

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.326 OF 2020**

**DISTRICT : SANGLI**

Smt. Aparna Shivnarayan Raut,

**Applicant**

**Versus**

Shri Vilas Dashrath Kamble,

**..Respondents**

Mr. P.D. Pise, the learned Advocate for the Applicant.

Mr. Suhan Deokar, the learned Advocate for Respondent No.1.

Ms. K.S. Gaikwad, the learned Presenting Officer for the Respondents  
No.2 to 9.

CORAM : Justice Ms. Mridula Bhatkar, Chairperson  
Ms. Medha Gadgil, Member (A)

RESERVED ON : 02.09.2021.

PRONOUNCED ON : 14.09.2021.

PER : Justice Ms. Mridula Bhatkar, Chairperson

**ORDER**

1. The Applicant, Junior Clerk has complained against the Respondent No.1, Deputy Regional Transport Officer, Sangli on the ground of sexual harassment.

2. The Internal Complaints Committee has submitted the reports dated 14.12.2020 and so also 17.02.2020 passed by Respondent No.6 and Respondent No.7 respectively that there is no substance in the complaint of the Applicant. The complainant has challenged the legality and validity of those reports before the Tribunal.

3. At the outset, the maintainability of this O.A. is challenged by the Respondent No.1, the delinquent officer and by the Respondent No.9, the State of Maharashtra. On this point the affidavit-in-reply dated 12.08.2021 was filed by the Respondent No.1, through Mr. Vilas Dasharath Kamble, Deputy Regional Transport Officer, Sangli, Deputy Regional Transport Office and the affidavit-in-reply is filed today i.e. on 02.09.2021 by the learned P.O. after the completion of the arguments however, it is taken on record. The affidavit-in-reply dated 02.09.2021 is filed by Respondents No.2, 3 & 9, through Mr. Jitendra Baburao Patil, Deputy Transport Commissioner (Admn.) in the office of the Transport Commissioner, Mumbai.

4. The Respondents have raised the objections that under Section 18 of the Sexual Harassment of women in the Workplace (Prevention, Prohibition and Redressal) Act 2013 (hereinafter referred as 'POSH Act 2013' for brevity) the remedy of appeal is provided. However, the enquiry was conducted as per Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred as 'MCS (D&A) Rules' for brevity). Further it is objected that the Tribunal is not a

proper forum to challenge the reports of the Internal Complaints Committee, but the reports should have been challenged before the Appellate Authority under the provisions of the MCS (D&A) Rules.

5. The learned Advocate for the Applicant has argued that the report of the enquiry is submitted under Section 13(2) of the POSH Act 2013 and the appeal is to be filed under Section 18 of the POSH Act 2013. He submitted that the Section 18 is in parts. The complaints of the Department/ Institution where the Rules are provided, an appeal is to be filed to the Court or Tribunal in accordance with the provisions of service rules applicable to the aggrieved person. Later portion of Section 18 the POSH Act 2013 states the Forum for those organizations or Departments where no such service Rules exists then the Appeal is to be filed as prescribed. The learned Advocate for the Applicant submits that the manner as prescribed is explained in Rule 11 of the POSH Act 2013. As per the said Rules the Appellate Authority is notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946). The case of the applicant being the Government servant of the State of Maharashtra is covered under the first part of the Section where the MCS (D&A) Rules are in force. The learned Advocate has further submitted that the objection of the Respondents on the maintainability is to be dismissed in view of Section 18 of the POSH Act 2013. The Appeal cannot be filed before any other Appellate Authority prescribed under the MCS (D&A) Rules against the report of Internal Complaints Committee.

6. The learned Counsel for the Respondent No.1 has submitted that the Tribunal is not a proper forum to challenge the reports of the Internal Complaints Committee in view of the amendments carried out by the State Legislature in MCS (D&A) Rules and Maharashtra Civil Services (Conduct) Rules, (hereinafter referred as 'MCS (Conduct) Rules' for brevity). The learned Counsel has relied on the judgment of the Hon'ble Supreme Court in case of **Medha Kotwal Lele & Ors. Versus Union of India & Ors.) reported in 2013 (1) SCC 297**, wherein the Hon'ble Supreme Court has observed that the enquiry under the Committee will be like Departmental Enquiry held under the Rules and the same Disciplinary Authority will have the powers. Thus, the disciplinary authority to take the decision. The learned Advocate for the Applicant has argued that by addition of proviso Rule 22A the MCS (Conduct) Rules is amended and the POSH Act 2013 in fact is merged into the MCS (Conduct) Rules. Therefore the provisions of the MCS (D&A) Rules are squarely applicable to the POSH Act 2013.

7. Further he relied on the proviso of sub Rule 2 of Rule 8 of the MCS (D&A) Rules wherein it is stated that the Complaints Committee which is established in each Department or Office of the State of Maharashtra is deemed to be inquiring authority appointed by the disciplinary authority. He submitted that under the MCS (D&A) Rules the orders passed by the Internal Complaints Committee which is in the nature of the report or any other order under the POSH Act 2013 passed under Rule 8 are appealable under Rule 18 of the MCS (D&A) Rules.

