

**OFFICE OF THE FEDERAL
OMBUDSPERSON
FOR PROTECTION AGAINST HARASSMENT OF WOMEN
AT THE WORKPLACE, REGIONAL OFFICE, SINDH
FORM OF ORDER SHEET
Complaint No. 250/2022**

Date of Institution: 13.10.2022

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE	MS. ZUREEAT SOOMRO	VS	MR. ABDUL SAEED ABBASI
		DEPARTMENT: AIRPORT SECURITY FORCE (ASF)			
1	2	3			
32	12.01.2024	<p><u>Subject: Final Order on Merits</u></p> <p>1. The present complaint has been filed by Ms. Zureeat Soomro (“Complainant”), an Assistant Sub Inspector (ASI) in the Airport Security Force (ASF) stationed at Sukkur Airport, against Mr. Abdul Saeed Abbasi (“Accused”), Airport Manager at Civil Aviation Authority (CAA).</p> <p>2. The Complainant has raised a number of allegations in her complaint before the Forum:</p> <ol style="list-style-type: none"> a. The Accused coerced the Complainant to accept his marriage proposal. b. Following the marriage, he started to mistreat the Complainant, physically abusing her and accused her of having illegitimate relationships with colleagues. c. Subsequently, he divorced the complainant in February 2022. d. The Accused regretting his actions made attempts to reconcile and resume their marital relationship. e. However, he declined to withdraw the divorce deed and instead wanted to have an illegitimate relationship (live-in relationship) with her. f. Upon the Complainant's refusal, the Accused warned her of potential job-related consequences, claiming to have influential connections within the ASF and the airport. g. The Accused used WhatsApp statuses and messages to abuse and threaten the Complainant and her family. The Accused has 			

also used his influence to terminate the job of the Complainant's brother after he refused to send her back to the Accused.

3. With respect to the maintainability of the complaint, the Complainant's Counsel has asserted that Sukkur Airport constitutes the workplace for both parties as the incidents allegedly occurred within its premises and this interpretation aligns with the meaning of the term "workplace", encompassing various settings beyond the traditional office as established by various case law.
4. The Counsel for the Accused in response to the argument of the Complainant's Counsel argued that the Accused does not fall under the definition of an "employer" or "accused" since he works for the CAA and the Complainant works for the ASF.
5. The Counsel for the Complainant stated that the Accused has access to the premises where the Complainant works and being in a position of authority he has influence in her workplace. Whereas the Counsel for the Accused contended that the Accused needs the authorization of the ASF to enter the airport premises and has also questioned as to why the Complainant did not report this issue to her supervisor. The forced marriage and maltreatment claim was also strongly disputed by the Accused's Counsel who pointed to the Complainant's inconsistent statements during her cross-examination and the acknowledgment of a family-approved marriage. The Counsel for the Accused submitted that the issue between the parties is a personal one which is beyond the ambit of workplace harassment, with the available criminal and civil remedies being more suitable alternatives.
6. Regarding the accusation pertaining to the messages sent by the Accused to the family of the Complainant, the Counsel for the Accused invoked Article 71 of Qanoon-e-Shahadat Order, 1984 (QSO), emphasizing the requirement for direct oral evidence. He pointed out that the Complainant's brother and sister although present at multiple hearings did not testify as witnesses which is a significant lapse under Article 71. For the allegation with respect to the threatening and abusive WhatsApp statuses put by the Accused, the Counsel for the Accused challenged the admissibility of the same, citing the need for formalities and an application under Article 164 of QSO. According to him the absence of forensic examination of the WhatsApp Statuses have rendered the same inadmissible. While addressing the allegation with respect to the dismissal of the brother

of the Complainant a week before the Complainant filed the complaint, the Counsel for the Accused disputed the merit of the Complainant's claim, asserting that if the Complainant's brother was aggrieved he could have filed a complaint himself. Nevertheless, it is the Complainant who has pursued the matter despite the absence of locus standi. In summary, none of the allegations substantiate workplace harassment. The claims lack specificity and details such as time, date, and the nature of harassment. The Complainant has not identified the mode or specified the Accused's actions. Despite supervising seven other women officers, no witnesses have come forward to support her claim. Additionally, no CCTV footage has been provided and neither has any effort been made to obtain such footage from the airport.

