

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

CIC/POSTS/A/2018/102584

BalkrishnaPorwal v. PIO, Department of Posts

Order Sheet: RTI filed on 05.09.2017, CPIO replied on 21.09.2017, FAO on 25.10.2017, Second appeal filed on 03.01.2018, Hearing on 21.05.2018;

Proceedings on 21.05.2018: Appellant present, Public Authority represented by CPIO, Mr R. D.Kaurav: Show cause with directions.

Proceedings on 20.06.2018: Appellant absent, Public Authority absent;

Date of Decision – 25.06.2018: Penalty imposed.

ORDER

FACTS:

1. The appellant is facing an enquiry on a complaint of alleged sexual harassment. He sought the following information under 15 Points (i) Copies of Statements of the followings obtained by ICC during preliminary enquiry: Praveen Jain, K.L. Chouhan, Abhishek Ratnawat and K. L. Parmar (ii) Either copies of all duly receipted Ads or returned undelivered notices issued to Mrs. Anshubala Masih by the President ICC Committee, Mandsaur to attend enquiry. (iii) Copy of letter issued by Divisional Office, Mandsaur to the President, ICC Mandsaur for conducting enquiry into complaint. (iv) Copies of all correspondence between SPOs, Mandsaur and President, ICC Mandsaur right from handling over complaints for enquiry to till completion, if any. (v) Copy of order by which ICC, Mandsaur was formed. (vi) Copy of order by which Mr. M. S. Rajawat, Member of ICC was placed on superannuation list. (vii) Copy of retirement charge report of Mr. M.S. Rajawat, Member of ICC. (viii) Copy of file noting by which Mr. B.K. Porwal, was placed under suspension. (ix) Copy of file noting by which Mr. B. K. Porwal's suspension was revoked and attached to Malhargarh. (x) Copy of file noting by which Mr. B. K. Porwal (appellant) was transferred to Manasa from Malhargarh. (xi) All copies of complaint received in Divisional Office from Ms. Madhavi Choubey against Mr. B. K. Porwal (appellant), Mr. Praveen Jain, Mr. K. L. Chouhan and others, if any. (xii) Copy of enquiry report along with statements of all

concerned in case of Mr. Praveen Jain and Mr. K. L. Chouhan and others. (The enquiry was conducted by ASP, Mandsaur). (xiii) An attested Copy of letter along with comments made by DO Mandsaur to RO Indore on appeal of Mr. B. K. Porwal (appellant) relating to his transfer case from Malhargarh to Manasa. (xiv) Copies of all correspondence made between Ms. Madhavi Choubey and SPOs Mandsaur relating to the case. (xv) Copies of all correspondence made between Ms. Madhavi Choubey and ICC, Mandsaur relating to the case. The CPIO on 21.09.2017 asked the appellant to deposit Rs. 6/- to get the information on point nos. 5 to 7 and rest of the information was denied under Section 8 (1)(d)& (g) of the RTI Act& under Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 and the same was upheld by the FAA. Aggrieved with the above responses, the appellant approached this Commission.

Contentions:

2. In his second appeal, the appellant stated:

1. The decision of the first appellate authority apparently disclose that the first appellate authority did not apply his mind to decide the request of the appellant but he fully relied upon decision of the CPIO and accordingly replied to the appellant through decision Dated 25.10.2017.

2. The points raised in the appeal are still standing because of the first appellate authority did not give his decision on these points. As per RTI Act the points must be discussed citing pertaining rules. The simply say of first appellate authority that the reply of CPIO is justified and according to rules and therefore there is no need to intercede in the decision of the CPIO do not satisfy the quires raised by the appellant. Hence the quires are still undisclosed because of the quires are raised after decision of CPIO on it. Hence the say of authority is vague and do not fulfil the appeal.

3. The points raised by the appellant cannot be left on attended. If the action of the first appellate authority is considered justified then there no need to appeal in the case because of in such situation the procedure in the shape of appeal is stand an empty formality hanging the provision of the act.

