

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

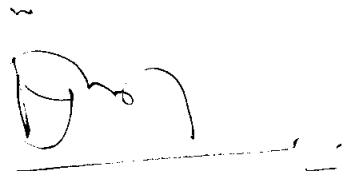
ORIGINAL APPLICATION NO.919 OF 2016

DISTRICT : THANE

Shri Hiralal Rama Jadhav.)
Working as Superintendent, Thane)
Central Prison, Thane (Presently under)
Suspension) and residing at)
Superintendent's Bungalow, Near Thane)
Central Prison, Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
(Appeal & Security), Home Dept.,)
(Prison), Mantralaya,)
Mumbai - 400 032.)
2. Dr. Bhushan K. Upadhyaya.)
The Addl. Director General of Police)
and Inspector General of Prisons,)
(M.S), having office at Central)
Building, Pune - 1.)
3. Smt. Swati Sathe.)
The Deputy Inspector General of)
Prisons (Head Quarter), Central)
Building, Pune - 1.)



4. Shri N.B. Vaichal.)
 Deputy Superintendent of Prisons,)
 Holding additional charge as the)
 Superintendent, Thane Central)
 Prison, Thane.)
)...Respondents

Mr. R.D. Soni, Advocate for Applicant.


**Mr. M.D. Lonkar, Special Counsel with Mrs. K.S. Gaikwad,
 Presenting Officer for the Respondents.**

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 12.09.2017

JUDGMENT

1. The Applicant is stung by the order of suspension dated 2.9.2016 and has moved this Tribunal thereagainst by way of this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985.
2. The Applicant was posted at Central Jail, Thane as Superintendent of Jails at the time relevant hereto. A lady employee made a complaint against him to the concerned Police Station levelling allegations of sexual harassment. The complaint was initially made to the DIG, Prisons who is the Respondent No.3 herein but is posted at Pune. Thereupon, an order of suspension was issued by the 2nd Respondent – Additional Director General of Police




and IGP Prisons. The 1st Respondent is the State in Home Department (Prison), the 3rd Respondent is the DIG, Prisons, Head Quarter, Pune while the 4th Respondent is the Deputy Superintendent of Prisons holding the additional charge as Superintendent, Thane Central Prison. The 1st Respondent is the competent authority while the 2nd Respondent is the recommending authority. On the complaint made by the 3rd Respondent, the 2nd Respondent recommended to the 1st Respondent that the Applicant be suspended. The Applicant is up before me thereagainst. It appears that the impugned order of suspension is made under the provisions of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (to be hereinafter called "D & A Rules"). However, the record would show that, regard being had to the nature of the complaint, the provisions of the "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" (to be hereinafter called the said Act) were invoked.

3. I have perused the record and proceedings and heard Mr. R.D. Soni with Mr. Ajay Sharma, the learned Advocates for the Applicant and Mr. M.D. Lonkar, the learned Special Counsel with Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents.




4. The record of this OA is really bulky but a better part thereof contributes to the weight rather than the substance of the matter. The parties have vied with each other to open unnecessary fronts, regardless of the real fact at issue and that fact at issue is the validity of the order of suspension which is herein impugned. It will be most pertinent to mention that, another OA being **OA No.115/2017 (Shri Hiralal R. Jadhav Vs. Additional Chief Secretary, Home and one another)** was presented and the same came to be decided by the 1st Division Bench of this Tribunal by the order dated 10.7.2017. Therein, the relief was sought to quash and set aside a certain letter dated 15.11.2016 along with which a charge-sheet was also served on the Applicant. Certain other reliefs were also sought but significantly, a relief pertaining to the order herein impugned dated 2.9.2016 was also sought in that OA, but it would appear from the Judgment of the 1st Division Bench that, in the said OA, that aspect of the matter was not decided and as I mentioned just now that is the only aspect of the matter that is germane hereto and I must repeat that the said aspect of the matter is as to the legality and validity of the order of suspension. In the Judgment of the 1st Division Bench in that particular OA, it is recorded that the Government clarified by way of Corrigendum dated 28.2.2007 that the issue of disciplinary