7. The Complainant's Counsel emphasized the cyberstalking aspect of harassment, asserting its inclusion in WhatsApp messages and statuses. He further added that the Accused would often come looking for her at work or call her to his office, harassing and publicly humiliating her while threatening her of dire consequences. The Accused would also follow the Complainant when she left the airport after work hours and continue to follow and abuse her all the way till she reached home. Counsel for the Complainant argued that the creation of a hostile environment by the Accused falls under the ambit of harassment as per Section 2(h)(i) of the Protection against Harassment of Women at the Workplace Act, 2010 (Act).
8. In response, the Accused's Counsel highlighted that the Complainant was transferred to Sukkur Airport in May 2021, a fact admitted by her during her cross-examination whereas the Accused was posted at Sukkur Airport until 29.12.2021 and later on at Karachi Airport until July 2022. Consequently, the Accused was not present at Sukkur Airport during the alleged harassment, and on the date of divorce i.e., 27.02.2022 he was stationed at Karachi Airport.
9. The Accused's Counsel argued that the burden of proof lies with the Complainant to establish, beyond a reasonable doubt, that workplace harassment had occurred. He emphasized that the allegations leveled by the Complainant should not be unquestionably accepted. According to Article 117 of the QSO the burden of proving a fact lies on the person who wishes to show its existence. Therefore, in workplace harassment cases, the Complainant must prove that the

accused, an employee or employer in the same organization, engaged in harassment.

10. The Accused's Counsel also highlighted a crucial detail revealed during the cross-examination – the Complainant admitted filing the complaint shortly after her brother's termination from Sukkur Airport. According to him this termination suggests a potential motive due to the Accused not renewing her brother's contract. Additionally, the eight-month delay in filing the complaint may also be noted. The Counsel asserted that the Complainant has approached this Forum with "unclean hands," and questioned her entitlement to the relief claimed.

11. After having heard the arguments of the parties there are three questions before this Forum:

I. Whether cross-organizational claims are maintainable before this Forum under the Act?

II. Whether the grievances of the complainant fall within the ambit of harassment as defined under Section 2(h) of the Act?

III. Whether a claim of workplace harassment should adhere to a strict standard of proof with respect to the admissibility of the evidence?

12. The first issue that requires a resolution is whether cross-organizational claims are maintainable before this Forum. It is clear that a complaint may be made by any person against any employee or employer of an Organization regarding harassment at the workplace. The definition of a complainant encompasses any person aggrieved by an act of harassment and the definition of an accused includes any employee or employer. While the Act does not explicitly demand a common organizational link between the complainant and the accused, it also does not exclude a complaint filed by one employee against another. The intent of the Act is to safeguard all individuals from workplace harassment in their professional settings. Thus, both the parties satisfy the criteria laid down in the Act.

13. Furthermore, the same has been established in **Asif Saleem vs Chairman BOG University of Lahore** (PLD 2019 Lah 407) wherein the Lahore High Court held that —

“12. ...**This Act is not confined only to the relationship of an employer and employee**; but it extends to all acts of sexual harassment committed by employer or employee with any women (at the workplace) by misusing/exploiting his/her official position/capacity...”

(emphasis supplied)

14. The term “workplace” is also broadly defined to extend beyond the traditional office settings to include the entire premises of the Sukkur Airport where both the Complainant and the Accused were employed. Despite working in different departments within the Airport, sharing the same premises qualifies as a workplace. However, the Counsel for the Accused contended that the Accused was not stationed at the Sukkur Airport while the alleged incidents happened. A timeline of the postings of the Complainant and the Accused show that they were both posted at Sukkur Airport for a period of three months (01.07.2022 till 09.10.2022) i.e., after the divorce till the filing of the complaint before this Forum. Furthermore, the judgments cited by the Counsel of the Accused in support of his argument predate the 2022 Amendments to the Act, following which the scope of “workplace” has been significantly expanded.

