

# Smt. Rekha Das vs The Union Of India on 7 May, 2026

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HIGH COURT OF TRIPURA

AGARTALA

W.A. No.18 of 2024

Smt. Rekha Das, Scientist (level 10), Wife of Sri. Himanshu Periyadarshi, resident of Manakkolil House, Illathuparambu Road, P.O.-Kochi-682041, Kerala, India, Presently residing at: Quarter Type IV, B-I College of Fisheries, P.O.- Lembucherra, P.S.- Lefunga, District-West Tripura.

..... Appellant(s).

VERSUS

1. The Union of India, represented by the Secretary, Ministry of Women and Child Development, A-Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.

2. The Secretary, Ministry of Women and Child Development, A-Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.

3. The Director General, Indian Council of Agriculture Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.

4. The Secretary, Appellate Authority, under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013, Indian Council of Agriculture Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.

5. The Director, ICAR Research Complex for NEH Region, Umiam, Umroi Road, Meghalaya-793103.

6. The Joint Director, ICAR Research Complex for NEH Region, Tripura Center, Lembucherra, P.O.-Lembucherra, Lembucherra, P.S.-Lefunga, District-West Tripura.

7. Dr. Basant Kumar Kandpal, Principal Scientist, PIM Unit, ICAR Headquarters, New Delhi.

.....Respondent(s).

For Appellant(s) : Mr. Somik Deb, Sr. Advocate,  
Mr. Subhendu Noatia, Advocate,  
Mr. Jishan Samed, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy S.G.I.,  
Mr. Dipankar Sarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

HON'BLE MR. JUSTICE BISWAJIT PALIT

CAV reserved on : 07.04.2026.

Judgment delivered on : 07.05.2026.

Whether fit for reporting : YES.

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JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

- 1) Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Jishan Samed, counsel appearing for the appellant and Mr. Bidyut Majumder, Deputy S.G.I. appearing for the respondent-Union of India as well as Mr. Dipankar Sarma, Addl. Government Advocate appearing for the respondents-State.
- 2) This Writ Appeal is filed by the Appellant challenging the judgment dt.20.12.2023 of the learned Single Judge in W.P.(C) No.483 of 2022.
- 3) The Appellant had filed the said W.P.(C) No.483 of 2022 challenging the Office Memorandum dt.30.7.2021 as communicated by the Letter dt.27.11.2021 and for a direction to the respondents to consider afresh a statutory Appeal filed by her within 2 months.
- 4) The case has a chequered history.  
The background facts:
- 5) The Appellant was appointed as a Scientist in the Indian Council for Agricultural Research on 10.10.2014. She was then given posting at the ICAR Research Complex for North Eastern Hills region, Tripura Centre, Agartala which she joined on 23.2.2015.
- 6) Dr. Basant Kumar Kandpal (Respondent no.6) assumed duties as Joint Director, ICAR, Tripura (Respondent no.7).
- 7) On 5.12.2018, the appellant filed a complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,2013 (for short 'the Act') against respondent no.6/7 alleging certain

inappropriate conduct allegedly amounting to sexual harassment while she was working in her office and also in the field.

8) At that time there was no Internal Complaints Committee at Agartala. So the matter was referred to the Internal Complaints Committee of the ICAR Research Complex for NEH Region, Meghalaya (hereinafter referred to as the 'Institute Complaint Committee').

9) The Administrative Officer, Institute Complaints Committee then issued a Letter dt.29.12.2018 asking her to appear before the said Committee on 18.1.2019 as an inquiry would be held at the Tripura Centre on the basis of the said complaint.

The constitution of the Institute Complaint Committee:

10) The said Committee consisted of the following:

- (i) Dr. Pankaj Kumar Sinha, Scientist (Agrl. Extension), Member.
- (ii) Ms. Nirmal Borthakur, Senior Technical Officer, Member
- (iii) Malaya Kharaior, UDC, Member
- (iv) S.R.Baruah, Administrative Officer (P), Member Secretary
- (v) Dr. Bijoy Bhattacharjee, Principal Scientist, Chairman.

