



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

J U D G M E N T

1. Appeal Number: 1(457)/2018-FOS (Reg)
2. Date of Institution: 19-04-2018
3. Date of Decision: 06-11-2018
4. Appellant: Mr. Ghulam Asghar
S/o. Ghulam Hurr
R/o. Mohulla Rahmania Post Office,
Tehsil Jand Distt. Attock

Through: Mr. Saif-ur-Rehman
Advocate Supreme Court

5. Respondents:
 - i. Chairman, Board of Director
OGDL House
Jinnah Avenue, Blue Area
Islamabad
 - ii. Managing Director / CEO
OGDL House
Jinnah Avenue, Blue Area
Islamabad
 - iii. Executive Director, HR / Admin
Chairman Inquiry Committee
OGDL House
Jinnah Avenue, Blue Area
Islamabad
 - iv. Mst. Hira Noor
HR Officer (H)
OGDL House
Jinnah Avenue, Blue Area
Islamabad

Through: Mst. Aliya Zareen Abbasi
Advocate High Court

Mst. Ambreen Nawaz Chaudhary
Advocate High Court

KASHMALA TARIQ**Federal Ombudsman:****Appeal No. 1(457)/2018-FOS(Reg)**

1. Through this order, I intend to decide upon appeal under section 6 of Protection against Harassment of Women at Workplace Act 2010 (“the Act of 2010”) wherein Ghulam Asghar (“appellant”) impugns office memorandum dated 21-03-2018 (“impugned order”), reproduced below:

“Mr. Ghulam Asghar S/o Ghulam Hur (E # 303403), Medical Attendant (on contract) has been found guilty of the charges contained in the charge sheet issued vide letter No. AED (HR/Admn)/949/2018 dated 03-03-2018. Consequently, major penalty of removal from service is imposed upon him w.e.f 19-03-2018. This issues with the approval of MD / CEO”

2. From the very outset, the appellant took the following preliminary objections:
 - i. The appellant has been punished twice; however, the matter was settled in 2013 by issuing warning letter to appellant.
 - ii. That decision made by inquiry committee was based on malafide, as the

same was used as a tool to pressurize appellant to withdraw his claim from a piece of land which is being owned by the organization.

- iii. That the charge sheet did not contain specific allegations.
- iv. That OGDCL has violated the Act of 2010 by not transferring appellant to any appropriate side after so called incident.

3. Briefly, the facts stated by the appellant are that he was working as a Dispenser in Oil and Gas Development Company Limited (OGDCL), Medical Center Dhakni Plant w.e.f 2008. That on same site two other male colleagues and one female colleague, Mst. Khurshid Bibi (“complainant”) was also posted in the dispensary as a medical helper and it is alleged that the complainant was ‘installed’ there to obtain some gains because some area of land owned by the father of appellant. In 2013, the complainant submitted an application leveling allegations of sexual harassment that the appellant used to talk and act vulgar and that he had threatened the complainant for termination of service. Furthermore, the appellant contends that an inquiry was conducted in the year 2013 where he was forced to admit the allegations with assurance that his employment will be continued upon which, the appellant was issued strict warning by Plant Manager Dhakni. Subsequently, the appellant requested CMO Dakhni Plant to transfer him in to another centre in order to avoid any future mishaps but he was not transferred. In 2018, the complainant

again submitted a complaint of sexual harassment against the appellant upon which charge sheet was issued by the inquiry committee. The appellant reiterated that land owned by appellant's family was acquired by OGDCL prior to his transfer in 2008 to Dhakni Plant and the administration by putting up a lot of pressure on appellant to withdraw his case.

4. On the other hand, the respondents have, inter-alia, argued that the appellant has admitted his guilt and has not come forth to this forum with clean hands. The instant appeal is frivolous and the appellant is trying to mislead this forum. Moreover, the appellant is having a history of repeated incidents of immoral turpitude since the harassment has been on-going since 2013 as a result of retaliation against the previous complaint made. Further stated, that the appellant was a contractual employee and no request of transfer was ever made by appellant. The appellant was transferred in January 2018 subsequent to the complaint in accordance with the provisions of the Act of 2010. That as a matter of fact on 19-01-2018, a fresh complaint was lodged by the complainant thereby creating new cause of action, upon which a thorough fact finding inquiry was conducted and procedure laid down under Act 2010 was followed.
5. Arguments heard and record perused.

