



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 20, 2024

+ W.P.(C) 15201/2023, CM APPL. 27067/2024

KHAJAN SINGH

..... Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with
Ms. Gauri Puri, Ms. Aditi Gupta and
Mr. Harshil Wason, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG with
Ms. Monika Arora, CGSC with
Mr. Amit Gupta, Mr. R.V. Prabhat,
Mr. Vinay Yadav, Mr. Saurabh
Tripathi, Mr. Vikramaditya Singh and
Mr. Subhrodeep Saha, Advs. for UOI
Mr. Apoorv Kurup, CGSC with
Ms. Aanchal, Adv. for R-4

AND

+ W.P.(C) 6465/2024, CM APPL. 26938/2024

SHRI KHAJAN SINGH

..... Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with
Ms. Gauri Puri, Ms. Aditi Gupta and
Mr. Harshil Wason, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG with
Ms. Monika Arora, CGSC with



Mr. Amit Gupta, Mr. R.V. Prabhat,
Mr. Vinay Yadav, Mr. Saurabh
Tripathi, Mr. Vikramaditya Singh and
Mr. Subhrodeep Saha, Advs. for UOI
Mr. Apoorv Kurup, CGSC with
Ms. Aanchal, Adv. for R-4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

V. KAMESWAR RAO, J

1. The issue which needs to be decided vide this common order is the one which has been raised by the respondents on the maintainability of the writ petition(s) / appeal(s) more particularly in view of the objection taken by stating that the remedy of appeal under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('Act of 2013', for short) is not available to the petitioner as the action on the inquiry report submitted by the Central Level Internal Complaints Committee ('CLICC', for short) needs to be considered and decided as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('Rules of 1965', for short).

2. The relevant facts in brief are that the proceedings under the Rules of 1965 were initiated against the petitioner (in both the petitions) wherein the allegations are primarily relatable to sexual harassment against the petitioner. The CLICC, which is the Inquiry Authority for the purpose of Rules of 1965, has since submitted its report to the



Disciplinary Authority, who has sought the advice of the Union Public Service Commission ('UPSC', for short) as the petitioner is the Group-A Officer. The UPSC has tendered its advice and the same has been given to the petitioner for his representation. Since, the petitioner has not submitted the representation against the advice of the UPSC in W.P.(C) 6465/2024, this Court had extended the time for the petitioner to submit his representation.

3. The plea of maintainability on behalf of the respondents can be seen from the short affidavit filed by the respondents in W.P.(C) 15201/2023, wherein a reference has been made to Rules of 1965, to state that in terms thereof, the Disciplinary Authority is to consider the representation made by the petitioner against the findings of the Inquiry Authority / CLICC.

4. Mr. Chetan Sharma, learned Additional Solicitor General appearing for the Union of India would submit that the misconduct relating to sexual harassment being a misconduct under the service rules/ Rules of 1965, the proceedings of the CLICC are to be considered as the proceedings for the purpose of Rule 14 of the Rules of 1965, and hence, it is the procedure which is laid down under the Rules of 1965 which needs to be followed, inasmuch as, after the submission of the inquiry report, Rule 15 of the Rules of 1965 gets attracted in a manner that CLICC's report was given to the petitioner for him to file his representation before the Disciplinary Authority within 15 days.

5. He further submitted that the Disciplinary Authority along with his comments and the inquiry report of CLICC, has sent the



representation of the petitioner to UPSC. The UPSC has also tendered its advice to the Disciplinary Authority. Moreover, the advice of the UPSC has also been given to the petitioner to enable him to give representation to the Disciplinary Authority within 15 days. As such, the Disciplinary Authority shall now consider the representation made by the petitioner against the recommendation of the CLICC and the advice of the UPSC, to pass a final order in the proceedings.

6. It is his submission that the appeal filed by the petitioner under Section 18 of the Act of 2013, against the recommendations made by the CLICC, is not available because of the applicability of the Rules of 1965, as Section 18 itself contemplates that the remedy of appeal is available in accordance with the provisions of the service rules which are Rules of 1965 in the present case.

7. He submitted that the stand of the petitioner and as contended by Mr. Rajshekhar Rao, learned Senior Counsel appearing for the petitioner that the appeal shall lie to the Court or Tribunal, which is an independent authority to mean a court outside the realm of service rules is a totally misconceived argument, when Section 18 of the Act of 2013, clearly states that an aggrieved person may prefer an appeal to the Court or a Tribunal, in accordance with the provisions of the service rules applicable to that aggrieved person.

8. According to him, the intent of Section 18 of the Act of 2013 is to provide an appeal against the findings of the CLICC, only as per the applicable service rules. Whereas, Rule 15(2) of the Rules of 1965, provides for a representation to be made against the findings of the CLICC to a Higher Authority, i.e., Disciplinary Authority and through



this way, the objective of challenging the findings of the CLICC, which though nomenclatured as an appeal, gets achieved.