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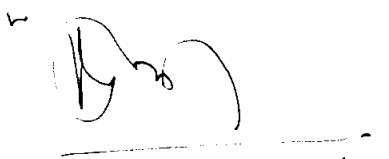
enquiry came to be separated from the complaint of sexual harassment and enquiry, which was then being conducted. It was further mentioned that, as at that point in time, the disciplinary proceedings were kept in abeyance awaiting the report of the internal Committee. It is a matter of record that, initially the internal Committee was to be chaired by the 3rd Respondent herein. The Applicant, however, alleged bias on account of the past incidents which is not at all necessary for me to examine in detail. The only fact of some significance is that the said Committee was then ordered to be chaired by Mrs. Ashwati Shering Dorje, Additional Commissioner of Police, Mumbai.

5. Returning to OA 115/2017 just referred to hereinabove, the details were set out with regard to the challenge posed to the charge-sheet issued by the State to the Applicant. The Applicant claimed that, by virtue of his position as a Superintendent of Thane Jail under the provisions of Section 2 (9)(i) and (ii) of the said Act, he himself would be the employer, and therefore, the internal Committee of the Prison could not enquire into the allegations against him which should be enquired into by the local Committee constituted by the Collector of Thane under the provisions of Section 6 of the said Act. It was noted by the 1st Division Bench that the said Act aims at



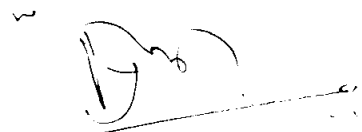
providing safe, secure and equitable environment for the women at the place of work. A reference was made to the objects and reasons of the said Act. A reference was also made to the provisions of the relevant Section defining the word, "employer" by Section 4 of the said Act. It was observed that, any and every complaint of sexual harassment which would fall outside the purview of internal Committee or Committees would fall within the jurisdiction of local Committee. Some discussion was then made as regards the eventuality, if the complaint itself was made against the Head of the internal Committee or local Committee. The case of the Applicant was that the lady complainant had not made the complaint to the internal Committee at Thane or local Committee at Thane District, but she did it to the 3rd Respondent and certain consequences adverse to the Respondents were envisaged thereby. In Para 27 of the said Judgment of the 1st Bench, it was found that the Government had issued a Corrigendum on 28.2.2017 to the G.R. of 23rd December, 2016 "and has restricted the operation of that GR to complaint under the said Act".

6. It is, therefore, very clear that the position such as it obtained in that OA obtains here also that currently, the proceedings are held against the Applicant under the

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provisions of the said Act. I shall to the extent necessary discuss a few Sections of the said Act in dealing with the submissions at the Bar presently, but then generally so speaking and subject to consideration of Mr. Lonkar's submissions based on Section 28 of the said Act, it bears repetition that, currently the proceedings against the Applicant are being held under the provisions of the said Act and not under the provisions of the 'D & A Rules'. In that connection, a reference would be made to Section 13(3)(i) and (ii) of the said Act.

7. In OA 115/2017, it was then held that no irregularity much less illegality attached to the complaint having been made by the victim to the 3rd Respondent and that the said complaint satisfied the requirement of Section 9 of the said Act. It was observed that a complaint made to any Senior Officer forwarded to the appropriate Committee will meet the requirement of Section 9. It was observed that the substance of the complaint rather than its form was significant (Para 31). In Para 32, it was observed that, in case the internal Committee concluded that the allegations against the Applicant were proved, it would be competent to recommend action under Section 13(i) or (ii) or both. It was held that the Committee, the constitution whereof was challenged would squarely fit into the concept



of a Committee at the level of prisons to conduct enquiry even against an employer who is an employer qua the establishment under his contract. The significance of the word, "employer" was highlighted in Para 34 of the said Judgment of the 1st Bench and upon harmonious construction, it was held that the said Committee could enquire into the complaint of sexual harassment against the Applicant. The Respondents' interpretation was thus accepted and it was concluded that, apart from everything else, no prejudice was likely to be caused to the Applicant if his conduct was enquired into as per the G.R. dated 23.12.2016 which it appears to me, will have to be read along with the Corrigendum referred to hereinabove. Another deduction was that the constitution of internal Complaints Committee at Head of the Department level was inevitable in many cases as per the discussion therein and having regard to the aforesaid facts and circumstances of the case, the said OA came to be dismissed.

