

EASTERN RAILWAY

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Kolkata, Dated 12.10.2015

ALL CONCERNED

Sub: Alignment of Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 - Guidelines regarding.

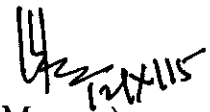
The following copy of Railway Board's letter No. E(D&A) 2015 GS1-1 dated 23.09.2015 (RBE No. 114/2015) is attached herewith for information, guidance and strict adherence.

Railway Board's earlier letter dated 05.03.2015 mentioned therein was circulated under this office serial number 27/2015.

The Serial Circular under circulation is also available on Eastern Railway's official website viz. URL No. <http://www.er.indianrailways.gov.in> under **About us → Department → Personnel → CODEs, MANUALs, CPO's Serial Circulars → CPO's SERIAL CIRCULARS.**

DA: As above.

Index No. 1023: Guidelines for implementation of Service Rules aligned with provisions laid down in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.



(K.K. Murmu)

Asstt. Personnel Officer/R & Bills
for Chief Personnel Officer

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

No. E(D&A) 2015 GS1-1

New Delhi, dated 23.09.2015

The General Manager(P)
All Indian Railways and
Production Units etc.
(As per standard list).

Sub: Alignment of Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 – Guidelines regarding.

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Attention is invited to Railway Board's letter of even no. dated 05.03.2015 on the above subject whereby instructions were issued for alignment of the Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [SHWW(PPR) Act] and the rules issued thereunder.

2. Basic guidelines regarding the constitution of the Internal Complaints Committee are contained in para 5.2 of the letter dated 05.03.2015. The following additional guidelines are laid down in respect of constitution and working of the Internal Complaints Committees :-

2.1 The Internal Complaints Committee shall function at the Zonal Railway level and at the Divisional levels. All the extra-Divisional Units reporting directly to the zonal Headquarters shall be covered by the Committee constituted at the zonal Railway level and the other units shall be covered by the Committees constituted at the Divisional level. The workshops etc. will also be covered by the Committees at the Divisional level depending on their geographical location. The Public Sector Undertakings under the Ministry of Railways shall have their separate Internal Complaints Committee.

2.2 In terms of section 4(3) of the SHWW(PPR) Act, the tenure of the Presiding Officer/Members of the Internal Complaints Committee shall not exceed three years.

2.3 The composition of the Internal Complaints Committee at the Zonal and Divisional levels and details of their jurisdiction may be published on the official websites of the zonal Railways and the changes in the composition of the Committees may be promptly updated on the websites.

2.4 In terms of Rule 3(1) of the Sexual Harassment of Working Women (Prevention, Prohibition and Redressal) Rules, 2013 [SHWW(PPR) Rules], the Member nominated to the Internal Complaints Committee from amongst non-government organisations in terms of section 4(2)(c) of the SHWW(PPR) Act, shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Complaints Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-conditioned class or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

3. In terms of section 22 of the Act, the employer shall include the number of cases filed, if any, and their disposal under the Act, in the annual report of his organization. The Railways etc. and the PSUs under the Ministry of Railways may furnish the requisite information as per the proforma enclosed as Annexure-1, through e-mail at the following address – dell@rb.railnet.gov.in. It may be ensured that the information for the year ending on 31st March is furnished to Railway Board's office by 30th April positively so that the same may be compiled and furnished to the Department of Personnel and Training.

4. Railways etc. may advise their units concerned to refer to the SHWW(PPR) Act, 2013 and the SHWW(PPR) Rules, 2013, which are available at the website of the Ministry of Women and Child Development (wcd.nic.in) under Legislation/Acts, and in case of any conflict/doubt vis-à-vis Board's instructions dated 05.03.2015, the provisions of the Act/Rules shall prevail.

5. Rule 9(2) of the RS(D&A) Rules, 1968 lays down that the Complaints Committee established for inquiring into complaints of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in these Rules. A guide on '*Steps for Conduct of Inquiry in complaints of Sexual Harassment*', intended to give the procedure as prescribed in the rules/instructions is enclosed as Annexure-II. This is, however, not intended as a substitute for reference to the Rules and instructions. Members of the Complaints Committees and others who are required to deal with such inquiries should acquaint themselves with RS(D&A) Rules, 1968 and instructions issued thereunder.

