondent used to offer. Smt. Pema Narzary, AFO(WI) (PW9) stated to have heard from other office staff that the respondent would offer lifts to the complainant in his official vehicle.

f. Shri B.B. Sonar, chowkidar (PW4) stated that once while the complainant was standing in the ladies' queue for booking tickets at the railway station, the respondent approached her from behind and placed his hand on her shoulder. This made the complainant very uncomfortable and on shrugging off her shoulder the respondent withdrew his hand. He further stated that he saw the complainant looking upset and uncomfortable.

To the aforesaid allegations, the respondent offered his explanation saying that he had done so as it was his "bounden duty to protect the dignity of the complainant" from the "boisterous crowd" and also to make people know

standing at the railway station that the complainant was not alone.

g. Shri Mast Ram Thakur, SFA(H) stated that he overheard the respondent making sexually coloured remarks to the complainant at the railway station saying; "*aap to jaa rehen hain, meri jaan jaa rahi hai. Aap chinta mat karo main tumhara dimag taza karne ke iye bhej rahaa huu, vahaan se aane ke baad tum shrimati paul banogi*".

h. Shri B.B. Sonar, chowkidar (PW4), Shri A. Deben Singh, AFO(M) (PW13) Shri Surjit Singh, Driver (PW2), Shri Rynjan Singh, peon (PW8) all stated to have heard from the other office staff that the respondent would often visit the complainant's residence uninvited and make proposal of marriage. Other witnesses namely; Shri Shyam Dass, Section Officer DACS (retd.) (PW19), Shri Subhash Prasad, UDC (PW18), Shri Ashok Gahlot, PA (PW17), Shir Jinen Singh, UDC (PW11), Shri Ranjit Patoi, Shri Samir Nandi, SFA(G) and Smt. Pema Nazary, AFO(WI) (PW9) all supported these allegations and said to have heard from the complainant sometime in 2009-2010 that the respondent used to visit her house at odd hours and also used to misbehave with her by making sexual advances and asking the complainant to leave her husband and marry him. Shri Chandan Sarkar, SFA(M) (PW6), stated to have even heard a telephonic recording of the respondent making sexual remarks to the complainant. Shri P.K. Rawat, UDC (PW5) stated that on many occasions he had seen the respondent sitting at the complainant's house.

i. Shri S.C. Katoch, IG (PW20), stated that the complainant had once telephoned him making a complaint against the respondent for detaining her beyond working hours. He further stated that, he had then telephonically reprimanded the respondent after which the respondent assigned her no work. Shri Mast Ram Thakur, SFA(H) (PW3) and Shri Ranjit Patoi, Assitant (PW7) also corroborated the aforesaid and stated that the respondent withdrew all work from the complainant after she made a complaint against him.

97. The aforesaid would indicate that this is not a case of "no evidence". Some evidence has come on record to indicate or rather substantiate the allegations of sexual harassment levelled by the complainant. What is most important to note at this stage is that the High Court has not gone into the sufficiency of evidence as it was aware that the law does not permit it to go into the issue of sufficiency of evidence for the purpose of holding a public servant guilty of the alleged misconduct. It is in such circumstances that in the entire judgment the High Court has concentrated only on technical pleas raised by the respondent. It is only on the issue of point 7(a) that the High Court seems to have taken the view that the findings in that regard are based on conjecture and surmises.

98. The High Court took the view that in respect of the allegations contained in Point 7(a) which relates to the respondent making unsolicited phone calls to the complainant, although no evidence of the call recordings had been produced to substantiate the same, yet the Central Complaints Committee accepted the allegations as true, and therefore its findings could be said to be based on conjectures and surmises.

99. The aforesaid in our opinion is not correct. The allegation in Point 7(a) was rightly accepted by the Central Complaints Committee keeping in mind the background of the case. The Central Complaints Committed duly noted that the non-availability of the call records was owed to the fact that the inquiry into the complainant's grievances was undertaken after a lapse of significant time. Moreover, the said finding is fortified by the oral evidence of one of the witnesses who deposed that he was aware of the respondent making calls to the complainant. The relevant portion is reproduced below:—

"POINT 7

"x. … Shri Samir Nandi has also stated that he knew that Shri Dilip Paul was calling Smt. X on her mobile.

xxx xxx xxx

B. The Complaints Committee made every effort to substantiate the charge that Shri Dilip Paul often telephoned Smt. X, and that too at odd hours, but since call records for Shri Dilip Paul's mobile phone were not available and Smt. X had a prepaid SIM card, it has failed to do so.

xxx xxx xxx

… The Complaints Committee also notes that the unavailability of corroboration from call records cannot be laid at Smt. X's door because, had the enquiry into her complaint been timely and speedy, these records would have been available as on date.""

100. Before we close this judgment, we must deal with one submission very vociferously canvassed on behalf of the respondent as regards the multiple inquiries conducted by the appellant. It was submitted on behalf of the respondent that the normal rule is that there can be only one inquiry. It was also submitted that once the on-spot/preliminary inquiry revealed nothing incriminating against the delinquent, no further committee could have been constituted to inquire into the allegations once again.

101. It was further submitted that even the Frontier Complaints Committee came to the conclusion that the charges were not held to be proved.

102. In such circumstances referred to above, according to the learned counsel, the Central Complaints Committee could not have been constituted to probe further into the allegations. In this regard, reliance was placed on the decision of this Court in the case of *Vijay Shankar Pandey* v. *Union of India*, (2014) 10 SCC 589.

103. In the aforesaid context, we may only say that the aforesaid point was raised even before the High Court and the same came to be negatived holding as under:

"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."

(Emphasis supplied)

104. We are in complete agreement with the aforesaid findings recorded by the High Court on the issue of multiple inquiries.

F. CONCLUSION

105. For all the forgoing reasons, we have reached to the conclusion that the appeal deserves to be allowed. The High Court committed an egregious error in passing the impugned judgment and order.

106. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court dated 15.05.2019 is hereby set-aside.

107. The order of penalty imposed by the Disciplinary Authority is hereby restored. However, we clarify that the appellant shall not effect any recovery of the amount already paid so far to the respondent.

108. Pending application(s) if any shall stand disposed of.

———