The preliminary objections raised by the appellant require some consideration.

Firstly, the question arises whether the appellant is being punished twice. Record shows that the first complaint against the appellant was made on 19.03.2013 leveling allegations of sexual harassment. Subsequently, the appellant admitted his fault and tendered an unconditional apology. The second complaint was made on 07.04.2014 when the appellant sent love letters to the complainant. The appellant again admitted his guilt and tendered an apology. The third and final complaint was made on 19.01.2018 which is the subject matter of the instant appeal. Hence, there is no question of being punished twice.

6. The appellant took the plea of malafide on account of an ongoing land dispute between OGDCL and the appellant. The determination of plea of malafide involves two questions, firstly whether there is personal bias or an oblique motive and secondly, whether the administrative action, as in the instant appeal is removal from service, is contrary to the object, requirement and conditions of a valid exercise of administrative power. Admittedly, the land dispute arose much prior to the transfer of the appellant to Dakhni Plant and the appellant had been working in the same station for the past ten years. This office is of the opinion that the appellant has been unsuccessful in making out a case of malafide as there is no nexus between the land dispute and grievances of the complainant. The appellant has also failed to show any adverse actions taken against him during his posting

from the year 2008 till 2018.

7. The appellant has also contended that the charge-sheet did not contain any specifications. After going through Charge Sheet dated 02.03.2018 issued to the appellant, the same is categorically denied as the charge sheet is detailed and contains all the allegations made by the complainant. Lastly, the appellant has stated that the organization i.e. OGDCL has violated the Act of 2010 by not transferring the appellant to another station. However, the appellant has not put forward any request for transfer. Under the Act of 2010, the employer must make temporarily adjustments and make sure the parties do not have to interact with each other and retaliation should be strictly measured. OGDCL to this extent, should have addressed the issue at the earliest with a permanent and logical solution. Even otherwise, such an argument cannot be agitated as a defence by the appellant as it does not justify or exonerate the acts committed. Hence, the objections are without any substance.
8. As per the contents of complaint and statement of the complainant, the main allegation against the appellant is that he has made objectionable and obscene gestures in front of the complainant. Moreover, he would force the complainant to touch his private body parts and do the same with her. Upon refusal of the complainant, the appellant would retaliate and threaten to get her fired from the

organization. The complainant also produced picture taken in a van where the appellant is holding the legs of the complainant, and two videos wherein the appellant is making obscene gestures in front of the complainant and playing with his private body part.

9. The said videos and pictures were examined by this office as well. The appellant was confronted with the videos and pictures to which he admitted that it was him and as a response he said he was just being 'easy' in the workplace when there were no people around. If we contextualize the circumstances in one picture, prima facie it appears that the present complaint corroborates with the previous complaints dated 19.01.13 and 07.04.2014. The complainant has been successful in making out a case of sexual harassment and denial of appellant to the charges holds no validity. Furthermore, the inquiry committee has conducted the inquiry with due process and has followed the provisions of the Act of 2010. Admittedly, the parties have been colleagues and the harassment has been ongoing for many years. There are cogent reasons to believe the version of the complainant and we are satisfied that there must have been several unreported incidents as understandably, it is not easy for a woman to speak up and raise her voice against harassment in our society owing to the social stigma. The conduct and actions of the appellant amount to unwelcoming sexual advance, sexually demeaning attitude

thereby creating a hostile working environment for the complainant.

10. For reasons discussed above, the appellant deserves no leniency and the office agrees with the findings of the inquiry committee, hence, the instant appeal is hereby dismissed. However, the penalty on the appellant recommended by the inquiry committee is enhanced to dismissal from service u/s 4(4)(ii)(d) of the Act of 2010.
11. OGDCL is also directed to conduct to capacity building trainings/workshops/seminars of employees and duly assigned inquiry committees to raise awareness on issue of sexual harassment and enforcement of Code of Conduct in true letter and spirit.

KASHMALA TARIQ
Federal Ombudsman