4. No doubt that the appellate authority is also a Administrative authority and controlling authority of the CPIO as well as of the appellant, but when he deals without appeal at that time he has to cease that powers and ought to come in

purview of pertaining rulings and justice and then appeal considered on merits/demerits. During the appeal the appellant is not a charged official but he is an official who is seeking justice and collecting documents for his safeguard provided under Constitution of India.

5. When the department has decided to provide copy of note sheets vide Directorate, New Delhi letter No. 3-4/2006-PG Dated 02.03.2006 then there is no reason to deny such documents. More over the documents which have been provided to the other officials are denied to the appellant is not justice and simply harassment.

3. The appellant submitted that as a charge sheeted accused before Internal Complaints Committee the principles of natural justice demand that certified copies of all documents relating to the inquiry report including copies of the statements of witnesses should be given to him to facilitate him to substantiate his defence and for conduct of the enquiry in a fair manner. It was denied under Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (in short SHW Act of 2013) and invoking exemptions under Section 8(1)(d) and (g) of RTI Act.

4. Proviso to Section 11 of SHW Act 2013, regarding inquiry by ICC, says:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being 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.

5. Section 13 of SHW Act 2013 says:

*13. Inquiry report.- a. 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.***

6. These two provisions provide for a right to information to the accused person, situated like the applicant in this case.

7. According to the handbook on Sexual Harassment of Women at Workplace, published by the Government of India, Ministry of Women and

Child Development the accused (respondent) has a right to information about complaint.

Step 5: Respondent and Response

- 1. As per the procedure provided in the Service Rule; or in absence of the same,*
- 2. Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.*
- 3. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.*

Complaint shall contain:

The complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. In addition, the Complaints Committee also has the discretion to call any person as a witness, who it believes, has something to contribute to the inquiry process.

....

Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health related concerns or sanctioning of leave....

....

1. Based on the results of the previous steps and before conducting interviews, the Complaints Committee should decide which issues need to be pursued for questioning. 2. Interviews are meant to obtain information that is relevant to the complaint from individuals. 3. Interviews should be conducted with each person separately and in confidence. The complainant and the respondent should not be brought face to face with each other.

Step 10: Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:-

- Identify the substance of each aspect of the complaint.*
- Determine, whether or not, on a balance of probability, the unwelcome sexual harassment took place.*
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.*
- Comment on any underlying factor(s) that may have contributed to the incident.*

Step 11: *Create a timeline to help establish the sequence of events related to the complaint.*

Step 12: Compare similarities and differences within each of the statements made by the interviewees.

STAGE FIVE: FINDING AND RECOMMENDATION

Step 13: Finding Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.

Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

STAGE SIX:

REPORT

Step 15: Writing the Report The Complaints Committee will prepare a final report that contains the following elements: • A description of the different aspects of the complaint; • A description of the process followed; • A description of the background information and documents that support or refute each aspect of the complaint; • An analysis of the information obtained; • Findings as stated above; • Recommendations.

An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be **made available to the concerned parties**. The Employer or District Officer is obliged to act on the recommendations within 60 days.

Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.

8. The rules and regulations and principles of natural justice have to be strictly applied to arrive at a conclusion in a due process of inquiry. There are some safeguards against misuse and to protect the accused from false allegations. The SHW Act 2013 has provided for punishment for false or malicious complaint and false evidence. Section 14 says:

14. Punishment for false or malicious complaint and false evidence.

a. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent 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 produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under subsection (1) or subsection (2) of Section 9, as the case may be, 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 may be prescribed: Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section: 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.

b. Where the Internal Committee or the Local Committee, as the case may be, 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 or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

9. The appellant-accused has a right of appeal over the findings or recommendations of the Complaints Committee. He also has a right to claim that the complaint is false and find if any evidence also is false, for which penalty is provided in SHW Act 2013. To exercise these rights the accused is entitled to all material information such as inquiry report, statements of witnesses and other relevant documents. In fact these documents must be made available during the process of inquiry as per principles of natural justice, which he claimed in his second appeal.

