

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

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

New Delhi, dated 05.03.2015

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.

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The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 {SHWW(PPR) Act} has been promulgated on 22.04.2013. Further to the Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 {SHWW(PPR) Rules} were notified on 09.12.2013. The Act and the Rules framed thereunder provide a redressal mechanism for handling cases of sexual harassment at workplace. The Act and Rules are available at the website of the Ministry of Women and Child Development (wcd.nic.in) under Legislation/Acts.

2. The guidelines laid down by the Hon'ble Supreme Court in the case of Vishakha vs. State of Rajasthan, in the matter of sexual harassment of women at the workplace, were circulated on the Railways vide Railway Board's letter no. E(D&A) 97 GS1-4 dated 01.07.1998. These instructions, inter alia, envisaged the constitution of a complaints committee for looking into complaints of sexual harassment and also specified the composition of such committee. These instructions also laid down guidelines regarding preventive steps, disciplinary/criminal proceedings against the offender, workers initiative to raise matters of sexual harassment at meetings, awareness etc. in context of sexual harassment of working women.

3. Subsequently, Railway Board's letter no. E(D&A) 2009 GS1-9 dated 30.01.2010 also laid down that the Complaints Committee shall be in existence at all times. Its composition along with names, contact details should be put on public display notice Board prominently in offices, workshops, stations where there is major concentration of staff. Changes in its composition, whenever necessary, should be made promptly and adequately publicized. It was also laid down that the composition of the Complaints committee be also posted on the websites of the concerned Ministries/Departments/Offices concerned. A copy of DoP&T's O.M. dated 03.08.2009 was also circulated alongwith the said letter which inter alia laid down that the Committee should be effective and functional at all times and that it is desirable for the Committee to meet once a quarter, even if there is no live case and review preparedness to fulfill all requirements of the Vishakha judgment in the Department/Ministry/Organisation concerned.

4. Further, the proviso to Rule 9(2) of the RS (D&A) Rules, 1968 provides that the Complaints Committee established in each office under the Railways enquiring into such complaints shall be deemed to be the inquiring authority appointed by the disciplinary authority and the committee shall hold the inquiry in accordance with the procedure laid down in these rules, to the extent practicable.

5. The procedure being followed on the Railways for dealing with matters of sexual harassment of women at the workplace, has been modified by the SHWW(PPR) Act and the SHWW(PPR) Rules. The salient features of the Act and the Rules and the instructions issued by the Department of Personnel & Training, in this regard are as follows:-

5.1 Definition of the terms 'Sexual Harassment' and 'Workplace'

Section 2(n) and 2(o) of the Act define the terms 'Sexual Harassment' and 'Workplace' in relation to the Act. Rule 3C of the RS(Conduct) Rules has been amended vide Board's letter no. E(D&A) 2014 GS1-4 dated 12.01.2015 to incorporate these definitions in the RS(Conduct) Rules relating to sexual harassment of working women.

5.2 Constitution of Internal Complaints Committee

5.2.1 Section 4 of the Act lays down that:-

- (i) Every employer at a workplace shall constitute a committee known as the 'Internal Complaints Committee' for looking into the complaints of sexual harassment of working women in that organisation, provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.
- (ii) The members of the Internal Complaints Committee shall be nominated as follows:-
 - (a) a Presiding Officer who shall be a woman employed at a senior level at workplace form amongst the employees. Provided that where such senior level employee is not available the Presiding Officer shall be nominated from other offices or administrative units of the workplace. Provided further that in the case the other offices or administrative units do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department on organisation.
 - (b) not less than two Members from amongst 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 organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment;
 - (d) At least one-half of the total Members so nominated shall be women. This however does not imply that most or all of the members of the Complaint committee may be nominated from amongst women. In the interest of fairplay and equal opportunity, male members should also be included in such Committees so that there is no apprehension of bias of the Complaint Committee for either party.

5.2.2 The conditions related to membership of the Internal Complaints Committee are laid down in sub-sections (3) to (5) of section 4 of the Act. Rule 3 of the SHWW(PPR) Rules, 2013 lays down the fee or allowances payable to the member from amongst NGOs/Associations, referred to in para 5.2.1 (ii) (c) above.