The report dt.9.4.2019 of the Institute Complaint Committee:

11) The said Committee submitted a report dt.9.4.2019 and a copy thereof was furnished to the appellant too.

12) The Committee, in its report, found lapses on part of both appellant and respondent no.7 and concluded that while the appellant was argumentative and arrogant, the respondent no.7 was a short tempered person.

behaviour. No specific finding on the sexual harassment allegations was given.

The Appeal filed by Appellant to the Respondent no.2:

13) Challenging the said report, the Appellant filed an Appeal/ representation dt.19.7.2019 under Section 18 of the Act to the Secretary (Appellate Authority/ Disciplinary Authority), ICAR, Krishi Bhavan, New Delhi ( Respondent no.2).

14) Inter alia, she raised the following grounds in the said appeal:

- (i) that the respondent no.7 was the Head of the Office as well as the reporting officer of Annual performance Appraisal Report (for short 'APAR') for several employees; and in his presence, if any enquiry is conducted by his subordinates, they may not speak the truth out of fear of harm in their careers; and so the enquiry held was not free and fair;
- (ii) that under section 12 of the Act, respondent no.7 was not transferred during the enquiry to any other workplace and he therefore coerced the other employees;
- (iii) that as per Section 11, the enquiry against the respondent no.7 should have been conducted as per the service rules applicable to respondent no.7 who was holding the respondent no.6 post i.e the Central Civil Services Classification, Control and Appeal Rules; that an enquiry into the complaint of sexual harassment is deemed to be an enquiry under the said rules; and the report of the committee should be deemed to be an enquiry

report for the purpose of the said rules, and this was not done;

(iv) that she was not informed by the enquiry committee about her right to cross examine the witnesses produced by respondent no.7;

(v) that she was not provided with copy of the documents as well as the copy of the depositions of witnesses to enable her to submit written analysis of the deposition of witnesses in detail to assist the enquiry committee;

(vi) There was non-application of mind by the enquiry committee;

(vii) That the report is biased in favour of respondent no.7;

(viii) That the complete report was not furnished to her ;

And so, the enquiry report has to be set aside.

15) She sent representation dt.21.8.2019 to the Director General, ICAR (Respondent no.3) stating that the respondent no.2 has not decided her appeal against the report dt.9.4.2019. She stated that she did not receive any communication about the status of the said Appeal and requested him to look into the said issue.

16) She followed it up by another representation dt.9.9.2019 to the Secretary (respondent no.2) to remove respondent no.7 from the North Eastern region till her appeal is decided.

17) She even sent a reminder by email on 27.12.2019 reiterating the request for early disposal of the appeal and to remove the respondent no.7 for the North Eastern region.

18) Though she filed W.P.(C) No.307 of 2020 challenging the report dt.9.4.2019, she withdrew the same on 24.2.2021 as her Appeal was pending  
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consideration and the High court granted her liberty to file the petition afresh on the same cause of action.

WP(C) No. 243/2021:

19) She then filed WP(C) No.243/2021 for early disposal of her appeal by respondent no.2. But it was dismissed on 17.5.2021 as not maintainable and she was directed approach the Central Administrative Tribunal (for short 'the CAT') under the Administrative Tribunals Act,1985.

Writ Appeal No.183/2021:

20) She challenged the judgment of the learned Single Judge by filing Writ Appeal No.183/2021 before the Division Bench of this Court which allowed the said Appeal on 7.9.2021, set aside the judgement of the Single Judge in the WP(C) No.243/2021 holding that her Writ Petition was maintainable and that she need not approach the CAT. It directed the respondent no.2 to decide the appeal in 2 months.

21) On 12.11.2021, the appellant gave a representation to respondent no.2 to comply with the direction in the WA No.183/2021.

The impugned order dt.30.7.2021 of respondent no.2:

22) The said appeal was the dismissed by the Secretary, ICAR on 30.7.2021 rejecting all contentions raised by her. Copy of it was forwarded to appellant on 27.11.021 by the Dy. Secretary, ICAR.

WP(C) No.483 of 2022 and the judgment dt.20.12.2023 therein:

23) Challenging the same, appellant filed WP(C) No.483 of 2022.

