

OFFICE OF THE FEDERAL OMBUDSMAN

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000090/19

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsman			
		TITLE:	Hafsa Tariq Commercial Assistant	VS	Khizer Hayat & others i. Assistant Director ii. Director (Admin) iii. Deputy Director
		DEPARTMENT: MULTAN ELECTRIC POWER COMPANY LIMITED (MEPCO)			
1	2	3			
	07-10-2022	<p>Complaint No. <u>FOH-HQR/0000090/19</u></p> <p>This case having a chequered history has, unfortunately, wasted much time and energies of not only the employees of the organization (MEPCO) but also the other forums where it has reached one way or the other. It has become a classic case of internal rivalries, jealousies and leg pulling of the employees of the organization concerned. This is a hard fact that consumers dealing with the organization are forced to keep on moving from post to pillar and pillar to post for redressal of their genuine grievances and are treated with contempt and disrespect by the employees of the organization but the employees themselves are indulged interse in mudslinging and backbiting to pull down one another. This case has a pretty long story which may take much time and space if narrated in full but in order to highlight the facts in brevity it is to be started from the day when the instant complaint landed at this forum on 16-04-2019.</p> <p>Ms. Hafsa Tariq, Commercial Assistant, MEPCO Headquarter Multan (hereinafter called the Complainant) filed a complaint at this forum for taking action against MEPCO employees including Khizer Hayat Assistant Director (hereinafter called the Accused No. 1), Mian Sohail Afzal, Director (Admn) (hereinafter called the Accused No. 2), Sohail Abbas, Deputy Director (hereinafter called the Accused No. 3), and Mr. Jamshed Ahmed Niazi, Director (hereinafter called the Accused No. 4) for causing her harassment at the workplace in terms of Section 8 of the Protection against Harassment of Women at the Workplace Act 2010. The Complainant's allegations are reproduced below for convenience:</p>			

“It is submitted that I was appointed as Commercial Assistant under employee’s son/daughter quota in MEPCO and working as Assistant Basis Administrator/ERP Coordinator on ERP floor under Finance Director MEPCO Multan.

I am a female employee working in MEPCO and a citizen of Pakistan. I have all the rights to live my life equal to other citizens of Pakistan, which are given under Constitution of Pakistan.

I also have the rights to work, to move and interaction with the other people working under MEPCO but Mr. Khizar Hayat, Assistant Director (Examination) MEPCO H.Qs Multan started harassing me. One day he clearly invited me to do sex with him. I was suddenly shocked to listen his stupid words and I also denied him that how you have dared to say his wish.

After that he met with Mr. Sohail Abbas, Deputy Director (Enquiries) MEPCO H.Qs Multan and Mian Sohail Afzal, (Director Admin) MEPCO H.Qs Multan and they claimed that they have hacked my whatsapp (Android Application) with planning and started to harass me. They also got published false news against me in Daily Newspaper Khabrain on 01-04-2019. In the newspaper, it was also mentioned that they have got record of my whatsapp conversations, my pictures, videos and my other personal data.

After the publication of this news in Daily Khabbarain, Mr. Jamshaid Ahmad Niazi, Director (PRO) MEPCO H.Qs Multan gave the presentation to Chief Executive Officer MEPCO Multan regarding the news clip published in daily Khabbarain but inspite of the supporting me which is his job, he further give the list of other 16-No. persons linked with me and informed to CEO MEPCO that these all 16-No. persons are also in contact with me through sexual chatting and nude videos and this is the 1st episode and others episodes are under preparation and on behalf of newspaper Khabbarain reporter, he demanded the Rs. 10,00,000/- (Rupees Ten Lac only) from each person for stopping this series of news to be published and also demanded Rs. 500,000/- (Rupees Five Lac only) from me.

In this connection, I lay down few lines for your kind information and consideration, please.