5.2.3 Railways etc. may ensure that the Internal Complaints Committees functional in their offices under their Railway etc., satisfy the conditions laid down in the Act. It may also be impressed upon the Complaints Committee to scrupulously follow the instructions contained in Board's letter no. E(D&A) 2009 GS1-9 dated 30.01.2010 relating to functioning of the Complaints Committee.

5.3 Complaint under the SHWW(PPR) Act

5.3.1 The salient features of the section 9 of the Act, relating to filing of complaints under the Act are as follows:-

- (i) The complaint of sexual harassment at the workplace can be made by an aggrieved woman to the Internal Complaints committee within 3 months of the incident (or where there is a series of incidents, within 3 months of the last such incident), provided further that this time limit can be extended by 3 months, for reasons recorded in writing, where the Committee is satisfied that circumstances were there which prevented the woman from filing a complaint within the said period. It is further laid down that where such complaint cannot be made in writing, the Committee shall render all reasonable assistance to the woman to make the complaint in writing.
- (ii) The legal heir of the woman or any other person, as prescribed in Rule 6 of the SHWW(PPR) Rules, 2013 may make the complaint, if the aggrieved woman is unable to do so herself on account of physical or mental incapacity or death or otherwise.
- (iii) If any complaint is received directly by the Internal Committee, the same shall be referred to the appropriate disciplinary authority and the Committee shall inquire into the complaint on the complaint being referred to it by the disciplinary authority.

5.4 Conciliation proceedings

The salient features of the section 10 of the Act, relating to conciliation proceedings, are as follows:-

- (i) The Internal Committee may before initiating inquiry under section 11 of the Act, and at the request of the aggrieved woman take steps to settle the matter between her and the charged official through conciliation, provided that no monetary settlement shall be made as a basis of conciliation.
- (ii) Where a settlement has been arrived at, the Internal Committee shall record the settlement and forward the same to the disciplinary authority to take action as specified in the recommendation.
- (iii) Where a settlement has been arrived as mentioned above, no further inquiry shall be conducted by the Internal Committee.

5.5 Inquiry into complaint

5.5.1 Section 11 of the Act lays down the mechanism of conducting an inquiry into the complaint. The salient features relating to conduct of inquiry are as follows:-

- (i) Subject to the provisions of section 10 of the Act, the Internal Committee shall conduct inquiry into the complaint as per service rules applicable to the charged official. Also where the aggrieved woman informs the Internal Committee that any term or condition of the settlement arrived at under section 10 has not been complied with by the charged official, the Internal Committee shall proceed to make an inquiry into the complaint. Provided further that where the parties are employees, the parties shall during the course of the inquiry be given an opportunity to be heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.
- (ii) The Committee will as far as practicable follow the procedures prescribed in Rule 9 of RS(D&A) Rules, 1968.
- (iii) For the purpose of making inquiry, the Internal Committee shall have the same powers as are vested in the 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 under oath;
 - (b) requiring the discovery and production of documents; and
 - (c) any other matter which may be prescribed.
- (iv) **The inquiry shall be completed by the Internal Committee within a period of 90 days.**

5.6 Recommendations of Internal committee during pendency of inquiry

Section 12 of the Act prescribes the action that can be taken by the Internal Committee during pendency of the inquiry, which are as follows:-

- (i) During the pendency of the inquiry, on a written request made by the aggrieved woman, the Internal Committee may recommend the competent authority on the Railway to-
 - (a) transfer the aggrieved woman or the charged official to any other workplace, or
 - (b) grant leave to the aggrieved woman up to a period of three months, provided that such leave shall be in addition to the leave she would be otherwise entitled.
 - (c) grant such other relief to the aggrieved woman as may be prescribed.

- (ii) On the recommendation of the Internal Committee as above, the employer shall implement the recommendations and send the report of such implementation to the Internal Committee.
- (iii) The other reliefs that may be granted to the complainant by the Internal Committee during the pendency of the inquiry are specified in Rule 8 of SHWW(PPR) Rules, 2013.

