पूर्व मध्य रेल

कार्यालय
मंडल रेल प्रबंधक (कार्मिक)
सोनपुर
दिनांक– 18.05.2023

सं0–का0/322/कल्याण/सोनपुर/2018/पार्ट–।
सभी शाखा अधिकारी
पूर्व मध्य रेल/सोनपुर

विषयः– आंतरिक शिकायत समिति का गठन– Sexual Harassment of Women at Workplace
संदर्भः– इस कार्यालय का समसंख्यक पत्र दिनांक– 08.06.2021

इस कार्यालय के संदर्भित पत्र दिनांक 08.06.2021 द्वारा पूर्व गठित आंतरिक शिकायत समिति में आंशिक बदलाव करते हुए रेलवे बोर्ड के आर.बी.ई सं0– 15/2015 दिनांक 05.03.2015 एवं आर.बी.ई सं0– 114/2015 दिनांक 23.09.2015 दिये गये निर्देशों के तहत मंडल स्तर पर आंतरिक शिकायत समिति का गठन नये सिरे से निम्नवत् किया जाता हैः–

क0 सं0	आंतरिक शिकायत समिति का पद	नामित अध्यक्ष/सदस्य	मोबाईल नं0	**Tenure in terms of provision contained in Para 2.2 of RBE 114/2015**
01	अध्यक्ष	डा0 एम हरिका, समचिधि/सोनपुर	9771429504	Till further order or 3 years from the date of issue of order, whichever is earlier
02	सदस्य	श्री प्रमोद कुमार सिंह, विधि अधिकारी/सोनपुर	7033092168	Till further order or upto 07.06.2024 whichever is earlier
03	सदस्य	श्रीमति, वंदना कुमारी एसएसई (सिग्नल)/सोनपुर	9771468653	Till further order or 3 years from the date of issue of order, whichever is earlier
04	सदस्य	श्रीमति सारिका कुमारी, NGO, secretary of Kriti Foundation, Hajipur, Bihar	8340119748.	Till further order or 3 years from the date of issue of order, whichever is earlier

उपर्युक्त गठित आंतरिक शिकायत समिति सोनपुर मंडल मे कार्यरत महिलाओं की लैंगिक उत्पीड़न (Sexual Harassment of Women) से संबंधित शिकायतों की जॉच करेगी। यह आंतरिक शिकायत समिति रेलवे बोर्ड के परिपत्र आर.बी.ई सं0– 15/2015 दिनांक 05.03.2015 एवं आर.बी.ई सं0– 114/2015 दिनांक 23.09.2015 में दिये गये निर्देशों/नियमों के तहत शासित होगी।

यह मंडल रेल प्रबंधक महोदय द्वारा अनुमोदित है।

18/5/23
(बिजय इंजीनियर)
सकाधि–III
कृते मरेप्र (कार्मिक)/सोनपुर

प्रतिलिपिः– सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

(1) निजी सचिव मंरेप्र – मंरेप्र महोदय के सादर सूचनार्थ
(2) अमरेप्र–। एवं ।।/सोन0 महोदय के सादर सूचनार्थ
(3) महाप्रबंधक (का0)/हाजीपुर,
(4) डा0 एम हरिका, समचिधि/सोनपुर,
(5) श्री प्रमोद कुमार सिंह, विधि अधिकारी/सोनपुर
(6) श्रीमति, वंदना कुमारी, एसएसई (सिग्नल)/सोनपुर अधिकारी/सोनपुर
(7) श्रीमति सारिका कुमारी, NGO, secretary of Kriti Foundation, Hajipur
(8) मंडल मंत्री/ईसीआरकेयू एवं अजा–अजजा एशो0/सोनपुर मंडल।

18/5/23
कृते मरेप्र (कार्मिक)/सोनपुर

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RBE No. 15/2015

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(D&A) 2015 GS1-1 New Delhi, dated 05.03.2015

The General Manager(P)
All Indian Railways and
Production Units etc.
(As per standard list).

Sub: Alignment of Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

.....