6. The above provisions may be brought to the notice of all concerned on the Railways.

7. Hindi version will follow. Please acknowledge receipt.

DA: As above



(S. Modi)
Dy. Director Estt. (D&A)
Railway Board

ANNEXURE – 1**ANNUAL RETURN ON CASES OF SEXUAL HARASSMENT***Period : 1st April to 31st March.....

Name of Railway/Production Unit/Public Sector Undertaking :

S.No.	Subject		
1	Number of complaints of sexual harassment received in the year		
2	Number of complaints disposed off during the year		
3	Number of cases pending for more than 90 days		
4	Number of workshops on awareness programmes against sexual harassment conducted during the year		
5	Nature of action	Number of employees on whom major penalty was imposed	
		Number of employees on whom minor penalty was imposed	
		Number of employees against whom administrative action was taken	
		Number of employees on whom fine was imposed in terms of Section 13(3)(ii) of SHWW(PPR) Act	
		No. of accused employees transferred in terms of Section 12(1)(a) of SHWW(PPR) Act	
6	Number of Internal Complaints Committee functioning as on last day of financial year		

* Information is to be provided in consolidated form for the entire zonal Railway/Production Unit/Public Sector Undertaking

Steps for Conduct of Inquiry in Complaints of Sexual Harassment

Complaints Committees

1. Complaints Committees have been set up at the Zonal and Divisional level in all zonal Railways and other offices under the Ministry of Railways in pursuance to the judgement of the Hon'ble Supreme Court in the *Vishakha* case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act"), the Internal Complaints Committee (referred to as "Complaints Committee" hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman and at least half of its members should be women. In case a woman officer of sufficiently senior level is not available in a particular office, an officer from another office may be so appointed. To prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committees should involve a third party, either an NGO or some other body which is familiar with the issue of sexual harassment.

What is Sexual Harassment?

2. "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) sexually coloured remarks; or
- (iv) showing any pornography; or
- (v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

3. The following circumstances, among other circumstances, in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment :-

- (i) implied or explicit promise of preferential treatment in employment; or
- (ii) implied or explicit threat of detrimental treatment in 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.

Workplace defined:

4. As per Section 2(o) of the Act, the following places are included within the ambit of the expression "workplace":

- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, etc. -- established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
- (ii) hospitals or nursing homes;

- (iii) any sports institute, stadium, etc., used for training, sports or other activities relating thereto;
- (iv) any place visited by the employee arising out of or during the course of employment -- including transportation provided by the employer for undertaking such journey;
- (v) a dwelling place or a house.

Initial relief

5. The Committee will also have the power to recommend:-
- (a) to transfer the aggrieved woman or the charged officer to any other workplace; or
 - (b) to grant leave to the aggrieved woman upto a period of three months. (The leave will not be deducted from her leave account.)

Complaints Committee to be Inquiring Authority

6. As per proviso to Rule 9(2) of RS(D&A) Rules, 1968, in case of complaints of sexual harassment, the Complaints Committee set up for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 9.

Need for investigation

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

Dual Role

9. In the light of the Proviso to the Rule 9 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already

discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 9 of RS (D&A) Rules, 1968. Failure to observe the procedure may result in the inquiry getting vitiated.

10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 9 (2) mentioned above, care has to be taken at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. When allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

Decision to issue Charge sheet, and conducting Inquiry.

12. On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 9 (6), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge Sheet. As per Rule 9(9), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.

13. If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 10 of the RS(D&A) Rules.

The Inquiry-stages

14. In case the Charged Officer denies the charges and his reply is not convincing, the Charge Sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 9 (10) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee 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 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.

The Section 11(4) of the Act requires that the inquiry shall be completed within a period of ninety days.

15. The Disciplinary Authority shall also in terms of Rule 9 (9) (c) appoint a railway or any other Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. The inquiry would be held in respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 9 (13).

16. The Inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such documents, if not given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. The Inquiring Authority would consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed. Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.

17. When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

Examination of Witnesses

18. Summons would, thereafter, be sent to the witnesses listed in the Charge Sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions of the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.