5.7 Inquiry report

As per section 13 of the Act, the following action will be taken on the inquiry report of the Complaints Committee:-

- (i) On completion of the inquiry, the Internal Committee shall provide a report of its findings to the disciplinary authority within ten days from the date of completion of inquiry and such report shall be made available to the concerned parties.
- (ii) Where the Internal Committee arrives at the conclusion that the allegation against the charged official has not been proved, it shall recommend to the disciplinary authority that no action is required in this matter.
- (iii) Where the Internal Committee arrives at the conclusion that the allegation against the charged official has been proved, it shall recommend to the disciplinary authority-
 - (a) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the charged official.
 - (b) to deduct, notwithstanding anything in the service rules applicable to the charged official, from the salary or wages of the charged official such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine in accordance with the provisions of Section 15 of the Act. Provided that in case the Railway is unable to make such deduction from the salary of the charged official due to his being absent from duty or cessation of employment it may direct to the charged official to pay such sum to the aggrieved woman. Provided further that in case the charged official fails to pay the sum, the Internal Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer. Such compensation awarded by the Internal Committee to the aggrieved woman or to her legal heirs shall not amount to penalty under Rule 6 of RS(D&A) Rules, 1968.
 - (c) The disciplinary authority shall act upon the recommendation within sixty days of its receipt by him.

Action is being taken to amend Rule 6 of RS(D&A) Rules to provide that such compensation will not amount to a penalty under Rule 6 of RS(D&A) Rules.

5.8 Punishment for false or malicious complaint and false evidence

Section 14 of the Act lays down that-

- (i) Where the Internal Committee arrives at a conclusion that the allegation against the charged official is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the competent disciplinary authority to take action against the woman or the person who has made the complaint under section 9, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as laid down in Rule 10 of SHWW(PPR) Rules. Provided that mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant. Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.
- (ii) Where the Internal Committee arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take action in accordance with the provisions of the service rules applicable to such witness.

5.9 Determination of compensation

Section 15 of the Act lays down that-

- (i) For the purpose of determining the sums to be paid to the aggrieved woman under section 13, the Internal Committee shall have regard to-
 - (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
 - (b) the loss in the career opportunity due to the incident of sexual harassment;
 - (c) medical expenses incurred by the victim for physical and psychiatric treatment;
 - (d) income and financial status of the charged official;
 - (e) feasibility of such payment in lump sum or in instalments.

5.10 Prohibition of publication or making known contents or complaint and inquiry proceedings and penalty therefor

Section 16 & 17 of the Act lay down that-

- (i) Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, charged official and witnesses, any information relating to conciliation and inquiry proceedings,

recommendation of the Internal committee and the action taken by the employer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to identification of the aggrieved woman and witnesses.

- (ii) Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendation or action to be taken under the provisions of this Act, contravenes the provisions of Section 16 of the Act, he shall be liable for penalty in accordance with the provisions of the service rules applicable to him.

5.11 Appeal

Section 18 of the Act provides that-

- (i) Any person aggrieved from the recommendations made under section 13(2) or clauses (i) or (ii) of section 13(3) or sub-sections (1) or (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 service rules applicable to the said person. The appeal shall be preferred within a period of ninety days of the recommendations.

5.12 Duties of the employer

Section 19 to the Act lays down that the employer shall-

- (i) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- (ii) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;
- (iii) organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act and orientation programs for the members of the Internal Committee in the manner as may be prescribed;
- (iv) provide necessary facilities to the Internal Committee for dealing with the complaint and conducting an inquiry;
- (v) assist in securing the attendance of the charged official and witnesses before the Internal Committee;
- (vi) make available such information to the Internal Committee as it may require having regard to the complaint made under section 9(1);
- (vii) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal code or any other law for the time being in force;

- (viii) cause to initiate action, under the Indian Penal code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- (ix) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (x) monitor the timely submission of report by the Internal Committee.

5.13 Miscellaneous provisions

- (i) In terms of section 21 of the Act, the Internal Committee shall in each calendar year prepare, an annual report as per the provisions of Rule 14 of the SHWW(PPR) Rules, 2013, and submit the same to the employer.
- (ii) In terms of section 22 of the Act, the employer shall include in its report the number of cases filed, if any, and their disposal under the Act, in the annual report of his organization.

6. The above provisions may be brought to the notice of all officers and staff on the Railways.

7. Hindi version will follow. Please acknowledge receipt.



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Railway Board