

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**The Hon'ble Mrs. Urmita Datta (Sen), Member (J) &  
Hon'ble Sayeed Ahmed Baba, Member (A)**

**Case No. - OA 765 of 2021**

Dr. Manotosh Sutradhar-- **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. A. Ghosh, Mr. C. Sarkar, Learned Advocates.
<u>01</u> 25.11.2021	For the State Respondent	: Mr. G.P. Banerjee, Learned Advocate.
	For the Respondent No.6	: Mrs. S. Roy, Mr. S. Seal, Learned Advocates.
	For the Respondent No.7	: Mr. S. Chakraborty, Mr. K. Das, Learned Advocates.

Vakalatnama filed on behalf of the respondent no. 6 and  
Vakalatnama filed on behalf of the respondent no. 7 are kept on record.

The instant application has been filed praying for the following  
reliefs :

*“(a) An order do issue directing the respondent no. 4 to  
allow the instant applicant to tender appeal by condoning  
the delay, if any, against report dated 14.06.2021 of Internal  
Complaints Committee*

*(b) An order do issue directing the respondent no. 4 to  
entertain and dispose of the letter dated 10.07.2021  
accompanied with memorandum of appeal within a  
stipulated period.*

*(c) An order do issue rejecting memo. no.  
HF/O/GA/Singly-22/21 dated 19.07.2021 in limine as it  
restricts the applicant to exercise his right to appeal.*

*(d) An order do issue directing the respondent  
authorities not to proceed with memo. no.  
HF/O/Vig/867/9A-45/2021/DP dated Kolkata, 09.07.2021 till*

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*disposal of the appeal by such respondent no. 4.*

*(e) An order directing the respondent authorities to produce all the relevant records in connection with the instant application so that conscionable justice may be done in favour of the applicant.*

*(f) Any other or further order or orders, direction or directions as Your Lordships may deem fit and proper for ends of justice."*

As per the applicant, the applicant is working as Assistant Professor, Department of Anesthesiology of NRS Medical College and Hospital, Kolkata. One Dr. Puja Trigunait, 2<sup>nd</sup> Year Post Doctoral Trainee, in the Department of Critical Care Medicine of IPGME&R and SSKM Hospital, Kolkata (Respondent No. 6) had submitted a complaint dated 27.01.2021 before the Director, IPGME&R, SSKM Hospital, Kolkata (Annexure-A2). Thereafter, the Director, Institute of Psychiatry had intimated vide letter dated 02.02.2021 that as per direction of Dean of Student Affairs, IPGME&R, SSKM Hospital, Kolkata vide Memo. dated 30.01.2021, the Enquiry Committee has received a complaint against the applicant. Therefore, he was asked to make his submission within seven days (Annexure-A/3). On 05.03.2021, the applicant appeared before the aforesaid Enquiry Committee, who passed the interim report dated 05.03.2021 observing some substance with respect to the allegations involving sexual harassment and had opined to place the said matter before the Internal Complaints Committee.

Subsequently, the said complainant vide her letter dated 05.03.2021, made a Complaint to the Officer-in-Charge, Bhowanipore Police Station. Thereafter, the Internal Complaints Committee of the Institution was reconstituted vide Memo. dated 10.03.2021 (Annexure-A/5). In the meantime, the Respondent No. 6, the complainant made a detailed

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complaint on 22.03.2021 (Annexure-A/6). Again vide Memo. dated 25.03.2021, the Presiding Officer of the Internal Complaints Committee sent the complaint of Dr. Puja Trigunait along with the supporting documents in a sealed envelope to the applicant with a request to reply the said complaint within ten working days. In response to that, the applicant submitted his detailed reply denying the allegations to the Presiding Officer on 05.04.2021 (Annexure-A/8).

However, the Internal Complaints Committee had communicated their final report vide Memo. dated 14.06.2021 (Annexure-A/11) recommending the Disciplinary Authority to take action for sexual harassment as a misconduct as per Service Rules.

Being aggrieved with, the applicant preferred one representation before the Principal Secretary, Department of Health & Family Welfare (Annexure-A/12) asking for the appropriate appellate authority vide letter dated 10.07.2021 (Annexure-A/12). However, vide Memo. dated 19.07.2021 (Annexure-A/13), the Commissioner, Department of Health & Family Welfare had intimated that as per the provisions of Section 18 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act., 2013, no appeal lies against the recommendation of the Internal Complaints Committee before the higher authority of the Department.

In the meantime, the applicant was served with the Charge-Sheet dated 09.07.2021 along with Article of Charges, (Annexure-A/14) as per the report of the Internal Complaints Committee. In reply to that, the applicant had submitted his written statement of defence vide letter dated 23.07.2021 (Annexure-A/14).

