

# OFFICE OF THE FEDERAL OMBUDSPERSON

## FOR PROTECTION AGAINST HARASSMENT OF WOMEN

### AT THE WORKPLACE, ISLAMABAD

#### FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000108/2023

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Syed Shahzad Khurshid	VS	Salma Naureen & others i. Assistant Director ii. Director General
		DEPARTMENT: Intelligence Bureau (IB), Islamabad			
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8	05-07-2023	<p>Appeal No. <u>FOH-HQR/0000108/2023</u></p> <p>This appeal under Section 6 of the Protection against Harassment of Women at the Workplace Act 2010 (Amendment) Act 2022 has been filed by Syed Shahzad Khurshid (<b>hereinafter called the Appellant</b>) assailing the notification dated 02-03-2023 issued by Intelligence Bureau through its Director General, K-Block, Pak Secretariat Islamabad (<b>hereinafter called Respondent No. 2</b>) whereby major penalty of removal from service has been awarded to the Appellant. The action has been taken in the light of harassment complaint filed by Salma Noreen, Assistant Director IB (<b>hereinafter called the Respondent No. 1</b>).</p> <p>Facts forming the background of the case, in short compass, are as under:</p> <p>The Appellant was serving as Director (BPS-19) with Respondent No. 2 at Aiwan-e-Sadar, Islamabad under the administrative control of IB Headquarters Islamabad. Respondent No. 1 was serving as Assistant Director (BPS-17), IB Provincial Headquarters Peshawar. Both the Appellant and the Respondent No. 1 were deputed on an official assignment of conducting screening test for recruitment at Hyderabad center w.e.f 25-07-2022 to 29-07-2022 and for this purpose they traveled together from Islamabad to Karachi by air on 22-07-2022. From Karachi to Hyderabad they travelled through official vehicle. For the referred assignment the Appellant was designated as Presiding officer, whereas Respondent No. 1 was appointed as Assistant Presiding officer. After completion of the assignment both the</p>			

Appellant and Respondent No. 1 reached back to their places. i.e. Islamabad and Peshawar respectively. On 01-08-2022, Respondent No. 1 lodged a complaint, thereby, levelling allegations of sexual harassment against the Appellant during their official tour to Hyderabad. The said complaint was forwarded from the Provincial office to IB Headquarter Islamabad. The Bureau constituted the inquiry committee under Section 3 of the Harassment Act 2010. The committee started its working and issued charge sheet/statement of allegations to the Appellant on 10-08-2022. He submitted his detailed reply to the charge sheet etc on 25-08-2022. Appellant denied the allegations of sexual harassment leveled against him and made counter allegation against Respondent No. 1 to the effect that, in fact, he was caused sexual harassment by Respondent No. 1 during the official tour. Appellant asked the inquiry committee to treat his counter claim as an independent complaint against Respondent no. 1. While submitting his detailed reply, the Appellant also furnished a list of witnesses which he intended to produce during the course of proceedings. On 21-09-2022 Respondent No. 1 submitted rejoinder to the reply filed by the Appellant.

During the course of inquiry proceedings, on 06-09-2022, the Appellant submitted an application to the committee that Respondent No. 1 be asked to establish her allegations first and then to allow him to counter her allegations and produce all the witnesses through the committee for recording their statements. He also requested to deal with his complaint in accordance with law. Appellant further filed two applications dated 19-09-2022 and 06-10-2022 repeating his prayer particularly seeking permission of cross examination of the individuals appeared in the proceedings on the directions of the committee. Committee submitted its report to the authority i.e. DG of the Bureau on 01-11-2022. It was recommended in the report to award major penalty of removal from service to the Appellant. Committee also recommended initiation of disciplinary proceedings against Respondent no.1 under E&D Rules. DG IB, on 28-11-2022, issued a memorandum pointing out the lapses on the part of the committee during the inquiry proceedings. The committee, after remand of the case, however still remained firm in supporting its previous report. The competent authority consequently issued an order dated 28-02-2023 in the following terms:

