OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN
AT THE WORKPLACE, REGIONAL OFFICE LAHORE
ORDER SHEET
APPEAL NO: FOH-LHR/000013/2025

Date of Institution: 10-06-2025

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson		
		Raza Pervez	**VS**	**British American Tobacco SAA Services (Pvt.) Ltd.**
		DEPARTMENT: BRITISH AMERICAN TOBACCO (BAT) SAA SERVICES (PVT.) LTD.		
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15	**13.11.2025**	**SUBJECT: FINAL ORDER** This order shall dispose of an appeal filed by Raza Pervez (**Appellant**) under section 6 of the Protection Against Harassment of Women at the Workplace Act, 2010 (**Act of 2010**) against British American Tobacco (BAT) SAA Services (Pvt.) Ltd. (**Respondent No.1/Company**), Inquiry Committee, BAT SAA Services (Pvt.) Ltd. through its Chairperson (**Inquiry Committee/Respondent No.2**) and Malaika Amir, Global Graduate (**Respondent No.3/Complainant**), (collectively they shall be referred to as **Respondents**) against the decision dated 13.05.2025 passed by the Competent Authority of BAT SAA Services (Pvt.) Ltd. whereby the Appellant was awarded a major penalty of removal from service. 1. Facts of the case are that the Appellant joined the office of Respondent No.1 as Channel Trade Analyst on 01.09.2023 where he was issued a show cause notice by the Inquiry Committee pursuant to a harassment complaint filed by Respondent No.3 on 25.01.2025 wherein, she accused him of persistent stalking and messaging over a span of two months. The allegations were however denied by the Appellant in his written reply to the show cause notice. The Inquiry Committee conducted its proceedings and found him guilty of causing sexual		

		harassment, and recommended his termination. Consequently, the Competent Authority of Respondent No.1 imposed a major penalty of removal from service upon him on 13.05.2025. 2. The Appellant has assailed the validity of the impugned order on grounds, inter alia, that constitution of Inquiry Committee is illegal as it consisted only of members who are employees of Respondent No.1 and as it did not have a sole mandate to inquire into the complaint, therefore, all proceedings conducted by it are coram non judice. Further, the Inquiry Committee failed to follow the procedure as delineated in section 4 of the Act of 2010 as well as the Protection Against Harassment of Women at the Workplace (Filing and Disposal of Complaints) Rules, 2013 (**Rules of 2013**). 3. The Appellant asserts that following the issuance of show cause notice, unjustified restrictions were imposed upon him. His access to the office premises and communication with colleagues were denied, which hindered him to present vital witness testimony in defense, thus his fundamental right to a fair hearing was undermined. Moreover, the Respondent Nos.1 and 2 fatally compromised procedural fairness by blocking access to his MS Teams account containing time-stamped exculpatory screenshots and disregarded the fundamental principal of the Act of 2010 which expressly prohibits stigmatization of accused persons and mandates rehabilitative measures and as no counseling or mediation between the parties was arranged, the very essence of legislation was violated. 4. Claiming that the inquiry has been conducted in a biased manner without providing a right of fair trial to him, the Appellant maintains that

		copies of complaint and supporting documents were not provided to him and his right to be represented or accompanied by a legal counsel or colleague was denied and he was also not granted a proper opportunity to cross examine the witnesses of Complainant. Further, the inquiry proceedings are completely flawed as reliance has been placed mainly on unreliable and legally inadmissible evidence which is hearsay, unsubstantiated and contradictory and the CCTV footage relied upon is also obtained through improper procedural means, which materially conflict on key factual details. 5. Elaborating further, the Appellant asserts that evidence of Complainant did not meet the threshold required to invoke the provisions of the Act of 2010 and findings of the Inquiry Committee also establish that Respondent No.3 was neither subjected to any act of harassment nor gender-based discrimination by the Appellant. While referring to the evidence, he maintains that testimony of the three witnesses of Respondent No.3 did not substantiate any allegation of sexual harassment, physical restraint or forcible confinement. The dates provided in the witness statements, testimony of Complainant during inquiry and the HR summary report are inconsistent and do not align with any verified occurrence. Further, the authenticated 'heart react' emoji from Respondent No.3 in response to his MS Teams message serves as conclusive evidence of mutual engagement and directly contradicts the assertion of non-consensual communication. It is claimed that the Inquiry Committee has willfully disregarded this critical evidence and such deliberate oversight has undermined the credibility of entire proceedings, rendering its findings legally untenable.