9. He states that the issue is no more *res integra* in view of the judgment of the Coordinate Bench of this Court in the case of ***Dinesh Chandra Mishra v. India Counsel of Agriculture Research and Ors., W.P.(C) 6538/2019***, decided on May 31, 2019, wherein this Court, on an identical issue, has clearly held that Section 18 of the Act of 2013, provides that the appeal has to be in accordance with the provisions of the service rules applicable to the aggrieved persons. Hence, it was categorically observed that Rules of 1965, specifically provides that the inquiry conducted by the CLICC would be treated as one held under Rule 14 of the Rules of 1965 by an Inquiring Authority appointed by the Disciplinary Authority and the same shall be acted upon in terms of Rule 14 of the Rules 1965. It further held that the appeal is provided in cases where the recommendation of the committee itself is final, and they are *ipso facto* binding and enforceable under Section 13(4) of the Act of 2013, which is not a case herein. It also held that the report of the CLICC in respect of an employee governed by the Rules of 1965, is not *per se* actionable and would be considered by the Disciplinary Authority.

10. The aforesaid judgment has been followed by the Coordinate Bench of this Court in its subsequent judgment in the case of ***Dr. P.S. Malik v. High Court of Delhi, W.P.(C) 5390/2020*** ('*Dr. P.S. Malik-II*', for short), decided on January 29, 2021, wherein, this Court has clearly held that a representation made under Rule 15 (2) of the Rules of 1965, more than subserves the purpose of an appeal as contemplated



under Section 18 of the Act of 2013. So, in that sense, he submits that the present petitions / appeals are not maintainable and need to be dismissed to enable the respondents proceed in accordance with the provisions of the Rules of 1965 and pass a final order.

11. The submissions of Ms. Monika Arora, learned CGSC appearing on behalf of the Central Reserve Police Force ('CRPF', for short) are on similar lines as have been urged by Mr. Sharma.

12. According to her, the allegations against the petitioner are of sexual harassment and as such, the same need to be proceeded under the Rules of 1965. She submits that in the present case, CLICC is the Inquiring Authority. On submission of report by the CLICC, the further action has to be taken under Rule 15 of the Rules of 1965.

13. It is her submission that in the present case, the Charged Officer/ petitioner, has submitted his representation on the findings of the CLICC. Moreover, the Disciplinary Authority has also forwarded the report of the CLICC, as well as, the representation of the Charged Officer to the UPSC for its advice. The UPSC has also tendered its advice, however, the petitioner has not submitted his representation on the advice of the UPSC in W.P.(C) 6465/2024.

14. According to her, Section 18 of the Act of 2013, clearly contemplates that any person aggrieved with the recommendations of the CLICC made under Section 13 (2) of the Act of 2013 or non implementation of such recommendations, may prefer an appeal to the Court or Tribunal, in accordance with the provisions of the service rules. It is only in the eventuality that where no service rules exist, then without prejudice to the provisions contained in any other law for time



being in force, an aggrieved person may prefer an appeal in such manner as may be prescribed.

15. She submits that even if it is contemplated that an appeal from the recommendations of the CLICC under Clause (i) and (ii) of sub-section 3 of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17, may lie before the Court or Tribunal, on which much reliance has been placed by Mr. Rao, the same cannot construed as ‘this Court’ or an ‘Industrial Tribunal’, inasmuch, the intent of the provision of Section 18 is only that an aggrieved person must have a remedy to challenge the findings of the CLICC before an Independent Authority and in the cases like the present case, the same shall be before Appellate Authority as per the applicable service rules which are the Rules of 1965 in the present case.

16. It is her submission that the Disciplinary Authority being a Higher Authority and Independent Authority than the Inquiry Authority, i.e., CLICC, , there cannot be any doubt that the Disciplinary Authority shall not consider the representation of the petitioner on the findings of the CLICC in accordance with law.

17. She also submits that the Rule 15 of the Rules of 1965, clearly contemplates various steps to be taken pursuant to the submission of the report by the Inquiring Authority, i.e., CLICC in the present case. She also submits that the issue is no more *res integra* in view of the law laid down by the Coordinate Bench of this Court in ***Dinesh Chandra Mishra (supra)*** and ***Dr. P.S. Malik-II***.

18. On the other hand, it is the submission of Mr. Rao that the petitions are duly maintainable before this Court as these petitions raise



an important question of law as to the inter play between the provisions of Act of 2013 read with Rules of 1965 and in particular to the remedy of appeal to a Court / Tribunal as available to the petitioner under Section 18(1) of the Act of 2013 against the recommendations of the CLICC. Therefore, the specific issue raised in these petitions is as to “*what is the Court or Tribunal, if any, that the petitioner would be entitled to approach under Section 18 of the Act of 2013*”.

19. It is his submission that the Act of 2013 in terms of Section 9, 11, 13 and 18, contain several checks and balances between the rights of the complainant and the accused. In this regard, Section 18 of the Act of 2013 provides a right to appeal, inasmuch as, any person aggrieved with the recommendations made by the CLICC under Section 13(2) or 13(3) of the Act of 2013 may prefer an appeal to the Court or Tribunal in accordance with the provisions of the service rules applicable or where no such service rules exist, then the person aggrieved may prefer an appeal in such manner as may be prescribed.

