

# **Procedure for Prevention of Sexual Harassment at Workplace in OTPC**

Dated: 23-Jan-2014

## **1. Applicability**

This procedure is known as **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 & the Rules** (hereinafter referred to as 'Procedure') and is applicable to all employees of ONGC Tripura Power Company Limited (OTPC), a company incorporated under the Companies Act, 1956 with its registered office at ONGC Tripura Assets, Badarghat Complex, Agartala, Tripura – 799014; deployed at the workplace who are either

- a) on the rolls of the establishment or
- b) engaged through the Contractor(s) having service agreement with the establishment or as enumerated in clause (f) of section 2 of the SHWW Act.

## **2. Objective**

This Procedure has been formulated keeping in view the provisions under The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (hereinafter referred to as SHWW Act) and its Rules. The said Procedure is to define the guidelines and the process to be followed in order to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment in addition to the matters connected therewith or incidental thereto. For any doubt or further clarification, reference be made to the SHWW Act and its Rules.

## **3. Abbreviations**

In this Procedure document, unless there is anything repugnant to the subject or context thereof, the words and expressions as stated below shall have the following meanings:-

- a) **CE** - Complainant Employee: Refers to any woman employee (as per section 2(a) of SHWW Act) who has lodged a complaint of sexual harassment at

workplace and has been subjected to any act of sexual harassment by another employee (hereinafter referred to as <sup>2</sup>'respondent').

- b) **ICC** - Internal Complaint Committee
- c) **Management** - Management means Company's Managing Director/Director/Manager or such other officer or Officers/nominee or nominees as may be authorized in this behalf by the Managing Director/Director and notified in the Notice Board of the establishment.
- d) **RE** - Respondent Employee: Refers to any employee against whom the complaint for sexual harassment has been lodged.
- e) **Workplace** - Refers to clause O of the SHWW Act and also includes all offices, branches and workshops located anywhere in India. It also includes any place visited by the employees arising out of or during the course of employment including transportation provided by the Management of the establishment for undertaking the journey.

#### 4. Preamble

Sexual harassment is not only a serious misconduct but criminal offence also, which can destroy human dignity and freedom. In an effort to promote the well-being of all women employees at the workplace, this Procedure envisages as under: -

- a) It shall be the duty of the Management of the establishment to prevent or deter the commission of any act of sexual harassment at the workplace.
- b) Sexual Harassment will be considered as misconduct and action will be taken based on the findings of the enquiry in this context.
- c) The definition of sexual harassment will be as defined in section 2 (n) of SHWW Act as represented below:-

*"Sexual Harassment" includes any one or more of the following unwelcome 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) *Making sexually coloured remarks; or*
  - iv) *Showing pornography; or*
  - v) *Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*
- d) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment :-
- i) Implied or explicit promise of preferential treatment in her employment; or
  - ii) Implied or explicit threat of detrimental treatment in her 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
- e) Humiliating treatment likely to affect her health or safety.

**5. Internal Complaints Committee\* (hereinafter referred to as ICC)—**

This is a Committee which is being constituted as per section 4 of the SHWW Act read with its Rules. The ICC will comprise of the following:

1. Ms..... (Presiding Officer)  
(The presiding officer shall be a woman employed at a senior position/workplace from amongst employee)
2. Ms..... (Member)
3. Mr./Ms ..... (Member)  
(The above members would be from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.)
4. Ms./Mr ..... (Member)

(The above member from amongst non-governmental organizations or associations committed to the cause<sup>4</sup> of women or a person familiar with the issues relating to sexual harassment).

Every Member of the ICC shall hold office for a period not exceeding three years, from the date of their nomination as may be specified by the Management. ICC would be strictly governed by Section 4 of the SHWW Act.

\* To be constituted when there are more than 10 employees.

## **6. Procedure of filing a Complaint-**

- a. The complaint should be made by an aggrieved woman within a period of three months from the date of occurrence of incident and in case of a series of incidents, within a period of three months from the date of last incident. The complaint by an aggrieved woman employee shall be made to ICC in writing and be sent either by post or given in person to the ICC of the establishment or any officer authorized by ICC in writing.
- b. The ICC may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the employee from filing a complaint within the said period. Where the employee is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir may make a complaint under this section.