		<p>“On perusal of the inquiry report, findings and recommendations contained therein, I feel constrained to implement the recommendations of the inquiry committee in view of Section 4(5) of the Act 2010 and Rule 9 of Rules”.</p> <p>Then vide notification dated 02-03-2023, Respondent No. 2 formally notified the penalty of removal from service of the Appellant. On his request, the Appellant got copy of the report on 10-03-2023.</p> <p>Feeling aggrieved of the impugned order dated 02-03-2023 the Appellant preferred the instant appeal inter-alia on the grounds that the complaint filed by Respondent No. 1 did not fulfill the mandatory requirements laid down in Rule 5 of the Rules 2013, that the committee, despite being reminded by the Appellant through multiple applications, did not ask the Respondent no. 1 to prove her case by producing independent and confidence inspiring evidence. Rather, it adopted the question answer method which has been deprecated by the August Supreme Court of Pakistan in number of judgments; that although the inquiry report does mention that opportunity of cross examination was given to the Appellant, yet, the factual position is that the Appellant was neither granted any opportunity to cross examine those individuals nor allowed to produce his witnesses in support of his defense; that the committee itself admitted that Complainant sent highly objectionable messages to the Appellant and the Complainant’s response at some places appeared to be encouraging; that conduct of the members of the committee remained biased and partisan throughout the proceedings, that the counter complaint of the Appellant against Respondent No. 1 was not considered by the committee and no findings on the said complaint were given, that the competent authority while issuing a speaking order dated 28-02-2023 was not convinced with the findings of the inquiry report, yet, as a result of misreading and non-reading, the authority caused miscarriage of justice while approving recommendations of the committee against the Appellant. Further alleged that no show cause notice was issued and no personal hearing was given to the Appellant before resorting to the extreme measures against him; that the communication record produced by the Appellant, if read conjunctively, would show that the allegations of harassment are baseless and unfounded; that the committee made illogical interpretation of the various judicial pronouncements whereas it was not the job of the committee to resort to any such exercise; that the</p>
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committee glaringly ignored all the circumstantial evidence as well as statements of the witnesses which clearly show that Respondent No. 1 was in a bliss full mood throughout the official visit and never complained of anything to anyone; that Respondent No. 1's conduct and demeanor in front of hundreds of on duty persons clearly belies any impression of any harassment, distress or anxiety; that her compliant is riddled with expression of falsehood and exaggeration without any evidence; that despite all the biases the inquiry could not prove these charges and categorically disapproved these charges and partially approved three on the basis of self-calculated probabilities of 50-70%; that it is impossible for any person facing continuous threats and harassment to behave totally normal throughout the trip, not only with the people around but with every person who she alleged to be harassing her and that without prejudice to the statements made herein above, the discriminatory approach of the committee is glaringly obvious from the surface on record, whereas it is beyond any doubt that Respondent no. 1 crossed all limits of decency and morality in her WhatsApp communication.

In view of above mentioned submissions, the Appellant prayed to allow his appeal and to set aside the impugned orders dated 28-02-2023 and 02-03-2023 issued by Respondent No. 2 and to direct Respondent No. 2 to immediately reinstate the Appellant in service with all back benefits. Further prayed to hold the complaint lodged by Respondent No. 1 as illegal, unlawful and malafide and consequently to dismiss the said complaint. The Appellant also sought for quashing the entire proceedings conducted by the departmental inquiry committee, to issue necessary directions to Respondent No. 2 to initiate proceedings against Respondent No. 1 for leveling false and frivolous allegations against the Appellant and to impose major penalty of dismissal from service upon her and to issue a direction to Respondent No. 2 to constitute a new inquiry committee to decide the complaint of the Appellant against Respondent No. 1.

The Respondents in their reply vehemently contested the appeal in hand.

Since the learned counsel for the Appellant was insisting on the suspension of the impugned orders through an application filed under Section 10&11 of the Federal Institutional Reforms Act 2013 it was

decided to take up the main appeal expeditiously to dispose it off on priority on merits after hearing both the sides in support of their respective viewpoints.

In this background, I heard the detailed arguments advanced by the learned counsel for the parties and have gone through the record with their able assistance.

While opening his arguments the learned counsel for the Appellant gave detailed facts of the joint visit of the parties to Hyderabad in connection with their assignment of conducting the screen tests for recruitment at Hyderabad center w.e.f 25-07-2022 to 29-07-2022. Learned counsel for the Appellant contended that along with his comprehensive reply to the charge sheet, the Appellant also gave details of his sexual harassment made at the hands of Respondent No. 1 during the official tour, praying to treat the same as an independent complaint against Respondent No. 1 but no action was taken by the inquiry committee on his that complaint. He further argued that the Appellant was not provided a copy of the rejoinder filed by Respondent No. 1 during the course of inquiry proceedings. According to the learned counsel for the Appellant, the inquiry committee started its proceedings in a highly unlawful manner, adopting the method of circulating questionnaires to the Appellant and Respondent No. 1 and, did not permit the Appellant to produce his witnesses in support of his defense. Learned counsel for the Appellant alleged that the inquiry committee did not follow the settled principles for conducting departmental proceedings rather it stepped into the shoes of Respondent No. 1, collecting evidence against the Appellant. He further alleged that eleven female officers voluntarily gave the statements thereby certifying good character and conduct of the Appellant but instead of giving due consideration to the said statements, Respondent No. 2 issued explanation letters to some of witnesses, thus putting unlawful pressure on them conveying an explicit threatening message to all those who were willing to appear and act as witness for the Appellant.