10. But his demand for information was refused under Section 16 of SHW Act of 2013, which says:

16. Prohibition of publication or making known contents of complaint and inquiry proceedings.- Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under Section 9, the identity and addresses of the aggrieved woman, 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:

11. This is a prohibition of publication of information to& by the media about the identity and addresses of aggrieved woman, respondent and witnesses during the conciliation and inquiry proceedings, and action taken etc. It does not mean that information could be denied to respondent-accused. Hence denial of information sought by the appellant is in clear breach of all above provisions of SHW Act of 2013.

12. The CPIO invoked exemption clauses 8(1)(d) and (g) of RTI Act to deny the appellant the information, which should have been given as per principles of natural justice, rules of disciplinary inquiry, Act of 2013, Rules made there under, official Handbook of the Ministry containing guidelines for prevention of Sexual Harassment. The CPIO used exemption clauses under RTI Act also. Section 8(1)(d) of RTI Act says;

information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

13. Section 8(1)(g) says:

information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

14. The CPIO neither explained nor justified how these clauses could be invoked in this case. He has not applied his mind at all. How the statement of witnesses and other documents relating to sexual harassment complaint could be considered as 'trade secret', 'commercial confidence' or 'intellectual property' of the third party or public authority? This is absolute absurdity. The appellant himself gave the names of the four witnesses and asked for their statements of evidence given during inquiry. This information was denied under an excuse that their physical security is threatened. These excuses are laughable and amounts to misuse of law by authority to deny the right to information of the appellant. It also reflects malafide on the part of the CPIO. If this is the way information is denied and accused is not allowed to defend,

false allegations will increase and real purpose of Act of 2013 and RTI Act will be totally defeated.

15. The CPIO has provided copy of order by which ICC, Mandsaur was formed, copy of order by which sh. M. S. Rajawat, Member of ICC was placed on superannuation list, copy of retirement charge report of sh. M. S. Rajawat, Member of ICC on payment of Rs 6. Thus information on points 5,6 and 7 were given and all other documents referred under points 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15 were denied by CPIO Mr R. D. Kaurava. It is sad that the Appellate Authority, Ms. Preeti, Director Postal Services has simply upheld the denial of information without application of mind and without considering relevant legal and factual provisions.

16. The Commission's order dated 23.05.2018:

16. The Commission directs the respondent authority to provide the certified copies of documents requested under points 1 to 15, except 5, 6 and 7, within 15 days from the date of receipt of this Order.

17. The Commission directs the CPIO Mr R. D. Kaurava to show cause why maximum penalty should not be imposed against him for his illegal denial of information on several points, and the Commission also directs the respondent authority to explain why it should not be ordered to pay compensation to the appellant. All responses shall reach within 21 days to the Commission and the appeal is posted for penalty and compliance proceedings on 20th June 2018 at 2.30 pm.

Decision :

17. Shri R.D. Kaurava, CPIO & SSPO in his written submission dated 09.06.2018, explained as under:

"1- *That the appellant has sought following 15 documents under R.T. I from CPIO on 05.09.2017.*

(i) *Copies of Statements of the followings obtained by ICC during preliminary enquiry: Praveen Jain, K. L. Chouhan, Abhishek Ratnawat and K. L. Parmar (ii) Either copies of all duly receipted Ads or returned undelivered notices issued to Mrs. Anshubala Masih by the President ICC Committee, Mandsaur to attend enquiry. (iii) Copy of letter issued by Divisional Office, Mandsaur to the President, ICC Mandsaur for conducting enquiry into complaint. (iv) Copies of all correspondence between SPOs, Mandsaur and President, ICC Mandsaur right from handling over complaints for enquiry to till completion, if any. (v) Copy of order by which ICC, Mandsaur was formed. (vi) Copy of order by which Mr. M.S. Rajawat, Member of ICC was placed on superannuation list. (vii) Copy of retirement charge report of Mr. M. S. Rajawat,*