20. In other words, it is his submission that Section 18 of the Act of 2013 is a safeguard provided to both the accused and the victim, who may be aggrieved by the recommendations of the CLICC, to prefer an appeal (which is an independent challenge to a previous factual and legal determination) before a judicial body i.e., a Court or a Tribunal. Any attempt to designate a quasi-judicial or an administrative body to mean a Court / Tribunal will be violative of the plain and literal meaning of the Section apart from being contrary to the spirit.

21. An endeavour has been made by Mr. Rao to justify that a representation to the Disciplinary Authority under Rule 15(2) of the



Rules of 1965 cannot be same as preferring an appeal to an independent judicial authority by submitting the following:

- i. The Disciplinary Authority is neither a Court / Tribunal nor does it have the trappings of a Court or a Tribunal;
- ii. The Disciplinary Authority's role as prescribed under the Rules of 1965 is limited to deciding the quantum/nature of penalty;
- iii. The Disciplinary Authority is not empowered to reopen / review the findings of the CLICC. Section 13(4), of the Act 2013 states that the employer (Disciplinary Authority / MHA in the present case) shall act upon such recommendations, thereby making the recommendations of the CLICC binding upon it;
- iv. The Disciplinary Authority who is also the accused person's employer cannot be considered as an independent body having no interest whatsoever in the proceedings.

22. It is also his submission that the term 'prescribed' has been defined under Section 2(k) of the Act of 2013 to mean prescribed by rules made under the Act of 2013. Under Section 29 (k) of the Act of 2013, the Central Government has the power to frame rules on the manner of appeal under Section 18 of the Act of 2013. However, till date, no such rules have been formulated to provide for an appeal mechanism to the employees governed by the Rules of 1965.

23. Therefore, it is his submission that on a conjoint reading of the provisions of the Act of 2013, it is evident that once the Inquiry Report has been issued with findings / recommendations, the same is open to



challenge under an appeal which has to be made to a Court or Tribunal in accordance with the service rules, and where such rules do not exist, then, in such manner as may be prescribed. Having not exercised its powers under Section 29(k) of the Act of 2013, the Central Government/MHA cannot by way of executive instructions dilute the petitioner's statutory rights.

24. He submitted that the petitioner has *inter alia* assailed the impugned order which include the letter dated April 24, 2024 issued by DG, CRPF / respondent No.2 forwarding the advice tendered by UPSC which was accepted by the Disciplinary Authority / MHA, i.e., imposition of a punishment of dismissal from service and granted 15 days time to the petitioner to make a representation in respect of the same.

25. It is his submission that in the prior W.P.(C) No. 805/2024 filed by the petitioner, he assailed the letter dated October 27, 2023 issued by the DG, CRPF, wherein it was stated that the MHA had accepted the report dated September 19, 2023 of the CLICC, and called upon him to submit a written representation within 15 days in accordance with Rule 15(2) of the Rules of 1965. In the said petition, on January 23, 2024, in view of the stand of the CRPF that the petitioner had availed of his remedy by submission of his representation/appeal to the DG, CRPF, the petition was withdrawn to enable the authority to consider and decide the same and seek such remedy available in law.

26. He submitted that the withdrawal was on the assurance of the CRPF that the representation dated November 10, 2023 and December 26, 2023, wherein the petitioner had sought clarifications on the



appellate authority under Section 18 of the Act of 2013, would be duly considered. Pertinently, no such consideration or order has been issued to the petitioner till date.

27. With regard to W.P.(C) 15201/2023, it has been submitted by Mr. Rao that petitioner has, *inter alia*, assailed the impugned orders including the letter dated October 27, 2023 issued by the DG, CRPF wherein it was stated that the MHA had accepted the report dated September 19, 2023 of the CLICC, and called upon the petitioner to submit a written representation within 15 days in accordance with the provision contained under Rule 15(2) of the Rules of 1965. The petitioner filed a representation in terms of the order dated November 30, 2023 without prejudice to his rights and contentions. Further, vide order dated November 30, 2023 and December 07, 2023, it was clarified that further action taken by the respondents would be subject to further orders passed by this Court.

28. He further submitted that the inquiry proceedings in the complaints filed by the complainants have been conducted under the Act of 2013, in accordance with the applicable service rules, i.e., Rules of 1965. The stand of CRPF is that the inquiry in respect of complainant in W.P.(C) 6465/2024 ('complainant No.1.', for short) was re-opened, despite closure by MHA on September 29, 2017, since the inquiry had to be conducted as per the Act of 2013.

29. It is his submission that the inquiry proceedings concluded on September 19, 2023, wherein the CLICC submitted its reports, the same was forwarded to the petitioner vide letter dated October 27, 2023 calling upon the petitioner to submit a representation under Rule 15(2)



of the Rules of 1965. Thereafter, vide letters dated April 24, 2024 (complainant No.1) and May 13, 2024 [complainant in W.P.(C) 15201/2023 / complainant No.2], the advice tendered by the UPSC has been forwarded to the petitioner by DG, CRPF upon approval from MHA, calling upon the petitioner to submit his representation. This is in view of Rule 15(3)(b) of the Rules of 1965.