15. Moving on to the second question, the Act emphasizes the creation of an intimidating, hostile, or offensive work environment as a crucial element when deciding the question of harassment. This Forum acknowledges that workplace harassment requires a connection to the workplace. The Complainant's contention regarding a coercive element for marriage, along with the threat of her brother's termination and the threat of her own termination has created a scenario where personal issues have spilled over into the professional setting. In fact, there is a significant disparity in power between the two parties wherein they are placed at considerably unequal positions and undeniably the Accused is in a position of power by virtue of his designation. The overlapping of personal and professional dynamics in this manner has created an environment that is not only exploitative but also detrimental to the well-being of the Complainant. While domestic violence does not fall within the purview of this Forum, the presented evidence offers an insight into the behaviour of the Accused. The screenshots of WhatsApp messages and statuses, i.e.,

- Sindh ki riwayat hai, Karo or Kari ko Maar diya jata hai
- Apne aapko izzatdaar samajhne wale kese kisi ki izzat k saath khelte hain, main unko izzatdaar nhi, beghairat bookings (bolunga)
- Aapke han to 24h booking chlti hai, bari beti ka kya rate hai or choti k rate kiya hain?
- Aray bharway to hai tu, apni sister ko le atay the or apne bhanjay ka tou DNA karao, halali hai ya harami or apna bhi test karao Soomro ho ya Jaghirani?
- Baghair Nikkah k behno ki bharwat khanay wale bharvay bhi.. or loghon k ghar me lakay behne chudvanay wale.
- InshaaAllah main un izzatdaron ki izzat neelaam karunga jo bazahir parhezgar hain magr un kay kartoot bhi to awaam k samne anay chhayen.
- Lanat ho unpr beshumaar jo shaadi se pehle apne walidain ki izzat nahi rakhte or shadi k baad apne husband ki chand rupay ki khaatir apne izzat neelaam krte hain
- Ye kese brother hotay hain jo sister se dhandha karatay hain
- Pyaar khatam inteqaam shuru
- Jisne mujhe barbaad kiya hai khuda ki ksm main unko barbad or ruswa kardunga kyun k meri zindagi main or kuch nhi, wo nhi to kuch nhi, meri nahi to kisi ki nhi.

The videos submitted in USB through application dated 28.12.2022 show the Accused abusing the Complainant at her home in the presence of her family. It is worth noting that these statuses as well as messages over WhatsApp were sent by the Accused after his divorce from the Complainant, at the end of their domestic relationship. The significance lies in the fact that, given the Accused and the Complainant continued working in the same premises for a period of approximately more than three months, such communications created a hostile environment at the Complainant's workplace, affecting her sense of safety at work and thereby substantiating her claim of harassment by the Accused.

16. With respect to the third issue regarding admissibility of the evidence and the burden of proof, keeping in view Articles 71, 117 and 164 of QSO as contended by the Counsel for the Accused, it is important to acknowledge the quasi-judicial nature of this Forum, which is operating within the ambit of a special law. It is unquestionable that

the principle of **lex specialis derogat legi generali**—wherein the special law supersedes the general law—finds unequivocal resonance.

17. This Forum possesses the prerogative to tailor its procedural modalities to align with a summary disposition, diverging from the procedures outlined in the QSO. The sui generis nature of this quasi-judicial body invests it with the authority to adopt expeditious procedures not tied to the procedural intricacies prescribed by the general laws. In this regard reference is made to Section 8(3) of the Act that allows the Ombudsperson to conduct proceedings as she deems proper.

18. The standard of proof applied by this Forum diverges from the criminal law standard. In this regard, reliance is also placed on **Imran Amir vs Mst. Ismat Bibi** (2023 CLC 1059) wherein the Islamabad High Court has held that –

“9. ...The inquiry proceedings conducted by the Ombudsman... are not criminal proceedings...”