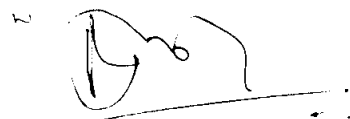
8. It is a common ground that, pending that particular OA before the 1st Division Bench of this Tribunal, interim directions were given which when translated into the actuality would lead to a position that the enquiry could go on against the Applicant, but the conclusions be not forwarded to the disciplinary authority.



It is again a common ground that the said Judgment of the 1st Division Bench has now been challenged before the Hon'ble High Court by way of **Writ Petition No.8080/2017 (Hiralal R. Jadhav Vs. Additional Chief Secretary, Home Department, Government of Maharashtra)** where by way of an interim order, the interim relief granted by the 1st Division Bench of this Tribunal is being continued from date to date.

9. I have merely noted the gist of that particular order of the 1st Division Bench and there is a complete absence of jurisdiction as far as I am concerned to make any comment thereon. The whole thing is so simple but still sometimes; whatever is simple is also required to be stated.

10. I have already mentioned above that the parties have done their very best to ensure that the chaff was far in excess of the grain, but I must make it very clear that, in this particular OA, I am not called upon to scrutinize any fact at issue that befalls the validity or otherwise of any order except the order of suspension, and therefore, I would not examine at all the truism or otherwise of the past conduct of the Applicant which was highlighted by the Respondents and which the Applicant in his own way by



way of various Affidavits and documents tried to rebut the same. It may only be mentioned that in past also, the Applicant faced more than once the allegations of sexual harassments of female employees and that was also before the enforcement of the said Act at different places. There was at least one instance where the Applicant was proceeded against under the provisions of the Prevention of Corruption Act, 1988. Mr. Soni contended that, from all the past fire, the Applicant emerged unaffected. The Respondents would counter it, but I would keep a safe distance away from that aspect of the matter conditioned as I am by the ambit presented by the present OA. Therefore, although there are Affidavits galore but most of it fall in the category of chaff rather than grain.

11. In the above background, when I turn to the present OA in the context of the provisions of the said Act, I find that, now at present at least, the proceedings are going on against the Applicant under the provisions of the said Act. The above discussion must have clarified the significance of the words, "aggrieved woman", "District Officer", "employee", "employer", "internal committee", a local committee" in the context of the said Act and so also the work place. Section 3 mandates that, no woman would be subjected to the sexual harassment at any work place.



Section 3(2) lays down the circumstances which are not exhaustive as would be exemplified by the words “among other circumstances” which would constitute sexual harassment. Chapter II deals with the constitution of internal Complaints Committee and Section 6 deals with the constitution and jurisdiction of local Committee. In the foregoing discussion based on the Judgment in the matter of OA 115/2017, this aspect of the matter has been alluded to. Section 11 provides the procedure with regard to the enquiry into the complaint. Now, Chapter V has got the heading, “enquiry into complaint”. Section 12 is the inaugural Section of that particular Chapter. It reads as follows :

“12. Action during pendency of inquiry – (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to –

- (a) transfer the aggrieved woman or the respondent to any other workplace; or
- (b) grant leave to the aggrieved woman up to a period of three months; or
- (c) grant such other relief to the aggrieved woman as may be prescribed.

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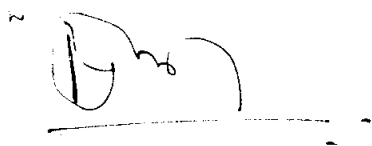
(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be."

12. The above Section makes it quite clear that, during the pendency of an enquiry of the complaint made by an aggrieved woman, what actions could be taken against the person in the shoes of the present Applicant. Clauses (a), (b) and (c) are significant in that respect, but the language thereof does not show that, those measures are inclusive and/or not exhaustive, in my opinion therefore, the suspension pending enquiry under the said Act is not envisaged by the said Act. At this stage itself, Rule 4 of D & A Rules needs to be reproduced.

"4. Suspension.- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending, or



- (b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.”