30. He submits that Rule 14 of the Rules of 1965 provides for procedure for inquiry for imposition of major penalties. The CLICC plays a dual role of conducting the Preliminary Inquiry and Disciplinary Inquiry in matters relating to Act of 2013 and gives an Inquiry Report. Notably, such an inquiry report ought to be considered as the final report which is binding on the Employer / Disciplinary Authority under the Rules of 1965 in view of Section 13(4) of the Act of 2013. However, with Rule 15(2) of the Rules of 1965, the inquiry report is forwarded to the Charged Officer seeking a representation irrespective whether the report is favourable or not. The UPSC advice is then sought under Rule 15(3) of the Rules of 1965, after which another opportunity is given to the Charged Officer to make a representation in respect of the UPSC advice under Rule 15(3)(b) of the Rules of 1965. As per Rule 15(4) of the Rules of 1965, the Disciplinary Authority shall have to consider the representation of the Charged Officer under Rule 15(2) and / or Rule 15(3) before proceeding further under Rule 15 (5) & (6) of the Rules of 1965.

31. It is his submission that under Rule 22 of the Rules 1965, the order passed by the CLICC while conducting an inquiry under Rule 14 is not appealable. Therefore, there is no provision of appeal against the



recommendation of the CLICC under the Rules of 1965. Whereas under Rule 24, the Appellate Authority of the petitioner to whom an appeal would lie for appealable orders under Rule 23 is the Appointing Authority / MHA in the present case.

32. It is his case that there has been inconsistencies in the stand of the respondents *viz-a-viz* appeal under Section 18 of the Act of 2013, inasmuch as, as per CRPF's counter-affidavit, the petitioner has an alternative efficacious remedy to file an appeal under Section 18 of the Act of 2013. Further, reliance has been placed on the MHA's letter dated January 22, 2024, wherein it is stated that serving of the inquiry report was "as good as providing a window of appeal to the Accused Officer by the Disciplinary Authority". Moreover, no order has been passed by the Appellate Authority in respect of the representation of the petitioner under Rule 15(2) of the Rules of 1965 and the writ petition was premature.

33. Therefore, it has been submitted by Mr. Rao that the Rules of 1965, do not envisage any Court or Tribunal, or prescribe any rules for the manner of appeal under Section 18(1) of the Act of 2013. While an appeal under Section 18(1) of the Act of 2013 is preferred against a recommendation under Section 13(3) of the Act of 2013, the inquiry report being issued under Rule 14 of the Rules of 1965 is not appealable in view of Rule 22 of the Rules of 1965.

34. He submits that on a demurrer, if the appeal under Section 18(1) of the Act of 2013 is the representation under Rule 15(2) of the Rules of 1965, the same necessarily has to be before a Court or Tribunal in accordance with the service rules. In this regard, there is no



appellate authority being a Court or Tribunal under the Rules of 1965 to assail the recommendations of the inquiry report under Rule 14 and / or decide the representation under Rule 15(2) of the Rules of 1965.

35. It is his case that if the argument of the respondents is taken to its logical end that the Disciplinary Authority / MHA is the Appellate Authority to consider an appeal against the recommendation of the CLICC, this would lead to an incongruity since Section 13(4) of the Act of 2013 makes it mandatory for the Employer / MHA to act upon the recommendation of the CLICC. Therefore, the employer can never be the Appellate Authority inasmuch as the employer is statutorily bound to act upon the recommendations of the CLICC.

36. He submits that on literal reading of Section 18(1) of the Act of 2013, the provision of an appeal to a Court or Tribunal is an intelligible result and has to be construed literally. This is particularly since the Rules of 1965 do not have any provision for an appeal to a Court or Tribunal or other such prescribed Appellate Authority as mentioned hereinabove. In the event, the provision of appeal under Section 18 (1) is treated to be akin to a representation under Rule 15(2), it would lead to rewriting the statute since the intention was to ensure a right of appeal in consonance of principles of natural justice.

37. It is his submission that in the present petitions, the impugned orders have been issued by the DG, CRPF albeit upon approval of the Disciplinary Authority / MHA.

38. He submits that the reliance placed by the respondents on the judgments passed by the Coordinate Bench of this Court in the cases of *Dinesh Chandra Mishra (supra)* and *Dr. P.S. Malik-II* is misplaced



inasmuch as the facts of the cases therein were different. Moreover, *Dinesh Chandra Mishra (supra)*, does not consider the legal objections raised in the present writ petitions and in fact holds that the report of the CLICC in respect of an employee governed by the Rules of 1965 is not *per se* actionable, which is entirely contrary to Section 13(4) of the Act of 2013. In this regard, it is submitted that the Act of 2013 being a statute cannot be rendered nugatory by virtue of Rules of 1965 which ought to have carried out necessary amendments, or in the least prescribed a manner of appeal as envisaged under Section 29 (k) of the Act of 2013.

