

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000120/2021

Date of Institution: 14-10-2021

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson		
		TITLE:		
		Syeda Gulbadan Shahid Principal CB Modern Montessori Nowshera	VS	Hassan Khan Laghari Director Cantt. Admin
		DEPARTMENT: Military Land and Cantonment Department		
1	2	3		
52	19-02-2024	<p><u>Subject:</u> Final Order on Complaint</p> <p>1. Syeda Gulbadan Shahid (Complainant) has filed the instant complaint against Hassan Ali Khan Laghari, Director Cantt Admin (ML&C) Rawalpindi (now retired) (Accused) alleging sexual harassment. Her grievance is that during the period that she was being unfairly targeted by Zofishan Manzoor, Executive Officer Nowshera Cantt and was ultimately terminated from service by her from the post of Principal Cantonment Board Modern Montessori Nowshera, the Accused sent her extremely inappropriate messages on WhatsApp. Some of these messages are:</p> <p style="padding-left: 40px;">“I feel you r not ordinary and may be considered for discreet relation of one-to-one relationship</p> <p style="padding-left: 40px;">Then what should be the term, my babe?</p> <p style="padding-left: 40px;">Bibi apni auqat dekh ker baat kiya kero... khubsurat aur bht khubsurat sexy outlook ka ye matlab nhn k tum koi aasmani makhlook ho</p>		

Yari kero gi?...no mincing words no hesitation...be bold and straight, my babe

Let's be friends...you will feel proud you got a real man in ur life

Think again honey ...trust me it is between u and me

Trust me, beauty queen ...our relation is to be one-to-tone...u will be Baloch's girl"

2. Although the Complainant had initially contacted the Accused herself to explain the predicament she was facing at her workplace, the above messages left her shocked. Feeling aggrieved she blocked the Accused and filed a complaint before the Director General, ML&C Rawalpindi. However, since she received no response to her complaint she approached this forum for relief on 14.10.2021.

3. After registration of the complaint the Accused was summoned to furnish his reply. In response he submitted an application on 21.12.2021 wherein he challenged the jurisdiction of this forum. However, the same was rejected by this forum vide order dated 11.01.2022. This order was assailed by the Accused before the Islamabad High Court in Writ Petition No.214/2022 but the writ was dismissed on 07.07.2022 on the following ground:

"10. ...In case of W.P. No.214/2022, though the cause of action has arisen in the Province of Khyber Pakhtunkhwa but the parties are employees of a Federal organization and, therefore, the Federal Ombudsman is vested with jurisdiction and consequently competent to proceed with the matter. The latter petition, therefore, stands dismissed."

4. Whilst the above writ was pending before the Islamabad High Court, the proceedings before this forum continued with the Accused filing his reply on 07.02.2022. In it he did not deny that the number from

which the messages were sent was his but instead took the stance that the messages were typed by one Chaudhary Babar Hussain who held a grudge against him as he had issued explanations to him for his misconduct and maladministration. He also asserted that the Complainant had filed the harassment complaint as part of a conspiracy hatched with Chaudhary Babar Hussain. Additionally, this forum sent the Complainant's mobile phone to the FIA for forensic examination. The report was received back on 28.01.2022 in which the mobile number of the Accused was identified and the chat log of the Complainant and the Accused was found and extracted. It is pertinent to mention here that the text messages produced above in para 1 were present in the chat log recovered by FIA. The Accused raised various objections on the FIA's report on 23.02.2022 but these objections were dismissed by this forum on 17.03.2022 and the Accused's representation before the Hon'ble President of Pakistan against that order met the same fate on 21.10.2022. After the case was remanded to this forum the matter was fixed for cross-examination of the Complainant which was recorded on 25.11.2022.

5. On 01.12.2022 the Complainant filed an application to summon Mr. Masood Ali, the forensic expert at FIA as a court witness since he had conducted the forensic examination of her mobile phone. In his reply filed on 20.12.2022 the Accused raised no objection to the application of the Complainant provided that he would be given the opportunity to cross-examine Mr. Masood Ali. The application was allowed by this forum by order dated 19.01.2023, however, Mr. Masood Ali remained absent for four hearings. During this time the Accused filed another application for dismissal of complaint for want of jurisdiction on 21.02.2023 which was rejected on the same day on

		<p>account of the fact that the matter had been pending before this forum for a considerable period and the application appeared to be an attempt to prolong the case. Dissatisfied with this decision the Accused preferred a representation before the Hon'ble President of Pakistan who rejected the representation on 16.09.2023 and returned the matter to this forum. Ultimately, the evidence of Mr. Masood Ali as a court witness was recorded on 02.11.2023 with the Complainant opting not to cross-examine him and the Accused exercising his right of cross-examination. The matter was then fixed for the evidence of the Accused but on the next date of hearing the Accused filed an application that an additional expert witness should be called in the interest of justice. Vide order of the same date i.e., 08.11.2023 this forum rejected the application as the forensic expert from FIA who had conducted the forensic of the Complainant's mobile phone had been examined and so there was no need to summon another expert. Accordingly, regarding the application to be a delaying tactic this forum imposed a cost of Rs.10,000/- on the Accused. The review of the Accused filed against that order was dismissed on 11.12.2023. Eventually, on 15.12.2023 the evidence of the Accused and his witness Zofishan Manzoor was recorded. Final arguments were heard by me on 25.01.2024 and 01.02.2024.</p> <p>6. I have heard the detailed submissions of the parties and have also perused the record.</p> <p>7. The only question before this forum is whether the messages sent to the Complainant on WhatsApp (produced in para 1 above) constitute harassment under the Protection against Harassment of Women at the Workplace Act, 2010 (Act). The relevant provision in this regard</p>
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is Section 2(h) of the Act which defines the term “harassment.” It reads:

“**2. Definitions.** In this Act, unless there is anything repugnant in the subject or context—

...