		6. At the end, he has prayed that the impugned order be set aside and the Respondent No.1 be directed to reinstate him to his former position with back benefits. Furthermore, costs be awarded for legal expenses, medical damages and transport expenses incurred during the flawed inquiry proceedings. 7. In the written reply to Appeal, the Respondent Nos.1 and 2 maintain that the Appellant has acted below normal standards of professionalism as he was engaged in acts of harassment at workplace. Moreover, Respondent No.3 filed a complaint against him pursuant to which a show cause notice as per section 4(2) was issued to him on 29.01.2025 by the Inquiry Committee which was constituted in accordance with section 3(2) of the Act of 2010. It is claimed that to ensure transparency and provide full opportunity of defense to the Appellant, another letter along with additional evidence was issued to him on 30.01.2025. 8. Further, the inquiry proceedings were conducted in a fair and impartial manner and the Appellant was given a fair opportunity to defend his position. He filed a detailed reply to the show cause notice and participated in the proceedings by presenting his evidence and cross-examining the witnesses of Complainant, however, he failed to substantiate his version of consensual relationship. Furthermore, he was provided full opportunity to bring his evidence and witnesses to support his case. It is asserted that findings and recommendations of Inquiry Committee based on the evidence were in accordance with law and the entire inquiry process was conducted in an impartial manner, hence the question of violation of fundamental rights of the Appellant does not arise.

		9. It is maintained that the Appellant has not been subjected to any unfair stigmatization as earlier he was instructed by the HR Department to stop reaching out to the Complainant when she complained about his acts in December 2024, but he continued causing harassment to her, hence his conduct was of a habitual stalker, and he was not subjected to any unfair stigmatization. Additionally, in terms of clause (x) of the Schedule of the Act of 2010 as the employer is under an obligation to do his best to make adjustments so that the accused and the complainant do not have to interact, therefore, the Appellant was suspended. However, he was not restricted from reaching out to his colleagues. 10. While taking a similar stance, the Respondent No.3 has further maintained in her written reply that the Appeal is motivated by malafide, is based on concealment and misrepresentation of facts and circumstances and has been filed by the Appellant to malign her and escape his liability. She maintains that she was subjected to persistent harassment, which not only caused her severe distress but also adversely affected her performance at work. Additionally, she had raised concerns over the misconduct and acts of harassment of the Appellant to the HR Department in the year 2024 whereafter he was warned of his inappropriate behavior, however, he continued to stalk and create a hostile work environment for her, therefore she had no other option except to file a formal complaint against him. 11. Arguments have been advanced by the learned counsels of both parties who have emphasized on the factual and legal aspects as mentioned respectively in the Appeal and its reply. At the outset, learned counsel

		for the Appellant has objected to the constitution of the Inquiry Committee, arguing that this procedural flaw has vitiated the entire inquiry process which was conducted in a partial manner as the Appellant was isolated in a separate room, while the Respondent No.3 and all her witnesses were physically present before the Inquiry Committee. Questions were posed to the Appellant via audio only, after consultation of the Committee members with the persons present there. He maintains that the Inquiry Committee recommended termination of the Appellant, which term is not used in the framework of the Act of 2010, therefore, the recommendation is ultra vires and liable to be set aside. 12. Learned counsel of the Respondent Nos.1 and 2 has argued that the inquiry was conducted impartially by meeting all the legal and procedural requirements to ensure a fair trial and after finding sufficient evidence against the Appellant, he was removed from service by the decision of Competent Authority. Justifying the recommendation of Inquiry Committee regarding termination, he has argued that this term included removal from service, hence there was no legal bar in using such word. As regards decision of Competent Authority, he maintains that the decision of removal from service was given verbally and not in writing and the same was communicated to the Accused through an office order and that such communication of decision of the Authority has been held lawful by the Apex Court. Reliance was placed on case law reported as Bilal Hussain Vs. President National Bank of Pakistan (2022 SCMR 313). Learned counsel of Respondent No.3 has relied on the afore stated arguments.

13. Keeping in view the contention of parties, arguments advanced by their counsels as well as the material available on record, the questions requiring determination are formulated as follows:

- Whether the Inquiry Committee proceeded in accordance with section 4 of the Act of 2010?
- Whether the Accused caused sexual harassment to the Complainant? If so, whether major penalty of removal from service imposed upon him is justified?

14. As regards the first formulation relating to proceedings of the Inquiry Committee, the first objection pertains to its constitution. Considering it from the legal perspective, section 3(2) of the Act of 2010 relating to members of the Inquiry Committee is reproduced hereunder for ready reference:

> *"The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA."*

The aforementioned legal provision mandates about constitution of an inquiry committee but places no restriction on the members belonging to the same organization, therefore, objection of the Appellant with regard to members of Inquiry Committee being from the same organization and thus possessing the sole mandate of inquiry is of no significance. Proceedings initiated by three members of the Inquiry Committee were thus within their jurisdiction and these cannot be declared as coram non judice.

15. So far as the inquiry proceedings are concern, it is important to refer to the case titled Fahad Faruqui Vs. SZABIST (2019 PCr.L.J 806), where although it has been held that no prescribed procedure or mechanism has been provided in the Act of 2010 for conducting the proceedings of the complaint, it has also been observed as under:

> *"…procedure and provisions prescribed under the general laws could not be strictly applied thereupon, however, maintenance of transparency and impartiality in order to ensure dispensation of justice was essential."*
>
> *(emphasis supplied)*

16. Article 10-A of the Constitution of Pakistan, 1973 (**Constitution**) guarantees the right to a fair trial and applies to the inquiries as well. As fair trial is a fundamental right of every citizen, it follows that a person who is accused of an allegation must be given a fair opportunity to defend himself. In the present case, the Appellant has alleged that the inquiry was conducted in a biased manner by withholding his evidence and intentionally disregarding his WhatsApp chat conversation to deprive him of the right of defense, thus causing prejudice to him due to deliberate oversight.