39. It is the submission of Mr. Rao that it is no more *res integra* that in the event there is a conflict between the Rules framed under Article 309 of the Constitution of India, 1950 and a law made by the appropriate legislature, the law prevails. (Ref: *S.K. Nausad Rahaman & Ors. v. Union of India & Ors. (2022) 12 SCC 1*).

40. He submits that pursuant to the judgment in *Dinesh Chandra Mishra (supra)*, the Supreme Court rendered a judgment in *Dr. P.S. Malik v. High Court of Delhi and Another, (2020) 19 SCC 714* ('*Dr. PS Malik-I*', for short), wherein it was held that the petitioner therein had a right of appeal against the recommendation made under Section 13(2) or (3) which was appealable under Section 18(1) of the Act of 2013. However, this Court in *Dr. P.S. Malik-II* did not refer to the said observation of the Supreme Court, and relied upon *Dinesh Chandra Mishra (supra)* which was rendered prior in time. Further, in *Dr. P.S. Malik-II*, after the Supreme Court judgment, the petitioner had availed his remedy of appeal by filing a writ petition and First Appeal. Further,



the said judgment was factually different since it dealt with the Disciplinary Authority being the Full Court in light of Article 235 of the Constitution of India, which is not akin to MHA under the Rules of 1965.

41. To further support his aforesaid submissions, reliance has been placed by Mr. Rao upon the following judgments:

- i. *Union of India and Ors. v. Dilip Paul, 2023 SCC OnLine SC 1423;*
- ii. *Aureliano Fernandes v. State of Goa and Ors., 2023 SCC OnLine SC 621;*
- iii. *Union of India & Ors. v. Dalbir Singh, (2021) 11 SCC 321;*
- iv. *Nirmala J. Jhala v. State of Gujarat & Anr., (2013) 4 SCC 301;*
- v. *Medha Kotwal Lele & Ors. v. UOI & Ors. (2013) 1 SCC 297;*
- vi. *Mukesh Khampariya v. State of Madhya Pradesh & Ors., 2023 SCC OnLine MP 3626;*
- vii. *Rashi v. Union of India & Anr., 2020 SCC Online Del 1555;*
- viii. *Dr. Sonali Badhe v. Ashish Chandhra Singh, W.P. (C) No. 4756/2014, decided on September 10, 2015;*
- ix. *Dinesh Chandra Mishra (supra) [para 3 and 4];*
 - a. *Review Petition No.390/2019* dismissed vide order dated September 20, 2019;
 - b. *SLP (C) No. 43513/2019* against the dismissal of



the Review Petition vide order dated February 28, 2020.

- x. *Dr. P.S. Malik-II;*
- xi. *Dr. P.S. Malik-I;*
- xii. *SLP filed in Dr. P.S. Malik-II being SLP (C) No. 2770/2021, dismissed as withdrawn vide order dated May 11, 2021;*
- xiii. *S.K. Nausad Rahaman & Ors. v. Union of India & Ors. (2022) 12 SCC 1;*
- xiv. *Veerendra Kumar Dubey v. Chief of Army Staff & Ors. (2016) 2 SCC 627;*
- xv. *Secretary, A.P.D. Jain Pathshala & Ors. v. Shivaji Bhagwat More & Ors., (2011) 13 SCC 99;*
- xvi. *Tirupati Balaji Developers P Ltd. & Ors. v. State of Bihar & Ors., (2004) 5 SCC 1;*
- xvii. *Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and Others, (1995) 2 SCC 474;*
- xviii. *Mohd. Riyazur Rehman Siddiqui v. Deputy Director of Health Services, 2008 SCC OnLine Bom 938;*
- xix. *Garikapti Veeraya v. N. Subbiah Choudhry & Ors., AIR 1957 SC 540;*
- xx. *DB Corp Ltd. v. Shailja Naqvi and Ors., 2022 SCC OnLine Del 2211;*
- xxi. *Ganesan v. T.N. Hindu Religious & Charitable Endowments Board & Ors., (2019) 7 SCC 108.*



ANALYSIS

42. Having heard the learned counsel for the parties, at the outset, we may state that the issue raised by the respondents is no more *res integra*, in view of the judgment of the Coordinate Bench of this Court in the case of ***Dinesh Chandra Mishra (supra)***, wherein in paragraphs 1 to 3, it has been held as under:-

“1. The petitioner has assailed the order dated 04.02.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 405/2019. The Tribunal has rejected the Original Application preferred by the petitioner wherein he had assailed the recommendations made by the Internal Complaints Committee (ICC) to take action against the petitioner in relation to his alleged misconduct of sexually harassing the complainant. The Tribunal has rejected the said Original Application as premature since no action has yet been taken against the petitioner on the basis of the said recommendations.

