

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/RM/A/2014/000313-SA

A.L. Agarwal Vs. Delhi University

Important Dates and time taken:

RTI/PIO: 16-9/27-9-13(11)	FA/FAO:19-10/25-11-13(37)	2 nd Appeal: 3-2-2014
Disposed of with directions	Hearing: 03-11-2015	Decision: 9.12.2015

Parties present:

The appellant is present. Mr. Jay Chanda, JR & CPIO and Mr. Henry H. Baa represent Public Authority.

FACTS:

2. The appellant is seeking information about a document issued by the Faculty of Medical Sciences No.FMDS/247/Complaint/PG/MAMC/2012/3766 dated 28-12-12 and the related information. Claiming that no information was received from the Public Authority, he approached the Commission under 2nd appeal after exhausting the first appeal.

PROCEEDING BEFORE THE COMMISSION :

3. Dr. A. L. Agarwal, appellant filed RTI application dated 06.09.2013 seeking the following:

1. Certified copy of document: FMDS/247/Complaint/PG/MAMC/2012/3766 dated 28.12.2012.
 2. Certified copy of all the correspondence/file noting in connection to this document.
 3. Copy of the rules, under which this document has been issued.
 4. Copy of the rules, which permits a medical teacher to be the thesis guide of 3 PGs every year.
4. Mr. Jay Chanda, Central Public Information Officer of the university replied through a letter dated 27.09.2013, quoting the response of Dy. Registrar (Faculty of Medical Sciences) who said that disclosure of such information would be inappropriate, as it would endanger the physical safety of the complainants/accused. Further, such personal information is held by the University in fiduciary relationship with the individuals concerned. Therefore, as per input of Deputy Registrar (Faculty of Medical Sciences), that the request of the applicant attracts section 8(1)(g) read with section 8(1)(j) & (e), and as per advice of Deputy Registrar, CPIO has transferred the original application to the PIO, National Commission for Women. The CPIO also furnished copy of letter written by Deputy Registrar.
5. Being unsatisfied, Dr. A. L. Aggarwal filed First Appeal on 19.10.2013. She disputed the Deputy Registrar's contention that section 8(1)(g), (j) & (e) of RTI Act would authorize them not to disclose. She also questioned the presumption of Delhi University that NCW would release the information. She stated that "obviously it is wrong to say that disclosure of information about University rules is exempted under section 8(1)(g), (j) & (e) of RTI Act or NCW would provide it". The appellant pleaded that rule of severability should have been used in relation to point 'B'. The Registrar and Appellate Authority had upheld the contention of the Deputy Registrar and transfer of application to NCW. Then appellant filed second appeal, claiming that PIO of National Commission for Women did not furnish any reply and her first appeal dated 15.12.2013 was also not replied. She pleaded the following grounds:

A. Document No. FMDS/247/Complaint/PG/MAMC/2012/3766 dated 28.12.12 has been created and issued by the Faculty of Medical Sciences, University of Delhi. Hence, University of Delhi is the custodian of this document and not the National Commission for Women.

B. The Hon'ble CIC can satisfy itself by perusing the said document that it contains no reference to the National Commission for Women and instead has reference to some GB Pant Hospital document, which has also not been released.

C. 4 point information about this document was denied by University of Delhi on the pretext that National Commission for Women is the seat of Enquiry and thus transferred the RTI application to them.

D. The Medical Council of India stipulates that not more than 2 PG students can be admitted per year per recognized PG teacher and accordingly one PG teacher cannot be thesis guide to more than 2 PG students per year.

6. She requested the Commission to examine the file and direct for release of complete information as sought in RTI application.

7. During hearing, the CPIO and other officers of the University claimed that the PG students filed complaints against the appellant and her husband, alleging sexual harassment and as per the law details about complaint and related information could not be given to two doctors - husband and wife (appellant). The Commission on 03.11.2015 exercising its power under section 19 (a)(1) of RTI Act directed Mr. Henry H. Baa, Joint Registrar (Faculty of Medical Sciences), Delhi University to produce record before the Commission about proceedings against Dr. A. L. Agarwal and her husband, regarding correspondence with the National Commission for Women based on the complaint of PG students. Accordingly on 09.11.2015, a bundle of documents was submitted to this Commission in sealed cover.