- The news published in Daily Newspaper Khabbarain by Rana Tariq Aziz, Reporter is fake and baseless.
- That news is directly attack on my personality and is the bad example of character assassination in history.
- That news has created many problems for me and my family amongst our relatives and society. Due to this news I and my family are much worried and shocked.

Due to above stated circumstances, I will resign from MEPCO service and will suicide or I will shift from Multan along with my family or from the country but I have decided to face the blackmailers, who created problems for working women in the offices”.

After registration of the complaint at this forum, notices were issued to the Accused for submission of their defense reply. Accused No. 1 filed his detailed written reply denying the allegations levelled against him. Accused No. 2 also furnished his reply putting the blame on Accused No. 1. Similarly Accused No. 4 too filed his defense statement. Then application came on behalf of Accused No. 2 for dismissal of the complaint on the basis of jurisdiction and maintainability etc.

An inquiry was also conducted at the departmental level as a result of the allegations of Complainant. The matter was taken to the Honorable Lahore High Court Multan Bench where it remained pending quite some time. Similarly the case was also taken to Cyber Crime, FIA Multan Region Multan where Accused No. 1 and Accused No. 2 were arrested.

In short the parties kept the pot boiling for long on one pretext or the other.

Having exhausted the different forums, the case ultimately reached to the stage of evidence to be recorded by this forum.

Mr. Liaqat Ali Memon, DG HR and Admin MEPCO Headquarter Multan appeared as the first witness and recorded his evidence as PW 1 with regard to his affidavit in evidence Ex PW 1/1. He stated that Accused No. 1, the then Assistant Director (Examination) confessed before him that he had hacked personal whatsapp data of Complainant on the instigation and pressure of Accused No. 2. He further told that he (Accused No. 1) handed over the same hacked data after fabrication to Accused No. 2 and Accused No. 2 conceded before Mr. Tahir Mehmood, Ex- CEO MEPCO that he had hacked whatsapp data of Complainant from Accused No. 1 but he did not share the same to anyone except Tahir Mehmood.

The witness was subjected to lengthy cross examination by the learned counsel for the Accused No. 2 but it appears that the witness has not been confronted with the main allegations leveled by him in his examination in chief against Accused No. 2. No tangible question has been asked from the witness with regard to his statement pertaining to confession or admission of Accused No. 1 in respect of hacking the whatsapp data of Complainant on the behest of Accused No. 2.

It is stated in the examination in chief of PW 1 that Accused No. 2 admitted in his own presence, in the presence of Tahir Mehmood and Complainant that he hacked whatsapp data of the Complainant through Accused No. 1. This portion of examination in chief PW-1 has not been touched by the Accused No. 2 during cross examination. It is also not cogently established on the record that Liaqat Ali (PW 1) recorded his evidence against Accused No. 2 on account of some enmity, ill will or animosity.

The Complainant appeared in the witness box and recorded her statement as PW 2. She owned her affidavit in evidence Ex PW 2/1. She alleged that Accused No. 1 confessed before Liaqat Ali Memon, Mr. Wajahat Ali Bucha that he has hacked her personal whatsapp data on the instigation and pressure of Accused No. 2 and it was given to him after fabrication. She further stated that Accused No. 1 also admitted this thing in the statement recorded at this forum, FIA, Cyber Crime Cell Multan and harassment committee PEPCO. Further submitted that Accused No. 1 in his statement before this forum disclosed that he was suspended by Accused No. 2 for his recording statement at this forum.

Complainant kept on stating that Accused no. 2 accepted before Liaqat Ali Memon, DG HR in the office of Tahir Mehmood Ex-CEO MEPCO that he has shared her personal whatsapp data hacked by Accused No. 1 and that Mr. Tahir Mehmood forwarded her whatsapp data through letter dated 23-08-2019 to PEPCO and General Manager HR PEPCO which was received there on 27-08-2019.

The Complainant was subjected to lengthy cross examination but it seems she has not been specifically asked about her allegations with regard to confession or admission of Accused No. 2 before Liaqat Ali Memon (witness of Complainant), Accused No. 1 and Tahir Mehmood.