24) The Single Judge dismissed the Writ Petition by judgment

dt.20.12.2023.

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25) The Single judge held that the inquiry conducted by the persons referred to in para 9 was only a preliminary inquiry and it was not a regular inquiry. He held that there is no question of permitting cross examination of witnesses as that would happen only in a regular enquiry. He rejected the allegations that witnesses were influenced by respondent no.7 stating that their depositions did not indicate this.

26) He concluded that the competent committee had given its observations after duly considering the witness led by the appellant and as such, no fresh intervention is called for.

27) He also held that appellant had not made out any case on point of maintainability of the Writ Petition and also on merits. He noted that she had filed OA No.85 of 2020 before the CAT and she cannot also invoke the jurisdiction of this Court.

28) Challenging the same, this Writ Appeal has been filed by the Appellant.

29) Heard Sri Somik Deb, Sr. Counsel for Sri Pannalal Debbarma, Counsel for Appellant, Sri Bidyut Majumder, Dy. Solicitor General of India for respondent Nos.1 to 6 and Sri Dipankar Sarma, for respondent No.7. We have also perused and considered the pleadings of the respective parties.

Consideration by the Court:

30) The following issues arise for consideration in the Writ Appeal:

(i) Was the Writ Petition filed by Appellant maintainable and whether she ought to have sought relief against the report dt.9.4.2019 and the appellate order dt.30.7.2021 before the CAT?

(ii) If the issue (i) is held in appellant's favour, is the constitution of the Institute Complaint Committee and the procedure followed by it valid in law?

Issue No.(i):

31) In our opinion, the Single Judge erred in holding that the issue of sexual harassment raised by the appellant under the Act has to be adjudicated only by the Administrative Tribunal constituted under the Administrative Tribunals Act,1985 and that the appellant could not have invoked the Writ Jurisdiction.

32) This issue, inter partes, had already been decided in the judgment dt.7.9.2021 by the Division Bench of this Court in W.A.No.183/2021. This is binding on the respondents and also the learned Single Judge.

33) The Division Bench had rejected the said plea of the respondents as to maintainability of the Writ Petition in its judgment dt.7.9.2021 in W.A. No.183/2021. It was held by the Division Bench as under:

"[19] Combined reading of the above noted provisions would show that the very purpose of enabling an aggrieved woman to make a complaint of sexual harassment and of providing a mechanism for inquiring into and deal with such complaints is to provide a safe workplace for all women to guard their human rights and the right of gender parity. The prime purpose of the Act is not to hand down departmental penalties on the respondent against whom the allegations of sexual harassment have been proved. It may be an ultimate outcome in some cases, it is not the prime purpose of the enactment of the Act. The purpose of enactment of the law is to deal with such allegations swiftly by providing a mechanism where such complaints can be dealt with effectively and thereby provide a redress to a woman in distress. The possible imposition of a departmental punishment

on the respondent is just one of the outcomes of a complaint of sexual harassment. For example, as provided under Section 11, upon receipt of the complaint of sexual harassment and finding prima facie case existing, such complaint would be forwarded to the police for registering case under Section 509 of Indian Penal Code which pertains to word, gesture or act intended to insult the modesty of a woman. As per Section 12, during the pendency of the inquiry on a request by the aggrieved woman, she may be transferred to another workplace, may be granted additional leave up to three months or granted such other relief as may be prescribed.

[20] Sub-section (3) of Section 13 provides that where the Internal Committee or the Local Committee arrives at a conclusion that the allegation against the respondent has been probed, it would recommend to the employer (i) to take action for sexual harassment as misconduct in accordance with the service rules and (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from his salary such sum as it may consider appropriate to be paid to the aggrieved woman or her heirs in accordance with the provisions contained in Section 15. In turn, Section 15 lays down the circumstances which will be taken into consideration by the Committee for determining the sum that should be paid to the aggrieved woman.

