

Circular no: CO/Per/ER-A/186/2018

Date: 12.06.2018

**All the offices of the Corporation**

**Re: Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)**

In pursuance to the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013, guidelines were issued vide circular ref: CO/PER/ER-A/067/2014 dated 30/04/2014. We have been receiving queries, particularly in the matter of Role of Internal Complaint Committee (ICC) and the inquiry proceedings to be conducted by ICC whenever a complaint of Sexual Harassment is received. In order to clarify the matter, following instructions are issued:-

1. As per the Act, unless the context otherwise requires:  
"Aggrieved woman" in relation to work place means -- a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.
2. **Definition:-**  
Sexual harassment is defined as any one or more of the following unwelcome 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 sexual nature;
3. The following circumstances, among others, if they occur, or are present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:
  - (i) implied or explicit promise of preferential treatment in her employment; or
  - (ii) implied or explicit threat of detrimental treatment in her employment: or
  - (iii) implied or explicit threat about her present or future employment status; or
  - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - (v) humiliating treatment likely to affect her health or safety.
4. The term employer means in respect of:  
Employees working in Central office: Executive Director (Personnel).  
Employees working in Zonal Office: Zonal Manager (In-Charge).  
Employees working in Audit Department: Secretary (Audit).

Employees working in Divisional/Branch office: DM/SDM-(In-Charge).

Employees in Zonal Training Centre: Principal (ZTC).

Employees in Sales Training Centre: Principal (STC).

Employees in Management Development Centre: Director (MDC).

**The workplace in the Organization is all the offices of the Corporation and any place visited by the employee arising out of or during the course of employment including transportation provided by the Corporation for undertaking such journey**

5. Every office shall, by an order in writing, constitute a Committee to be known as the Internal Complaints Committee as under to receive complaints:-

- (i) The Internal Complaints Committee shall consist of the following members.
  - a. Chairperson who shall be a woman employed at a senior level at work place from amongst the employees.
  - b. Not less than two members from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
  - c. One member from amongst non-governmental organization or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment or a person who has expertise on issues relating to sexual harassment and may include a social worker with at least five years experience in the field of social work or a person who is familiar with Labour, Service, Civil or Criminal law.

Provided that at least half of the total members so nominated shall be women.

- (ii) The member of the Internal Complaints Committee shall hold office for a period not exceeding three years from the date of their nomination/appointment.

There is no bar on re-appointment of ICC Member for second term. The previous Committee or individual Member may be reappointed but not for more than two terms. The Act does not prohibit the nomination of same Committee Member after one year from completion of his/her tenure. Any Internal/External Member of ICC of one place can be nominated as a member of ICC of another after completion of his/her tenure in previous ICC.

6. The ICC for the purpose of making an enquiry shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following:

- (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.

7 The aggrieved woman is required to make a complaint of sexual harassment at work place in writing to the Internal Complaints Committee within a period of three (3) months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident. Provided further, that the ICC may, for reasons to be recorded in writing extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

8. The Internal Complaints Committee shall render all reasonable assistance to the aggrieved woman if complaint cannot be made in writing. Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by her relative or friend or her co-worker or an officer of the National Commission for Women or State Women's Commission or any person who has knowledge of the incident with the written consent of the aggrieved women.

Where the aggrieved woman is unable to make a complaint on account of her mental incapacity or death or otherwise, her legal heirs or her relatives or friend or a qualified psychiatrist or such other persons as may be prescribed may make a complaint.

9. The Internal Complaint Committee before initiating an inquiry at the request of the aggrieved woman shall take steps to settle the matter between her and the respondent through conciliation, provided that no monetary settlement shall be made. Where the settlement has been arrived at as above, it should be intimated to the aggrieved woman and the respondent and no further inquiry shall be conducted by the Internal Complaints Committee.

10. The members of the committee shall be entitled for the following allowance for holding the proceedings of the Internal Complaints Committee and also reimbursement of travel cost incurred in travelling by train in three tier air conditioned or by air conditioned bus or auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

For Chairperson: Rs. 1000/- per day.

For Members (including NGO) of Internal Complaints Committee: Rs. 750/- per day.

**11. Manner of Inquiry into complaint:-**

- (i) At the time of filing the complaint, the complainant shall submit six copies of the complaint along with supporting documents and the name and address of the witnesses to the Internal Complaint Committee.
- (ii) On receipt of the complaint, the Internal Complaints Committee shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days.
- (iii) The respondent shall file his reply to the complaint along with his list of documents and names and addresses of the witnesses within a period not exceeding ten working days from the date of receipt of the documents.

