

OFFICE OF THE FEDERAL OMBUDSMAN

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000396/22

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsman			
		TITLE:	Muhammad Qaiser PSO/Head MBC	VS	Chairman PCSIR & others i. Chairman ii. Secretary, M/o. Science & Technology iii. Secretary, PCSIR iv. Director General, PCSIR v. All Members of Inquiry Committee
1	2	3			
	22-02-2023	<p>Appeal No. <u>FOH-HQR/0000396/22</u></p> <p>Facts forming the background of the instant appeal, in short compass, are as these:</p> <p>Ms. Hina Tariq joined PCSIR Peshawar as junior scientific officer (JSO) on 29-10-2021. She was placed at Medicinal Botanic Centre (MBC) under the supervision of Dr. Fareena Kanwal. Dr. Muhammad Qaiser was Head of the department.</p> <p>But, he was on vacation at that time. Ms. Hina Tariq met him after his resuming the duty.</p> <p>Through her hand written complaint dated 12-11-2021, Ms. Hina Tariq in the company of her husband informed Director General PLC about an incident of the previous day dated 11-11-2021 alleging harassment at the hands of Dr. Muhammad Qaiser in his office. Director General, PCSIR Labs Complex Peshawar forwarded that hand written complaint of Ms. Hina Tariq to the competent authority i.e. Chairman PCSIR Labs Complex Islamabad. DG concerned also forwarded another joint complaint of some MBC officers dated</p>			

15-11-2021 against the alleged immoral conduct and misbehavior of Dr. Muhammad Qaiser, PSO/Head MBC, PLC. The Chairman PCSIR constituted an inquiry committee to probe into the case. The committee consisted of the following persons:-

- i. Dr. Sarwat Ismail, Chief Admin officer/Chairperson
- ii. Mr. Nasrullah Jan, Principal Account officer/Member
- iii. Mr. Fahim-ud-Din, Senior Admin Officer (I)/Member
- iv. Mr. Fayaz Ahmed Soomro, SAO (II) Member/Secretary

After thorough probe into the matter, the inquiry committee concluded that Dr. Muhammad Qaiser was guilty of the charge of harassment as against Ms. Hina Tariq. It was, therefore, recommended by the inquiry committee to reduce Dr. Muhammad Qaiser from BPS-19 to BPS-18 besides to transfer him from PLC.

In view of the recommendations of the committee, the competent authority imposed major penalty of reduction to lower post in terms of Section 4(4)(ii)(a) of the Protection against Harassment of Women at the Workplace Act, 2010 vide the order dated 18-08-2022.

Feeling aggrieved by decision of the competent authority, Appellant filed the instant appeal under Section 6 of the Protection against Harassment of Women at the Workplace Act, 2010 and prayed that the impugned order of the competent authority dated 18-02-2022 may be set aside and appellant be exonerated from the charges. According to the Appellant, the filing of a complaint against him was merely based on misunderstanding. In the initial appeal Ms. Hina Tariq was not made as party but subsequently the appellant through a separate application prayed for to array Ms. Hina Tariq as a Respondent. The said application was allowed on 20-10-2022. Respondent Ms. Hina Tariq furnished her response later on through courier.

In the connection of above, the members of inquiry committee including Chairperson Dr. Sarwat Ismail were summoned and heard. Learned counsel for the Appellant contended that the inquiry committee did not follow the required procedure and conducted the proceedings in a haphazard manner. According to him the appellant

was not provided with opportunity to cross examine the Complainant or other witnesses, so much so no evidence was recorded in presence of the Appellant. He further submitted that before initiation of the inquiry proceedings neither any charge sheet nor any show cause was given to the Appellant which was gross violation of the mandate of inquiry. According to the learned counsel for the Appellant the impugned order dated 18-08-2022 is illegal, unlawful, against the norms of justice because it was passed against the factual position depriving him of his legitimate rights and hence, not tenable. The learned counsel also raised objections on the constitution of the inquiry committee describing it as against the provisions of Section 3(2) of the Protection against Harassment of Women at the Workplace Act, 2010.

As per allegations of Complainant, on 11-11-2021 Appellant called a meeting to prepare PC-1 by inviting Ms. Fareena Kanwal, Dr. Yousaf Ali, Ms. Hina Tariq and Ms. Riffat Naz. During lunch break all officers left but Appellant restrained the Complainant to his office and asked her to come near and hold him/his hand when there was no one else in the room. Complainant stated that she got scared and extremely terrified by the act of Appellant and ran out of the room and left her belongings there. Appellant although denied the allegation of harassment on his part, yet he admitted his presence on the place of incident. According to him he just asked to Ms. Hina Tariq to give him chair/hold his hand as he was getting unconscious, blurred vision etc due to ill health.

Whereas, on conducting the inquiry procedure the chairperson of inquiry committee Dr. Sarwat Ismail contented that the inquiry was conducted deeply by touching all the merit of the case as provided in inquiry report.

The available record has been scrutinized and gone through in depth. It may be appropriate to refer to the relevant provisions of the Act, 2010 here under for convenience.

Section 3 of the Act deals with constitution of an inquiry committee.

In Sub Section 2 of Section 3 ibid requires three members committee whereas committee constituted vide order dated 18-11-2021 consisted of four members. Moreover Section 4 of the act pertain procedure for holding inquiry. In Section 4 (1)(c) it is mentioned that each party shall be entitle to cross examine the witness against him. It appears mandatory that if a statement of witness is recorded by the inquiry committee the other side shall be allowed to cross examine that witness. It is up to the other side where or not to cross examine a witness. Here as per application of the Appellant dated 24-08-2022 to chairman PCSIR, even after conclusion of inquiry proceeding the statement of Complainant and the witnesses against him were not given to the Appellant. As in the application he requested to provide statement of Complainant and list of witness alongwith their written statements. It transpires that neither the Appellant was given the written statements of the witnesses against him nor given a chance to cross examine them.

From the above mentioned facts, it is evident that the committee is lacking some basic procedure in conducting the inquiry proceeding. The inquiry committee did not followed the required procedure in letter in spirit as it is well settled principle of law that, an act require to be in a particular manner should be done in that manner else it should not be done at all.

Although the committee took great labour and pain in conducting such a comprehensive and exhaustive inquiry but it is like that, if you go a little extra mile in gaining/achieving or making something right, there can be a situation where it will not go according to what you were thinking and might end up in failing to achieve a target.

Consequent upon what has been discussed above, while analyzing and scrutinizing all the relevant facts of the case threadbare, I am of the consider view that the nature and gravity of the charge and incident and upon this the imposed penalty on the Appellant is on the harsh and severe side. Accordingly I set aside the impugned order in terms of Sub Section 3 of Section 6 of the harassment act and to

allow the Appellant resume his normal duty and to restore to that position which he held prior to issuance of the impugned order from the competent authority.

A copy of this order be send to the competent authority to PCSIR laborites and the compliance report should be submitted within fifteen working days after issuance of the instant order.

Disposed off accordingly.

FEDERAL OMBUDSMAN