Member of ICC. (viii) Copy of file noting by which Mr. B. K. Porwal, was placed under suspension. (ix) Copy of file noting by which Mr. B. K. Porwal's suspension was revoked and attached to Malhargarh. (x) Copy of file noting by which Mr. B. K. Porwal (appellant) was transferred to Manasa from Malhargarh. (xi) All copies of complaint received in Divisional Office from Ms. Madhavi Choubey against Mr. B. K. Porwal (appellant), Mr. Praveen Jain, Mr. K. L. Chouhan and others, if any. (xii) Copy of enquiry report along with statements of all concerned in case of Mr. Praveen Jain and Mr. K. L. Chouhan and others. The enquiry was conducted by ASP, Mandsaur. (xiii) An attested Copy of letter along with comments made by DO Mandsaur to RO Indore on appeal of Mr. B. K. Porwal (appellant) relating to his transfer case from Malhargarh to Manasa. (xiv) Copies of all correspondence made between Ms. Madhavi Choubey and SPOs Mandsaur relating to the case. (xv) Copies of all correspondence made between Ms. Madhavi Choubey and ICC, Mandsaur relating to the case.

- 2- That out of 15 documents the CPIO has provided 03 document Sl. No. 5 to 7 on 22.09.2017 within 30 days & informed that item no. 1 to 4 & 8 to 15 were not supplied U/s 16 of SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT 2013, invoking exemptions under section 8(i)(d) and (g) of RTI Act.
- 3- That in advertently invoked exemption Section 8(i)(d) but in actual provision of exemption U/s 8(i)(g) is applicable in present case.
- 4- That Hon'ble CIC has served Show cause notice U/s 20 of RTI Act to impose the penalty for non-disclosure of information. The Hon'ble High Court D.B. PATNA in the case of Arbind Prasad Singh V/s State of Bihar & others reported in AIR 2010 PATNA 75 held that order of penalty should contain opposite, cogent and germane reasons and should clearly exposit application of mind, It did not show that **CPIO has without any reasons refused to furnish information within time specified U/s 7(i) or malafidely denied request to give information, Merely stating that allegations have been established would not suffice requirement prescribed under provision from imposition of penalty.**
- 5- **POINT NO -1-** Contain statement of
 - (i) Praveen Jain
 - (ii) K L Chouhan
 - (iii) Abhishek Ratnawat
 - (iv) K L Parmar

The Statement of above 4 employees disclose that there were some enquiry in respect of comments regarding MADHVI CHOUBEY & BAL KRISHNA PORWAL.
The Said statements was denied by CPIO U/S 16 of Act 2013
- 6- **POINT NO -2-** Contain undelivered notice issued to Smt. Anshubala Masih.

- 7- **POINT NO -3-** Contain letter issued by Divisional Office Mandsaur to the President ICC for conducting enquiry in to complaint of complaint Ku. Madhvi Choubey.
- 8- **POINT NO -4-** Contain correspondence between SPOs Mandsaur & President ICC for Conducting Enquiry into complaint of Ku. Madhvi Choubey.
- 9- **POINT NO -5,6,7-** Documents were supplied to Mr. Porwal.
- 10- **POINT NO -8-** Contain suspension order of Mr. B K porwal
- 11- **POINT NO -9-** Revocation of Suspension of Mr. B K Porwal.
- 12- **POINT NO -10-** Transfer of B K Porwal from Malhargarh to Manasa
- 13- **POINT NO -11-** Complaint from Ku. MadhviChoubey against B K Porwal
- 14- **POINT NO -12-** Statement of Praveen Jain & K L Chouha& others in DE against B K Porwal.
- 15- **POINT NO -13-** Comments by DO Mandsaur to RO in appeal of B K Porwal related to his transfer.
- 16- **POINT NO -14-** Correspondence between MadhviChoubey& SPOs Mandsaur in respect of case of Madhvi Choubey.
- 17- **POINT NO -15-** Correspondence made between Ku. Madhvi Choubey& ICC Mandsaur.