- (iv) The Committee (ICC) set up for inquiring into complaints of Sexual Harassment complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority. ICC shall hold the inquiry as far as practicable in accordance with the provisions of LIC of India (Staff) Regulations, 1960. The Offices may refer to the guidelines ref: Per/IR/C/ZD/Cir.153/93 dated 21/08/1993 issued by ER (Discipline) Department, Central Office in this regard.
- (v) On receipt of the complaint, facts of the allegation are required to be verified by the ICC. This is called as preliminary enquiry/fact finding enquiry or investigation. The Committee shall conduct the investigation and then try to ascertain the truth of the allegations by collecting documentary evidence as well as recording statements of any possible witnesses including the complainant. If, subsequently, charge sheet is to be issued, the Disciplinary Authority can rely on the investigation for drafting of charges and they can be used for proving the charges. Thus, at the investigation stage impartiality should be maintained. Allegations of bias may result in vitiating of inquiry.
- (vi) If the Committee arrives at a conclusion that the allegations against the respondent have not been proved, then no action is required to be taken in the matter.
- (vii) Where there is a prima facie substance in the allegations which calls for conducting a formal inquiry, ICC, without making any judgmental recommendations or expressing views which may be construed to have prejudiced their views, shall make a recommendation for formal enquiry to the Disciplinary Authority.
- (viii) It may be noted that the inquiry of cases related to Sexual Harassment should be held at the workplace where the witnesses and oral/documentary evidences are readily available. In case there is a necessity to change the venue of enquiry for any reason, the convenience of the complainant should be taken into account.
- (ix) The Disciplinary Authority shall examine the report with a view to see as to whether a formal charge sheet, needs to be issued to the accused employee. In case of issuance of Charge Sheet, Charge Sheeted Officer / Charge Sheeted Employee (CSO/CSE) should be given an opportunity of replying to the Charge Sheet and decision for inquiry has to be taken after consideration of the reply of CSO/CSE.
- (x) If the Charged Officer/Employee admits the charges clearly and unconditionally, there will be no need for formal inquiry against him and further action may be taken as per Staff Rules applicable to the respondent.

## **12. The Inquiry:**

- (i) If the charges are denied by the CSO/CSE and his reply is not convincing, the Charge Sheet along with the reply of CSO/CSE may be sent to the Complaint Committee for formal inquiry.

- (ii) As a first step, the CSO/CSE would be formally asked as to whether he admits the charges. In case of any clear and unconditional admission of any of Charges, no inquiry would be held in respect of that particular charge and the admission of the CSO/CSE would be taken on record. The inquiry would be held thereafter in respect of those charges which have not been admitted by the Charged Officer.
- (iii) The Disciplinary Authority then may follow the procedure as well as Rules of Disciplinary Proceedings as per CO Circular Ref: Per/IR/C/ZD/Cir.153/93 dated 21/08/1993. However, in the case of Sexual Harassment complaint the role of Enquiry Officer has to be played by the Internal Complaint Committee.
- (iv) A Presenting Officer (PO) **from amongst the employees of the Corporation** shall be appointed to present evidence on behalf of prosecution before the Complaint Committee/Inquiring Authority.
- (v) The Internal Complaints Committee shall have the right to terminate the enquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for the three consecutive hearings conveyed by the Chairperson. Provided that such termination or ex-parte order may not be passed without giving a notice in writing fifteen days in advance, to the party concerned.
- (vi) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Internal Complaints Committee.
- (vii) In conducting the enquiry, a minimum of three Members of the Complaints Committee including the Chairperson shall be present.
- (viii) In cases of complaints of Sexual Harassment, it is not mandatory for the complainant to appear as a witness. However, if the complainant appears as a witness, she would be also examined and cross-examined. The Inquiry Officer may however, disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.
- (ix) Witnesses, listed in the Charge Sheet may be produced in any order as per the discretion of PO. The examination of the witnesses in chief would be done by PO where PO may ask questions to witness to ascertain the facts. Witness would thereafter be cross-examined by the Defence. After the cross-examination, the PO would be given an opportunity to re-examine the witness. In the examination in Chief, which would be done by the Presenting Officer, leading questions are not allowed. These are however, allowed in the cross examination.
- (x) Charged Officer/Employee should be given opportunity to cross-examine the witnesses that appear on behalf of the Prosecution. If the complainant appears as a witness, she would also be cross-examined. However, offensive/indecent or

annoying questions to the witnesses or complainant may be disallowed by the Inquiry Officer.

(xi) Inquiring Authority may pose questions to ascertain facts for clarity. However, it should not show any bias for or against the CSO/CSE. This should be done in the presence of PO and CSO/CSE/Defence Assistant and not behind the back of the CSO/CSE. Witnesses should be examined one by one separately and witnesses who are examined or yet to be examined should not be allowed to be present at the time of examination of another witness.

(xii) All the events of the inquiries/incidences/requests & representations by CSF/CEO and every related decision should be recorded in the Daily Order Sheet. It should be signed by the Inquiring Authority, Presenting Officer, CSO/CSE and Defence Assistant.

13. The inquiry should be completed within a period of **90 days**.

14. During the pendency of the inquiry, on a **written request** made by the aggrieved woman, the ICC may recommend to the employer to:

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

The leave granted to the aggrieved woman shall be in addition to the leave she would be otherwise entitled i.e. under Regulation 67(2) of the Staff Regulation. The Competent Authority to grant leave will be the same as mentioned at Point No.4 of the circular. Record of all such leave granted is to be kept separately.

15. Other relief to the complainant during the pendency of the Inquiry: The Internal Complaints Committee at the written request of the aggrieved woman may recommend to the employer to restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assigning the same to another officer.

