

OFFICE OF THE OMBUDSMAN

Islamabad

FORM OF ORDER SHEET

Appeal No. FOH-HQR/0000209/2021

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsman			
		TITLE:	Mr. Wamiq Jameel	VS	Secretary Establishment Division & Others
		Department: Establishment Division			
1	2	3			
	19-05-2022	<p>Appeal No. <u>FOH-HQR/0000209/2021</u></p> <p>Appellant with his counsel Mr. Muhammad Saeed Khan Niazi, advocate present.</p> <p>Respondent Tehreen Akbar also present in person.</p> <p>Raja Saim-ul-Haq Satti, legal advisor, Ms. Sania Saeed, Section officer, Mr. Asad Mehmood, Section officer and Mr. Sami-ul-Haq, section officer on behalf of department present.</p> <p>This appeal under section 6(1) of the Protection against Harassment of Women at the Workplace Act 2010 is directed against the office order dated 15-09-2021 of the competent authority whereby the appellant Wamiq Jamil (Ex-steno typist BPS-14) Establishment Division, government of Pakistan Islamabad has been imposed upon the major penalty of compulsory retirement from service in terms of section 4(4)(ii)(d) of the Act 2010 with immediate effect.</p>			

		<p>The brief facts giving rise to the instant appeal are that in the light of an harassment complaint against the appellant an inquiry was conducted by the concerned department through the harassment committee. A charge sheet dated 10-08-2021 and show cause notice dated 18-08-2021 were issued to the appellant which were received by his mother. It was stated that perhaps the appellant-accused was hospitalized due to some mental illness. Ms. Shakila Qureshi, mother of the appellant sent an application to Ms. Ayesha Bashir Wani, Joint Secretary (Litigation), chairperson Inquiry committee of harassment, admitting and expressing the repentance on the act of her son. The lady took the stance that due to using some homeopathic medicine her son was adversely affected that led to bazari and weird behavior of him as against the office decorum and workplace ethics. Ms. Shakila Qureshi tendered apology on all the situation created in the office due to mental and psychological condition of her son.</p> <p>The inquiry committee constituted for probing into the case, called the appellant to submit his written defense within seven days of issuance of charge sheet. Appellant was asked to receive the charge sheet but he refused to receive the same. The inquiry committee, then, vide its letter dated 11-08-2021 directed section officer Admin-I to hand over the charge sheet to the appellant. Appellant-accused preferred not to submit his written response to the committee against the charges against him. On his failure to submit his written defense, the inquiry committee provided another chance to the appellant by issuing show cause dated 17-08-2021 but the appellant still decided not to reply to the notice and no reply received from him. The inquiry committee also issued notice to the complainant Ms. Tehreen Akbar, section officer providing her with opportunity of personal hearing on 20-08-2021.</p> <p>In view of the statements submitted by the complainant Ms. Tehreen Akbar and her staff, the inquiry committee issued notice to two more witnesses namely Ms. Sania Saeed, section officer and Ms. Tayaba Bibi, LDC. The</p>
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		<p>witnesses appeared before the committee on 26-08-2021 and submitted their written statement as well as verbal narration. The inquiry committee conducted the inquiry, examining all the relevant witnesses and also examining the personal file of the appellant-accused.</p> <p>Consequent upon the inquiry so conducted, the inquiry committee found that the act of the appellant was against the work ethics who had violated the official code of conduct and ethical boundaries on several occasions. It was further found by the committee that the appellant deliberately and consistently created intimidating, hostile and offensive work environment for female colleagues and officers and that all the charges against the appellant had been established and confirmed. It was held by the committee that the act of omission and commission of the appellant did constitute harassment in terms of section 2(h) of the Act 2010. The committee, therefore, recommended for imposing major penalty of compulsory retirement from service prescribed under section 4(ii)(d) of the Protection against Harassment of Women at the Workplace Act, 2010.</p> <p>In view of the above recommendations of the committee the competent authority imposed the major penalty upon the appellant vide office order dated 15-09-2021.</p> <p>While assailing the impugned order through the appeal at this forum the appellant submitted that due to his illness his mother gave an interim reply to the charge sheet and show cause notice with the request to extend some time to submit written defense and to appear in person. That the appellant was never heard in person nor confronted with any witnesses, so much so he was not supplied with the copy of the inquiry report and any other documentary evidence etc. It was further submitted by the appellant that the inquiry committee violated the mandatory requirements of the inquiry proceedings as per section 3(2) of the Act 2010 with reference to the required criteria of composition of the inquiry committee. The appellant</p>
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alleged that the constitutional obligation pertaining to fair trial was not adhered to by the committee. And that neither any oral nor documentary evidence was produced in his presence so much so he was not provided any opportunity to cross examine the witnesses. The appellant, however, conceded that due to facing certain health issues, he suffered from behavioral problems leading to severe mood swings and weird behavior. He further disclosed to have been remained admitted in psychiatrist ward of Benazir Bhutto hospital Rawalpindi for a period of three weeks. The appellant requested and prayed to accept his appeal and to set aside the impugned order dated 15-09-2021 to restore him on his previous official position.