8. The learned P.O. for the Respondents while opposing this Original Application has adopted the submissions made by learned Counsel for Respondent No.1.

9. On the point of forum to file the Appeal the Maharashtra Civil Services Rules are applicable to the persons concerned and on this point the learned Advocate for the Applicant relied on the judgment / order of the Hon'ble High Court of Delhi at New Delhi, **Writ Petition (C) 6538/2019, (Dinesh Chandra Mishra Versus India Council of Agriculture Research and Ors.) dated 31.05.2019.**

10. Article 14 and Article 15 of the Constitution of India guarantee equality of all irrespective of the religion, race, caste, sex or place of birth or any of them. In late 19<sup>th</sup> century women started occupying offices, institutions, corporate sectors, different services in the society. Thus, the Union of India being the party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted many policies and enacted various laws to protect the women not only against harassment but eliminating discrimination against them and to provide them gender equal surrounding at work place. The POSH Act 2013 is the outcome of the guidelines of the judgment of Hon'ble Supreme Court in the case of **Vishaka & Ors Versus State Of Rajasthan & Ors reported in 1997 (7) SCC 323.** It is a progressive and social legislature. Being a special legislature specific procedure in respect of sexual harassment of women at work place is laid down and to be

followed. Internal or Local Committees are formed to enquire into the complaint of harassment. In this case the report of Internal Complaints Committee which is constituted under Section 4 of the POSH Act 2013 is challenged.

Chapter IV of the POSH Act 2013 is about the complaint. Section 11 states about the inquiry into the complaint, wherein it is mentioned that the Committee to make enquiry into the complaint in accordance with the provisions of the service Rules applicable to the Respondents and when no such Rules exist, then in such manner as may be prescribed.

Chapter V is about the enquiry into the complaint. Under Section 13 the Inquiry Report is to be submitted to the employer and also it is to be made available to both the parties. Sub Section 2 of Section 13 states that when the allegations against the Respondent has proved then the committee shall recommend to the employer and the District Officer that no action is required to be taken in the matter. Section 18 is the relevant Section in the present case.

Section 18 of the POSH Act 2013 is reproduced below for better understanding :-

*“18. Appeal – (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (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 the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.”*

11. The remedy of Appeal is provided to both, a Complainant and also a Respondent, whosoever is aggrieved due to the recommendations made under Section 3 of the POSH Act 2013. The Appeal is to be preferred before the Court or Tribunal. The later part of the Section speaks of two possibilities, firstly, where the service Rules are available and under which the complainant or the Respondent is covered and secondly, if the service rules do not exist then the subject to the provisions in the other law a person aggrieved may prefer an Appeal in such manner as may be prescribed. The manner in which it is preferred is provided under Rule 11 of the POSH Act 2013. It provides a prescribed manner of filing an Appeal to the Appellate Authority Notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946). The second situation is not applicable in the present case as the MCS (Conduct) Rules and the MCS (D&A) Rules are available. The enquiry is conducted by following the Rules i.e. as per Section 11 of the POSH Act 2013. The enquiry is to be conducted under Section 8 of the MCS (D&A) Rules. The learned Advocate for the Applicant has rightly argued that after the POSH Act 2013, the Rule 22A was inserted in the MCS (Conduct) Rules which is about prohibition of sexual harassment of working women in Government service at any work place. Section 22A has adopted definition of sexual harassment, types of sexual harassments and so also the work place from the POSH Act 2013. It was added on 23.10.2015. The learned Advocate has also highlighted the portion of sub Rule 2 of Rule 8 in Part IV of the MCS

(D&A) Rules which is for procedure for imposing penalty. The proviso is inserted which reads as follows :-

*“Provided that, where there is a complaint of sexual harassment within the meaning of rule 22A of Maharashtra Civil Service (Conduct) Rules, 1979, the Complaints Committee established in each 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.”*

12. Rule 18 of the MCS (D&A) Rules also states about filing an Appeal before he ceased to be in the service. The Rule 18 of the MCS (D&A) Rules is about the Appellate Authority for Group C and Group D whereas the Respondent and the victim i.e. complainant in the present case falls in Group C. The member of Group C service may Appeal to the immediate superior officer against imposing the penalty upon him under Rule 5 of the Rules. Thus Rule 18 is not of any use for the complaint under the POSH Act 2013, but it is the Section that provides the Appellate forum for the Respondent who has suffered punishment.

13. Thus we have to rely on Section 18 of the POSH Act 2013 which provides a forum for filing an Appeal to a person aggrieved and that forum is either the Court or the Tribunal. It is made clear that under Section 19 of the Administrative Tribunals Act a person aggrieved is required to make an application to the Tribunal for redressal of his grievance. The word ‘application’ mentioned in Section 19 of the Administrative Tribunals Act speaks about the form and procedure of



presenting grievances. The word 'application' used in Section 19 does not restrict the forum which is made otherwise available under the special statute i.e. the POSH Act 2013. In Section 18 of the POSH Act 2013 the legislature has specifically provided two fora i.e. the Court or the Tribunal, for filing the Appeal. The aggrieved person may prefer an Appeal to the Court or the Tribunal.