Being aggrieved with the rejection order dated 19.07.2021, the applicant has filed the instant application. As per the applicant, under Section 18 of the Sexual Harassment of Women at Work Place (Prevention,

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Prohibition and Redressal) Act, 2013 as well as Rule 11 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013, the applicant has the right to file appeal within a period of 90 (ninety) days of the recommendations before the Higher Authority of the Department, which has been denied to him. Therefore, he has asked for directions as prayed in relief portion of the instant OA.

The state respondents have vehemently objected the contention of the applicant and have submitted that the respondents have rightly rejected the plea of the applicant as per Section 18 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 as the Internal Complaints Committee is a preliminary Enquiry Committee and after being satisfied with the prima facie case against the accused has only recommended the case to the Disciplinary Authority to take appropriate action as per service rules. Moreover, in the meantime, the Disciplinary Authority has already issued Charge-Sheet and the applicant in reply to which, has already submitted written statement. Therefore, if he has any grievance with respect to the findings of the Internal Complaints Committee, he would get proper opportunity before the Disciplinary Authority to place his case by way of examine or cross-examine the witnesses and evidences. It has been further submitted that during the process of making final report by the Internal Complaints Committee, no provisions under the said Act has been violated or alleged to be violated by the applicant. The applicant has been granted enough opportunity to present his case. However, he will again get the opportunity to place his case in detail before the Inquiry Officer as well as Disciplinary Authority. Thus, there is no violation of natural justice also.

The counsel for the Respondent No. 6 has submitted that the state respondents have rightly taken action with respect to her complaint.

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We have heard all the parties and perused the records. It is noted that the applicant has mainly approached this Tribunal asking for a direction upon the respondents to allow him to prefer appeal against the recommendation of the Internal Complaints Committee before the higher authority under Section 18 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. However, the applicant has not made any other allegations of violation of natural justice against the Internal Complaints Committee.

Section 18 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 stipulates as follows :

*“18. Appeal – (1) Any person aggrieved from the **recommendations** made under sub-section (2) of section 13 or under **clause (i) or clause (ii) of sub-section (3) of section 13** or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the **court or tribunal** in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.*

*(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.”*

From the perusal of the above provisions of the Act, it is noted that the Act stipulates that any person aggrieved from the recommendation

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may prefer appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person. Rule 11 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 stipulates as follows :

*“11. Appeal – Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).”*

From the perusal of the aforesaid Section 18 of the aforesaid Act as well as submission made by the applicant, it is noted that the applicant is aggrieved by the recommendations of the Internal Complaints Committee made under sub-section 3 (i) of Section 13 of the aforementioned Act which stipulates that the applicant may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person. Since the applicant is a State Government employee, therefore, he may prefer appeal to the court or tribunal relates to the service rules of the applicant. As this aforesaid Act is an Act made to protect the women in general from sexual harassment in work place, therefore, the aforesaid Act stipulates various provisions applicable for various types of women working in various types of work places. Further, Section 18 of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 stipulates that where no such service rules exists then without prejudice contained in any other law for the time being in force, the person aggrieved

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may prefer an appeal in such manner as may be prescribed. Since this Act is not only applicable for Government, Semi Government but also to Industrial employees and Domestic employees and where no such service rules is applicable. Therefore, under Rule 11 of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013, it has been prescribed that the aggrieved person may prefer an appeal to the appellate authority notified under Clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946. Section 13 of the Industrial Employment (Standing Orders) Act, 1946 stipulates that it applies to other industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. Therefore, the provision under the aforesaid Act is not applicable for the State Government employee. Further, the report of the Internal Complaints Committee is a preliminary enquiry report, who after hearing the both sides and conducting investigation, was prima facie satisfied that there is a substantial evidence to hold the accused guilty as per the provisions of Section 13. Therefore, the Internal Complaints Committee has to recommend their observation to the appropriate Disciplinary Authority to take appropriate action. As no final decision has been taken nor any punishment has been imposed upon the accused/applicant and he will get enough opportunity before the Disciplinary Authority to place his case. Therefore, at this stage his appeal cannot be said to be a statutory appeal. Therefore, in our considered opinion, the respondent no. 4 has rightly rejected the plea of the applicant. As the Internal Complaints Committee has been constituted under the statute i.e. under the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. The said committee should be independent and impartial. Thus, the said Committee is not under the control of any higher authority of the department while taking final decision. Therefore, there is no scope to appeal before the higher authority as per

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Section 18 of the Act.

In view of the above, we do not find any reason to interfere with the decisions of the respondents.

Accordingly, the OA is **dismissed** with no order as to costs.

Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

CSM/SS

**SAYEED AHMED BABA  
MEMBER (A)**

**Mrs. URMITA DATTA (SEN)  
MEMBER (J)**