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 {SHWW(PPR) Act} has been promulgated on 22.04.2013. Further to the Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 {SHWW(PPR) Rules} were notified on 09.12.2013. The Act and the Rules framed thereunder provide a redressal mechanism for handling cases of sexual harassment at workplace. The Act and Rules are available at the website of the Ministry of Women and Child Development (wcd.nic.in) under Legislation/Acts.

2. The guidelines laid down by the Hon'ble Supreme Court in the case of Vishakha vs. State of Rajasthan, in the matter of sexual harassment of women at the workplace, were circulated on the Railways vide Railway Board's letter no. E(D&A) 97 GS1-4 dated 01.07.1998. These instructions, interalia, envisaged the constitution of a complaints committee for looking into complaints of sexual harassment and also specified the composition of such committee. These instructions also laid down guidelines regarding preventive steps, disciplinary/criminal proceedings against the offender, workers initiative to raise matters of sexual harassment at meetings, awareness etc. in context of sexual harassment of working women.

3. Subsequently, Railway Board's letter no. E(D&A) 2009 GS1-9 dated 20.01.2010 also laid down that the Complaints Committee shall be in existence at all times . Its composition along with names, contact details should be put on public display notice Board prominently in offices, workshops, stations where there is major concentration of staff. Changes in its composition, whenever necessary, should be made promptly and adequately publicized. It was also laid down that the composition of the Complaints committee be also posted on the websites of the concerned Ministries/Departments/Offices concerned. A copy of DoP&T's O.M. dated 03.08.2009 was also circulated alongwith the said letter which interalia laid down that the Committee should be effective and functional at all times and that it is desirable for the Committee to meet once a quarter, even if there is no live case and review preparedness to fulfill all requirements of the Vishakha judgment in the Department/Ministry/Organisation concerned.

4. Further, the proviso to Rule 9(2) of the RS (D&A) Rules, 1968 provides that the Complaints Committee established in each office under the Railways enquiring into such complaints shall be deemed to be the inquiring authority appointed by the disciplinary authority and the committee shall hold the inquiry in accordance with the procedure laid down in these rules, to the extent practicable.

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5. The procedure being followed on the Railways for dealing with matters of sexual harassment of women at the workplace, has been modified by the SHWW(PPR) Act and the SHWW(PPR) Rules. The salient features of the Act and the Rules and the instructions issued by the Department of Personnel & Training, in this regard are as follows:-

5.1 Definition of the terms 'Sexual Harassment' and 'Workplace'

Section 2(n) and 2(o) of the Act define the terms 'Sexual Harassment' and 'Workplace' in relation to the Act. Rule 3C of the RS(Conduct) Rules has been amended vide Board's letter no. E(D&A) 2014 GS1-4 dated 12.01.2015 to incorporate these definitions in the RS(Conduct) Rules relating to sexual harassment of working women.

5.2 Constitution of Internal Complaints Committee

5.2.1 Section 4 of the Act lays down that:-

(i) Every employer at a workplace shall constitute a committee known as the 'Internal Complaints Committee' for looking into the complaints of sexual harassment of working women in that organisation, provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(ii) The members of the Internal Complaints Committee shall be nominated as follows:-

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees. Provided that where such senior level employee is not available the Presiding Officer shall be nominated from other offices or administrative units of the workplace. Provided further that in the case the other offices or administrative units do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation.

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment;

(d) At least one-half of the total Members so nominated shall be women. This however does not imply that most or all of the members of the Complaint committee may be nominated from amongst women. In the interest of fairplay and equal opportunity, male members should also be included in such Committees so that there is no apprehension of bias of the Complaint Committee for either party.

5.2.2 The conditions related to membership of the Internal Complaints Committee are laid down in sub-sections (3) to (5) of section 4 of the Act. Rule 3 of the SHWW(PPR) Rules, 2013 lays down the fee or allowances payable to the member from amongst NGOs/Associations, referred to in para 5.2.1 (ii) (c) above.