That keeping in view point 1 to 15 the information is related to complaint of working woman Ku. Madhvi Choube so U/S 16 of the Act 2013 bonafide CPIO & 1st Appellate authority did not disclosed above information. There is no malafide in non providing certain documents 1 to 4 & 8 to 15.

To appreciate the controversy in proper perspective we may refer to Section 20 of Act. It reads as under-

"20 Penalty (i) where the central Information Commission any complaint or appeal of option that CPIO has without any reasonable cause refused to received an applicant for information or has not furnished information within time specified in Section 7(i) or malafidely denied the request for information of knowingly given incorrect information of misleading information or destroyed information."

P R A Y E R

It is requested that on the receipt of the applicant three documents were provided and twelve documents were denied by giving the reasons within prescribed time limit. After order received on VC dated 21.05.2018 all the documents have been provided to Appellat (Mr. B K Porwal) on dated 29.05.2018. It is therefore humbly prayed that the act of non supply of certain

information to Mr. B K Porwal is with reasoned order which is not malafide but bonafide. The penalty as per provision may not be imposed against under signed."

18. The CPIO in his explanation is pleading that he has no malice in rejecting part information hence penalty should not be imposed.

19. The Commission has powers to impose penalty in a second appeal as per Section 19(8)(c) and Section 20 of the RTI Act, which say:

"19. Appeal.

(1).....

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to, -

(a).....

(b).....

(c) impose any of the penalties provided under this Act."

"20. Penalties. - (1)Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

20. The division bench of Delhi High Court consisting of the then Acting Chief Justice A K Sikri, and Justice Rajiv Sahai Endlaw explained these provisions in *Ankur Mutreja vs Delhi University* <https://indiankanoon.org/doc/16873969/> as follows:

8. It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has "without any reasonable cause" refused to receive the application for information or not furnished information within the prescribed time or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed "at the time of deciding the appeal". The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information Officer against whom penalty is proposed. Such hearing obviously has to be after the decision of the appeal. The reliance by the appellant on Section 19(8)(c) of the RTI Act is misconceived. The same only specifies the matters which the CIC is required to decide. The same cannot be read as a mandate to the CIC to pass the order of imposition of the penalty along with the decision of the appeal. Significantly, Section 19(10) of the Act requires CIC to decide the appeal "in accordance with such procedure as may be prescribed". The said procedure is prescribed in Section 20 of the Act, which requires the CIC to, at the time of deciding the appeal only form an opinion and not to impose the penalty.

9. The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and malafide.

21. Accordingly the Commission formed an opinion that penalty needs to be imposed in this case and then issued show cause notice. In response, the CPIO pleaded absence of malice. As per above analysis of provisions of SS 19 and 20 of RTI Act by Delhi High Court, the Commission has to impose penalty if the denial is

- (a) without reasonable cause,
- (b) intentional and
- (c) malafide.

22. Thus the Commission even if agreed with contention of the CPIO that it was not malafide, can still impose penalty if the denial without reasonable cause and intentional. The documents **given** to appellant, at cost of Rs 6/- are:

(v) Copy of order by which ICC, Mandsaur was formed.

(vi) Copy of order by which Mr. M.S. Rajawat, Member of ICC was placed on superannuation list.

(vii) Copy of retirement charge report of Mr. M.S. Rajawat, Member of ICC.