16. After the completion of the enquiry the ICC is required to:

- a) Give reasonable time to Presenting Officer and CSE/CSO to submit their briefs
- b) Write an Inquiry Report in which the evidence in support of the charges and against them will be examined. The Report should be speaking one clearly bringing out as to the evidence on the basis of which any particular conclusion has been reached. Based on this analysis, the Inquiring Authority (ICC) will give its findings on the allegations as proved or not proved. In case the Charge is proved only partially, the ICC should record the extent to which that allegation has been proved.
- c) Provide a report of its finding to the Disciplinary Authority. **The said report shall be made available to the concerned parties.**

- d) It shall recommend action against the respondent for sexual harassment in accordance with the provisions of the Staff rules applicable to the respondent. Here it may be noted that normally the Inquiry Officer is not allowed to make any recommendations in the report. However, here the function of ICC acting as the Inquiring Authority differs. The ICC may make recommendations after mentioning rationale behind such recommendations as provided in point no. '14' & '15' above.
- e) The Inquiry Authority in its report cannot suggest any penalty, however, in addition to the recommendations mentioned in point no '14 & 15' the Committee also has the powers to make following recommendations:
- a. to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.
  - b. Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or heirs.
  - c. Committee may recommend action to be taken against complainant, if the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.
  - d. The Committee may also recommend action against any witness if such witness has given false evidence or produced any forged or misleading document.
17. CSE/CSO may also be placed under suspension before or after issue of a Charge Sheet where his continuance in office will prejudice the investigation, for example if there is an apprehension that he may tamper with witnesses or documents. Suspension may also be resorted to where continuance of the employee/officer in office will be against wider public interest such as there is a public scandal and it is necessary to place the employee/officer under suspension to demonstrate the policy of the Corporation to deal strictly with officers involved in such scandals. It may be desirable to resort to suspension in case of misdemeanour involving acts of moral turpitude.
18. The employee aggrieved by the recommendations of the committee shall prefer an appeal within a period of **ninety** days of the recommendations. The Appellate Authority for making an appeal is the Disciplinary Authority.
19. The Disciplinary Authority is required to act on the recommendations of the committee within a period of **sixty days**.
- Disciplinary Authority is not expected to dispense with the inquiry lightly, arbitrarily or with ulterior motive or merely because the case against the Employee/Officer is weak.
20. Where the ICC arrives at a conclusion that the allegations against the respondent are malicious, or the aggrieved woman has made a false complaint, or has produced a forged or misleading information/document, it may recommend, to take action against the woman or the person who has made the complaint in accordance with the service rules. **Provided further that a mere inability to substantiate a complaint or provide adequate**

proof need not attract action against the complainant under this section. Where the ICC arrives at a conclusion that during the enquiry any witness has given false evidence or produced any forged or misleading documents, it may recommend to take action in accordance with the provisions of the service rules.

21. Where ICC has not recommended any action against the employee against whom the allegations have been made in a case involving allegations of sexual harassment, the Disciplinary Authority shall supply a copy of the Report of ICC to the complainant and shall consider her representation, if any submitted, before coming to a final conclusion. The representation shall be deemed to be an appeal under section 14(1) of the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
22. Notwithstanding anything contained in the RTI Act, 2005, the contents of the complaint made, the identity and address of the aggrieved woman, the respondent, the witnesses, any information relating to conciliation and enquiry, proceedings, recommendation of ICC, action taken by the employer shall not be published, communicated or made known to the public, press and media in any manner. Provided that the information may be disseminated regarding the justice secured to any victim of sexual harassment under Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses
23. The order constituting the ICC under sub section (I) of section 4 is to be displayed at any conspicuous place in the work place. The penal consequences of sexual harassment are also to be displayed as per notice mentioned below.

#### NOTICE

“Sexual Harassment at work place is a Criminal Offence attracting penalty as per Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Further such act may also invite initiation of disciplinary proceedings under LIC of India (Staff) Regulations, 1960.”

**By Order**

24. The Internal Complaints Committee is required to prepare and submit an Annual Report having the following details:
  - a) Number of complaints of sexual harassment received in the year.
  - b) Number of complaints disposed off during the year.
  - c) Number of cases pending for more than ninety days if any, with detailed reasons thereof.
  - d) Number of workshops or awareness programs against sexual harassment carried out.
  - e) Nature of action taken by the employer.



25. At the beginning of the year all the Zonal Offices are required to send confirmation of the following:

- a) Formation of ICC as per the prescribed guidelines in all the offices
- b) Display of order constituting the ICC at conspicuous place in all the offices
- c) Display of names of ICC member at the prominent places in the offices
- d) Conduction of Employee awareness / Sensitization Programmes.

26 Every office shall carry out orientation programs and seminars for the members of the Internal Complaints Committee carry out employee awareness programs and seminars for members of ICC.

All the offices are hereby instructed to adhere to the provisions of the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 which is annexed herewith, in particular Section 19 regarding "Duties of the Employer" and act accordingly.

  
Executive Director (Personnel)



Encl: - A copy of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.