

# OFFICE OF THE OMBUDSMAN Islamabad

## FORM OF ORDER SHEET

Appeal No. FOH-ONL/0000059/2022

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsman <b>MUHAMMAD UMAIR VS PAK RAILWAY &amp; OTHERS</b>
1	2	3
	17-06-2022	<p>Appeal No. <u>FOH-ONL/0000059/2022</u></p> <p>Through the instant appeal, the notification dated 03-02-2022 has been assailed by the appellant Muhammad Umair because vide the said notification the appellant has been imposed major penalty of dismissal from service under E&amp;D rules 1973 with immediate effect.</p> <p>As per the record produced and relied upon by Pakistan Railways Peshawar (authority) the appellant Muhammad Umair was served with show cause notice dated 24-11-2020 under Government Servant (Efficiency &amp; Discipline) Rules 1973 for gross misconduct on account of sexual harassment and creating hostile and intimidating environment for lady officer Ms. Saba Jabeen, Ex-ATO at the workplace. In view of the notification dated 03-02-2022 authority (Divisional Superintendent, Pakistan Railway Peshawar) imposed the major penalty of dismissal from service under E&amp;D Rules 1973.</p> <p>Feeling aggrieved of the above mentioned penalty imposed upon him, the appellant approached this forum by the instant appeal praying to</p>

allow the appeal and to set aside the major penalty imposed upon him vide notification dated 03-02-2022.

The appellant raised many objections and pleas with regard to holding of the inquiry by the department alleging that the authority has displayed complete injustice, unfairness and non-seriousness in the entire process.

Pakistan Railway Peshawar through Divisional Superintendent office Peshawar resisted the appeal with the stance that the appellant has already preferred his appeal at departmental level which is still under process and as such his present appeal is liable to dismissal.

In the above background, I have heard the arguments of both the sides and perused the record.

At the very outset I would like to observe that this matter has been taken quite non-seriously without following the relevant procedure as laid down in Harassment of Women at the Workplace Act 2010. Such a casual attitude on behalf of the authority reflects its inefficiency and maladministration. As referred to above the impugned notification dated 03-02-2022 has been made and issued under Government Servant Efficiency & Discipline Rules 1973. It has been specifically provided in para 3 of the notification that the aggrieved person i.e. appellant may prefer an appeal to the appellate authority namely CEO/ Senior General Manager, PR Headquarter Lahore within thirty days of the receipt of the notification. It is, therefore, clear from the subject notification that it has not been made or issued in terms of provisions of Protection against Harassment of Women at the Workplace Act 2010. It is strange that the above notification has been issued under E&D Rules, 1973, whereas the inquiry conducted by the committee is shown to have been held under the Act 2010. Recommendations of

the inquiry in question are reproduced below:

“In view of the above, committee recommends imposing of major penalty upon the accused under section 4 of the Act ibid (Act 2010)”.

In the findings of the inquiry committee it is also made clear that the appellant is found guilty of all the three counts of charges served to him under clause-4 of the Protection against Harassment of Women at the Workplace Act 2010. Needless to explain that section 4 of the Act 2010 describes the complete procedure of holding inquiry as well as the penalties to be recommended to the competent authority for imposing upon one or more of the same. After receiving the findings and recommendations of the inquiry committee it is the competent authority to impose the penalty recommended by the inquiry committee under sub section 4 of section 4 ibid. It is quite contradictory on the part of the authority to hold inquiry under the Act 2010 and to impose the penalty under Government Servant Efficiency & Discipline Rules, 1973. The authority was required to impose penalty in view of sub section 4 of section 4 of the Act 2010. Not following the required procedure in letter and spirit the authority has razed the entire super structure to the ground because it is the settled principle of law that an act required to be done in a particular manner should be done in that manner else it should not be done at all.

A word of wisdom to the concerned inquiry committee that under the provision of section 4 of the Act complete procedure has been given for conducting the inquiry into the harassment cases. Unfortunately the departmental inquiry committee has not taken the pain to go through the relevant provisions and instead held the inquiry as per its own whims and pleasure.

In view of above, the penalty imposed upon the appellant by

notification dated 03-02-2022 cannot hold ground, so far as its applicability to the Provision of Harassment Act 2010 is concerned. In case the authority invokes the provision of the Act 2010 it shall have to follow the mandate of the Act 2010 to conduct the inquiry accordingly.

However, as the notification dated 03-02-2022 pertains to Efficiency and Discipline Rules, 1973 and against the said notification departmental appeal is also pending, this is a matter between appellant and appellant's departmental authority. This matter may be disposed off by the authority on its own with which this forum has no concern whatsoever. Both the sides may pursue this matter before the appellate forum, if so advised. So far as this appeal is concerned, it is disposed off in the terms that the impugned notification dated 03-02-2022 may be made in accordance with section 4(4) of the Act 2010. Authority may issue corrigendum to make the impugned notification, 2010 Act specific if so advised.

To sum up the existing state of affairs is not sustainable due to its being interse contradictory and conflicting. Hence it may not be kept intact in the given circumstances. The authority appears to have been boarded the two boats instead of taking one course i.e. either to proceed against the accused under E&D rules 1973 or to decide the matter under the relevant provisions of the Act 2010. The authority has adopted and followed both E&D rules and the Act 2010 for its convenience which is not allowed.

For proceedings under the Act 2010, elaborate and comprehensive procedure has been laid down in section 4 of the Act *ibid*.

As sequel to above I deem it just, appropriate and expedient to send this case back to the competent authority to make the impugned notification dated 03-02-2022 subservient to section 4 of the Act 2010 instead of E&D rules, 1973. In that eventuality the aggrieved party i.e.

the present appellant would be entitled to file fresh appeal at this forum under section 6 of the Act 2010. Notification dated 03-02-2022 is, therefore, set aside for the time being considering it not in conformity with the provisions of the Act 2010.

Consequently the appellant is restored to that position which he held prior to issuance of the impugned notification. He will be entitled to get all benefits of the period in between the impugned notification and the fresh decision by the competent authority. The authority concerned is directed to decide the case within fifteen days of the receipt of this order under intimation to the Registrar of FOSPAH Islamabad.

**OMBUDSMAN**