

**OFFICE OF THE FEDERAL OMBUDSPERSON**  
**FOR PROTECTION AGAINST HARASSMENT OF WOMEN**  
**AT THE WORKPLACE, ISLAMABAD**

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000116/2023

Serial No. of Order of Proceedings	Date of order of Proceedings	<b>THE PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE ACT, 2010</b>  Order of other proceedings with Signature of Federal Ombudsperson  <b>TITLE: RUBINA NASIR VS FARUKH IQBAL &amp; OTHERS</b>
		<b>Department: First Women Bank Limited</b>
1	2	3
16	10-10-2023	Complaint No. <u>FOH-HQR/0000116/2023</u>  <b><u>Subject:</u> Maintainability of Complaint filed under the Protection against Harassment of Women at the Workplace Act, 2010</b>  <b><u>Factual Background</u></b>  1. The relevant facts of the instant case are that Ms. Rubina Nasir ( <i>hereinafter called the Complainant</i> ) was appointed as Officer Grade-III in First Women Bank Ltd ( <i>hereinafter called the Bank</i> ) vide appointment letter dated 31.05.1992. Clause no. 6 of the appointment letter is as under:  “6. You may be required to serve at any time at any of the Bank’s Office in or outside Pakistan.”  2. After her appointment, the Complainant performed her duties with the Bank for approximately 30 years. Subsequently, vide letter dated 02.08.2022 she was transferred from Area office Islamabad to Area office Lahore w.e.f. 15.08.2022. She was asked to ensure

		<p>proper handing/taking over of assignments. All other terms and conditions of her employment remained the same. The Complainant was unhappy with her transfer and as such she sent an email to the Bank on 12.08.2022 requesting that her transfer be reconsidered keeping in view her previous track record. From this date onwards the dispute between the Bank and the Complainant started. This culminated in a charge sheet being served on the Complainant on 22.12.2022 for being on unauthorized leave from 15.08.2022 to which she replied on 10.01.2023. Finding the reply unsatisfactory an inquiry was held against the Complainant on 20.03.2023 in which she was found guilty of misconduct. Thereafter, the Disciplinary Action Committee compulsorily retired her from service on 12.04.2023.</p> <p>3. During the pendency of the disciplinary proceedings against the Complainant she submitted a preliminary complaint to this forum via email on 07.04.2023 followed by a written complaint on 13-04-2023 alleging psychological harassment at the hands of the Bank's management. She stated in her complaint that she conveyed her inability to accept the transfer assignment to the management of the Bank but they paid no heed to her concerns and instead conducted baseless inquiries against her. In response, the Bank filed its written reply on 11.05.2023 wherein it alleged that the complaint does not come within the ambit of harassment as defined in Section 2(h) of the Protection against Harassment of Women at</p>
--	--	---

the Workplace Act, 2010 (“**Act**”) and instead relates to the terms and conditions of the Complainant’s service.

4. At this stage it may also be added here that the Complainant sought injunctive relief from this forum, namely, that the order of compulsory retirement issued against her on 12.04.2023 be suspended. However, the same was refused vide order dated 09.06.2023. Against that order the Complainant filed representation No. 27/WO/2023 before the President. The impugned order dated 09.06.2023 was modified by the President on 02.08.2023 to the extent that the operation of the order of compulsory retirement was directed to be put in abeyance in case the Complainant joined either the Lahore or the Karachi office within ten days of the receipt of the President’s order. Feeling aggrieved of this decision the Bank filed Writ Petition No. 2670/2023 before the Islamabad High Court which vide order dated 05.09.2023 suspended the President’s order dated 02.08.2023. However, the Writ Petition is yet to be finally decided. Nevertheless, since the Islamabad High Court did not issue any stay order against the complaint pending before this forum the matter was proceeded with and arguments on the maintainability of the complaint were heard on 28.09.2023.

**Submissions by Counsel**

5. During arguments counsel for the Bank reiterated the points recorded in the Bank’s written reply, as noted above in para 3. On

the other hand, the Complainant resisted the challenge to the maintainability of the complaint.

**Question in Issue**

6. It is an admitted fact that the present complaint has been filed before this forum under the Act. Section 2(h) of the Act specifies the requirements that a complaint of harassment must fulfill in order to be cognizable by this forum. For reference, Section 2(h) is reproduced below:

**“2. Definitions.—** In this Act, unless there is anything repugnant in the subject or context,—

(h) “harassment” means-

- i. Any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or
- ii. discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant;”

**Determination by the Ombudsperson**

7. It is evident from the definition of harassment given above that harassment is comprised of two limbs. The first limb is regarding sexual harassment [refer Section 2(h)(i) of the Act] whereas the second limb is concerned with discrimination on the basis of gender. Therefore, only when a complaint falls under one of the said two limbs can it be considered by this forum and any other kind of harassment, howsoever serious and grave, is beyond its

ambit. Keeping in view the stated legal context, the instant complaint must now be examined.