2. It is not in doubt that the CCS (CCA) Rules are applicable to the petitioner and, therefore, the enquiry conducted against the petitioner is in terms of proviso to Rule 14(2) of the said Rules. The petitioner has sought to place reliance upon Section 18 of the Sexual Harassment of Women at workplace (Prevention, Prohibition, and Redressal) Act, 2013 which, inter alia, provides that any person aggrieved from the recommendations made under clause (i) or clause (ii) of sub-section (3) of section 13 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. The petitioner submits that he had, accordingly,



approached the Tribunal against the recommendations made by the ICC.

3. In our view, this submission of the petitioner is misconceived inasmuch, as, the said Section itself provides that the appeal has to be in accordance with the provision of the service rules applicable to the person concerned. As noticed hereinabove, the petitioner is governed by the CCS (CCA) Rules which specifically provide that the enquiry conducted by the ICC would be treated as one held under Rule 14 of the CCS (CCA) Rules by an Inquiring Authority appointed by the Disciplinary Authority and the same shall be acted upon in terms of Rule 14. The report of the ICC in respect of an employee governed by the CCS (CCA) Rules is not per se actionable and would be considered by the Disciplinary Authority. The appeal is provided in cases where the recommendation of the committee itself is final, and they are ipso facto binding and enforceable under Section 13(4) of the aforesaid act. That is not the position in the present case.

(emphasis supplied)

43. It is the submission of Mr. Rao that in the case of ***Dr. P.S. Malik-I***, it was held by the Supreme Court that the petitioner therein had a right to appeal against the recommendation made under Section 13(2) or (3) of the Act of 2013, which was appealable under Section 18 (1) of the Act of 2013. He also states that this Court in ***Dr. P.S. Malik-II***, on which reliance has been placed by Mr. Sharma and Ms. Arora, has not referred to the observation made by the Supreme Court in ***Dr. P.S. Malik-I***, but relied upon the judgment ***Dinesh Chandra Mishra (supra)***, which was rendered prior in time.

44. Suffice to state that the Supreme Court in ***Dr. P.S. Malik-I***, did state what has been noted above but at the same time, the Supreme



Court did not consider the issue in the context of what shall be the effect of the provisions of Rules of 1965 on Section 18(1) of the Act of 2013. Even otherwise, the provision of remedy of appeal if seen in the context of Rules of 1965, under Rule 15(2) of Rules of 1965, the petitioner has a remedy to challenge the findings of the CLICC before the Disciplinary Authority, which is not available under the Act of 2013. Therefore, it is in such a context that Section 18 contemplates a remedy of appeal in accordance with the provisions of the service rules. So, it follows that the Rules of 1965, having provided the remedy to challenge the findings of the CLICC, the Division Bench in ***Dr. P.S. Malik-II***, held that the said requirement more than subserves the purpose of appeal under Section 18 of the Act of 2013.

45. At this stage, it is also necessary to highlight the submission of Mr. Rao that a remedy of an appeal before a Court or Tribunal as per the service rules, stipulated under Section 18 of the Act of 2013, has been provided with an intention to provide remedy outside the administrative process to an independent authority, who given the nature of misconduct, shall have to consider the issue fairly. Though, the said submission of Mr. Rao, looks appealing on a first blush but on a deeper consideration, when remedy to challenge is provided under the service rules (representation), reading a further remedy of Court / Tribunal, shall have the effect of providing a remedy of challenging the findings outside the realm of administrative process to a Court / Tribunal, which shall make Rule 15 of the Rules 1965, framed under the proviso to Article 309, nugatory. In fact, there would be a conflict between Rule 15 of the Rules of 1965 and Section 18 of the Act of



2013, providing two remedies against the findings of the CLICC. So, it follows that both the provisions must be construed harmoniously, so that one provision does not defeat the other provision.

46. Meaningfully read, it has to be construed that in an eventuality that the Committee / CLICC returns the findings against a government servant, the representation against those findings made by a Charged Officer as per the procedure laid down under Rule 15 of Rules of 1965 thereof, shall satisfy the remedy akin to appeal under Section 18 of the Act of 2013, which is applicable only where the rules concerned specifically prescribe Court or Tribunal as a remedy for filing appeal against the finding / recommendations made by the committee in a given case or where there are no rules, the appeal may be preferred in such manner as may be prescribed. In other words, the rules being in existence providing the remedy to challenge the findings / recommendations of the CLICC in the form of representation to the Disciplinary Authority, by harmoniously construing Section 18 of the Act of 2013, which specifically provides that an aggrieved person may prefer an appeal before a Court or Tribunal in accordance with the provisions of the Service Rules, it must be held that in cases like present one, where procedure of representation against the findings is provided under the Rules of 1965, the remedy to challenge the findings / recommendations, shall surely lie before the Disciplinary Authority as a higher and independent authority and not as a remedy of appeal under Section 18 of the Act of 2013.

47. That being the harmonious construction of Section 18 of the Act of 2013 and Rule 15 of the Rules of 1965, we are of the view, the



submission of Mr. Rao, that a remedy other than the Rule 15 of the Rules of 1965, as contemplated under Section 18 of the Act of 2013, before the Court or Tribunal, ought to be prescribed separately by the respondents under the concerned service rules, is not sustainable.

