

## News

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### Supreme Court allows POSH probe against IRS officer accused of sexual harassment by IAS officer



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### SUPREME COURT OF INDIA



**SUPREME COURT ALLOWS POSH PROBE AGAINST IRS OFFICER ACCUSED OF SEXUAL HARASSMENT BY IAS OFFICER SUPREME COURT ALLOWS POSH PROBE AGAINST IRS OFFICER ACCUSED OF SEXUAL HARASSMENT BY IAS OFFICER**

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*The Supreme Court recently allowed an inquiry under the Sexual Harassment of Women at Workplace(Prevention, Prohibition, and Redressal) Act, 2013 [POSH Act] to proceed against IRS Officer Sohail Malik in a sexual harassment complaint filed by an IAS officer [Dr. Sohail Malik vs. Union of India & Anr.].*

The issue is being probed by the Internal Complaints Committee (ICC) of the Ministry of Food and Consumer Affairs.

A Bench of Justices JK Maheshwari and Vijay Bishnoi rejected Malik's contention that only the ICC of his own ministry could study the POSH complaint.

In its verdict of December 10, the Court ruled that the POSH proceedings can continue before the Internal Committee of the IAS officer's department even though the accused IRS officer works in a different ministry.

Thus, it upheld orders of the Central Administrative Tribunal and the Delhi High Court, both of which had refused to stop the inquiry.

The Bench said that the POSH Act was enacted to remove barriers for women at the workplace and cannot be read narrowly to shield an accused officer behind departmental limits.

***The case concerns allegations made by a 2004-batch IAS officer, then serving as Joint Secretary in the Department of Food and Public Distribution, who accused Malik, a 2010-batch IRS officer posted as OSD (Investigation) with the CBDT in Delhi, of sexually harassing her in her office at Krishi Bhawan on May 15, 2023.***

An FIR was recorded the next day and the department's ICC took up her complaint under the POSH Act on May 24.

When the ICC issued a notice to Malik on June 13, 2023, he challenged its authority before the CAT, arguing that only the ICC established in his department (the Department of Revenue) could look into the complaint since he fell under its disciplinary control. Both the CAT and the High Court rejected this case, prompting him to appeal to the Supreme Court.

The Supreme Court reviewed the statutory framework of the POSH Act in detail and held that the phrase "where the respondent is an employee" in Section 11 is not a jurisdictional limitation but a procedural direction requiring the ICC to apply the service rules applicable to the accused person.

The Court said that tying jurisdiction to the accused officer's workplace would put

unreasonable hurdles on an aggrieved woman and would defeat the very purpose of the Act.

***“A narrow interpretation of provisions of the POSH Act, in order to hold that only the ICC of the workplace of the ‘respondent’ has jurisdiction to inquire into complaints against him, irrespective of where the workplace of the aggrieved woman is or where the alleged act of sexual harassment took place, would undermine the POSH Act’s remedial social welfare intent since it would create significant practical hurdles for the aggrieved woman.”*** the Bench said.

The Court also emphasised that the POSH Act gives a deliberately wide meaning to “workplace”, including any place visited in the course of employment. It said that the woman’s right to approach the ICC at her workplace cannot be weakened simply because the accused officer works elsewhere.

***“While the ICC constituted at the workplace of the aggrieved woman or the employer may not have the authority to impose a penalty / punishment on the ‘respondent’ as a consequence of the proceedings under the POSH Act, its findings can certainly be acted upon by the employer of the ‘respondent’,”*** the Court noted.

Clarifying the structure of inquiries involving Central government staff, the Court noted that the POSH mechanism works in two stages - a preliminary factual inquiry and a later disciplinary process.

***“It is merely the factual inquiry which is to be conducted by the ICC constituted at the workplace of the aggrieved woman... the employer of the respondent shall then decide on disciplinary action,”*** the Court said.

The Court noted that in this case, the IRS officer’s department had cooperated with the ICC during the review as required under Section 19 of the POSH Act. After reviewing the sealed-cover report of the ICC, the Court found no prejudice caused to the officer by the inquiry being conducted in a different department.

Holding that the IAS officer’s departmental ICC had full authority to conduct the fact-finding inquiry, the Court directed that its report be transmitted to the Department of Revenue, which must decide on disciplinary action under the CCS (CCA) Rules.

The appeal was accordingly rejected.

Malik was defended by advocates Piyush Sharma, Anuj Kumar Sharma, Aditya Dikshit and Shivesh Srivastava.

***The respondents were represented by Additional Solicitor Generals Aishwarya Bhati and Archana Pathak Dave, along with advocates Raj Bahadur Yadav, Ruchi Kohli, Priyanka Das, Preeti Rani, BK Satija, Shubhranshu Padhi, Noor Rampal, Shreekant Neelappa Terdal, Abhay Kumar, Shagun Ruhil, Shreenivash and Rakesh Kumar***

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