Lengthy cross examination has been made but it mainly revolved around immaterial and irrelevant things. Nothing cogent has been brought on the record to prove that Complainant has filed this case against Accused No.

2 on account of some ill will or for that matter collusion with Liaqat Ali Memon, DG HR & Admin.

Next comes the statement of Accused No. 2 who recorded his evidence as DW 1 in support of his affidavit in evidence Ex DW 1/1 on file. According to him the allegations leveled against him by the Complainant are false, frivolous and baseless and without justification. He denied to have ever been involved in commission of the acts alleged by the Complainant. He alleged that complaint against him was filed by Complainant on the behest of Liaqat Ali Memon with whom he has professional jealousy and service related dispute. Accused No. 2 was also cross examined at length but his cross examination almost also revolved around irrelevant and unnecessary things. However from the Accused No. 2 evidence it could not be established that complaint against the Accused was a result of some conspiracy, hatched between Complainant and PW Liaqat Ali Memon. On the contrary it was brought on the file that the relation between Liaqat Ali Memon and the Accused No. 2 remained most of the time normal and cordial.

I heard the arguments advanced by both the parties and also gone through the relevant record.

As mentioned earlier the harassment complaint filed by Hafsa Tariq landed at this forum on 16-04-2019. Complainant clearly alleged that Accused No. 1 had started to harass her and that one day he clearly invited her for sex with him. Further alleged that Accused No. 2 and Accused No. 3 hacked her whatsapp data with the connivance of Accused No. 1 and started her harassment. They got published the news in Daily Khabrain on 01-04-2019 propagating that they had got record of her whatsapp conversation, her pictures, videos and other personal data. That after publication of the news in daily Khabrain Accused No. 4 gave the presentation to the Chief Executive officer MEPCO regarding the news clip published in Daily Khabrain, further adding 16 more persons in the list linked with her and informed the CEO that all those 16 persons are also in contact with her through sexual chatting and nude videos. That Accused No. 4 demanded Rs.10 lacs from each of the persons for stopping the publication of that material in the newspaper.

From the above contents of the complaint, it transpired that Complainant charged Khizer Hayyat, Mian Sohail Afzal, Sohail Abbas and Jamshed Ahmed Niazi for her harassment under the Protection against Harassment of Women at the Workplace Act 2010.

Accused No. 1 (Khizer Hayat) whose conduct and character always remained dubious and condemnable submitted his reply at this forum in a bid to save his own skin and instead shifting the blame on other employees namely Mian Sohail Afzal (Accused No. 2), Muhammad Ali, Muhammad Akram and Sohail Abbas (Accused No. 3). He submitted that he had a good relation with Complainant Hafsa Tariq being an official colleague but he was compelled by Accused No. 2, his immediate boss to hack the whatsapp data of the Complainant or else to face the consequences. Hence on the behest of his immediate boss Accused No. 2, he (Khizer Hayat) hacked the whatsapp data of Complainant in the office room of Accused No. 2 and saved it for him. He went further to depose that Accused No. 2 and Accused no. 3 asked Complainant to fulfill the sexual desires of Mr. Muhammad Ali, the then DG HR MEPCO but she refused to do so. At the end Accused no. 1 disclosed that no doubt he hacked the data of Complainant on the pressure of Accused No. 2, his immediate boss, but he did not share this data with anyone else nor blackmailed or harassed the Complainant and also did not share the data with social media or reporter of any newspaper.

According to Accused No. 1 it was proved from the wordings of CEO that Accused no. 2 leaked out such personal data of the Complainant in a bid to blackmail her as well as Liaqat Ali Memon. Lastly Accused No. 1 begged pardon for hacking the whatsapp mobile data of Complainant on the pressure of Accused No. 2 due to ignorance of Cyber Crime Act. He blamed Accused No. 2, as the real culprit for sharing personal data of Complainant with CEO & others.