It is, however, pertinent to state that where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by—

- i. her relative or friend; or
- ii. her co-worker; or
- iii. an officer of the National Commission for Woman or State Women's Commission; or
- iv. any person who has knowledge of the incident, with the written consent of the aggrieved woman;

Where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by—

1. her relative or friend; or
2. a special educator; or
3. a qualified psychiatrist or psychologist; or
4. the guardian or authority under whose care she is receiving treatment or care; or
5. any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

**Notes:** (i) Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.

(ii) Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

## **7. Procedure to be followed post receipt of Complaint**

- a. The ICC would go through the details of the complaint and evaluate if there is a *prima facie* case or not. While doing that, ICC will keep in mind that the CE is not subjected to enquiry more than once. However, if the complaint complexity requires that the CE is to be called for more than once for enquiry, then utmost sensitivity should be displayed and adequate precaution would be taken to ensure that there is no loss of dignity to the CE.
- b. The ICC will initiate a detailed enquiry as deemed fit.
- c. The ICC may, before initiating an enquiry and at the request of the CE, take steps to settle the matter between her and the RE through conciliation, provided that no monetary settlement shall be made as a basis of conciliation. Where a settlement has been arrived during conciliation, the ICC shall record the settlement and forward to the employer or District Officer to take action. However, if the terms arrived during conciliation have not been complied with by the RE, the ICC shall proceed to make an enquiry into the complaint or as the case maybe forward the complaint to the police. The copies of the

settlement as recorded during conciliation shall be provided to the both the parties.

6

- d. The ICC shall after completing the enquiry, submit its recommendations to the Management with recommendations of the penalty to be imposed.
- e. In case no settlement is arrived the ICC, shall, where the Respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exists, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable.
- f. Where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being 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.
- g. Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15 pertaining to determination of compensation.
- h. The submission of the recommendations by the ICC to the Management shall be completed within a period of ninety days (90) from the date of receipt of the complaint by the ICC.
- i. The HR/Personnel/Administrative Department will extend full cooperation in facilitating to conduct the proceedings by the ICC.

**Important** : For the purpose of making an inquiry under sub-section (1), the Internal Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents; and
- iii. any other matter which may be prescribed.

**8. GUIDELINES TO BE KEPT IN MIND BY ICC WHILE RECOMMENDING ACTION**

8

- a) To conduct the enquiry as per the Principles of natural justice and in a confidential manner.
- b) In cases where the ICC has recommended to Management for compensation to be made to the CE, then the said amount shall be deducted from the salary of the RE and paid to the CE or her legal heir/s.
- c) In case the RE fails to pay the sum referred as above, the ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.
- d) Where the ICC arrives at a conclusion that the allegation against the RE is malicious or the CE has made the complaint knowing it to be false or the CE has produced forged or misleading document, it may recommend to the Management of the establishment to take action against the CE as stipulated by section 14 of the SHWW Act.
- e) Where the ICC arrives at a conclusion that during the enquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the Management to take appropriate action.

**9. EMPLOYER (Management of the establishment) TO ENSURE :-**

- (a) That in case there is a complaint against any of the ICC members; Management will have to reconstitute the ICC. In all such cases the guidelines as defined in the above clauses would be inclusive of the time taken to reconstitute the said committee.
- (b) The Management will provide assistance to the CE if she so chooses to file a police complaint in relation to the offence under the India Penal Code or any other law for the time being in force.



- (c) The Management will also initiate action under the Indian Penal Code or any other law for the time being in <sup>9</sup> force, against a perpetrator, where the perpetrator is not an employee of the establishment and there is complaint of Sexual Harassment against the said perpetrator in the workplace where the harassment took place.
- (d) The ICC will submit an annual report to the Management outlined in the SHWW Act and it is the responsibility of the Management to ensure that the said annual report is also filed with the District Officer as per the format applicable.
- (e) The Management will direct HR/Personnel/Administrative Department to ensure to display at conspicuous places the guidelines as given in section 19(b) of the SHWW Act.
- (f) The Management will direct and monitor the HR/Personnel/Administrative Department to create awareness amongst employee material on sexual harassment in the following manner:-
- (i) Training cum Awareness session for employees (men and women)
  - (ii) Training cum Awareness session for ICC members
  - (iii) Training cum Awareness session for Human Resource teams and Senior Management.
- (g) The Management will assist in ensuring the attendance of the RE and witnesses before the ICC as the case may be.
- (h) The Management will monitor timely submission of reports. For this, the Management will conduct periodic update meetings with the ICC and HR/Personnel/Administrative Department to ensure that the said Procedure is being implemented in letter and spirit.

#### **10. APPEAL BY THE AGGRIEVED PERSON**

Any person aggrieved from the recommendations made by the ICC enquiring with the allegations against the respondent has not proved, or the ICC arrived at a conclusion that during the enquiry any witness has given false evidence or produced

any forged or misleading documents or contravenes the provisions of section 17 of the SHWW Act or when the persons entrusted with the duty to handle or deal with the complaint, the enquiry or recommendations makes known the contents of the complaint and the enquiry proceedings, or non- implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal. The appeal will lie before the Appellate Authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946.

**Note:** It is pertinent to state here that the Standing Orders are not invariably applicable to all the establishments since these apply mainly to the industrial establishments and, as such, it would be appropriate for the Management to notify as to who will be the Appellate Authority in the absence of Standing Orders.