48. If the submission of Mr. Rao is to be accepted, then the same shall preclude the Disciplinary Authority from passing a final order as expeditiously as possible, as it is a common knowledge that a judicial process before the Court or the Tribunal takes its own time in attaining the finality. In that sense, such an interpretation which really defeats the objective of the service rules i.e., to provide immediate/quick action by the Disciplinary Authority, in a given case, should not be adhered to.

49. Even otherwise, it is also a settled law that in service jurisprudence, where remedies are available under the service rules, there should be minimum interference by Court / Tribunal during the administrative process. It is also a settled law that departmental proceedings must not be ordinarily interfered with till such time the process as contemplated under the rules gets completed, which can thereafter, be made subject matter of judicial review.

50. Even otherwise, assuming for a moment that Mr. Rao is justified in his submission then the same would mean that if in the eventuality the Court or Tribunal upholds the findings of the CLICC, there would be no occasion left for the Disciplinary Authority to consider the findings of CLICC. The Disciplinary Authority only has to pass a penalty order. Similar would be the position for an appellate authority, who as an appellate authority, even if it wants to disagree with the findings of the CLICC, will not be able do the same, as a



judicial authority like a Court or Tribunal, has already put the approval on the findings of the CLICC. In that sense, the decision of a Disciplinary Authority / appellate authority, imposing penalty/ agreeing / disagreeing with the same, would be only an empty formality or at the most, confining itself to the quantum of penalty / punishment.

51. Further, inasmuch as the submissions of Mr. Rao, that (1) any attempt to designate a quasi judicial body as a Court or Tribunal, shall be violative of plain and literal meaning of Section 18 of the Act of 2013, apart from being contrary to the spirit of that Section; (2) the term 'prescribed' has been defined under Section 2(k) of the Act of 2013, to mean 'prescribed' by rules made under the Act of 2013 and the Central Government has the power to frame rules on the manner of appeal in terms of Section 18 of the Act of 2013, but till date no such rules have been formulated to provide for an appeal mechanism to the employees governed by the Rules of 1965 and (3) the stand of the respondents is contrary inasmuch as the respondents have stated that the petitioner has a remedy of appeal under Section 18 of the Act of 2013, are concerned, the same are unmerited in view of findings in paragraph 46 above.

52. We may also state here that Section 18 of the Act of 2013, which though prescribes that an appeal may be preferred to a Court or Tribunal as per the service rules, the same would kick in, only in the eventuality, as stated by this Court in *Dinesh Chandra Mishra (supra)*, i.e., when the recommendation of the committee itself is final, *ipso facto* binding and enforceable under Section 13(4) of the Act of 2013.

53. We may also note that even the DoP&T ,in its instructions



dated November 04, 2022, has stated as under:-

“(E) APPEAL UNDER SECTION 18(1) OF THE SHWW (PPR) ACT, 2013 BY THE COMPLAINANT

➤ *Where a Complaint Committee has not recommended any action against the employee against whom the allegation have been made in a case of involving allegations of sexual harassment, the Disciplinary Authority shall supply a copy of the Report of the Complaints Committee 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 18(1) of the Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.*

[Para 3 of OM No. 11012/5/2016-Estt.A-III dated 02.08.2016]”

54. So, it follows that even the DOP&T, through the Nodal Ministry, has also expressed itself that in case a complaint committee has not recommended any action against a Charged Officer, the Disciplinary Authority shall have to supply a copy of the report of the complaint committee to the complainant for her to make a representation, if any. Moreover, the Disciplinary Authority shall also need to consider the representation, if any, made by the complainant, before coming to any final conclusion. It has also been clarified that such a representation shall be deemed to be an appeal under Section 18 (1) of the Act of 2013.

55. We may also note that Mr. Rao during his submissions, has also relied upon the report of the Parliamentary Standing Committee on Human Resource Development on the Protection of Women Against



Sexual Harassment at Work Place Bill, 2010, more specifically, on Paras 20.3, 20.4 and 20.5, under the head ‘Clause 18: Appeal’, which we reproduce as under, to contend that even in the recommendations made by the Standing Committee, it has been observed that the proposed legislation envisages no further inquiry after the Report of the complaints committee has been given, which would be mandatorily implemented by the employer. However, the right to appeal both to the aggrieved woman and the respondents stays in consonance with the principles of natural justice:-

“20.3.....On the issue of appellate forum of court or tribunal, it was clarified by the Ministry that wherever Service Rules prescribed the Court of Law as an appellate forum, an appeal would be preferred before that court. Even in cases where Service Rules do not exist, a Court of Law may be prescribed as the appellate forum through the Rules.

20.4 The Committee while appreciating the concerns about likelihood of aggrieved woman as well as witnesses being made to face further harassment and uncalled for exposure in case of appeal being made in the Court or Tribunal would like to point out that principle of nature justice has to be adhered to in every case. Sexual harassment cases cannot be made an exception. The Committee would like to point out that with required steps and extra precaution taken by making the conduct of appeal proceedings in camera, chances of victims/witnesses facing undue harassment will not be there. It would also be better if onus of providing the case should be on the employer.