Learned counsel for the Appellant pointed out that the inquiry committee submitted its report to DG, IB who issued a memorandum making observations on illogical, irrational and inconsistent conclusions drawn by the committee with strong expression of

		<p>disapproval for the recommendations of the committee. The committee altogether disregarded the command contained in the remand order and remained adamant to its previous stance. Learned counsel for the Appellant specially referred to the order dated 28-02-2023 of the competent authority.</p> <p>Learned counsel for the Appellant expressed his reservations on the conduct of the members of the committee who according to him remained biased and partisan throughout the proceedings. Learned counsel for the Appellant kept on contending that the complaint filed against the Appellant is riddled with accepted expressions of falsehood and exaggeration without any evidence and that harassment allegations of the Respondent No. 1 do not come up to the required standard of harassment definition given in the harassment Act. In view of his above contentions learned counsel for the Appellant prayed for setting aside the impugned orders and to reinstate the Appellant in service.</p> <p>Conversely, learned counsel appearing for Respondents supported the impugned orders passed by the competent authority on the plea that Respondent No. 2 had no ill will, grudge or malice against the Appellant to falsely implicate him in a case of such serious nature; that a woman could not be expected to take a risk of filing such a complaint against her male senior to damage and destroy her dignity, honor and reputation; that the inquiry committee and for that matter the competent authority had no bias against the Appellant to award him a major penalty and that; the Appellant miserably failed to prove any malafide or ill will either on the part of Respondent no. 1, the members of inquiry committee or the competent authority. According to the learned counsel for the Respondents, a detailed inquiry was conducted whereby the Appellant was found guilty of the charge of sexual harassment and as such he was rightly imposed upon major penalty in terms of the provisions of Section 4 of the Harassment Act, 2010.</p> <p>So far as the allegation of the Appellant regarding biased attitude of the inquiry committee or any of its members is concerned, I have not found any proof on record to substantiate the allegation. It is nowhere established by cogent, solid and convincing evidence that either the inquiry committee as a whole, or anyone of its members nourished ill</p>
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will, grudge or animosity against the Appellant. The Appellant has been unable to show any past event on the basis of which the committee or any of its members could have been biased towards him. In the absence of the element of previous enmity or grudge or clash of interest, the inquiry committee could not be termed biased. This allegation, thus, seems a stereotyped allegation which is not uncommon in such cases. The work of the inquiry committee, on the other hand, appears quite thorough, unbiased and impartial because the committee has discussed the role of both the parties and arrived at accurate conclusions. Had the committee been partisan, it would not have given findings and recommendations showing complicit actions of Respondent No. 1-Complainant. Thus, the allegation levelled by the Appellant against the departmental inquiry committee is of no value and merits and is responded in negative.

The other objection raised by the Appellant is that, although, he made counter allegations of sexual harassment at the hands of Respondent No. 1 requesting the departmental committee to treat his allegations as a separate complaint against the Respondent No. 1 but the committee did not pay any heed to his complaint and did not entertain his allegations as an independent complaint which reflects arbitrary and one sided approach of the committee members towards the Appellant. This allegation or plea of the Appellant is not sustainable on the ground that it is quite clear from the findings of the inquiry committee that the said plea or request of the Appellant was duly considered and responded to in paras 6, 7 & 8 of the inquiry report.

