

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

FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000300/2023

Date of Institution: 11-10-2023

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson		
		TITLE:	Syed Salman Bukhari	VS
1	2	DEPARTMENT: State Bank of Pakistan		
09	09-02-2024	<p><u>Subject: Final Order on Appeal</u></p> <p>1. The instant appeal has been filed by Syed Salman Bukhari (Appellant) against the decision of the Inquiry Committee dated 18.09.2023 wherein the minor penalties of censure and withholding of annual increment for a period of six months were imposed on him on account of the inappropriate and unprofessional language that he used with Nida Hassan (Respondent No.1) and because of his discriminatory approach towards the female gender.</p> <p>2. Briefly the history of this case is that on 14.10.2022 Respondent No.1 filed a harassment complaint against the Appellant before the Inquiry Committee which was disposed of on 02.02.2023 on the ground that the allegations raised by Respondent No.1 did not qualify as harassment under the Protection against Harassment of Women at the Workplace Act, 2010 (Act). Respondent No.1 preferred an appeal before this forum which was disposed of on 18.05.2023 with a direction to the Inquiry Committee to conduct a de novo inquiry in the matter in accordance with the provisions of the Act. Particularly this forum ordered that the Inquiry Committee be constituted according to the requirements of Section 3 i.e., the Committee must only have 3 members, one of whom should be from senior management and one should either be a senior representative of the employees or a senior employee. Further,</p>		

that the procedure outlined in Section 4 should be followed, namely, that the charges and statement of allegations be shared with the Appellant, evidence be produced and the parties be allowed to cross-examine the witnesses. The order of this forum was challenged in representation before the Hon'ble President of Pakistan by Respondent No.1 but the same was rejected on 31.07.2023.

3. Thereafter, Respondent No.1 filed a fresh complaint before the Inquiry Committee on 25.07.2023 wherein she alleged that the Appellant harassed her at the workplace over a span of two years. In support of her claim she cited various incidents and also referred to an audio recording of a conversation that took place between her and the Appellant. In her complaint she also objected to the presence of two members in the Inquiry Committee i.e., Dr. Zeba Alvi and Ms. Fouzia Aslam as they were a part of the previous Inquiry Committee which had not entertained Respondent No.1's complaint. Consequently, the composition of the Inquiry Committee was changed and the same was communicated to Respondent No.1 on 09.08.2023. On 15.08.2023 Respondent No.1 provided the Inquiry Committee with her list of eleven allegations which were grouped under two charges. These charges were:

- i. That the Appellant repeatedly harassed Respondent No.1 in the workplace and subjected her to discriminatory treatment over the course of two years; and
- ii. That the inappropriate workplace conduct of the Appellant is habitual and other women in the workplace have also been at the receiving end of the same reflecting his prejudicial and discriminatory attitude towards female colleagues.

4. The list of allegations along with the charges were shared with the Appellant on 17.08.2023. On 18.08.2023 the Appellant objected to the modifications made by Respondent No.1 in her complaint since the Act did not allow for the same. However, vide email dated 21.08.2023 the Inquiry Committee overruled the objection of the

Appellant since he had failed to highlight any deviations in Respondent No.1's stance and had not pointed out the specific legal provisions on which he had relied. Thereafter, the Appellant submitted his defence on 23.08.2023 wherein he denied all the allegations. It is pertinent to state here that in his defence the Appellant neither objected to the newly constituted Inquiry Committee nor pressed his contention that Respondent No.1 had modified her complaint and stance. The Inquiry Committee then started its proceedings which continued from 01.09.2023 to 04.09.2023. Both the Appellant and Respondent No.1 attended the full proceedings and were allowed to produce evidence and cross-examine each other's witnesses.