[21] It can thus be seen that besides a possible imposition of punishment under the service rules, the complaint of sexual harassment at workplace has many other repercussions. If prima facie case is found, the same would be forwarded to the police for registration of a case under Section 509 of IPC. During the pendency of the inquiry into the complaint, the complainant may make a request for being transferred or being granted leave or may be granted such some other relief as may be prescribed. Even upon the conclusion of the inquiry which results into a finding that the allegations are correct, punishment of imposition

of penalty on the respondent as per the service rules is not the only consequence. The employer may deduct from the salary or wages of the respondent appropriate sum so as to pay the same to the aggrieved woman which sum would be determined in terms of Section 15 taking into account various factors such as the mental trauma, pain and suffering that has been caused to her, the loss in carrier opportunity due to the incident of sexual harassment and so on.

[22] Recovery of amount to be paid to an aggrieved woman from the salary and emoluments of an employee is not part of the normal penal mechanism in service jurisprudence. It is a special provision enacted under the Act of 2013 for giving swift relief to a woman who has been harassed at the workplace and her allegations of harassment have been found to be true and which may have resulted into mental trauma, pain or suffering

including emotional distress, loss of carrier opportunity or resulted into medical expenditure etc. In short, what we are trying to project is that lodging of a complaint for sexual harassment does not have sole correlation with the service conditions of the respondent. It has many other repercussions and consequences, imposition of departmental punishment being just one of them.

[23] Viewed from this angle, the disputes pertaining to a complaint of sexual harassment made by a women at the workplace, cannot be included within the definition of –service matter as defined in Section 3(q) of the Act of 1985. It may have indirect consequences on the respondent in relation to his service conditions, but the same is a matter of different consideration."  
(emphasis supplied)

34) It also held that what is referred to in Section 14 r/w Section 3(q) of the Administrative Tribunals Act,1985 is a 'service' matter concerning the person who approaches the court, be it the Tribunal or any other Court and not

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one concerning the respondent in such proceedings, and that there is nothing in the language used in Section 14 or Section 3(q) which would justify this interpretation.

35) It was held that the Writ Petition filed by appellant did not involve a subject matter which would lie before the Central Administrative Tribunal and her prayer was only for expeditious disposal of her Appeal.

36) We agree with the aforesaid reasoning of the Division Bench and hold that the learned single Judge erred in holding that the Writ Petition is not maintainable and that only the CAT can decide it.

37) Consequently we hold that the Writ petition filed by appellant is maintainable. Issue No.(i) is decided accordingly in favour of the Appellant.  
Issue No.(ii):

38) Next we shall consider the plea of the respondent Nos.1-5 that what the Institute Complaints Committee did in its report dt.9.4.2019 is only a

preliminary enquiry and that only if there is a prima facie 'fact finding' of such harassment by a person in an organisation, a regular enquiry will be done under the Central Civil Services Classification Control and Appeal Rules,1965 (for short CCS (CCA) Rules,1965).

39) There is no dispute that the Institute Complaint Committee had not supplied the full depositions of the respondent no.7's witnesses to the appellant and had not also allowed her to cross examine witnesses examined by appellant.

40) Section 11 lays down the manner of conducting an inquiry into the complaint of sexual harassment. It states:

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" 11. Inquiry into complaint.--

(1) Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

.....

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.

(2) ....

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely--

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

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

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

41) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 does not contemplate any preliminary 'fact finding' enquiry of the nature done by the respondents 1-5.

42) What it contemplates is an attempt at Conciliation under Section 10 first and then an inquiry into the complaint of sexual harassment in accordance with the provisions of the service Rules applicable to the respondent in the complaint.

43) The service rules applicable to the respondent are the Central Civil Services Classification Control and Appeal Rules.

44) Rule 3- C thereof states:

"3-C. Prohibition of sexual harassment of working women.-- (1) No government servant shall indulge in any act of sexual harassment of any women at any workplace.

(2) Every government servant who is incharge of a workplace shall take appropriate steps to prevent sexual harassment to any woman at the workplace.

