

Circular No. 5- NGE/2006.
No. 86 – NGE(Disc.)/10-2005/KW
Dated: 08-02-2006

To,

1. All Heads of Department in IA&AD
(as per mailing list)
2. AC(P) / ACC(C) / Director(P)
3. G.E. I/ GE.II / CA-I /OE & Bills/ NGE(Entt.)/
NGE(JCM)/ Audit(Rules).

Subject: Combating Sexual harassment of working women – Guidance
Note.

Sir/Madam,

I am to invite a reference to the Department of Personnel and Training's O.M. No. 11013/10/97-Estt.(A) dated 13-02-1998 issued under Hdqrs' letter No. 137 Audit(Rules) /8-98/III –98 (44) dated 25-05-1998 on the above subject where in general guidelines and norms had been laid down prohibiting sexual harassment of women by Government servants in compliance of judgement of the Hon'ble Supreme Court of India in the case of Vishaka and others vs. State of Rajasthan & others (JT 1997 (7) SC 384). Provisions regarding prohibiting sexual harassment of women are contained in Rule 3-C of CCS (Conduct) Rules, 1964 and Government of India's Instruction No. 25 under it. Formation and functioning of the Complaints Committee should be regulated as envisaged in Hdqrs' circular No. NGE /12/ 2000 issued under Hdqrs' letter No.15-NGE/Disc. /34-49 dated 24-01-2000.

2. As per instructions contained in the Department of Personnel and Training's O.M. No. 110131/11/2001- Estt.(A) dated 12-12-2002 the findings of the Complaints Committee regarding sexual harassment of the complaint / victim will be binding on the disciplinary authority to initiate disciplinary proceedings against the Government servant(s) concerned under the provision of CCS (CCA) Rules, 1965. The report of the Complaints Committee should be treated as a preliminary report against the accused Government servant. It should be ensured that the necessary follow-up action is taken on the report of the accused Government servants.

3. It is observed that these instructions are not followed in proper form and spirit. The salient points are reproduced in the Annexure.

4. It is also observed that often employers, administration and employees believe that harassment is not a problem in their particular workplace. They may specifically believe this if there are no complaints. However, a complaint free workplace is not a guarantee of problem free workplace. Following guidelines are issued to ensure support and commitment of the employee and administrator to a harassment- free work place:-

(i) **Role and Responsibilities of Employee:-**

- (a) Employees have responsibility to
 - oppose harassment
 - co-operate with the administration in action taken to promote a good and harmonious working environment
 - avoid behaviour which could be considered harassment
 - participate in any training designed to prevent and deal with sectarian harassment in the work place
 - participate as required in any investigation of complaints or allegations of harassment
 - assist colleagues who are being subjected to harassment by being supportive and making it clear that the behaviour is not acceptable. Such support can take many forms e.g. a word from a non-involved colleague may be enough to stop the harassing behaviour or to consider reporting the matter with the colleague's consent.
- (b) Employees have the right not to be harassed and should not feel or be made to feel guilty or embarrassed about exercising these rights.

(ii) **Formal Complaint Procedure:-**

- (a) Employees need to know
 - how to file a formal complaint and that the formal process includes filing the complaint, investigating, reporting the findings, decision making providing remedies for the victim and corrective action taken for the harasser. This process should include an appeal process.
- (b) Employees should also know exactly what the consequences of harassment are before they find themselves involved in a complaint.
- (c) Employees may be afraid to speak up
 - They and their work may be suffering in all kinds of ways without employers, administration and colleagues being aware of it.
 - People who are being harassed may fear embarrassment, retaliation, job loss or loss of acceptance by the colleagues, if they complain.
 - They may also fear not being believed, especially when difference in the level of authority, age, sex, race religion and the line exist.
 - It is not the intention of the perpetrator but the deed itself and the impact on the recipient which determine what constitutes harassment and whether the behaviour would be regarded as harassment by any reasonable person.

(iii) **Role and Responsibilities of the Administration:-** The administration should participate as required in any investigation of complaint or allegation of harassment. The administration may take action to oppose harassment and ensure that:

- the subordinate staff do not harass other members of staff
- behaviours of staff are all time beyond question
- politically incorrect material is not displayed or circulated
- communication of allegation informally is also taken cognizance of
- appropriate action is taken to implement any recommendation as result of any allegations irrespective of level of harasser
- there is no recurrence of the harassment or any victimization of those involved
- staff are advised about the availability of confidential counseling which will be provided by a nominated officer, independent of the situation

5. It is requested to bring these instructions to the notice of all concerned. Wide publicity may be given by displaying it on all notice boards, important locations etc.

The receipt of the circular may kindly be acknowledged.

Yours faithfully

(R. Ambalavanan)
Assitt. Comptroller and Auditor
General of India (N)

ANNEXURE

Salient points regarding prohibiting sexual harassment of working women.

1. In accordance with Rule 3-C of CCS (Conduct) Rules, 1964, no Government servant shall indulge in any act of sexual harassment of any woman at her work place. Every Government servant who is in-charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Definition:– For the purpose of this rule, “sexual harassment” includes such unwelcome sexually determined behaviour, whether directly or otherwise, such as :-

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Whether any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, Public or private enterprises, such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory, for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raise any objection thereto.

2. **Preventive Steps:** All employers or persons in charge of work place, whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation, they should take the following steps:-

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee should have reasonable grounds to believe that she is disadvantaged in connection with employment.

3. **Criminal Proceedings:** Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

4. **Disciplinary Action:** Whether such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated against the delinquent Government servant in accordance with those rules.

5. **Complaint Mechanism:-** Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in every organization for redress of complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints. Whenever such machineries for redressal of grievance already exists, they may be made more effective and in particular women officers should preferably handle such complaints.

6. **Complaints Committee:** The Committee for redressal of complaint of sexual harassment should be headed by an officer sufficiently higher in rank than the perpetrator. Formation and functioning of the Complaints Committee should be regulated as envisaged in Hdqrs' circular No. NGE/12/2000 issued under Hdqrs' letter No.15-NGE/Disc. /34-49 dated 24-01-2000 prescribing followings steps to strengthen the complaint mechanism:-

- (a) The committee should be headed by a lady officer not below the level of DAG. In case a DAG level lady officer is not available in the office, the DAG/Sr. DAG of a sister office at the same station or nearby station may be made head of the committee.
- (b) The number of the lady members in the committee should not be less than 50%;
- (c) An appropriate NGO may be associated with the committee;
- (d) The committee must be directed to receive all the complaints irrespective of the status of the officer against whom the complaint is made;
- (e) In case the complaint is against an IA&AS officer, the matter must be referred to Headquarters and further action should be taken in consultation with Headquarters;
- (f) The chairperson of the committee may write about the complaint directly to Headquarters, if circumstances so warrant, without the mandatory approval of the Pr.AG/AG/PDA and

(g) On receipt of a particular complaint, if circumstances so warrant, P.A.G./A.G./P.D.A. may constitute an adhoc committee particularly in situation where one /more committee member/members are junior to the officer against whom the complaint is made or if the complaint relates to the branch office.

7. **Workers' Initiative:** Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

8. **Awareness:** Awareness of rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

9. **Third Party Harassment:** When sexual harassment occurs as a result of an act or omission by third party or outsider, the employer and the person in-charge will take all steps necessary and reasonable to assist the affected persons in term of support and preventive action.