The documents **denied** to appellant are:

(i) Copies of Statements of the followings obtained by ICC during preliminary enquiry: Praveen Jain, K.L. Chouhan, Abhishek Ratnawat and K. L. Parmar

(ii) Either copies of all duly received ack or returned undelivered notices issued to Mrs. Anshubala Masih by the President ICC Committee, Mandsaur to attend enquiry.

(iii) Copy of letter issued by Divisional Office, Mandsaur to the President, ICC Mandsaur for conducting enquiry into complaint.

(iv) Copies of all correspondence between SPOs, Mandsaur and President, ICC Mandsaur right from handling over complaints for enquiry to till completion, if any.

(viii) Copy of file noting by which Mr. B.K. Porwal, was placed under suspension.

(ix) Copy of file noting by which Mr. B.K. Porwal's suspension was revoked and attached to Malhargarh.

(x) Copy of file noting by which Mr. B.K. Porwal (appellant) was transferred to Manasa from Malhargarh.

(xi) All copies of complaint received in Divisional Office from Ms. Madhavi Choubey against Mr. B.K. Porwal (appellant), Mr. Praveen Jain, Mr. K.L. Chouhan and others, if any.

(xii) Copy of enquiry report along with statements of all concerned in case of Mr. Praveen Jain and Mr. K.L. Chouhan and others. The enquiry was conducted by ASP, Mandsaur.

(xiii) An attested Copy of letter along with comments made by DO Mandsaur to RO Indore on appeal of Mr. B. K. Porwal (appellant) relating to his transfer case from Malhargarh to Manasa.

(xiv) Copies of all correspondence made between Ms. Madhavi Choubey and SPOs Mandsaur relating to the case.

(xv) Copies of all correspondence made between Ms. Madhavi Choubey and ICC, Mandsaur relating to the case.

23. The above documents should have been shared with the appellant who is an officer accused of charge of sexual harassment during the inquiry itself. He was denied these documents even under RTI Act. Section 11 and Section 13 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, mandated that findings of the committee and inquiry report, respectively, be given to the concerned party. Appellant is concerned party. Paragraphs 4 to 7 above explained how the handbook to prevent sexual harassment mandated certain steps including sharing of information with the parties. Even the due process of inquiry and principles of natural justice demand the sharing of such documents which were unduly denied by the CPIO. In view of paragraph 8 above, the accused has a right to invoke Section 14 of Act of 2013 to pray for punishment for false or malicious complaint and

false evidence. For this he needs to have all the papers, correspondence and file notes relating to complaint and statements of witnesses to prepare his self defence. He should get all information and opportunity to defend himself and prove that allegation was false. The charge of sexual harassment is a serious allegation which if falsely made and proved by suppression of information to the accused, it can ruin the career of the accused, cause permanent and irreparable damage to the reputation and also disturb his domestic life affecting his relations with his wife and children. Society will look him down and people talk badly about him in his absence or some may even insult him openly. As per SHW Act 2013 he would be shifted, and he might even face criminal prosecution under IPC which in our country would span over a decade or more involving huge expenditure and going to courts for several rounds as an accused person. A false allegation can render his life a hell for the accused officer and if innocent, the officer might suffer serious mental torture also. It can destroy a person totally. The due process, principles of natural justice and legal provisions of the SHW Act of 2013 provide him a right to defend himself from allegation of sexual harassment, and the right to information to secure all those related documents will strengthen that right.

24. It is the human right of appellant in his capacity as a citizen and accused under RTI Act and under the principles of criminal justice, to all the related information to defend himself in a penal proceedings. The expression 'human rights' is defined in Section 2(d) of the Protection of Human Rights Act, 1993.

"human rights" means the rights relating to life liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

25. Article 21 of Indian Constitution guarantees right to life, saying

"No person shall be deprived of his life or personal liberty except according to a procedure established by law."

26. In ***Maneka Gandhi v. Union of India*** (1978 AIR 597), the Supreme Court gave a new dimension to this Art. 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. An unproven charge of sexual harassment seriously affects the dignity of a person. And not facilitating the procedural rights including right to

information/documents that are being used against him will deprive him of a due opportunity to defend himself, which is the human right to free and fair trial that amount to breach of Article 21.