Initially Accused No. 1 attended the proceedings at this forum but later on he disassociated himself with the proceedings and was placed ex-parte.

So far as the written reply of the Accused No. 1 is concerned, that does not seem to be the result of any pressure, undue influence or coercion. On the other hand such a detailed reply appears to be a voluntary statement and deposition of Accused No. 1. The character and conduct of this man can be judged from the fact that after submitting the above mentioned reply at this forum during the proceedings of the case, he later on took another u-turn, resiling from his statement dated 29-04-2019 stating that his first statement was due to pressure and threats of Complainant. Subsequent statement was filed at this forum on 23-12-2021 whereas on the file there is undertaking on behalf of Accused No. 1 on a stamp paper dated 07-02-2020 wherein he admitted to have hacked

the whatsapp of Complainant on instigation and forcing of Accused No. 2, his immediate boss.

It is a thing of shame and shock that Accused No. 1 changed so many instances within a short span of time. Such person deserves strong condemnation by the right thinking people of the society. As Accused No. 1 is directly charged in this case for sexual harassment and as he has already been placed ex-parte having no defense in his credit, He is straightway found to be guilty of harassment in terms of Protection against Harassment of Women at the Workplace Act 2010. His act squarely falls within the definition of Section 2(h) of the Act 2010.

Accused No. 1 being guilty of the charge of sexual harassment is liable to be imposed upon the major penalty in terms of Section 4(4)(ii)(d) of the Act 2010. He is, therefore, dismissed from service and also imposed upon fine of Rs. 5 Lacs under Sub Section 4(ii)(e) of the Act to be paid as compensation to the Complainant.

Competent authority shall impose the penalty upon Accused No. 1 within one week of the receipt of this order under intimation to the Registrar FOSPAH.

I deem it essential to mention here that perjury has become a menace which is shaking, jolting and destroying the very foundation and fabric of our society. This menace requires to be dealt with iron hand. It is an evil to disrupt very basis of social order and for that matter is the most heinous offence.

In the words of a jurist, "truth is the foundation of justice and justice is the core and bedrock of a civilized society, any compromise on truth amounts to a compromise on a society's futures, as a just, fair and civilized society.

Competent authority where Accused No. 1 (Khizer Hayat) works should take this matter to the concerned quarter for taking legal action against him in terms of the relevant provision of Pakistan Penal Code.

Now coming to the case of Accused No. 2 he has been charged specifically by the Complainant in her complaint filed at this forum as well as complaints at other forums particularly FIA Cyber Crime branch and PEPCO for sexual harassment by hacking her mobile data through Accused No.1.

Lengthy evidence has been recorded in the case from both the sides but nothing cogent has come forward to prove that Complainant hatched any conspiracy against the Accused No. 2 on account of some previous

enmity, grudge, ill will or animosity. No such evidence is available on the file to show that Complainant fell in the hands of rivals of the Accused and has been used by them to cause damage to the Accused. On the contrary evidence on the file reflects that the relations between the Complainant and Accused No. 2 remained normal.

In these circumstances one cannot expect of such a drastic action on behalf of the Complainant against the Accused No. 2 who is holding a senior position in the organization. Having discharged the initial burden on Complainant's part as against the Accused No.2, he was given opportunity to prove that in fact the charge against him is false and fabricated but no such tangible evidence has been brought forward to substantiate the stance of the Accused No. 2 that the case against him is concocted.

There is evidence on behalf of Liaqat Ali Memon, senior officer of the organization, whereby he has supported the cause of the Complainant. On the record one cannot find confidence inspiring evidence to prove that Liaqat Ali Memon had animosity with Accused no. 2. The evidence on the other hand shows that they both remained cordial and normal. Statement of Liaqat Ali Memon, in the given circumstances, may not be dubbed as a statement of a partisan or interested person.