19. The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appears as a witness, she would also be examined and cross-examined. The Inquiry Officer may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.

20. If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by

one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

Daily Order Sheet

21. The Inquiring Authority would also maintain a document called Daily Order Sheet in which all the main events of the inquiry and including requests/representations by the Charged Officer or the Presenting Officer, and decisions thereon would be recorded. For example (i) if the Charged Officer refuses to cross-examine the witnesses, this should be recorded in the Daily Order Sheet (ii) the Daily Order Sheet should record that the Charged Officer had been advised that he has the right to engage a Defense Assistant (iii) it should also be clearly mentioned that the Charged Officer was also informed as to who are eligible to assist him as Defense Assistant. (iv) the Daily Order Sheet should also record in case request of the Charged Officer for engaging a particular person as Defense Assistant is disallowed in the light of the existing instructions. Daily Order Sheet should be signed by the Inquiring Authority, Presenting Officer and the Charged Officer/Defense Assistant.

Defence Evidence

22. After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross-examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

General Examination of the Charged Officer

23. After the Defense evidence is over, the Inquiring Authority shall ask the Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defense witness. In case however, he declines to do so, the Inquiring Authority is required to generally question him. At this stage due care is required to be exercised that as per Rule 9(21) the purpose of this stage is to apprise Charged Officer of the circumstances which appear to be against him. This is to enable the Charged Officer to explain them to the Inquiring Authority. Presenting Officer and the Defence Assistant do not take any part in the General Examination. Charged Officer may not be compelled to answer questions during examination by the Inquiring Authority.

Brief

24. After this, the Presenting Officer would be asked to submit his brief. A copy of this brief would be given to the Charged Officer. Both the Presenting Officer and the Charged Officer may be allowed reasonable time for submission of their brief.

25. The Inquiring Authority then writes the Inquiry Report in which the evidence in support of the charges and against them will be examined. The Report should be a 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 will give its findings on the Articles as proved or not proved. In case any Article of charge is proved only partially, then the Inquiring Authority should record the extent to which that Article has been proved.

Powers of the Committee to make recommendations

26. Normally, the Inquiry Officer is not allowed to make any recommendations in his report. Here the function of the Complaints Committee acting as the Inquiring Authority differs. The Complaints Committee may however, make recommendations including what has been mentioned in para 5 above;

- (c) to grant such other relief to the aggrieved woman as may be prescribed; or
- (d) 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.
- 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 his heirs.
- Such compensation will not amount to penalty under Rule 6 of RS(D&A) Rules, 1968 in terms of the Explanation (x) to Rule 6 inserted vide notification no. E(D&A) 2015 RG6-2 dated 08.09.2015.
- 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.
- The Committee may also recommend action against any witness if such witness has given false evidence or produced any forged or misleading document.

27. The Complaints Committee should also remember that as per the Section 16 of the Act, notwithstanding the RTI Act, 2005, information as regards identity and addresses of the aggrieved woman, respondent and witnesses, Inquiry proceedings, Recommendations of the Committee, shall not be published or communicated or made known to public, press or media in any manner. Provided that 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.

28. With the above stage, the inquiry would be formally over. The Inquiring Authority should prepare separate folders containing the documents mentioned in Rule 9 (25) (ii).

Suspension

29. A Railway servant 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 Railway servant in office will be against wider public interest such as there is a public scandal and it is necessary to place the Railway

servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals. It may be desirable to resort to suspension in case of misdemeanor involving acts of moral turpitude.

Special provisions to deal with threats or intimidation

30. Disciplinary Authority may also dispense with inquiry under Rule 14 (ii), and action may be taken without the inquiry when the Disciplinary Authority concludes that it is not reasonably practicable to hold such an inquiry. The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. Such situation would be deemed to have arisen:

- (i) Where the Railway servant, through or together with his associates terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or
- (ii) Where the Railway servant himself or with or through others threatens, intimidates and terrorizes the Disciplinary Authority, Members of the Committee, the Presenting officer or members of their family.

Disciplinary Authority is not expected to dispense with the inquiry lightly, arbitrarily or with ulterior motive or merely because the case against the Railway servant is weak.