5. After conducting a detailed inquiry, the Inquiry Committee found the Appellant guilty of allegation nos. v, vi and ix. These allegations were:

- i. That the voice recording annexed with the instant Complaint (and previously sent to the Inquiry Committee and placed on the record of FOSPAH) provides multiple such illustrations of the attempts made by the Respondent/Mr. Salman Bukhari to create an uncomfortable environment for the Complainant, and encouraging her to cross professional boundaries so as to achieve a level of "friendliness." To achieve such "friendship," the Respondent/Mr. Salman Bukhari would regularly share details about his own personal life, stating he had issues/problems with his wife because he was married against his will and wanted a "career-oriented" woman a partner (allegation v).
- ii. That the comments directed towards the Complainant reflect the patriarchal, sexist and hostile approach of the accused Respondent/Mr. Salman Bukhari towards female colleagues in general and the Complainant in particular. In September 2021, after resolution of a technical issue on the premium prize bond counter, when the accused Respondent/Mr. Salman Bukhari was informed of the same, he began hysterically flaring up, yelling: "*I am fed up of all these women. All of them have gathered up here and none of them are competent to do anything. They know nothing.*" That this conversation took place in front of a witness (Shamsher Khan Officer OG-1) who submitted an affidavit to this effect (to the

		<p>extent of “I am fed up of all these women, all of them have gathered up here”) before the previous Inquiry Committee (allegation vi).</p> <p>iii. That further evidence of the Respondent/Mr. Salman Bukhari’s highly inappropriate workplace behaviour is contained in Annexure J, which is a 57-minute and 33-second audio recording between herself and the Respondent/Mr. Salman Bukhari (allegation ix).</p> <p>6. The findings of the Inquiry Committee on allegation nos. v, vi and ix were:</p> <p>i. While going through the whole Audio Clip, Committee observed that accused</p> <ul style="list-style-type: none"> • Frequently used words like “Beta, Beti, Yaar, Nikami” etc. which are by no means considered as professional or appropriate. Accused accepted these words during his cross-examination conducted by the Complainant, however emphasized that these words do not fall in the ambit of “Harassment”. • Not vehemently denied, proved or challenged the wordings of message “ooper deko, neechy dekho” and only showed his ignorance narrating which message. He further suggested to the complainant that she should have told him about this message, if it was mindful. • Not conducted PMS interview in professional manner or environment as uneasiness of complainant reflects it during the interview at many occasions. • Accused showed his own thoughts regarding non-trust or uneasiness with complainant narrating that he is not sure what to ask/share or what not to ask/share with her. • Complained at multiple occasions regarding the behaviour/stance of Complainant like “after hearing about the unwanted message “ooper deko, neechy dekho”, discussing the harassment complaint issue while quoting Ms. Shireen and Ms. Rubina talk etc. • Somehow warned the Complainant that this talk should not go out of this room, otherwise she will be responsible for all outcomes as people enjoy such issues/talks. • Used words with Complainant like being my customer or Mr. Shahzad Customer does not fit ethically in such professional meetings and more refined words should have been used. • Nowhere discussed his family issues in the interview with the complainant. <p>Inquiry Committee while considering the point of view of Accused on Audio Clip as illegal or unacceptable evidence (with doubts of any</p>
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manipulation on part of complainant and requires intrinsic validity through forensic) observed that Accused referred to same Audio Clip at multiple occasions to defend his stance/position. At no point of time did he refuse to respond to anything related to Audio Clip, rather he not only responded to questions but also took cushion of some evidence to negate the stance of Complainant. Based on the above described facts and proceedings of enquiry, Inquiry Committee is of considered view that during the interview at no point of time Accused discussed his family matters or anything that shows his open desire of friendliness, however accused used inappropriate and unprofessional language causing uneasy, uncomfortable environment for the complainant. Hence the Allegation to the extent of uneasy environment is **“Proved”** (allegation v).

ii. Inquiry Committee after going through the statements on record, witness response considers no doubt in the happening of this incident. Accused defence sharing details of the incident stands valid at his end, but not justify basis for such words. Further, although it was not directed specifically towards anyone as shared by witness, the use of such words clearly demonstrates a discriminatory approach towards a set of gender. Hence, the allegation stands **“Proved”** (allegation vi).

iii. Inquiry Committee while going through the Audio Clipping, statements of Complainant & Accused is of considered view that inappropriate behaviour of Accused to the extent of interview at some occasions is **“Proved”**, however it cannot be generalized in overall work environment (allegation ix).

