

Justice (R) Yasmin Abbasey,

Ombudsman:

Appeal No. 1(178)/ 2015-FOS.

1. Appellant Senior General Manager working in Pakistan State Oil (PSO) has filed this appeal.
2. It is stated that on 21-11-2014 respondent No. 4 issued an explanation letter to appellant with reference to complaint filed by respondent no. 2 against him for harassing her at workplace. Copy of that complaint was not provided to appellant however, he filed his reply on 01-12-2014, followed by subsequent statement of 26-12-2014.
3. Inquiry committee comprising of respondent no. 4 to 6 was constituted, appellant raised objection to the composition of inquiry committee and its jurisdiction but that was not considered and without associating appellant, inquiry committee kept on proceeding the matter.
4. Inquiry committee held appellant guilty of negligence with minor penalty of withholding of increment. In pursuance of that annual increment and performance based award of

appellant was withheld. It further stated that appellant came to know from inner sources that complainant had withdrawn her complaint. On 23-04-2015, another inquiry committee was constituted on same subject and that too proceeded without associating appellant. Finally on 17-07-2015, appellant received a letter from respondent No.4 intimating about order of inquiry committee of his forced retirement with back dated work order of 03-07-2015. It is important that from 16-07-2015 new Managing Director Yaqoob Sattar started working in office which is evident that previous Managing Director Shahid Islam had signed order dated 03-07-2015 in back date which show his malice intension.

5. It is alleged that he has been condemned unheard and no opportunity of hearing was provided to him by both inquiry committees constituted in the matter. Section 4 of sub section (i)(a) of Act of 2010 has been violated. Inquiry committee has also failed to give its recommendation within prescribed time. Babar Hameed Chaudhry, General Manager (HR) who issued explanation letter on 21-11-2014 was no competent authority

to issue such notice.

6. Incident allegedly took place in evening of 29-09-2014 and at that time both parties were at their respective residence. Therefore, matter doesn't fall within ambit of section 2(h) of Act of 2010, yet respondent No.3, 4 & 7 with malafide intent and ulterior motive had exploited the situation to ruin career of appellant. It is prayed that order dated 17-05-2015, may be set aside and appellant be restored to his original position.
7. Though in appeal no written reply is required however, respondent No.1 and 3 to 7 have filed their defense. According to them inquiry committee conducted inquiry proceeding in accordance with law and order of competent authority is based on the recommendation of inquiry committee.
8. After committing harassment act, appellant pressurizes respondent No. 2 through different means to withdraw her complaint that is evident from her letter dated 02-12-2014. Appellant illegally dragged members of inquiry committee with

malafide intention as respondent no. 3 to 7 were members of inquiry committee which becomes functus officio after conclusion of inquiries. Therefore names of members of inquiry committee be deleted from proceeding.

9. It is stated by respondent no. 3 to 7 that respondent No.2 has verbally informed human rights department that after filing complaint by her, appellant used to pass comments on her look which made her feel uncomfortable. On 10-10-2014, respondent No. 2 submitted a complaint followed by a subsequent letter of 13-10-2014, against appellant. Thereon complainant / respondent No.2 was immediately transferred to Internal Audit Department. Appellant was fully informed about complaint filed against him. Respondent No.2 had also made a complaint to HR through email dated 02-12-2014, and requested that appellant should restrained him from making any direct contact through phone, email or face to face with respondent No. 2.
10. Inquiry committee by majority of vote recommended penalty of withholding increment against appellant.

Recommendations of inquiry committed dated 22-05-2015 were sent to MD of PSO for implementation of recommendation but on 06-06-2015 it was returned back to Mst Sumera Manzar, Chairman of inquiry committee with observation that:-

“In any case, even if the apology is considered, it cannot undo the immoral act committed by the accused and key objective of Act, 2010 is defeated which is aimed to create a safe working environment for women, which is free of harassment, abuse and intimidation with a view toward fulfillment of their right to work with dignity.

Hence, the Inquiry Committee Report is being sent back to the Inquiry Committee for reconsidering the recommendation made by the committee in the interest of justice and fair play. The inquiry committee is advised to address the observations within 5 days time and resubmit the Inquiry Report”.

After this observation matter was reconsidered and on

meeting of 10-06-2015 and with majority of opinions of members of inquiry committee, penalty under section 4 sub-clause (II) (b) of compulsory retirement was imposed on appellant.