Explanation.--(1) For the purpose of this rule--

(a) "sexual harassment" includes any one or more of the following acts or behaviour (whether directly or by implication), namely--

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

45) Rule 14 of the CCS (CCA) Rules stipulates the procedure for imposing major penalties and is extracted below:

"14. Procedure for imposing major penalties.--(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or 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." ( emphasis supplied)

46) In *Aureliano Fernandes v. State of Goa*<sup>1</sup>, the Executive Council of a University made a similar 'fact finding inquiry' through its Internal Complaints Committee (First Committee) and after such inquiry appointed a ret'd. High Court Judge to conduct inquiry under Section 14 of the Act.

47) The Supreme Court set aside the action of the University and clarified that the Complaints Committee should itself be the inquiring (2024) 1 SCC 632, at page 673 authority under Rule 14 of the above Rules and it cannot be a mere 'fact finding' committee and act ignoring natural justice and fair play. It held:

"75. The error committed on the part of the EC, is no less grave. It is apparent that the EC continued to remain under an impression that the First Committee to which the complaints were forwarded, was only a "fact-finding Committee" and that a full-fledged inquiry was still required to be conducted subsequently, in the manner prescribed under Rule 14 of the CCS (CCA) Rules. The result was that though the Report of the First Committee was accepted and the EC proceeded to place the appellant under suspension, for the very first time, it decided to issue him Memorandum detailing the articles of charge and the imputation of charges and further appointed a former Judge of the High Court as an inquiry officer to conduct the inquiry in terms of the Rules. Respondents 2 and 3 got wiser only when the said proceedings commenced and the inquiry officer was apprised of the directions issued in *Medha Kotwal* case<sup>2</sup> where it had been clarified by this Court that the Complaints Committee contemplated in *Vishaka* case<sup>3</sup>, will be deemed to be an inquiry authority for the purposes of the CCS (Conduct) Rules and its report shall be deemed to be a Report under the CCS (CCA) Rules.

76. When the employer itself was oblivious to the remit of the Committee and the Committee remained under the very same impression having described its proceedings as fact-finding in nature, it was all the more incumbent for the respondents to have paused on receiving the Report of the First Committee and verify the legal position before taking the next step. In all this back and forth, it was the procedure prescribed under Rule 14 for conducting an inquiry of sexual harassment at the workplace that (2013) 1 SCC 312 (1997) 6 SCC 241 came to be sacrificed at the altar of expeditious disposal, which can neither be justified nor countenanced.

77. The intent and purpose of the proviso inserted in Rule 14(2) of the CCS (CCA) Rules and Rule 3-C of the CCS (Conduct) Rules is that the procedure required to be adopted for conducting an inquiry into the complaint of sexual harassment that can lead to imposition of a major penalty under the Rules, must be fair, impartial and in line with the Rules. Pertinently, the emphasis on adhering to the principles of natural justice during an inquiry conducted by a Complaints Committee finds specific mention in Rule 7(4) of the subsequently enacted Rules of 2013. But the spirit behind the due process could never be suppressed or ignored even in the absence of the Statute or the Rules inasmuch as the principles of natural justice are the very essence of the decision-making process and must be read into every judicial or even a quasi-judicial proceeding." ( emphasis supplied)

48) The respondents therefore could not have therefore contended that the Institute Complaint Committee is only a 'fact finding' committee and principles of natural justice such as supply of full depositions of witnesses and permission to appellant to cross examine the witnesses examined by respondent no.7 need not be given by it before submitting its report dt.9.4.2019.

49) We further hold that the single Judge in his impugned judgment dt.20.12.2023 in W.P.No.483 of 2022 erroneously upheld the inquiry report agreeing with the contention of respondents 1-5 that what was done was only a preliminary 'fact finding' inquiry and cross examination of witnesses can be permitted only in a regular inquiry, if it happens later.

50) Thus both the appellate authority (Respondent no.2) in his order dt.30.7.2021 and the single Judge in his impugned judgment dt.20.12.2023 in W.P.No.483 of 2022 thus erred in upholding the report dt.9.4.2019 of the Institute Complaint Committee and the procedure followed by it even though there was total non-compliance with Rule 11 of the Act r/w 14 of the Rules apart from violation of principles of natural justice by it.