8. On perusal of that record it was observed that NCW has taken suo-moto cognizance and constituted inquiry committee under Section 8 (1) read with Section 10(1) and (4) of NCW Act 1990 to inquire into the complaint regarding the alleged harassment of female PG student by

Professors of Medical College, Delhi and also given recommendations like transfer of students from guidance of appellant and her husband to other professors. A note in the file of Delhi University (Faculty of Medical Sciences) refers to 09 students complaining with 23 allegations against Head and his wife of their department who were their thesis-guides. The note says the basic contention of allegations was about lack of training and education, verbal abuse and defying basic right of dignity of work which makes them worried to work in the department. The students were complaining against the present Head, alleging that he caused mental harassment, created vicious working atmosphere and continued the humiliating behaviour.

9. The note dated 28.12.2012 deals with complaint of harassment by both Dr. Sanjay Agarwal and Dr. Aruna Agarwal (husband and wife), and requested to transfer them in other Medical College. The Director of G. B. Pant Hospital has informed that both the husband and wife have been transferred. Most of that record is about attendance, leave and other related works of the students. In it there is a letter dated 26.12.2012, wherein the National Commission for Women asked the Secretary, Health and Family Welfare, GNCTD to ensure that alternate guide be provided to the complainant students in place of the alleged accused professor and his wife. NCW also recommended to ensure that strict action be taken in accordance with law against accused and suspend them immediately, since the demotion/transfer is not a punishment in this case. Dr. M. S. Bhatia, HOD of Psychiatry referred representation consisting of allegation of 'sexual harassment' against Dr. Sanjay Agarwal, and sought immediate action to suspend him.

10. This Commission found letter dated 22.11.2012 addressed to Dean (Faculty of Medical Sciences) submitted by 09 PG students requesting for transfer of Psychiatry PG students from G. B. Pant Hospital to other teaching institutes due to alleged continuing harassment of the students by Dr. Sanjay Agarwal and his wife Dr. Aruna Agarwal (appellant). Most of the allegations are about harassment by husband and wife together. The allegations made in 23 points do not consist any specific sexual harassment allegation against either Dr. Sanjay (husband) or Dr. Aruna

Agarwal (wife) individually. Every allegation was made against both jointly. The complaints did not reveal any allegation that both of them together caused any 'sexual harassment'.

11. Letter No. 2 dated 04.01.2013 was written to the Dean by the same PG students. Out of 09 complaining students, three are male persons. The second letter also consists of harassment complaint against both husband and wife. There are similar letters of complaints against this couple. In spite of repeated deep scrutiny, the Commission could not locate any point of allegation related to sexual harassment.

12. The Commission located letter No. FMDA/247/Complaints/PG/MAMC/2012/ 3766 dated December, 28, 2012. This letter also contains no specific allegation of sexual harassment. This letter is about change of supervisor of certain students because of humiliating harassment. There is nothing that can be claimed as confidential in this letter. The appellant is seeking correspondence, file notings relating to this.

13. The Commission finds no exception in section 8 (1) of RTI Act, can enable the CPIO to deny copy of letter cited under point A & B, and under point C & D, she has simply asked for copy of rules which is also not hit by any provision of section 8. Assuming that this change of supervisor was the result of complaint by 9 PG students, which included male students also, against that husband and wife, there is nothing that prohibited disclosure of the same. The CPIO was not correct in alleging that the complaints by 09 students (both male and female) against husband and wife were of sexual harassment. The allegations are substantially of serious harassment, but there is no possibility of considering them as of sexual harassment.

14. The CPIO submitted to the Commission during hearing that the appellant's request for copy of complaint against him could not be given because the complaint included the charge of sexual harassment, and Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, has prohibited such disclosure. He also claimed that Section

16 specifically overrides RTI Act, 2005. The CPIO also contended that since the matter was seized by the National Commission for Women, the copy of the complaint could not be given.