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5.2.3 Railways etc. may ensure that the Internal Complaints Committees functional in their offices under their Railway etc., satisfy the conditions laid down in the Act. It may also be impressed upon the Complaints Committee to scrupulously follow the instructions contained in Board's letter no. E(D&A) 2009 GS1-9 dated 20.01.2010 relating to functioning of the Complaints Committee.

5.3 Complaint under the SHWW(PPR) Act

5.3.1 The salient features of the section 9 of the Act, relating to filing of complaints under the Act are as follows:-

(i) The complaint of sexual harassment at the workplace can be made by an aggrieved woman to the Internal Complaints committee within 3 months of the incident (or where there is a series of incidents, within 3 months of the last such incident), provided further that this time limit can be extended by 3 months, for reasons recorded in writing, where the Committee is satisfied that circumstances were there which prevented the woman from filing a complaint within the said period. It is further laid down that where such complaint cannot be made in writing, the Committee shall render all reasonable assistance to the woman to make the complaint in writing.

(ii) The legal heir of the woman or any other person, as prescribed in Rule 6 of the SHWW(PPR) Rules, 2013 may make the complaint, if the aggrieved woman is unable to do so herself on account of physical or mental incapacity or death or otherwise.

(iii) If any complaint is received directly by the Internal Committee, the same shall be referred to the appropriate disciplinary authority and the Committee shall inquire into the complaint on the complaint being referred to it by the disciplinary authority.

5.4 Conciliation proceedings

The salient features of the section 10 of the Act, relating to conciliation proceedings, are as follows:-

(i) The Internal Committee may before initiating inquiry under section 11 of the Act, and at the request of the aggrieved woman take steps to settle the matter between her and the charged official through conciliation, provided that no monetary settlement shall be made as a basis of conciliation.

(ii) Where a settlement has been arrived at, the Internal Committee shall record the settlement and forward the same to the disciplinary authority to take action as specified in the recommendation.

(iii) Where a settlement has been arrived as mentioned above, no further inquiry shall be conducted by the Internal Committee.

5.5 Inquiry into complaint

5.5.1 Section 11 of the Act lays down the mechanism of conducting an inquiry into the complaint. The salient features relating to conduct of inquiry are as follows:-

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(i) Subject to the provisions of section 10 of the Act, the Internal Committee shall conduct inquiry into the complaint as per service rules applicable to the charged official. Also where the aggrieved woman informs the Internal Committee that any term or condition of the settlement arrived at under section 10 has not been complied with by the charged official, the Internal Committee shall proceed to make an inquiry into the complaint. Provided further that where the parties are employees, the parties shall during the course of the inquiry be given an opportunity to be heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(ii) The Committee will as far as practicable follow the procedures prescribed in Rule 9 of RS(D&A) Rules, 1968.

(iii) For the purpose of making inquiry, the Internal Committee shall have the same powers as are vested in the civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him under oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(iv) **The inquiry shall be completed by the Internal Committee within a period of 90 days.**

5.6 Recommendations of Internal committee during pendency of inquiry

Section 12 of the Act prescribes the action that can be taken by the Internal Committee during pendency of the inquiry, which are as follows:-

(i) During the pendency of the inquiry, on a written request made by the aggrieved woman, the Internal Committee may recommend the competent authority on the Railway to-

(a) transfer the aggrieved woman or the charged official to any other workplace, or

(b) grant leave to the aggrieved woman up to a period of three months, provided that such leave shall be in addition to the leave she would be otherwise entitled.

(c) grant such other relief to the aggrieved woman as may be prescribed.

(ii) On the recommendation of the Internal Committee as above, the employer shall implement the recommendations and send the report of such implementation to the Internal Committee.

(iii) The other reliefs that may be granted to the complainant by the Internal Committee during the pendency of the inquiry are specified in Rule 8 of SHWW(PPR) Rules, 2013.

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5.7 Inquiry report

As per section 13 of the Act, the following action will be taken on the inquiry report of the Complaints Committee:-

(i) On completion of the inquiry, the Internal Committee shall provide a report of its findings to the disciplinary authority within ten days from the date of completion of inquiry and such report shall be made available to the concerned parties.