51) The said report dt.9.4.2019 and the order of the appellate authority dt.30.6.2021 as also the judgment dt.20.12.2023 of the learned single Judge in W.P.(C) No.483 of 2022 , cannot therefore be sustained.

Other aspects:

52) The reference in the judgment of the learned single judge to the OA.No.85 of 2020 pending before the Central Administrative Tribunal (CAT) is also not relevant because the said case related to the gradings in the Annual Performance Appraisal Reports for 2017-18.

53) Though the CAT rejected her claim in it's final order , the appellant challenged it in this Court in W.P.(C) (CAT) 3 of 2024.

54) The Division Bench in the said case, on 25.6.2024, set aside the order of the CAT and the rejection of her representation by the respondents 1-

5 as 'cryptic' and directed consideration of her representations dt.12.10.2018 and dt.5.12.2018 in that regard within 3 months.

55) Thus the issue in the proceeding before the CAT was different and the pendency at that time of the said OA, was not a bar to the appellant pursuing her remedies in this Court by filing a Writ Petition in relation to her allegation of sexual harassment under the Act.

56) We shall now consider whether there can said to be any predisposition in the Institute Complaint Committee to exonerate the respondent no.7 because all its members were subordinate in rank to him.

57) A specific allegation was raised by appellant by way of an additional affidavit dt.2.12.2025 that all members of the Institute Complaints Committee which gave the report dt.9.4.2019 are subordinate in rank to respondent no.7. This allegation is not denied in the counter affidavit dt.12.1.2027 filed by respondents.

58) The question is:

"Would the above fact in any way vitiate the preliminary inquiry report?"

And "Can it be said that there is a predisposition to decide for or against appellant, without proper regard to the true merits of the dispute ?"

59) In India the "real likelihood of bias" has been consistently applied.

60) In *Badrinath v. Govt. of T. N4*, the Supreme Court held that a real likelihood of bias means at least substantial possibility of bias. The question depends not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all circumstances, would feel a serious apprehension of bias. It was further held that though the plea is not raised during the inquiry proceedings, if it is raised in the High Court, it is sufficient as it

goes to the root of the question and is based on "admitted and uncontroverted facts" and does not require any further investigation of facts. It held:

"75. The leading case on the question of reasonable likelihood of bias is the one in *Rattan Lal Sharma v. Managing (2000) 8 SCC 395 Committee, Dr Hari Ram (Co-Education) Higher Secondary School*<sup>5</sup>. This Court held in that case that the test was one of "real likelihood" of bias even if such bias was not in fact the direct cause. It was held there, a real likelihood of bias means at least substantial possibility of bias. The question depends not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all circumstances, would feel a serious apprehension of bias. It was stated: (SCC p. 21, para 11) "[T]he test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

The above ruling is an authority also for the view that though the plea is not raised during the inquiry proceedings, if it is raised in the High Court, it is sufficient as it goes to the root of the question and is based on "admitted and uncontroverted facts" and does not require any further investigation of facts."

61) In *Krishnadatt Awasthy v. State of M.P.*<sup>6</sup>, the Supreme Court has declared:

"29. Indian courts have consistently adopted the "real likelihood" test to determine bias. In a recent decision in *CORE v. ECI SPIC SMO MCML (JV)*<sup>7</sup>, a Constitution Bench of this Court speaking through D.Y. Chandrachud, C.J. (of which one of us was a member), summarised the Indian position thus: (SCC p. 731, para 107) "107. Although there have been vacillations about the test in England, the Indian courts have been largely consistent in (1993) 4 SCC 10 (2025) 7 SCC 545, at page 575 (2025) 4 SCC 741 their approach by applying the test of real likelihood of bias or reasonable apprehension of bias. Recently, the court has used the real danger of bias test. However, the above discussion shows that there is no significant difference between the real danger of bias test and the real possibility of bias test if the question of bias is inferred from the perspective of a reasonable or fair-minded person."

62) In *Govt. of T.N. v. Munuswamy Mudaliar*<sup>8</sup> it was held that a predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials.