17. The inquiry report reveals that version of Complainant and her witnesses has been written in detail as compared to that of the Appellant. The messages and emails tendered by Complainant in her evidence have been duly referred to, however, documentary evidence including WhatsApp messages regarding the alleged consensual relationship though mentioned in the report, have not been considered.

		Although it is mentioned in the report that the Appellant waived his right to cross examine the Complainant and call his own witnesses, no written document duly signed by him has been tendered in this regard. Further, during arguments it has revealed that the Appellant was not physically present before the Inquiry Committee as his statement was recorded through audio link whereas Complainant and her witnesses were present before it in person. Such a procedure undermines a fair trial which has to be conducted impartially and in a transparent manner. The adopted procedure imparts an impression of biasness, causing prejudice to the Appellant and depriving him of his fundamental right of fair trial as ordained by the Constitution. 18. The findings and recommendations further reveal that the Inquiry Committee has also not complied with the legal provision of recommendation for imposing a specific penalty as contained in section 4(4) of the Act, 2010 which makes it mandatory for the Inquiry Committee to submit its findings and recommendations to the Competent Authority, and if the accused is found guilty, to recommend to the Competent Authority for imposing one or more of the minor or major penalties. It has recommended termination of service of the Appellant which term is of a wider application and also includes removal from service, however, the category of termination of service has not been specified. The law requires recommendation of one or more of the prescribed penalties, which the Committee has failed to recommend, leaving it for the Competent Authority to decide, which is against the statutory requirement. 19. Moreso, there is no decision of the Competent Authority in writing. During arguments the learned counsel stated that it was not given in

		writing and was verbal. However, emails of members of Inquiry Committee and the Competent Authority tendered during arguments do not reveal that penalty of removal from service was imposed by the Authority in terms of Section 4(5) of the Act of 2010, which provides as under: *"The Competent Authority shall impose the penalty recommended by the Inquiry Committee under subsection (4) within one week of the receipt of the recommendations by the Inquiry Committee."* Letter of termination dated 13.05.2024, addressed to the Appellant reads as under: *"…In light of the findings and recommendations of the Inquiry Committee, the Competent Authority confirms your removal from service…"* As already stated above, the Inquiry Committee never recommended penalty of removal from service specifically, but it was mentioned so in the termination letter. As no office order regarding designation of Shahid Afzal as Competent Authority was placed on record, his name as such reveled when the board resolution of the Company was tendered during arguments. The termination letter was issued as an office order with one of its signatories being Zain Bakir who was also a member of the Inquiry Committee. There is however no cavil that such orders can be issued by the office of the organization as it is a routine practice by large organizations to communicate order of the Authority by its office, as has been held in the case of Bilal Hussain supra.

		20. Contention of the Appellant to be accompanied by a friend or colleague finds its strength in section 4(3)(c) of the Act of 2010 which mandates that both parties have a right to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague. Trial to the extent of Appellant was conducted only through audio link whereas Complainant and her witnesses were present before the Inquiry Committee in person, which makes it quite apparent that he was hindered from cross examining the witnesses and adducing his defense to his best. Claim of the Appellant that no effort for mediation was made between them is however of no significance as earlier the same issue was addressed on the verbal complaint made by Complainant. However, the blatant irregularities stated above stand in place, which make the findings and recommendations of the Inquiry Committee and decision of the Competent Authority improper. 21. In view of the foregoing, the findings and recommendations of Inquiry Committee dated 18.03.2025 and the decision of Competent Authority conveyed through office letter dated 13.05.2024 are set aside and the case is remanded back with the direction to the Inquiry Committee to allow the Appellant to cross examine the Complainant and her witnesses and adduce his own evidence along with that of his witnesses, accompanied by a friend or colleague, if he so desires. If he waives any such right, his statement in this regard shall be recorded in writing. Further, cross examination shall be conducted in person and not through audio or video link and the evidence shall also be recorded in writing in a question answer form to ensure a fair trial and uphold transparency. In terms of section 4(4) of the Act of 2010, if the Inquiry Committee upon careful examination and evaluation of the evidence adduced both in favor of and against the Appellant, finds the Appellant

		guilty, it shall recommend the imposition of an appropriate specific penalty or penalties to be imposed upon him from the category of minor or major penalties, as the case may be. Further, the Competent Authority shall impose such penalty or penalties, recommended by the Inquiry Committee, through a decision in writing. 22. Thus, without deciding the second formulation pertaining to harassment, the appeal is partly accepted and the case is remanded with direction to Respondent No.2 to conclude the inquiry within a period of thirty days, followed by decision of the Competent Authority within one week of receipt of the recommendations of Inquiry Committee in light of observations made in the preceding paragraph. As the impugned order has been set aside, therefore, status of the Appellant as an employee of the Company stands revived entitling him to all the service benefits. **FEDERAL OMBUDSPERSON**