It is a matter of common sense that a lady would not ruin her modesty, dignity, respect by making a false complaint of sexual harassment just to defame a colleague. The Protection Against Harassment of Women at the Workplace Act 2010 has been promulgated for the safety of persons who feel insecure at the workplace and to punish transgressors for their act of sexual harassment, abuse or assault. Such acts have to be condemned and discouraged. Under Articles 25 & 34 of the Constitution it is everyone's constitutional duty to protect women to ensure their full participation in all spheres of national life.

There is no denying the fact that sexual harassment pollutes the working environment and have a devastating effect on the health, confidence, morale and performance of those affected by it. Sexual harassment may also have damaging impact not only on employees themselves but also those who witness it or have knowledge of the unwanted behavior.

It has been held by the August Supreme Court of Pakistan in its judgment in the **Civil Petition No. 4570 of 2019** that:

“Harassment, in all forms and manifestations affects and violates the dignity of a person, as guaranteed under the

Constitution of Pakistan, 1973. Even though anyone may be subject to sexual harassment, in a culture and society like Pakistan, women are the distressing majority of victims. Harassment in any society or organization is a testament to regressive behavior that creates an intimidating, hostile, degrading, humiliating, and offensive environment which has a devastating effect on any society or organization by adversely affecting its overall performance and development”.

In the judgments of Indian jurisdiction reported in **AIR 2003 SC 4684** and **PLD 1984 SC 218 (SAB)** it is observed:

“When Indian woman in tradition bound society makes a complaint of rape there is an inbuilt assurance that the charge is genuine. To insist on corroboration is to add insult to injury”.

The Supreme Court of India in judgment reported in **AIR 1991 SC 207** has held that:

“Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”

After going through the entire record of the case particularly the evidence produced by the parties, one cannot believe that the case of Complainant against the Accused no. 2 is result of any conspiracy, concoction or fabrication. No circumstances have been shown that Complainant could file false case against the Accused No. 2 due to any malice or ill will. The question arises why the Complainant should have taken such a step which could ruin her dignity and modesty in the society. There was no moral or legal justification for the employees of the organization to have hacked the personal data from the mobile phone of the Complainant. In case, for arguments sake, the Complainant had some objectionable material or data in her mobile it was her personal and private affair. None else was allowed to hack the said data for the purpose of blackmailing the lady. No one is allowed to interfere in the private affairs of a person if not done in open to spread obscenity or vulgarity.

From the stance of the Accused No. 2, I am not convinced that he has never hacked the data of the Complainant. Evidence on the file on the other hand is quite supporting the version that the whatsapp data of the Complainant was hacked and then used by the Accused No. 2 as a piece of blackmailing against her. In modern technology such tactics are oftenly

used for blackmailing women which is highly a condemnable act of interference in privacy of a lady.

Accumulative effect of the evidence and record on the file is that Accused no. 2 Mian Sohail Afzal is guilty of the charge of sexual harassment of the Complainant. He cannot be, therefore, exonerated or absolved of such a heinous charge. Thus, Accused No. 2 being **guilty of the charge of sexual harassment** in terms of Section 2(h) of the Act 2010 is hereby imposed upon major penalty under Sub Section 4(4)(ii)(a) i.e. reduction to a lower post or time-scale, or to a lower stage in a time-scale and 4(4)(ii)(e) of the Act i.e. fine of Rs. 10 lacs to be paid as compensation to the Complainant. Competent authority shall impose the penalty upon the Accused No. 2 Mian Sohail Afzal within one week of the receipt of the order under intimation to the Registrar FOSPAH.

As regards Accused No. 3 Sohail Abbas and Accused No. 4 Jamshed Niazi no cogent evidence or substance exists against them to prove them guilty of the charge beyond any shadow of doubt. In my opinion the said two Accused are entitled to be extended the benefit of doubt. So they are exonerated of the charge of sexual harassment.

Disposed off.

FEDERAL OMBUDSMAN