(h) “harassment” means:—

(i) any unwelcome sexual advance, request for sexual favours, stalking or cyberstalking 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 an 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;...”

(emphasis supplied)

8. It is evident from the above definition of harassment that unwelcome sexual advances and favours and unwelcome communication and conduct of a sexual nature clearly fall within the ambit of harassment under the Act. On an examination of the messages sent by the Accused to the Complainant it becomes clear that the same do satisfy the test of harassment as the Accused repeatedly sought a personal relationship with the Complainant despite her refusals. In its recent judgment in **Uzma Naveed Chaudhary Vs. Federation of Pakistan** (PLD 2022 SC 783) the Supreme Court upheld the concurrent decisions of this forum, the Hon’ble President of Pakistan and the Islamabad High Court (albeit differing on the quantum of penalty) to declare that the accused by referring to the complainant as hot; sending her a phone message expressing his love for her; asking her out for dinner and upon her refusal threatening her to suffer the consequences; and promising to make her a star if she would have friendship with him had engaged in sexual harassment.

The allegations levelled in the instant complaint are similar to the one raised in **Uzma Naveed** (*supra*) as even here the Accused pestered the Complainant to enter into a relationship with him. Consequently, there can be no denying that the Accused is guilty of harassment. More so when the Accused occupied a position of authority in relation to the Complainant which is established from the fact that during the challenges that she was encountering as Principal Cantonment Board Modern Montessori Nowshera the Complainant apprised the Accused, amongst other concerned persons, about her situation in the hope of getting some relief. In these circumstances, it was the duty of the Accused to be mindful of his power and to ensure that he did not abuse it. In this regard the Code of Conduct attached to the Act is relevant as it explains the three significant manifestations of harassment, one of which is “Abuse of Authority” i.e., ‘*a demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job, itself.*’ In the case of **Asif Saleem Vs. Chairman BOG University of Lahore** (PLD 2019 Lah 407) the Lahore High Court elaborated upon the concept of abuse of authority in the following manner:

“26. ...It would not be out of place to mention here that the persistent and unwanted amorous advanced by the petitioner to a female student would amount to a fundamental breach of the implied term of mutual trust and confidence. No doubt, more and more girl students, women etc. go to educational institutions, work places etc., their protection is of extreme importance to a civilised and cultured society...”
(*emphasis supplied*)

Similarly in **Ajay Tiwari Vs. University of Delhi** [(2020) 1 SCT 381] the Delhi High Court, whilst dismissing the writ petition of the

petitioner who had been compulsorily retired from service owing to allegations of sexual harassment made by a student, endorsed the following observations of the Sub-Committee:

“Thus it is evident that there existed a close and intimate relationship of a sexual nature between the accused and the complainant. On the basis of the available records the [Sub-Committee] cannot determine whether this relationship was, from the beginning, entirely consensual (as claimed by the accused) or non-consensual (as claimed by the complainant), but it believes that what is at stake here is not the issue of consent, but of power...”

(emphasis supplied)

While the above comments of the Lahore High Court and the Delhi High Court were made in the context of teacher student relationships, they are equally applicable to all workplace relationships where there is a power imbalance between the parties as is the case presently.

9. In his defence the Accused merely stated that the entire complaint against him was orchestrated by one Chaudhary Babar Hussain, however, he failed to prove this assertion with any cogent evidence. Even his own witness Zofishan Manzoor’s testimony is silent on this aspect. It is a settled principle of law that he who alleges must prove [refer Article 117 of the Qanun-e-Shahadat, 1984]. A mere statement of the Accused that the complaint is a conspiracy hatched between the Complainant and Chaudhary Babar Hussain carries little weight when *‘it is a matter of common sense and even a man of prudent mind cannot think that just to defame a person... a lady can ruin her modesty/dignity/respect herself by making a false complaint of sexual harassment’* [refer **Asif Saleem** (*supra*) at para 24]. It is also relevant to state here that the Accused himself has not denied in his reply and has in fact admitted in his cross-examination that the

number from which the messages were sent to the Complainant belonged to him. Additionally, it does not appeal to logic that another person would have had access to the Accused's WhatsApp on their laptop/computer, that too a person with whom the Accused, on his own admission, is not on good terms. Also the report of the FIA confirms that the inappropriate messages were sent to the Complainant late at night which further casts doubt on the theory of the Accused that another person is behind the messages. Insofar as the objections of the Accused regarding maintainability of the complaint is concerned, suffice to say that this question was once and for all settled by the Islamabad High Court in the Accused's Writ Petition No.214/2022 wherein the Court in its judgment dated 07.07.2022 held that the complaint should proceed before this forum.

10. Accordingly, for what has been discussed above I declare that the Accused has sexually harassed the Complainant by sending her inappropriate messages. Resultantly, I impose on him a minor penalty under Section 4(4)(i)(d) of the Act i.e., compensation in the amount of Rs.1,000,000/- payable to the Complainant. In case of the failure of the Accused to pay this amount the same shall be deducted from his pension. The complaint is allowed in the stated terms.

FEDERAL OMBUDSPERSON