(ii) Where the Internal Committee arrives at the conclusion that the allegation against the charged official has not been proved, it shall recommend to the disciplinary authority that no action is required in this matter.

(iii) Where the Internal Committee arrives at the conclusion that the allegation against the charged official has been proved, it shall recommend to the disciplinary authority-

(a) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the charged official.

(b) to deduct, notwithstanding anything in the service rules applicable to the charged official, from the salary or wages of the charged official such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine in accordance with the provisions of Section 15 of the Act. Provided that in case the Railway is unable to make such deduction from the salary of the charged official due to his being absent from duty or cessation of employment it may direct to the charged official to pay such sum to the aggrieved woman. Provided further that in case the charged official fails to pay the sum, the Internal Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer. Such compensation awarded by the Internal Committee to the aggrieved woman or to her legal heirs shall not amount to penalty under Rule 6 of RS(D&A) Rules, 1968.

(c) The disciplinary authority shall act upon the recommendation within sixty days of its receipt by him.

Action is being taken to amend Rule 6 of RS(D&A) Rules to provide that such compensation will not amount to a penalty under Rule 6 of RS(D&A) Rules.

5.8 Punishment for false or malicious complaint and false evidence

Section 14 of the Act lays down that-

(i) Where the Internal Committee arrives at a conclusion that the allegation against the charged official is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has

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produced any forged or misleading document, it may recommend to the competent disciplinary authority to take action against the woman or the person who has made the complaint under section 9, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as laid down in Rule 10 of SHWW(PPR) Rules. Provided that mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant. Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(ii) Where the Internal Committee arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take action in accordance with the provisions of the service rules applicable to such witness.

5.9 Determination of compensation

Section 15 of the Act lays down that-

(i) For the purpose of determining the sums to be paid to the aggrieved woman under section 13, the Internal Committee shall have regard to-

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;

(b) the loss in the career opportunity due to the incident of sexual harassment;

(c) medical expenses incurred by the victim for physical and psychiatric treatment;

(d) income and financial status of the charged official;

(e) feasibility of such payment in lump sum or in instalments.

5.10 Prohibition of publication or making known contents or complaint and inquiry proceedings and penalty therefor

Section 16 & 17 of the Act lay down that-

(i) Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, charged official and witnesses, any information relating to conciliation and inquiry proceedings, recommendation of the Internal committee and the action taken by the employer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to identification of the aggrieved woman and witnesses.

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(ii) Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendation or action to be taken under the provisions of this Act, contravenes the provisions of Section 16 of the Act, he shall be liable for penalty in accordance with the provisions of the service rules applicable to him.

5.11 Appeal

Section 18 of the Act provides that-

(i) Any person aggrieved from the recommendations made under section 13(2) or clauses (i) or (ii) of section 13(3) or sub-sections (1) or (2) of section 14 or section 17 or non-implementation of such recommendations, may prefer an appeal to the Court or Tribunal in accordance with the provisions of service rules applicable to the said person. The appeal shall be preferred within a period of ninety days of the recommendations.

5.12 Duties of the employer

Section 19 to the Act lays down that the employer shall-

(i) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(ii) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(iii) organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act and orientation programs for the members of the Internal Committee in the manner as may be prescribed;

(iv) provide necessary facilities to the Internal Committee for dealing with the complaint and conducting an inquiry;

(v) assist in securing the attendance of the charged official and witnesses before the Internal Committee;

(vi) make available such information to the Internal Committee as it may require having regard to the complaint made under section 9(1);

(vii) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal code or any other law for the time being in force;

(viii) cause to initiate action, under the Indian Penal code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(ix) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

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(x) monitor the timely submission of report by the Internal Committee.

5.13 Miscellaneous provisions

(i) In terms of section 21 of the Act, the Internal Committee shall in each calendar year prepare, an annual report as per the provisions of Rule 14 of the SHWW(PPR) Rules, 2013, and submit the same to the employer.