Now coming to the main allegation of sexual harassment of the Complainant at the hands of Accused (Appellant), firstly I would like to refer to the definition clause of Protection against Harassment of Women at the Workplace Act 2010 (Amendment) Act, 2022. Section 2(h) of the Act that defines harassment as under:

**Section 2(h):**

**“(h)” “harassment” means\_**

- (i) *Any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes,*

*including any gestures or expression conveying derogatory connotation causing interference with work performance or creating and intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or*

*(ii) 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;”*

It becomes evident from the above that the applicable portion of Section 2(h) of the Act is its Sub Clause (i) which deals with sexual harassment. This Provision defines harassment as an unwelcome sexual advance, request for sexual favors etc. meaning thereby that any act of sexual advance or sexual favor etc. must be an unwelcome act on behalf of the aggrieved/victim party. The definition of harassment is further explained as follows:

*“Harassment based on a person’s sex include unwanted or unwelcome sexual advances. Unwanted or unwelcome sexual advances are expressions of romantic or sexual interest that are unwelcome, unreciprocated, unpleasant, or offensive to those targeted by the sexual advances. Commonly, a supervisor will initiate some form of sexual advance or proposition with an express or implied threat that if the employee refuses, the employee will be terminated or demoted, or lose other job-related benefits. Alternatively, the employee may be promised a promotion or pay raise if the employee submits to the sexual advances”.*

Observations of the inquiry committee on the unwanted or unwelcome nature of interactions between the two parties are inconclusive in many places.–My viewpoint in this regard is strengthened by the following contradictions and misstatements of the Respondent No. 1- Complainant as highlighted by the inquiry committee in its report.

		<ol style="list-style-type: none"><li>i. The accused alleged that the complainant held his hands 3-4 times. The complainant during her interview with the committee, confessed before the committee for holding his hand once, from the cuffs, as her reflex action for the fear of being slipping away with the water waves/sand at Manora beach.</li><li>ii. The complainant alleges a sudden change of plan by the accused, who diverted the vehicle against her will and without her knowledge towards Manora beach but during the course of inquiry it turned out to be a pre-decided plan between the two officers.</li><li>iii. The complainant's statement of spending hours at Manora beach could not be substantiated as the only witness Mr. Javed SCD disclosed that the officers stayed at Manora beach for 25-30 mins.</li><li>iv. Similarly, her allegation regarding the accused offering him tea at late night was also misreported as she herself asked him for tea first.</li><li>v. Besides, the next morning the accused coming out of his room furiously and sarcastically was also not proven.</li><li>vi. The complainant denied bringing any gifts for the accused's family but Ms. Mishal, HC revealed that the complainant purchased a blue colour suit for his wife on 27<sup>th</sup> July in her presence. Picture of the gifts including blue color dress and bangles were also enclosed.</li><li>vii. The complainant enclosed only selective WhatsApp messages with her complaint and skipped other relevant ones.</li><li>viii. In a message on the intervening night of 26<sup>th</sup>-27<sup>th</sup> July, 2022, the accused thanked the complainant for appreciating his socks, while she replied that "I was noticing it since morning but couldn't get the opportunity to tell". When enquired by the committee to comment regarding the message, her reply was that she intended to appease a senior she was afraid of, did not sound satisfactory.</li><li>ix. The complainant denied asking for lotions from the accused so she was asked by the committee to clarify why she called the accused on 28<sup>th</sup> July, 2022 at 0100 hours.</li></ol>
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She replied that she called to seek permission from the accused for going late on duty the subsequent day. Whereas, Qamar Sheikh, Inspector in his statement revealed that it was already decided in the car that the accused will conduct the first paper on 29<sup>th</sup> July, 2022 while the complainant will conduct the second, which makes the riposte of the complainant implausible.

- x. The complainant's comfort level with the accused is demonstrated in her taking a selfie with the accused on 26<sup>th</sup> July, 2022 and when she gave her phone to him in the presence of other officers of NHQ Hyderabad on 28<sup>th</sup> July, 2022 for taking her picture.

While discussing the demeanor of the Respondent No. 1-Complainant the committee in its report has observed that at the very first place she could have given clear shut up call to the Accused but her response to some of the messages of the Accused show an element of engagement initially. Similarly, she could have avoided the Accused's company by having separate meals as far as it was possible but she did not. Frequent selfies by the Respondent No. 1-Complainant even in tense situation is indicative that she was in a comfortable state of mind and enjoying her trip. A significant element of impropriety is further found in the voluntary information provided by the Respondent No. 1 (Complainant) to the Accused stating "I did not wear anything under polka (abaya)". Similarly, at another instance when the Accused asked a very inappropriate question "what are you wearing under abaya today?", she replied "undergarments". When confronted by the committee with these replies, she admitted that and said that she had said these because it was truth.

In view of above findings of the committee which have not been assailed or challenged by the Respondent No. 1-Complainant at any forum, it will be fair to conclude that there was a definite element of demonstrated consent in the interaction between the Respondent No. 1-Complainant and the Accused. The factum of "unwelcome or unwanted" sexual advance in the case is inconclusive on the record and findings of the inquiry report.