7. Ultimately the Inquiry Committee held that Respondent No.1 failed to prove Charge No.1 i.e., that the Appellant repeatedly harassed her and subjected her to discriminatory treatment over the course of two years. However, Respondent No.1 proved that in isolation the Appellant created uncomfortable/uneasy environment, crossed professional boundaries and used inappropriate and unprofessional words/language during his interview with Respondent No.1. Further, that although Respondent No.1 failed to substantiate Charge No.2, namely, that inappropriate conduct of the Appellant is habitual and other women in the workplace have also been at the receiving end of it, she did prove the Appellant’s prejudicial and discriminatory attitude towards the female gender in one instance. As a result, the Inquiry Committee recommended the minor penalties of censure and withholding of annual increment for a period of six months. Consequent upon the recommendations

of the Inquiry Committee, the Competent Authority vide Office Order No. HRMD-162 dated 18.09.2023 imposed the relevant penalties on the Appellant.

8. Feeling aggrieved the Appellant approached this forum in appeal mainly on the grounds that Respondent No.1's allegations did not pertain to sexual harassment and so were not cognizable under the Act; that Respondent No.1 filed her complaint belatedly; that she changed her stance in her fresh complaint filed before the Inquiry Committee; and that the Inquiry Committee was biased and hostile against the Appellant. Therefore, he prayed that Office Order No. HRMD-162 dated 18.09.2023 be set aside; the proceedings conducted by the Inquiry Committee be declared illegal, unlawful and void ab initio; and the complaint filed by Respondent No.1 be dismissed. On the other hand, the Respondents in their replies supported the findings of the Inquiry Committee with the caveat that Respondent No.1 requested that the penalty imposed on the Appellant be enhanced to dismissal from service along with imposition of fine.

9. I have heard the arguments of the parties and have also perused the record.

10. Since in his appeal the Appellant has raised four main objections, I shall deal with each of them separately. Taking his first objection that under the Act only complaints of sexual harassment can be agitated before the Inquiry Committee, a perusal of the provisions of the Act shows that this contention of the Appellant is misconceived. This is because Section 2(h) of the Act which defines the term 'harassment' clearly states that harassment is not only confined to acts of a sexual nature but also encompasses '*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.*' Although it is true that gender-based discrimination as a form of harassment was only expressly added in the Act after the 2022 Amendments, the Supreme Court

in its judgment reported as Nadia Naz Vs. President of the Islamic Republic of Pakistan (PLD 2023 SC 588) has observed that even prior to the 2022 Amendments the original definition of harassment given in the Act encompassed gender-based discrimination:

“4. ...If the definition of the word sexual is taken to also include the gender, the impact is significant when reading Section 2(h) of the Act as harassment means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes. So in the context of harassment, the word sexual and sexually are relevant and give meaning to the word harassment, which in this context becomes actionable when it relates to the gender, being sex-based discrimination as opposed to only meaning coital relations and advances. Reading further into the definition of harassment, it appears sex-based discrimination does not have to be limited to sexual activity, rather it is behaviour which is promoted on account of the gender as a result of gender-based power dynamics, which behaviour is harmful and not necessarily a product of sexual desire or sexual activity. Such harassment is motivated to degrade and demean a person by exploitation, humiliation and hostility which amounts to gender-based harassment and can include unwanted sexual alleviation and sexual coercion. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance or creates an intimidating, hostile or offensive work environment and has the effect of punishing the complainant for refusal to comply with a request or is made a condition for employment. Accordingly, the definition of harassment includes sex-based discrimination that is based on the conduct of the harasser which affects the workplace environment in a negative manner as it interferes with the work and performance of the victim. If the conduct of the harasser is given a restricted meaning to being of sexual nature or form, it takes away the essence of the meaning of harassment, its purpose and reduces its impact and scope and ignores that sexual harassment is oftentimes less about sexual interest and more about reinforcing existing power dynamics...”

(emphasis supplied)

In her complaint before the Inquiry Committee Respondent No.1 explicitly flagged the gender-biased conduct of the Appellant and also accused him of creating a hostile work environment. Her complaint therefore did contain elements of harassment that were actionable by the Inquiry Committee

under the Act. Consequently, there is no merit in the Appellant's contention that since Respondent No.1's allegations did not relate to sexual harassment the Inquiry Committee could not take cognizance of them.