DISCUSSION ON FACT AND ON RELEVANT PROVISIONS OF LAW:

15. Appellant is Dr. A. L. Agarwal, wife of Dr. Sanjay Agarwal, who is Head of Department, under whose supervision 09 P.G. students were researching. Complainants include both male and female students. They leveled allegation of harassment against both Dr. Sanjay Agarwal and his wife (Appellant). In this case students made allegations against female professor (appellant) also.

16. If the University considered the complaint as the sexual harassment it should have referred to Committee against Sexual Harassment of the College for inquiry, which is mandatory under 2013 enactment and the directives of Supreme Court. If they had not constituted committee prior to this complaint, they should have constituted, at least after such complaint is received. After study and verification of the records submitted in sealed cover, the Commission finds that the complaint of 09 students was not referred to the committee against sexual harassment, because the authority also was not sure whether the complaint disclosed any allegation in the nature of sexual harassment. However, serious allegations of harassment including use of inappropriate language and improper behaviour against husband and wife (appellant) were leveled. Though these allegations are of very serious proposition, no action was initiated immediately by public authority. Undoubtedly the National Commission for Women has enough authority and jurisdiction to inquire into the allegation made by 09 students, majority of who were women, irrespective of the nature of charges, whether sexual harassment or other harassment.

17. The Commission finds that NCW has issued directions, which were implemented by the Delhi University, such as transfer of students or change of supervisor. It is also a matter of fact that there was no recommendation by the National Commission for Women to refer the complaint to committee against Sexual Harassment. NCW did not recommend any action on that lines.

When the complaint of 09 students cannot be considered as complaint of sexual harassment, the contention of the CPIO that it cannot be disclosed as per 2013 Law will totally fail. The Commission considers, after due study of the sealed file which includes recommendations of NCW, that the complaint is not in the nature of sexual harassment and that is why it was not referred to the committee against sexual harassment. No committee was constituted to inquire into this charge. There are no separate complaints against the appellant and her husband individually. The women students did not make sexual harassment allegations against male Doctor/Research Supervisor (husband of the appellant). Male students did not make any sexual harassment allegation against female Doctor (appellant). It is a joint complaint of 09 students made against a couple jointly on matters related to supervision of their research and humiliation.

18. The CPIO raised contention of prohibition of disclosure of complaint under section 16 of Sexual Harassment of Women in the Work Place (Prevention, Prohibition and Redressal) Act, 2013, which says :-

“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 women, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer 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 the identification of the aggrieved woman and witnesses”.

19. Section 16 prohibits undue publicity or publication of contents of the complaint made under section 9, identity and addresses of the aggrieved women etc. The section specifically says, it should not be published, communicated or made known to the public, press and media. This section does not prohibit the disclosure of certified copy of complaint to the person against whom complaint is made. The prohibition is against undue publicity among the public, press or media, which under any stretch of imagination can be extended to disclosure to the accused person.

Even if it is assumed that the complaint of PG students against supervising couple is of sexual harassment, the CPIO cannot deny the disclosure of the complaint related information or papers to the accused officer. It was not correct for CPIO to raise this kind of contention. The CPIO should have seen the rules and FAQs circulated by the DoPT to understand that officers accused of sexual harassment were entitled to have a copy of the sexual harassment complaint against them.

20. Department of Personnel and Training has circulated a set of Frequently Asked Questions (FAQs) and Answers on Sexual Harassment of Women at Working Place under circulation No. F.No.43012/5/2012-ESTT.A in which at point No. 11 it is mentioned – “whether copy of the report should be given to the Charged Officer/Complainant”; Answer is ‘Yes’.

Rule 7 (1) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 specifically stated that the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the name and addresses of the witnesses. Rule 7 (2) says, on receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved women under sub-rule (1) to the respondent, within a period of 7 working days. Rule 7 (4) mandates that Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice. The principles of natural justice demand furnishing a copy of complaint to the charged officer.