(ii) In terms of section 22 of the Act, the employer shall include in its report the number of cases filed, if any, and their disposal under the Act, in the annual report of his organization.

6. The above provisions may be brought to the notice of all officers and staff on the Railways.

7. Hindi version will follow. Please acknowledge receipt.

(S. Modi)
Dy. Director Estt. (D&A)
Railway Board

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RBE No. 114/2015

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(D&A) 2015 GS1-1

New Delhi, dated 23.09.2015

The General Manager(P)
All Indian Railways and
Production Units etc.
(As per standard list).

Sub: Alignment of Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 – Guidelines regarding.

.....

Attention is invited to Railway Board's letter of even no. dated 05.03.2015 on the above subject whereby instructions were issued for alignment of the Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [SHWW(PPR) Act] and the rules issued thereunder.

2. Basic guidelines regarding the constitution of the Internal Complaints Committee are contained in para 5.2 of the letter dated 05.03.2015. The following additional guidelines are laid down in respect of constitution and working of the Internal Complaints Committees :-

2.1 The Internal Complaints Committee shall function at the Zonal Railway level and at the Divisional levels. All the extra-Divisional Units reporting directly to the zonal Headquarters shall be covered by the Committee constituted at the zonal Railway level and the other units shall be covered by the Committees constituted at the Divisional level. The workshops etc. will also be covered by the Committees at the Divisional level depending on their geographical location. The Public Sector Undertakings under the Ministry of Railways shall have their separate Internal Complaints Committee.

2.2 In terms of section 4(3) of the SHWW(PPR) Act, the tenure of the Presiding Officer/Members of the Internal Complaints Committee shall not exceed three years.

2.3 The composition of the Internal Complaints Committee at the Zonal and Divisional levels and details of their jurisdiction may be published on the official websites of the zonal Railways and the changes in the composition of the Committees may be promptly updated on the websites.

2.4 In terms of Rule 3(1) of the Sexual Harassment of Working Women (Prevention, Prohibition and Redressal) Rules, 2013 [SHWW(PPR) Rules], the Member nominated to the Internal Complaints Committee from amongst non-government organisations in terms of section 4(2)(c) of the SHWW(PPR) Act, shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Complaints Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-conditioned class or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

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3. In terms of section 22 of the Act, the employer shall include the number of cases filed, if any, and their disposal under the Act, in the annual report of his organization. The Railways etc. and the PSUs under the Ministry of Railways may furnish the requisite information as per the proforma enclosed as Annexure-1, through e-mail at the following address – dell@rb.railnet.gov.in. It may be ensured that the information for the year ending on 31st March is furnished to Railway Board's office by 30th April positively so that the same may be compiled and furnished to the Department of Personnel and Training.

4. Railways etc. may advise their units concerned to refer to the SHWW(PPR) Act, 2013 and the SHWW(PPR) Rules, 2013, which are available at the website of the Ministry of Women and Child Development (wcd.nic.in) under Legislation/Acts, and in case of any conflict/doubt vis-à-vis Board's instructions dated 05.03.2015, the provisions of the Act/Rules shall prevail.

5. Rule 9(2) of the RS(D&A) Rules, 1968 lays down that the Complaints Committee established for inquiring into complaints of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in these Rules. A guide on *'Steps for Conduct of Inquiry in complaints of Sexual Harassment'*, intended to give the procedure as prescribed in the rules/instructions is enclosed as Annexure-II. This is, however, not intended as a substitute for reference to the Rules and instructions. Members of the Complaints Committees and others who are required to deal with such inquiries should acquaint themselves with RS(D&A) Rules, 1968 and instructions issued thereunder.

6. The above provisions may be brought to the notice of all concerned on the Railways.

7. Hindi version will follow. Please acknowledge receipt.

DA: As above

(S. Modi)
Dy. Director Estt. (D&A)
Railway Board

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ANNEXURE – 1

ANNUAL RETURN ON CASES OF SEXUAL HARASSMENT*

Period : 1st April ..... to 31st March.....