11. Insofar as the Appellant's assertion that Respondent No.1 filed her complaint after a delay of more than two years is concerned, suffice to say that it is now settled law that on its own delay in lodging harassment complaints is not fatal to the case of the complainant owing to our '*cultural and social setting where prevailing notions of family honour and taboos play a dominant role*' [ref: **Uzma Naveed Chaudhary Vs. Federation of Pakistan** (PLD 2022 SC 783) at para 9]. Resultantly, this objection of the Appellant is irrelevant in deciding the present appeal.

12. The Appellant next alleged that despite this forum and the Hon'ble President of Pakistan ordering the Inquiry Committee to merely conduct a de novo inquiry in the matter, the latter entertained a fresh complaint by Respondent No.1 wherein she changed her stance and improved her allegations. According to the Appellant the Inquiry Committee had no power to accept the fresh complaint of Respondent No.1. However, on an examination of the two complaints filed by Respondent No.1 before the Inquiry Committee it becomes clear that she has neither changed her stance nor improved her allegations. In fact the crux of her allegations and the incidents quoted in support of her claim have remained the same in both the complaints. Be that as it may, even if I were to accept the Appellant's contention that the Inquiry Committee could only conduct a de novo inquiry on the strength of the first complaint filed by Respondent No.1 the fact of the matter is that Rule 5(3) of the Protection against Harassment of Women at the Workplace (Filing and Disposal of Complaints) Rules, 2013 allows complainants and the accused to amend their complaints or defence statements at any stage of the inquiry before decision. Therefore, under the legal regime governing workplace harassment there is no prohibition on either the Inquiry Committee from admitting a fresh/amended

complaint nor is there any bar on the complainant from filing the same. Consequently, this objection of the Appellant also lacks merit.

13. Lastly, the Appellant argued that the Inquiry Committee was biased in favour of Respondent No.1 which is reflected in the Committee changing its composition on the request of Respondent No.1; accepting her fresh complaint; and conducting the inquiry proceedings in a one-sided manner. However, none of these objections of the Appellant find any support from the material available on record. I have already dealt with the Appellant's objection to the purportedly fresh complaint of Respondent No.1 above. Insofar as the composition of the Inquiry Committee is concerned, it is evident from the record submitted by the Appellant himself that he did not object to the same either in his emails to the Inquiry Committee or in his defence statement filed before it. His contention that the Inquiry Committee did not hold fair proceedings is controverted by the feedback report signed by him wherein he answered 'yes' to, *inter alia*, the following statements:

- i. Have all allegations been discussed thoroughly.
- ii. All procedural requirements are met.
- iii. All technical aspects have been covered in the proceedings.
- iv. Are you satisfied with enquiry proceedings.

It is also relevant to mention here that of the eleven allegations levelled against the Appellant, the Inquiry Committee did not find him guilty of eight allegations. If the Inquiry Committee was indeed biased against the Appellant it does not appeal to logic that it would clear him of most allegations. Accordingly, I find that the Appellant's apprehensions about the Inquiry Committee are unfounded.

14. I shall now examine the findings of the Inquiry Committee on the strength of the evidence presented before it. In its report the Inquiry Committee has observed that the Appellant engaged in unprofessional behaviour by using inappropriate language which

created an uneasy environment for Respondent No.1 (allegations v and ix). In reaching this conclusion the Inquiry Committee relied heavily on an audio recording submitted by Respondent No.1 of a conversation that took place between her and the Appellant. The inquiry report notes that the Appellant admitted that it was his voice in the audio recording but he objected to its admissibility on the ground that since the recording was done without his consent it was illegal. That in the recording it can frequently be heard that the Appellant referred to Respondent No.1 as 'beta,' 'beti,' 'yaar' and 'nikami.' The defence of the Appellant for using these words was that such words do not fall within the ambit of harassment and that instead 'beta,' 'beti' and 'choti behan' are a gesture of respect towards females. However, the Inquiry Committee disagreed with him and found the same to be unprofessional and inappropriate. It also disregarded the objections of the Appellant on the admissibility of the audio recording because he himself relied on it to bolster his defence/stance.