8. A perusal of the complaint reveals that nowhere is it alleged therein that the Complainant was either sexually harassed or discriminated against on account of her gender. Indeed, there is no material on record and none has been provided by the Complainant which establishes that the Complainant was subjected to sexual harassment or gender-based discrimination. In fact, the only grievance raised by the Complainant in her complaint is that she was directed to perform her services in the Area Office Lahore and that the Bank's refusal to accommodate her in Area Office Islamabad has caused her psychological harassment. The entire matter therefore appears to revolve around the transfer of the Complainant from Islamabad to Lahore. This, as also argued by counsel for the Bank, is a matter which solely pertains to the terms and conditions of the Complainant's service. It is well-established in the jurisprudence of the Superior Courts that this forum cannot adjudicate upon service/disciplinary matters. Reliance in this regard is placed on the judgment of the Supreme Court rendered in **Nadia Naz Vs. President of Islamic Republic of Pakistan** (PLD 2021 SC 784) ("**2021 judgment**"). The Supreme Court in that case observed:

"23. ...It may be observed that [under] the scheme of the Act, the Federal Ombudsman has no jurisdiction to enquire into and give findings as regard to the disciplinary proceeding against an employee of the Organization, as disciplinary matter fell beyond the realm of the authority and jurisdiction of Federal Ombudsman under the Act, of 2010.."

*(emphasis supplied)*

		<p>Although the above judgment was set aside by the Supreme Court in <b><u>Nadia Naz Vs. President of Islamic Republic of Pakistan</u></b> (PLD 2023 SC 588) (“<b>2023 judgment</b>”) that was only to the extent that the meaning and scope assigned to the term ‘harassment’ by the 2021 judgment was restrictive in nature. However, the finding that this forum cannot intervene in service/disciplinary matters was not disturbed by the Supreme Court in its 2023 judgment. Furthermore, a Division Bench of the High Court of Sindh also arrived at the same conclusion in <b><u>Muhammad Rizwan Dalia Vs. Ombudsman</u></b> (PLD 2022 Sindh 213) at para 13. Since the complaint of the Complainant is essentially seeking redressal of a service grievance, her prayer cannot be granted by this forum.</p> <p>9. Be that as it may, even if I examine the complaint of the Complainant through the lens of gender-based discrimination it appears to me that the same falls short of the standard noted in Section 2(h)(ii) of the Act, namely, the embodiment of ‘<i>a discriminatory and prejudicial mind-set or notion</i>’ against women. This is evident from the Bank’s reply. In para 2 of the parawise comments it is noted that prior to the Complainant’s transfer letter dated 02.08.2022 being issued multiple female members of staff at the Bank were transferred out of their home stations and they joined their duties. For reference, the list of transferred female employees is provided hereinbelow:</p> <ul style="list-style-type: none"><li>i. Mrs. Shagufta Sultana (late) transferred from Rawalpindi to Karachi and subsequently became the President of the Bank;</li><li>ii. Ms. Zareen Aziz, President, transferred from Lahore to Karachi;</li></ul>
--	--	---

		<p>iii. Mst Fauzia Janjua, Regional Head Islamabad, transferred from Rawalpindi to Karachi;</p> <p>iv. Mst Hina Shuaib transferred from Abbottabad to Rawalpindi;</p> <p>v. Mst Saadia transferred from Wah to Islamabad;</p> <p>vi. Mst Farida Nigar transferred from Islamabad to Karachi; and</p> <p>vii. Mst Bisma transferred from Peshawar to Karachi.</p> <p>Similarly in the Inquiry report, attached with the written reply, the names of certain other women who were transferred are recorded.</p> <p>These are:</p> <p>i. Ms. Shabi transferred from Lahore to Sialkot;</p> <p>ii. Ms. Shakira transferred from Sialkot to Gujrat; and</p> <p>iii. Ms. Samina transferred from Khairpur to Sukkur.</p> <p>Clearly then the record proves that the Complainant is not the first or the only woman at the Bank who has been transferred out of her home station. The Complainant can therefore not allege that she has been singled out on the basis of her gender alone because it appears that the Bank routinely transfers its female employees. At this stage, it is appropriate to note that the Complainant did not assert even once, either in written or orally, that male employees at the Bank are not transferred out of their home stations or are transferred less frequently.</p> <p>10. Additionally, the Complainant's transfer letter dated 02.08.2022 was issued by Ms. Shazia Rashdi, Manager Payroll, and Ms. Sakina Alam, Head HR Division. Likewise, the penalty of compulsory retirement was imposed on the Complainant on 12.04.2023 by Ms. Shaheen Zamir, Head of Marketing &amp; Service Quality; Ms. Fouzia Nusrat, Manager Compliance; Mr. Irfan Malik, Head Operations (Acting). Therefore, the alleged adverse actions</p>
--	--	--