11. After hearing parties and perusal of record my findings are as under:-

Allegations against appellant is that he sent a vulgar video through Whatsapp to respondent no. 2 who at that time was serving as his secretary. Matter was reported by respondent no. 2 to management on 13-10-2014. Explanation was called from appellant and in his reply dated 01-12-2014 it is stated by him that act of sending video was a mistaken act. According to him he wanted to send that video to one of his friend but by mistake it was sent to respondent no. 2 for which he had apologized form respondent no. 2. In spite of that inquiry committee was constituted and matter proceeded against appellant.

12. Committee examined the incident happened. Before inquiry committee and also before this forum it is pleaded by

appellant that copy of complaint filed by respondent no. 2 was not delivered to him and that no opportunity was provided to him by inquiry committee to defend his case. He further pleaded that no notice was issued to him for his appearance before inquiry committee.

13. After going through record I found no substance in above referred objections taken by appellant because if he would not had been in receipt of complaint dated 13-10-2014 and was unaware of the contents of allegations leveled against him, it is unbelievable that he would have been able to give a detailed reply as submitted by him on 01-12-2014. However, even if contention of appellant, for sake of arguments is taken as correct that copy of complaint was not delivered to him then at least letter dated 23-12-2014 issued by Babar Hamid Chaudhary, General Manager, Human Resources & CP is sufficient evidence of dispatch of state of allegations leveled against him by respondent no. 2 and this delivery had been accepted by him in his statement produced before inquiry committee placed as Annex-h at page 72 of file. It is also

noteworthy that even inquiry committee's report show participation of appellant during inquiry proceedings.

14. Explanation issued to appellant was examined by management that

(i) Whether in light of apology tendered by appellant and withdrawal of complaint by respondent no. 2 whether gravity of incident can be reduced

(ii) Whether inquiry committee constituted in matter is bound to accept withdrawal of complainant and apology tendered by appellant.

15. Finally on 22-05-2015 it has been observed that offensive act of appellant / accused has been proved through evidence and same has also been accepted by appellant / accused in writing. It is responsibility of Committee to ensure that accused may be awarded an appropriate penalty. And then out of three, two members recommended penalty under section 4(i)(b) whereas one member recommended for compulsory retirement under section 4(ii)(b) of Act 2010.

16. After perusal of inquiry committee's report dated 22-05-2015 I found that members of inquiry committee did very hard work and with great conscious examined nature of incident and has elaborately discussed each and every aspect of case which proves that act of appellant was not a mistake but was a deliberate act. I am in full concurrence of the discussions and observations made by members of inquiry committee.
17. Efforts made by members of Inquiry committee to reach at a right conclusion which reflects in meetings held with reference to this case and placed on record at page 138 to 146 are highly appreciable. Here it is noteworthy that inspite of admitting guilt, appellant had tried to exonerate himself from punishment to be imposed on him by inquiry committee, stating that incident had taken place outside ambit of "workplace" as has been defined in Protection against Harassment of Women at Workplace Act 2010, therefore no proceedings can be initiated against him under Act of 2010. This objection very comprehensively discussed by inquiry committee in para 1 clause (3) of its findings and does not

find any reason not to accept them.

18. Record further shows that even after recommendations of inquiry report of 22-05-2015 with two different opinions when matter was referred to competent authority for its implementation, it has rightly been observed by competent authority that

“In any case, even if apology is considered, it cannot undo immoral act committed by accused and key objective of Act 2010 is defeated which is aim to create a safe working environment for women, which is free of harassment, abuse and intimidation with a view towards fulfillment of their right to work with dignity”.

With this observation inquiry committee report dated 22-05-2015 was sent back to inquiry committee for reconsidering their recommendations in interest of justice and fair play. It is after that remand final opinion of 12-06-2015 came forward with penalty of compulsory retirement of appellant under

section 4 clause (2) subclause (b) of Act of 2010.

19. In view of above I find no ground to interfere in findings of inquiry committee made on 12-06-2015. Appeal of appellant is hereby dismissed.
20. Parties be informed accordingly. Issue notice to Managing Director of Pakistan State Oil (PSO) for implementation of recommendations of inquiry committee dated 12-06-2015 and of this order passed by this court.
21. Announced in open court.

JUSTICE (R) YASMIN ABBASEY
Federal Ombudsman