15. Having considered the reasoning of the Inquiry Committee I am of the view that the Committee arrived at the correct decision. The Appellant appears to be operating under the mistaken impression that terms such as 'beta' 'beti' and 'choti behan' are signs of respect for a working woman when in fact these are patronizing terms that are aimed at diminishing the worth of professional women by casting them into stereotypical submissive roles. In **Colvin v Gillies (No.2)** (2004 HRTO 3) the Human Rights Tribunal of Ontario ruled that:

"[223] ... Ms. Thivierge testified that Mr. Gillies referred to her as "little lady", and Ms. Happy averred that he called her "sweetie" and "hun". The Tribunal is not satisfied with Mr. Gillies' explanation that he refers to his female children by such terms of endearment as "dear" and "little lady"... The manner in which he speaks to his young female children takes on a different, condescending meaning when applied to adult female employees, even if the same terminology was consistently employed, which it was not. Rather, the Tribunal finds that his repeated use of such terms of diminishment... poisoned their workplace..."

I find no reason to disagree with the observations of the Human Rights Tribunal of Ontario and endorse them as fully applicable to the facts of the present complaint. Therefore, by using the words 'beta,' 'beti,' 'yaar,' 'nikami' and 'choti behan' for Respondent No.1 the Appellant has discriminated against her on the basis of her gender in terms of Section 2(h)(ii) of the Act. Insofar as the Appellant's objection to the admissibility of the audio recording is concerned it is established law that '*if a piece of evidence is otherwise relevant and pertinent for the decision of an issue, it is untenable argument that notwithstanding the fact that it is genuine and otherwise reliable it should not be made use of because in the process employed for the collection of the material an irregularity or for that matter an illegality was committed*' [ref: **Bisvil Spinners (PVT.) Ltd Vs. Pakistan** (PLD 1992 SC 96)]. Accordingly, I uphold the decision of the Inquiry Committee on allegation nos. v and ix.

16. The Inquiry Committee's next finding against the Appellant was that by stating "*I am fed up of all these women. All of them have gathered up here and none of them are competent to do anything. They know nothing,*" he displayed his prejudicial and discriminatory attitude towards the female gender. This statement uttered by the Appellant was corroborated by an independent witness, namely, Mr. Shamsheer Khan and was made in the background of Respondent No.1 mistakenly crediting the sum of Rs.440,000/- in the bank account of a customer whilst also issuing him eleven premium registered bonds valued at Rs.440,000/-. The mistake was subsequently rectified. Whilst the Appellant has stated that his statement was not attributed to Respondent No.1 it still does not take away from the fact that the Appellant expressed disparaging views about women, especially regarding their competency to perform their professional duties. As enunciated by the Supreme Court in **Uzma Naveed Chaudhary** case (*supra*) the '*criticism of one's abilities on the basis of gender also comes within the ambit of harassment*' [para 11]. Therefore, I find no reason to interfere with the well-reasoned decision of the Inquiry Committee on allegation no. ix.

17. Before departing with this order I think it appropriate to address the plea of Respondent No.1 that the penalty imposed on the Appellant should be enhanced to dismissal from service along with imposition of fine. According to Respondent No.1 in light of the allegations proved against the Appellant, particularly the observation that he had '*clearly demonstrated a discriminatory approach towards a set of gender,*' there was no justification for imposing only a minor penalty on him. Whilst there is no denying that harassment at the workplace is a pervasive issue which needs to be dealt with strictly and swiftly in order to ensure the equality of women and their full participation in all spheres of national life as mandated by Articles 25 and 34 of the Constitution of Islamic Republic of Pakistan, 1973, in awarding a penalty to an accused the severity of the harassment also has to be assessed. In its report the Inquiry Committee has held that the Appellant engaged in objectionable conduct but it did not find a pattern of such behaviour and instead deemed his conduct to be a one off instance. I see no reason to disagree with this finding of the Inquiry Committee, more so when it has conducted a thorough inquiry into the complaint and has minutely examined not only the documentary evidence but also the oral evidence.

18. Accordingly, in light of what has been discussed above I dismiss the appeal of the Appellant and uphold the Inquiry Committee's report dated 18.09.2023 and Office Order No. HRMD-162 dated 18.09.2023 wherein the minor penalties of censure and withholding of annual increment for a period of six months were imposed on the Appellant.

FEDERAL OMBUDSPERSON