27. The trials in courts are open to public and criminal trial in the absence of accused is primary rule. The right of accused to information about the charges and witnesses and documents that might be used against him basically arise out of this open trial. Essential component of a free and fair trial in criminal cases is to give precise information to the accused as to the accusation against him. In a criminal trial, the charge is the foundation. Section 273 of Criminal Procedure Code requires that the evidence is to be taken in the presence of the accused person. Section 218 of Criminal Procedure Code says that for every distinct offence there shall be a separate charge. This is again a right to clarity about the charges against him. Fair trial means and requires that the accused person is given adequate opportunities and facilities to defend himself. Such opportunity will have little meaning, or such an opportunity will in substance be the very negation of it, if the accused is not informed of the accusations against him, not given related documents including statement of witnesses. The Code of Criminal Procedure therefore provides in unambiguous terms that when an accused person is brought before the court for trial, the particulars of the offence of which he is accused, shall be stated to him (Ss. 228, 240, 246, 251 of Cr.P.C.). In case of serious offences, the court is required to frame in writing a formal charge and then to read and explain the charge to the accused person (Ss. 228,240,246 of Cr.P.C.). Detailed provisions have been made in Sections 211-224 of Criminal Procedure Code regarding the form of charge, and the joinder of charges. Fair trial requires that the particulars of the offence have to be explained to the accused person and that the trial is to take place in his presence. Therefore, as a logical corollary, such a trial should also require the evidence in the trial to be taken in the presence of the accused person. Failure to do so would vitiate the trial, and the fact that no objection was taken by the accused is immaterial. The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case as it is unfolded in the court. That is in fact right to information about the proceedings against him. This would facilitate in the making of the preparations for his defence. A trial

and a decision behind the back of the accused person is not contemplated by the Cr.P.C.

28. As per section 207 of Criminal Procedure Code, accused has the right to be furnished with the following in case the proceeding has been initiated on a police report: a) the police report; b) the first information report recorded under section 154; c) the statements recorded under sub-section (3) of section 161; d) the confessions and statements, if any, recorded under section 164; e) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173.

29. As per section 208 of Cr.P.C., when a case not instituted by a police report but when the offence is triable exclusively by the Court of Session: a) the statements recorded under section 200 or section 202, or all persons examined by the Magistrate; b) the statements and confessions, if any, recorded under section 161 or section 164; c) any documents produced before the Magistrate on which the prosecution proposes to rely.

30. According to section 243(1) of Cr.P.C., the accused has the right to present his evidence and defend his case. Section 311 of Cr.P.C. gives the accused (and the prosecution) full right to cross examine a witness called by the Court. Section 138 of Evidence Act says that the right of cross-examination available to opposite party is a distinct and independent right.

31. The elementary principle of Natural Justice, *audi alteram partem* or right to be heard which include right to cross-examine and right to legal representation form the fundamental structure of right available to the accused in the Indian criminal justice system.

32. The Sixth Amendment of US Constitution reads as follows:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

33. Section 11 of the Canadian Charter of Rights and Freedoms is the section of the Canadian Constitution that protects a person's legal rights in criminal and penal matters, which include right to be informed of the offence, right to trial by jury, right not to be found guilty unless action constituted an offence.

34. The complaint of sexual harassment has very serious repercussions including the criminal prosecution. Even under SHW Act of 2013, the penal nature and painful consequences of the charge makes it mandatory that the accused is given all information and documents to facilitate him to defend. The documents might also be useful to establish the guilt, if they are genuine and allowed to be scrutinized and cross examined by the accused.

35. Thus the procedure established by SHW Act of 2013 and criminal justice system found in Code of Criminal Procedure mandates that accused shall have all the information about his prosecution.