It would become clear that, Rule 4 of the D & A Rules in contrast with Section 12 of the said Act specifically provides for the issue of suspension.

13. Now, Section 13 of the said Act needs to be examined. It reads as follows :

“13. Inquiry report – (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be –

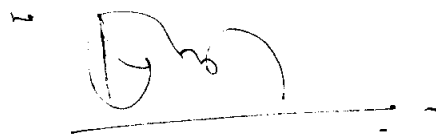
(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent 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:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation or the employment it may direct to the respondent to pay such sum to the aggrieved woman;

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer of the District Officer shall act upon the recommendation within sixty days of its receipt by him.”

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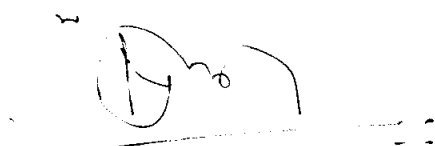
14. The above provision and more particularly, Sub-section 3 thereof, I think make it quite clear that, recourse to the provisions of D & A Rules could be had only under Section 13(3) of the said Act and that too, after either of the Committees, as the case may be arrived at a conclusion that the allegations against the Respondent (present Applicant) had been proved. That is in my view the import of Section 13(3)(i) above quoted.

15. Mr. Lonkar, the learned Special Counsel for the Respondents, however, relied upon the provision of Section 28 of the said Act which provides *inter-alia* that the said Act would not be in derogation of any other law. It lays down that the provisions of the said Act, "shall be in addition to and not in derogation of the provisions of any other law for the time being in force". An issue came to be raised as to whether the provisions of the D & A Rules which are framed under the proviso to Article 309 of the Constitution of India could be considered to be, "law" for the time being in force. Mr. Lonkar answered in the affirmative. I may proceed on the assumption that the said Rule is also a law for the purposes of Section 28 of the said Act. However, the discussion with regard to Section 13 of the said Act that has taken place hereinabove would make it very clear that the two Sections viz. 13 and 28 will have

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to be harmoniously read and interpreted. In so far as the matters covered by Section 13 are concerned, that would be the governing provision and in case a finding of guilt in the manner of speaking is entered against the Respondent (present Applicant), then Section 28 of the said Act would swing into operation and the provisions of the D & A Rules would apply. However, as already discussed above, Section 12 of the said Act is exhaustive in so far as the measures pending enquiry are concerned. I am, therefore, quite clearly of the opinion and I must repeat that the measure of suspension is not provided in enquiries under the provisions of the said Act. That being the state of affairs, I am very clearly of the opinion that the impugned order of suspension having been made on 2.9.2016 was in the manner of speaking premature because the Respondents on their own free volition decided to invoke the provisions of the said Act only and they have expressly at this stage and not in future ruled out the application of the provision of D & A Rules, and therefore, the suspension made under Rule 4 was in the manner of speaking bad at its inception and it will have to be interfered with.

16. I must, however, make it very clear that this Judgment and order governs only the impugned order at the stage such as it obtains at present. If there are other

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contingencies that present themselves in future in accordance with the law and rules, needless to say the Respondents will be entitled and empowered to try and exercise their powers thereunder. In view of the conclusions that I have reached, it is not necessary for me to examine the general principles of the law of suspension which was also one component presented for consideration during the several hearings that took place before me. It is really not necessary because the special provision of the said Act and the provisions of D & A Rules to the extent they are relevant hereto for consideration are only relevant. It must also be made clear that this order would not come in the way of the Respondents taking measures, if so advised and if so found necessary and proper to insulate some persons from the influence of the Applicant and to take any measure permissible by Rules in the matter of posting of the Applicant post reinstatement as herein below mandated. Those rights and powers of the Respondents are kept intact.

17. The upshot, therefore, is that the order of suspension dated 2.9.2016 herein impugned is, subject to the discussion hereinabove including in the preceding Paragraph quashed and set aside and it is directed that the Respondents shall reinstate the Applicant within a period

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of four weeks from today and give to him an appropriate posting where he shall work as Superintendent of Jails or equivalent post. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
VICE-CHAIRMAN
12.09.2017

12-09-17

Mumbai

Date : 12.09.2017

Dictation taken by :

S.K. Wamanse.

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