21. Rule 7 reiterates the right of the complained person or accused charged officer or respondent in sexual harassment case to have the copy of the complaint as received by the Complaints Committee from the complainant. Thus, it is clear that the appellant and her husband are entitled to have copy of the complaint, even if it is assumed that the complaint is in the nature of sexual harassment.

22. The CPIO in his written response claimed that information sought cannot be given as per the section 8 (1) (g), (j) and (e). Section 8 (1) (g) claiming that such disclosure would endanger the life or physical safety of any person etc. The CPIO could not produce any evidence to show that appellant and her husband did not know the identity of research scholars whom they were guiding and that such disclosure would endanger physical safety. The CPIO's claim for exemption under Section 8 (1) (j) also does not stand, because information does not relate to personal information of anybody. Moreover, information sought is relating to public activity of two Professors and there is a public interest in proving or disproving the allegation of harassment. It is not possible for the charged officers to make their case, or defend them against allegation if the allegation is not known to him. The complaint of sexual harassment is not a secret document for charged officer. There is statutory responsibility on the part of the public authority to verify the truth of the allegation in a properly conducted inquiry. In this case, the public authority has not initiated any inquiry against the appellant and her husband, and thus it is not entitled to invoke this exemption/exception. Thirdly, the CPIO has claimed exemption under section 8 (1) (e) saying the information was received in fiduciary capacity. This is most fallacious contention. PG students did not give any secret information or did not ask the authorities to keep the information confidential, but they made a complaint and wanted the authorities to act on that. This is not information, but a complaint required to be inquired into. The public authority like University, in this case has not conducted any inquiry into the allegation, but wrongly claimed that the 'complaint' is personal or fiduciary information and illegally denied the same to the officers who were accused.

23. The Commission finds that Delhi University has not performed its responsibility; it has not inquired into the serious charge/ allegation of harassment against the appellant and her husband, though university acted on the recommendation of NCW. The Commission also finds that the public authority did not take enough interest in performing its duty in examining the real/substantial nature of the complaint of 09 P.G. students, whether it reveals the character of sexual harassment

or not. If they sincerely found the allegations were of sexual harassment nature, they had a duty of referring them to Committee against Sexual Harassment, which they abdicated. They have simply passed on the matter to the NCW and were waiting for its instructions.

24. In addition to the inquiry done by NCW, Delhi University should have performed its legal obligations in the interest of students, good administration and public interest and inquired into the allegation to establish the fact and take necessary action against wrong doers, if any. All the defenses claimed by the CPIO in his written response and contentions during hearing failed due to reasons discussed above and the Commission holds as follows:

- a) The Complaint filed by three male and six female PG students against Dr. Sanjay Agarwal and his wife Dr. Aruna Agarwal is not of sexual harassment but of serious harassment, which do not attract any provision of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- b) Even if assumed that the complaint in this case discloses possibility of sexual harassment charge, Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 does not prohibit sharing of the copy of complaint with the complained officers.
- c) Public authority should read Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 along with the rules made under this Act and circulars of DoPT which specifically direct them to provide a copy of sexual harassment complaint to charged officer.
- d) Principles of natural justice demand that the copy of the complaint must be given to the accused officer so that he would get ample opportunity to defend the charge made against him.

- e) It is absolutely irrelevant and wrong to assume that disclosing identity of complainants to the complained officer would endanger the life of complainants, when the complainants were PG students researching under the supervision of the complained doctors.
- f) It is absolutely wrong to consider the complaint given to authorities for taking action as information given in fiduciary relationship.
- g) Invoking irrelevant provisions of exceptions, wrongly assuming the complaint as sexual harassment complaint and wrongly interpreting Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the public authority do not reflect any good faith on the part of CPIO and other officers but show that they are unreasonably not interested in sharing any information with the appellant and her husband.

25. Hence the Commission directs CPIO to furnish the certified copies as sought under point A, B, C, & D, within 20 days from the date of receipt of this order. The Commission also directs the respondent authority to take back the sealed file from the Commission, under acknowledgement.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(U.C.Joshi)
Deputy Secretary

Address of the parties :

1. The CPIO under RTI Act,
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2. Shri A. L. Agarwal,

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