20.5 So far as Supreme Court directives in Dr. Medha Kotwal case is concerned, the Committee observes that the proposed legislation envisages no further inquiry after the Report of the Complaints Committee has been given which would be mandatorily implemented by the employer. However, the right to appeal to both to the aggrieved woman and the respondent stays in consonance with principles of natural justice.”

(emphasis supplied)



56. The above recommendation of providing the right to appeal both to the aggrieved woman and the respondent stays in consonance with the principles of natural justice and the same must be read keeping in view the clarification of the Ministry that wherever service rules prescribe the Court of law as an appellate forum, an appeal would be preferred before that Court and even in cases where service rules do not exist, a Court of law may be prescribed as the appellate forum through the Rules.

57. Mr. Rao has also made a submission that under Section 13(4) of the Act of 2013, it has been provided that the employer (Disciplinary Authority / MHA, in the present case) shall have to act upon the recommendation of the CLICC, thereby making the recommendations of the CLICC binding upon the employer.

58. We may state here that the said submission of Mr. Rao, is not appealing to us for the reason that Section 13(4) of the Act of 2013, cannot be read in isolation, when the Rules of 1965 (Rules 15) read in consonance with the Act of 2013 (Section 18), provide for the remedy of challenging the findings / recommendations of the CLICC. It needs to be highlighted that Section 13(4) would only come into play, when the recommendations / findings of the CLICC, attain the finality. It goes without saying that once the recommendations / findings are challenged by the Charged Officer before a higher authority i.e., Disciplinary Authority, Section 13(4) will not come into play. In other words, Section 13(4) would only kick in, if in the eventuality the Charged Officer, accepts the findings / recommendations of the CLICC, without any demur, which is not the case here. Therefore, this plea of



Mr. Rao, is also not sustainable.

59. Insofar as, the plea of Mr. Rao that there is an inconsistency in the stand of the respondents inasmuch as it is the case of the respondents themselves that the petitioner has a remedy of appeal under Section 18 of the Act of 2013, is concerned, in view of our findings above as well as the stand taken by Mr. Sharma that there cannot be any estoppel against the law, this plea of Mr. Rao is also liable to be rejected.

60. Having said so, insofar as reliance placed by Mr. Rao on the judgment of the Coordinate Bench of this Court in the case of **Dr. Sonali Badhe (supra)** is concerned, more specifically, on observations made by this Court in paragraphs 12 and 14 thereof, the same will not help the case of the petitioner. This we say so, on carefully perusing the said paragraphs. In fact, in paragraph 12, this Court has held report of the Committee is deemed to be a report of the inquiring authority appointed by the disciplinary authority. As such, after the inquiry report is submitted by the Committee, Rule 15 of the Rules of 1965 would come into play. Though it was held that Rule 15 has to be read along with Section 13 of the Act of 2013, but the Court has also held that in such a scenario, the employer would be the Disciplinary Authority, who, upon receipt of the report, is to record tentative reason of disagreement on the findings, if any, and grant an opportunity to delinquent officer to submit a written report or submission to the disciplinary authority and thereafter the disciplinary authority, after considering the report, record its finding and in case the disciplinary authority is of the opinion that any penalties are to be imposed make an



order imposing such penalties.

61. In fact while disposing of the petition, in paragraph 17, this Court has also categorically held that as the real challenge before the Tribunal was to the recommendation made by the Committee, the Tribunal ought to have taken note of the fact that the Disciplinary Authority was yet to give its findings and also that no punishment has been imposed on the delinquent. As such, the writ petition was disposed of with a direction to the Tribunal to decide the question of maintainability of OA on merits. Therefore, the said judgment will not help the case of the petitioner.

62. We may also state though Mr. Rao has referred to some other judgments as mentioned in paragraph 41 above, in support of his submission that this Court or Tribunal must entertain the appeal under Section 18 of the Act of 2013, but in light of our findings above, we are of the view that issue under consideration being no more *res integra*, as Coordinate Benches of this Court in ***Dinesh Chandra Mishra (supra)*** and ***Dr. P.S. Malik-II***, have conclusively held that the representation against the recommendations/findings of the CLICC more than subserves the requirement of an appeal and also for our additional reasons, the same are not being referred to.

63. In view of the aforesaid discussion, we are of the view that the present petition(s) / appeal(s) under Article 226 / Section 18 of the Act of 2013, shall not be maintainable. The Disciplinary Authority would be within its right to act on the report of the CLICC and proceed in accordance with law. Since, the petitioner has not submitted his representation on the advice of the UPSC, this Court grants time till



May 26, 2024 to the petitioner for the same. It goes without saying, that the Disciplinary Authority, after receiving the representation of the petitioner, shall by considering the advice of the UPSC as well as the recommendations / findings of the CLICC, act in accordance with the procedure as laid down in the Rules of 1965. The petitions along with pending applications are hereby dismissed. No costs.

V. KAMESWAR RAO, J

RAVINDER DUDEJA, J

MAY 20, 2024/aky/jg