The inquiry committee has also brushed aside the allegation of Complainant pertaining to request for sexual favors by the Accused, categorically observing that in the light of available circumstantial

evidences and witnesses account, nothing could be established during the course of inquiry that substantiates the charge of using official position by the Accused for seeking sexual favors from the Complainant, therefore, the charge in question could not be proven. The charge of the Complainant with regard to explicit and inappropriate conversation by the Accused during flight from Islamabad to Karachi on 22<sup>nd</sup> July, 2022 has also not been proven in view of lack of credible independent witnesses and circumstantial evidence.

Furthermore, keeping aside the 11 affidavits demonstrating good character of the accused, the Inquiry Committee did not find and, the Respondent No. 1 (Complainant) neither alleged, nor provided evidence of previous record of harassment on the part of the Accused.

It is however clear from the Inquiry Committee report findings that both the Respondent No.1-Complainant and the Accused engaged in improper behavior demonstrated in the WhatsApp communication, for which the authority could have held both the Complainant and the Accused accountable, as recommended in the inquiry committee report.

However, the issue at hand is not whether this relationship was entirely consensual or non-consensual, but that there is disparity in power between the two parties wherein, they are placed at considerably unequal positions and there is a real power held by the Appellant by virtue of his position and place in the organizational hierarchy. In such situations, there can be a real fear of consequences for refusal to be convivial or even compliant with demands for sexual favours. The onus in such a relationship lies on the senior, who must always be mindful of the responsibility to uphold organizational policy and norms of zero tolerance for harassment of women. In WP (C) 1288/2012, Ajay Tiwari v. University of Delhi 2019- Del 11360, while this principle is expressed with regards to a teacher, it is equally relevant to the unequal relationship in the case at hand whereby it is stated, "a teacher must always be mindful of the fact that even apparent" consent" is not likely to be unmediated by this power relationship, and submitted to because the affected individual believes that the request for sexual favours "is an implicit/explicit term or condition of teaching/guidance and employment". Despite the finding

		<p>of the Inquiry committee that the charge of using official position by the Accused for seeking sexual favors from the Complainant could not be proven, the Appellant had a responsibility of conducting himself in the most proper manner, setting an example for others.</p> <p>The element of consent; previous clean record of the Accused and circumstantial evidence showing a continued cordial relationship between the Respondent/complainant and Appellant/Accused constitute mitigating factors that can help in diminishing the severity of the offence of the Accused. Due and judicious consideration to these mitigating factors provides a case for reducing the punishment of the Appellant. I may therefore, not uphold the severe penalty imposed upon the Appellant in terms of Section 4(4)(ii) of the Act <i>ibid</i>.</p> <p>It is appreciable on the part of the committee to hold that harassment at workplace is unacceptable and incompatible with decent working environment and must be addressed. The recommendations of the committee that an all-encompassing departmental harassment policy may be issued declaring zero tolerance for work related abuse and sexual harassment is praiseworthy and needs to be implemented in letter and spirit. It is also essential for the organization to create awareness among the employees of the Bureau, especially women to sensitize them about both preventive measures and the complaint mechanism for deterrence in future. The recommendations of the committee with regards to a clear, crisp and detailed policy with respect to the use of social media platform by the employees of Bureau in their official as well as personal capacity is also a sound recommendation to the competent authority for implementation.</p> <p>Consequent upon discovery of certain inconsistencies in the subject inquiry report and, the mitigating factors discussed above, while I uphold the findings of the Inquiry Committee with regard to sexual harassment of Respondent No. 1 at the hands of the Appellant in terms of Section 2(h) of the Act, I find the major penalty of “removal from service” imposed upon the Appellant unjustified, harsh and disproportionate in the given circumstances. As such, this penalty is liable to be modified from Section 4 (4)(ii)(c) to Section 4(4)(ii)(a) of the Protection against Harassment of Women at the Workplace (Amendment) Act, 2022. This appeal is, therefore, decided in the manner that the major penalty of removal from service of the Appellant</p>
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		<p>is modified into major penalty of reduction to a lower post or time scale or, to a lower stage in a time-scale.</p> <p>While parting with the case in hand, I would like to remind the Head of Bureau to ensure that the policy of zero tolerance for sexual harassment at workplace is followed stricto sensu.</p> <p style="text-align: right;"><b>FEDERAL OMBUDSPERSON</b></p>
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