In response to the appeal above mentioned, the respondent 1 and 2 submitted their written defense giving the brief background of the case and para wise comments in detail with the prayer to dismiss the appeal in hand.

I heard arguments advanced by both the sides and perused the relevant material placed on the file.

There is no denying the fact that an inquiry was conducted against the appellant on the complaint of a female officer staff Establishment Division, government of Pakistan. So the factum of harassment complaint by the female officer against the appellant stands established on the record. It transpires from the record that the female complainant is quite senior to the appellant and for that matter there is no clash of interest between the two. There is no such evidence on the record to convincingly show that some previous grudge, animosity or enmity existed between the complainant and the appellant, to falsely implicate the appellant by the complainant. Now question arises why the lady complainant could have charged the appellant for such an act without any rhyme or reason. Normally such a thing cannot be expected of an educated lady knowing it well that such an allegation on her part may ruin her reputation in the

society. It is also not established on the record that inquiry committee which probed into the matter was biased or partisan against the appellant. No reason exists to show that the committee acted in a biased manner. Similarly no reason is shown by the appellant to discredit the testimony of the other witnesses who recorded their statements during the course of inquiry proceedings. The neutral and impartial status of the witnesses has not been shattered by the appellant.

In short the findings of the inquiry committee seem bonafide and confidence inspiring holding the appellant to have been proved guilty of causing harassment to the lady colleague at the workplace. The application of the mother of the appellant to Chairperson Inquiry committee, in a way, is admission of causing the harassment by the appellant to his female colleague. The stance of Ms. Shakila Qureshi that her son acted under influence of some medicine is of no help to the appellant because no such evidence has been produced to show that in fact some medicine adversely affected the mind of the appellant to commit such act of harassment. Mere admission in a Psychiatry department (if any) may not absolve or exonerate the appellant of the charge. Such tactics are common in our society for one's face saving.

It is a common practice that after the crime is committed, majority of the people come forward as champions of human rights to seek pardon for accused. No doubt every accused has got human and fundamental rights but does it mean the victim has no such right whatsoever. A lady worker, if not safe her workplace, what will be the working environment in our office. In that eventuality no one will be willing to send his sister or daughter or wife to work in the offices and 50 percent of our population would be deprived of its fundamental rights.

It may not be irrelevant to mention here that the objective of harassment Act is to create safe working environment for women, which is free of

		<p>harassment, abuse and intimidation with a view towards fulfilment of their right to work with dignity. Harassment is one the biggest hurdles faced by working women preventing many who want to work to get themselves and their families out of poverty.</p> <p>As regard the objection of the appellant of the constitution of inquiry committee, it is of course mandatory that inquiry committee should consists of three members of whom at least one member shall be a woman. This constitution of the committee, however, does not prevent the three female members of the committee. There is no such embargo in section 3(2) of the Act, 2010 that all the three members of the committee may not be women. Hence the formation of the inquiry committee in this case consisting of all the three female members is not violative to the provision of law.</p> <p>It is clearly shown on the record that the appellant refused to receive show cause notice or to appear before the committee. If so how the committee could wait for the appellant indefinitely. Being, intentionally, non-participant in the proceedings of the committee, appellant could not have avail the opportunity to cross examine the witnesses who recorded their evidence before the committee. The charge against the appellant has been proved as a result of evidence led by the Complainant's side and as such it is immaterial on the part of the appellant to say that he has been penalized on the basis of vague charge.</p> <p>It has been admitted and conceded by the appellant as well as his family that he has been suffering from mental and Psychological malady for which he has also remained hospitalized. In view of such an admission it seems risky and unsafe to retain the appellant in government service. There is a common practice in the government departments that employees suffering from serious sickness are sent on retirement on medical grounds prematurely. It would be in the interest of the appellant himself that he</p>
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		<p>should be sent on retirement so that he could take complete rest alongwith his family. Appellant is not being dismissed from the service on the other hand his compulsory retirement will give him all the due pensionary benefits.</p>
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The penalty of compulsory retirement to the appellant in these circumstances would not be something inappropriate. It appears to be an adequate and proper decision of the authority.

For the aforementioned reasons this appeal fails and as such it is hereby dismissed, maintaining the impugned order dated 15-09-2021 intact.

OMBUDSMAN