36. Recently in a landmark judgment, Hon'ble CIC Mr. Yashovardhan Azad (CIC/INBRU/A/2017/118048 on 7.5.2018 in Mr. M Dinesh v PIO, Bureau of Immigration/Intelligence Bureau) has held that it was a human right of the accused facing inquiry to have complete information.

37. Article 14 of International Covenant on Civil and Political Rights (ICCPR), which was ratified by India on 10th April 1979, says:

*1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone **shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.** The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

*3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) **To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;***

(b) To have **adequate time and facilities for the preparation of his defence** and to communicate with counsel of his own choosing;

38. There are, in fact, two human rights –one, right to defend himself in penal proceedings and second, right to information to prepare for that defence. These two human rights are founded on a) principles of natural justice and due process, b) principles of criminal justice, c) the provisions of SHW Act of 2013, d) the provisions of RTI Act 2005.

39. The CPIO in this case has simply ignored all these mandatory provisions of RTI Act, Code and Criminal Justice. The information/documents sought by accused-appellant were denied invoking wrongfully the Section 16 of SHW Act of 2013, which authorizes the public authority to deny them to press and the media. Section is unambiguous and it cannot be denied to the complainant, while there are many provisions which candidly direct the department to provide them. The CPIO cannot plead ignorance of law, which is so candid and specific. Invoking Section 16 of Act of 2013 knowingly that it does not apply to the facts of the case, and ignoring its mandatory provisions, is malafide, and not bona fide as claimed by the CPIO. Assuming, without agreeing that it was not malafide or intentional, the CPIO is still guilty of denying information without any reasonable cause.

40. By denying the information the appellant was not only harassed by the public authority, but also by the CPIO. While public authority denied him the documents which he was entitled under SHW Act of 2013, the CPIO denied them under RTI Act besides wrongfully invoking Section 8(1) (d) and (g). It is absurd to think that copy of inquiry report and statements of witnesses could be 'trade secret', 'intellectual property' or of 'commercial confidence'. The CPIO was penny wise, when he demanded Rs 6 to give 3 pages. The CPIO might have spent at least Rs 15 to Rs 100 approximately (taking into account the time, energy, paper, typing or correcting mistakes, which is quite possible, and posting) to write a letter demanding Rs 6. If it is his personal money, no prudent man would spend Rs 100 for collecting Rs 6. Is it not wrongful spending of public money? If this CPIO is demanding money up to Rs 18, by spending Rs 20 to Rs 100 every day hypothetically, what should be the loss of exchequer per year? Even if the appellant positively responds and pays Rs 6 promptly, still the loss would be Rs 94. The RTI Rules say the CPIO can collect

the copying fee at Rs 2 per page but did not authorize him to demand Rs 2 by spending more than that. This reflects at least, the harassing nature of the CPIO, which is surely a sign of malice. The problem of CPIO is the mindset and attitude. It is part of malice.

41. For the above reasons the Commission concludes that denial of information to the appellant was without any reasonable cause, and hence liable for maximum penalty of Rs. 25,000.

42. In view of the above, the Commission finds the CPIO liable under section 20 of RTI Act and imposes a penalty of Rs. 25,000 upon Mr. R.D. Kaurava, CPIO. The penalty of Rs. 25,000 shall be deducted by the Public Authority from the salary of the CPIO by way of demand draft drawn in favour of "PAO CAT", New Delhi in 5 equal monthly instalments and forward the demand drafts addressed to Deputy Registrar (CR-II), email: dyregcr2-cic@gov.in Room No. 106, First Floor, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi-110067. The first instalment should reach the Commission by 27.08.2018 and the last instalment should reach by 29.12.2018.

43. The Commission also finds it as a fit case to recommend the public authority to initiate disciplinary action against the CPIO in view of the above analysis. Disposed of.

SD/-
(M. Sridhar Acharyulu)
Central Information Commissioner