Name of Railway/Production Unit/Public Sector Undertaking : .....

S.No.	Subject		
1	Number of complaints of sexual harassment received in the year		
2	Number of complaints disposed off during the year		
3	Number of cases pending for more than 90 days		
4	Number of workshops on awareness programmes against sexual harassment conducted during the year		
5	Nature of action	Number of employees on whom major penalty was imposed	
		Number of employees on whom minor penalty was imposed	
		Number of employees against whom administrative action was taken	
		Number of employees on whom fine was imposed in terms of Section 13(3)(ii) of SHWW(PPR) Act	
		No. of accused employees transferred in terms of Section 12(1)(a) of SHWW(PPR) Act	
6	Number of Internal Complaints Committee functioning as on last day of financial year		

* Information is to be provided in consolidated form for the entire zonal Railway/Production Unit/Public Sector Undertaking

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ANNEXURE – 2

Steps for Conduct of Inquiry in Complaints of Sexual Harassment

Complaints Committees

1. Complaints Committees have been set up at the Zonal and Divisional level in all zonal Railways and other offices under the Ministry of Railways in pursuance to the judgement of the Hon'ble Supreme Court in the *Vishakha* case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act"), the Internal Complaints Committee (referred to as "Complaints Committee" hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman and at least half of its members should be women. In case a woman officer of sufficiently senior level is not available in a particular office, an officer from another office may be so appointed. To prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committees should involve a third party, either an NGO or some other body which is familiar with the issue of sexual harassment.

What is Sexual Harassment?

2. "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) sexually coloured remarks; or
(iv) showing any pornography; or
(v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

3. The following circumstances, among other circumstances, 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.

Workplace defined:

4. As per Section 2(o) of the Act, the following places are included within the ambit of the expression "workplace":

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, etc. -- established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
(ii) hospitals or nursing homes;

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(iii) any sports institute, stadium, etc., 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.

Initial relief

5. The Committee will also have the power to recommend:-

(a) to transfer the aggrieved woman or the charged officer to any other workplace; or

(b) to grant leave to the aggrieved woman upto a period of three months. (The leave will not be deducted from her leave account.)

Complaints Committee to be Inquiring Authority

6. As per proviso to Rule 9(2) of RS(D&A) Rules, 1968, in case of complaints of sexual harassment, the Complaints Committee set up for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 9.

Need for investigation

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

Dual Role

9. In the light of the Proviso to the Rule 9 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already

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discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 9 of RS (D&A) Rules, 1968. Failure to observe the procedure may result in the inquiry getting vitiated.

10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 9 (2) mentioned above, care has to be taken at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. When allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

Decision to issue Charge sheet, and conducting Inquiry.

12. On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 9 (6), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge Sheet. As per Rule 9(9), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.

13. If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 10 of the RS(D&A) Rules.

The Inquiry-stages

14. In case the Charged Officer denies the charges and his reply is not convincing, the Charge Sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 9 (10) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents; and
(c) any other matter which may be prescribed.

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The Section 11(4) of the Act requires that the inquiry shall be completed within a period of ninety days.

15. The Disciplinary Authority shall also in terms of Rule 9 (9) (c) appoint a railway or any other Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. The inquiry would be held in respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 9 (13).

16. The Inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such documents, if not given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. The Inquiring Authority would consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed. Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.

17. When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

Examination of Witnesses

18. Summons would, thereafter, be sent to the witnesses listed in the Charge Sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions of the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.

19. The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appears as a witness, she would also be examined and cross-examined. The Inquiry Officer may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.