14. Section 22 of the Administrative Tribunal's Act, 1985 states about the procedure and powers of the Tribunal, wherein the Tribunal shall not be bound by the procedure laid down in Code of Civil Procedure but shall be guided by the principles of the natural justice and subject to the other provisions of the Act, the Tribunal shall have the power to regulate its own procedure. Thus though the word 'application' cannot be read in narrow sense which will dilute the substantive power of the Tribunal given by Section 18 of the POSH Act 2013. Moreover, we do not find any appropriate authority to file Appeal for the complainant who is aggrieved under Section 13(2) the POSH Act 2013. Hence, we have to rely on the forum which is provided under Section 18 of the POSH Act 2013.

15. Let us now address to the procedure contemplated under sub Section (2) of Section 18 of the POSH Act 2013 in the phrase,

*"in accordance with the provisions of the service rules applicable to the said person"*

The clause succeeds after the words 'Court' or 'Tribunal'".

16. We are not convinced with the interpretation of these terms by the learned Advocate for the Respondent No.1 that the aggrieved person

needs to file Appeal not under POSH but before the Appellate Authority provided only under the Maharashtra Civil Services Rules. As we have stated earlier Rule 18 of the MCS (D&A) Rules provides the Appellate forum specifically to the Respondent who is held guilty or against whom the recommendations are submitted. However, there is no specific mention about the Appellate forum for the complainant having grievance under Section 13(2) of the POSH Act 2013 where it is held that the charges are not proved against the Respondent and the complaint thus is failed. Therefore, one needs to read this clause with context and as a whole. When no provision of preferring the Appeal either to a Court or to a Tribunal under the MCS (D&A) Rules to aggrieved complainant, then in absence of proper forum in the MCS (D&A) Rules we have to rely on the special statute wherein the forum available to the aggrieved complainant is either the Court or the Tribunal.

17. There is no doubt that the Internal Complaints Committee has to work like an enquiry authority under the Maharashtra Civil Services Rules. Thus, the report of the disciplinary authority is also necessary. The Hon'ble High Court of Delhi at New Delhi in the order/ judgment of ***Dinesh Chandra Mishra (supra)*** held that the petitioner has challenged the order of the Internal Complaints Committee before the Central Administrative Tribunal, Principal Bench, New Delhi. The CAT has rejected the O.A. on the ground that,

*“The Tribunal has rejected the said Original Application as premature since no action has yet been taken against the petitioner on the basis of the said recommendations.”*

The Delhi High Court also dismissed the petition uploading the view taken by the Tribunal and additionally it stated that Section 18 of the POSH Act 2013 itself provides that the appeal has to be in accordance with the provision of the service rules applicable to the person concerned and therefore the steps are to be taken under Rule 14 of the CCS (CCA) Rules. In the present case, like in case of ***Dinesh Chandra Mishra (supra)*** the Appeal is filed by the aggrieved complainant who has approached the Tribunal without having the report of the disciplinary authority in hand. We therefore called upon the Respondent-State to produce the report of the disciplinary authority if it is issued. The State has produced the order dated 23.02.2021 issued by one Mr. Jitendra Baburao Patil, Deputy Transport Commissioner (Admn.) in the office of the Transport Commissioner, Mumbai which is taken on record as Exhibit-A and also letter dated 03.03.2021 by Dr. S.T. Alwaris, Regional Transport Officer implementing the same which is marked as Exhibit-B. The present application is filed on 16.06.2021 i.e. before the issuance of the order by the disciplinary authority. However, during the pendency of the matter the disciplinary authority has issued the order so it is upto the applicant i.e. aggrieved complainant to consider it and to amend the application about which the learned Advocate for the Applicant may inform on the next date. However, as the entire procedure is now complete, we cannot treat this matter today as premature which will be hyper technical.

18. The learned Advocate for the Applicant relied on Paragraph 6 of the Hon'ble Supreme Court judgment in case of **Medha Kotwal Lele** (supra) it is held that,

6. *In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows :*

*“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka’s case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called 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.”*

*This Court further directed in the order dated 26.4.2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.*

In the same judgment the Hon'ble Supreme Court has taken the note of the affidavit-in-reply filed by the various State Governments wherein the State of Maharashtra has stated that the necessary amendments in MCS (Conduct) Rules 1974 and also in Mumbai Industrial Employment (Permanent Orders) Rules, 1959 were made. Thus the challenge on the point of maintainability fails. Thus, we hold that the Administrative Tribunal is appropriate forum and has jurisdiction to entertain the Appeal filed under Section 18 of the POSH Act 2013.

**ORDER**

The Original Application is maintainable as the Appeal is filed under Section 18 of the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act 2013 and the Tribunal has jurisdiction to try and entertain the same.

Sd/-

**(Medha Gadgil)**  
**Member(A)**

prk

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**