taken against the Complainant i.e., her transfer from Islamabad to Lahore and her compulsory retirement from service were primarily on the orders of other female staff working at the Bank. I am cognizant of the fact that same-sex harassment is actionable under the Act because the Act defines the expressions 'complainant,' 'employee' and 'employer' in gender-neutral terms. However, even same-sex harassment has to be brought within the ambit of Section 2(h) by a complainant in order for this forum to initiate proceedings against the accused. In this regard, the landmark decision of the US Supreme Court in **Oncale v Sundowner Offshore Services, Inc** 523 US 75 (1998) is relevant. That case recognised that same-sex harassment is actionable under Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment, *inter alia*, on the basis of sex. Although the facts of that case were concerned with same-sex sexual harassment, the US Supreme Court identified three different routes through which a complainant can establish his/her claim of same-sex harassment:

“Courts and juries have found the inference of discrimination easy to draw in most male-female sexual harassment situations, because the challenged conduct typically involves explicit or implicit proposals of sexual activity; it is reasonable to assume those proposals would not have been made to someone of the same sex. The same chain of inference would be available to a plaintiff alleging same-sex harassment, if there were credible evidence that the harasser was homosexual. But harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex. A trier of fact might reasonably find such discrimination, for example, if a female victim is harassed in such sex-specific and derogatory terms by another woman as to make it clear that the harasser is motivated by general hostility to the presence of women in the workplace. A same-sex harassment plaintiff may also, of course, offer direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace. Whatever evidentiary route the plaintiff chooses to follow, he or she must always prove that the conduct at issue was not merely tinged with

offensive sexual connotations, but actually constituted "*discrimina[tion] ... because of ... sex.*"  
(*emphasis supplied*)

11. It becomes plain from the above-cited dictum that a complainant can prove same-sex harassment if he/she:

- i. Shows that the harasser was homosexual (in the case of sexual harassment);
- ii. Demonstrates that the harasser used such sex-specific and derogatory terms against him/her that it is clear that the harasser is generally hostile to the presence of the complainant's gender in the workplace (in the case of non-sexual harassment); or
- iii. Provides direct comparative evidence on how the harasser treats both sexes differently in a mixed-sex workplace (in the case of non-sexual harassment).

In **Roberts v Glenn Industrial Group, Inc.** (No. 19-1215) (4<sup>th</sup> Cir. 2021) the US Court of Appeals for the Fourth Circuit added a fourth category by including '*discrimination based on a [complainant's] failure to conform to sex stereotypes*' within the scope of same-sex harassment. It also observed that the list identified by the US Supreme Court in **Oncale** (*supra*) is not exhaustive and that there may be '*additional forms of proof... available to [complainants] to demonstrate that the same-sex harassment they suffered was based on sex.*'

12. Now in the instant case the Complainant has not alleged sexual harassment at the hands of the senior female staff therefore ground (i) is irrelevant. She has also not stated that the senior female staff treated male members of the staff better than their female counterparts so ground (iii) too is not applicable. She has neither submitted that she was discriminated against by senior

female staff because she failed to adhere to the traditional stereotypes attributed to women in Pakistani society rendering ground (iv) immaterial. At best the Complainant could have offered evidence in support of ground (ii) i.e., that the senior female staff at the Bank was generally hostile to the presence of women in the workplace but even that evidence is sorely lacking. In fact, it appears that the Bank regularly employs women and promotes them to high-ranking positions. I am well aware that the US case-law relied upon by me pertain to claims of discrimination filed under Title VII of the Civil Rights Act of 1964. However, these cases can still be treated as authorities by this forum for deciding harassment complaints filed under the Act because the tests that are laid down in the said case-law for proving same-sex harassment are similar to conduct that is prohibited by Section 2(h) of the Act. Consequently, keeping in view the factual and legal situations I find that the Complainant has not been subjected to gender-based discrimination by the Bank.

**Conclusion**

13. In light of the above discussion, in particular the cited case-law, the instant complaint is dismissed for being not maintainable as it falls outside the scope of Section 2(h) of the Act.

**FEDERAL OMBUDSPERSON**