10. ...The sentences that the... Criminal Court can award to petitioner No.1 are dissimilar to the minor or major penalties that the Ombudsman can impose on the petitioners if the allegations made by respondent No.1 against them are established...”

19. In similar vein, the Policy on Preventing Sexual and Gender-Based Harassment issued by the Ontario Human Rights Commission states that —

“Under the Code, the claimant – or the person making a claim – has the onus of proving an allegation of sexual harassment. A claimant must show a human rights tribunal that, on a "balance of probabilities," there appears to be a contravention of the Code.

The burden of proof for showing harassment under the Code is not as strong as the “beyond a reasonable doubt” standard required for establishing guilt in criminal cases.

Proving a case on a "balance of probabilities" is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" took place, and that the behaviour was sexual harassment within the meaning of the Code.”

(emphasis supplied)

20. Consequently, the burden of proof rests with the Complainant, albeit at a standard of preponderance of evidence, in establishing claims of workplace harassment before this Forum.

21. Regarding the contention of the Counsel for the Accused with respect to the lapse of a period of eight months in filing the present complaint, it is important to clarify that the Act does not impose any specific time limitation for filing complaints before this Forum. The absence of a time limitation highlights the intent of the Legislature to afford complainants the breathing space/freedom to initiate proceedings when they deem it appropriate, without being encumbered by rigid timelines. The emotional toll that harassment may inflict on a victim can often impede the swift initiation of formal proceedings. A time lapse therefore does not ipso facto diminish the substance of a complainant's claim. This view has also been affirmed by the Supreme Court in **Uzma Naveed Chaudhary vs Federation of Pakistan** (PLD 2022 SC 783).

22. Whilst the Learned Counsel for Accused has also contended the possibility of a potential motive due to a close proximity between the termination of the services of the Complainant's brother and the institution of the present complaint, this Forum is primarily concerned with the harassment that the Complainant experienced at the workplace by the Accused. Although the timing of the complaint coincides with her brother's termination, it does not diminish the validity of her workplace harassment claim. In fact, it is one of the manifestations of harassment that she endured within the workplace. Furthermore, the Complainant has provided sufficient evidence demonstrating workplace harassment irrespective of her brother's termination.

23. After considering the available records and thoroughly evaluating the arguments and evidence presented, the Forum finds satisfactory proof of harassment in the present facts and circumstances. Accordingly, based on the aforementioned discussion, it is concluded that the Accused is guilty of harassment. I accordingly impose a major penalty under Section **4(4)(ii)(e)** i.e., a fine of Rs. 5,00,000/- on the Accused which shall be paid to the Complainant as compensation for the wrong done to her. This amount is to be paid within 30 days from the date of receipt of this Order. Furthermore, a major penalty under **Section 4(4)(ii)(a)** of the Act i.e., reduction to a lower post or

time-scale, **or to a lower stage in a** time-scale is also imposed upon him. Additionally, if the Accused is permitted to continue working at the same workplace alongside the Complainant, he will remain a constant threat to her. Consequently, CAA is directed to ensure that for the duration of the Complainant's service, the Accused shall be placed at different premises from her. A copy of this order be sent to CAA and ASF for its implementation in letter and spirit

24. The administration at CAA is hereby directed to implement this order thoroughly and promptly, reporting to this Forum within 30 days of receiving this directive.

25. Since prevention is the best tool to eliminate harassment at the workplace, Director General CAA is strongly encouraged to undertake appropriate measures, including but not limited to conducting seminars, training sessions, and awareness campaigns in order to foster a harassment free work environment. Additionally, a standing Inquiry Committee shall be constituted and their names and contact information shall be displayed at conspicuous places in the offices of CAA; the Code of Conduct shall also be displayed in both Urdu and English at conspicuous places in the offices of CAA. A compliance report in this regard shall be filed by the Director General, CAA before this forum by **20.02.2024**. These initiatives shall proactively prevent and address unlawful harassment while promoting awareness on the subject.

FEDERAL OMBUDSPERSON