20. If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by

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one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

Daily Order Sheet

21. The Inquiring Authority would also maintain a document called Daily Order Sheet in which all the main events of the inquiry and including requests/representations by the Charged Officer or the Presenting Officer, and decisions thereon would be recorded. For example (i) if the Charged Officer refuses to cross-examine the witnesses, this should be recorded in the Daily Order Sheet (ii) the Daily Order Sheet should record that the Charged Officer had been advised that he has the right to engage a Defense Assistant (iii) it should also be clearly mentioned that the Charged Officer was also informed as to who are eligible to assist him as Defense Assistant. (iv) the Daily Order Sheet should also record in case request of the Charged Officer for engaging a particular person as Defense Assistant is disallowed in the light of the existing instructions. Daily Order Sheet should be signed by the Inquiring Authority, Presenting Officer and the Charged Officer/Defense Assistant.

Defence Evidence

22. After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross-examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

General Examination of the Charged Officer

23. After the Defense evidence is over, the Inquiring Authority shall ask the Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defense witness. In case however, he declines to do so, the Inquiring Authority is required to generally question him. At this stage due care is required to be exercised that as per Rule 9(21) the purpose of this stage is to apprise Charged Officer of the circumstances which appear to be against him. This is to enable the Charged Officer to explain them to the Inquiring Authority. Presenting Officer and the Defence Assistant do not take any part in the General Examination. Charged Officer may not be compelled to answer questions during examination by the Inquiring Authority.

Brief

24. After this, the Presenting Officer would be asked to submit his brief. A copy of this brief would be given to the Charged Officer. Both the Presenting Officer and the Charged Officer may be allowed reasonable time for submission of their brief.

25. The Inquiring Authority then writes the Inquiry Report in which the evidence in support of the charges and against them will be examined. The Report should be a speaking one clearly bringing out as to the evidence on the basis of which any particular conclusion

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has been reached. Based on this analysis, the Inquiring Authority will give its findings on the Articles as proved or not proved. In case any Article of charge is proved only partially, then the Inquiring Authority should record the extent to which that Article has been proved.

Powers of the Committee to make recommendations

26. Normally, the Inquiry Officer is not allowed to make any recommendations in his report. Here the function of the Complaints Committee acting as the Inquiring Authority differs. The Complaints Committee may however, make recommendations including what has been mentioned in para 5 above;

- (c) to grant such other relief to the aggrieved woman as may be prescribed; or
- (d) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.
- Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs.
- Such compensation will not amount to penalty under Rule 6 of RS(D&A) Rules, 1968 in terms of the Explanation (x) to Rule 6 inserted vide notification no. E(D&A) 2015 RG6-2 dated 08.09.2015.
- Committee may recommend action to be taken against complainant, if the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.
- The Committee may also recommend action against any witness if such witness has given false evidence or produced any forged or misleading document.

27. The Complaints Committee should also remember that as per the Section 16 of the Act, notwithstanding the RTI Act, 2005, information as regards identity and addresses of the aggrieved woman, respondent and witnesses, Inquiry proceedings, Recommendations of the Committee, shall not be published or communicated or made known to public, press or media in any manner. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

28. With the above stage, the inquiry would be formally over. The Inquiring Authority should prepare separate folders containing the documents mentioned in Rule 9 (25) (ii).

Suspension

29. A Railway servant may also be placed under suspension before or after issue of a Charge Sheet where his continuance in office will prejudice the investigation, for example if there is an apprehension that he may tamper with witnesses or documents. Suspension may also be resorted to where continuance of the Railway servant in office will be against wider public interest such as there is a public scandal and it is necessary to place the Railway

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servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals. It may be desirable to resort to suspension in case of misdemeanor involving acts of moral turpitude.

Special provisions to deal with threats or intimidation

30. Disciplinary Authority may also dispense with inquiry under Rule 14 (ii), and action may be taken without the inquiry when the Disciplinary Authority concludes that it is not reasonably practicable to hold such an inquiry. The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. Such situation would be deemed to have arisen:

(i) Where the Railway servant, through or together with his associates terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(ii) Where the Railway servant himself or with or though others threatens, intimidates and terrorizes the Disciplinary Authority, Members of the Committee, the Presenting officer or members of their family.

Disciplinary Authority is not expected to dispense with the inquiry lightly, arbitrarily or with ulterior motive or merely because the case against the Railway servant is weak.

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