63) Looked at from the perspective of a reasonable and fair minded person, we are of the view that there is strong likelihood that the officer accused of sexual harassment would influence the Internal Complaints committee members who are subordinates to him in service. The inquiry by a junior

officer or a committee of juniors cannot therefore commend the confidence which it deserves.

64) In fact Swamy's Compilation of Central Civil Services Classification, Control and Appeal Rules quotes " G.I., C.S (Dept.of Per.),O.M No.7/12/70- Ests.(A) dt.7.1.1971' which states that Inquiry officers should be senior in rank to the officers inquired against. It states:

"The Committee of Subordinate Legislation (fourth Lok Sabha) had observed that inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into, as inquiry by a junior officer cannot commend confidence which it deserves." (emphasis supplied) 1988 Supp SCC 751, at page 753

65) This principle has also been reiterated in a subsequent Office Memorandum dt.21.12.20229 which states:

"clause 2.9. IO senior from the CO: DoPT , vide OM No.71/70-est.(A) dt.6.1.1971, requested all the Ministries/Departments to note the observations of the Committee on Subordinate Legislation (Fourth Lok Sabha) , which examined the question of appointment of inquiry officers to conduct oral inquiry into charges levelled against delinquent officer under the CCS (CCA) Rules, 1965. The Committee observed that though they agree that it may not be possible to entrust always inquiries against delinquent officer to gazetted officers the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into as inquiry by a junior officer cannot command confidence which it deserves."( emphasis supplied)

66) This important principle which flows from the maxim "Justice must not only be done, but must be seen to be done" has also been violated by the respondent Nos.1-5. This also vitiates their decision.

67) Another important point to be taken note of is that in her appeal to the respondent no.2 challenging the report dt.9.4.2019, the appellant had also specifically alleged as holder of office of Joint Director, the respondent no.7 plays an important role in writing the Annual Performance Appraisal reports (APARs) of the employees at the Tripura Centre.

68) The Appellate authority (Respondent No.2) in his order dt.30.7.2021 does not deal with this specific allegation of appellant in her appeal .

Quoted in the judgment of the Bombay High Court in Dr.Shyam behari v. Nuclear Power Corporation of India Ltd ... 2025 SCC Online Bom 4025 at para 13

69) The Single Judge rejected this allegation by saying erroneously that it is not true because two persons deposed on her behalf too.

70) The Single Judge failed to note that both the witnesses examined by her i.e., Dr. K.K. Barman and Dr. S.P. Das, Principal Scientists stated that they were not aware of the case/complaint. All the witnesses examined by respondent no.7, on the other hand, supported his version of denial of allegations.

71) The above circumstance lends credence to her allegation that respondent no.7 has a dominant position in the organisation, and since he is also the person writing the APARs of the persons working under him, some of whom were witnesses, they might not have deposed honestly out of fear.

72) It is sad that the respondent no.7 was not transferred during the period of inquiry by the Institute complaint Committee so that the witnesses can depose without fear though this could have been done under Section 12 of the Act.

73) Had this been done, the witnesses would have been able to depose honestly and freely.

Conclusion:

74) For all the aforesaid reasons, we hold that the report dt.9.4.2019 of the Institute Complaint Committee and the order dt.30.6.2021 of the respondent no.2, upholding the same, are vitiated and cannot be sustained.

They are accordingly set aside.

75) Since the respondent no.7 is currently posted at Krishi Bhavan, New Delhi and not at Agartala and the appellant is still working in the State of Tripura, the respondent nos.1-5 are directed to constitute an Internal Complaints Committee consisting of persons senior to the respondent no.7 in the manner indicated in Section 4 of the Act within 4 weeks. The said committee shall conduct the inquiry as per Rule 14 of the CCS (CCA) Rules,1965.

76) The parties shall be permitted to lead evidence afresh before the said committee; all documents filed by the respective parties shall be shared with each other; they shall be permitted to cross-examine each other's witnesses; and then a reasoned order shall be passed by the said committee in accordance with law within 6 months from the date of constitution of the said Committee and communicated to the appellant.

77) The Writ Appeal is allowed as above. No costs.

78) All pending applications shall stand disposed of.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

PULAK BANIK

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