

Justice (R) Yasmin Abbasey,**Ombudsman:**

1. Ms. Mussarrat Nahid Imam, Director Visual Arts, Pakistan National Council of the Arts (PNCA) has lodged this complaint against Mashud Ahmad Mirza, Joint Secretary, Ministry of Information, Broadcasting & National Heritage, Islamabad.

2. The facts of the case as stated by complainant Ms. Mussarrat Nahid Imam are that she has been repeatedly harassed by senior officials leading to serious impediments to her carrier. She joined PNCA on 26-01-1981 as Program Organizer in Grade 16 then promoted as Incharge / Curator in grade 17 on 1st April 1984. Her promotion to grade 18 was delayed due to administrative shortfall in the PNCA but then got promoted to grade 19 as Director in 2005 after a period of 21 years of service. Complainant had put in 35 years of service towards making of PNCA particularly the Visual Arts Division, one of the renowned Institution in Pakistan for which she was also send abroad to expedite Pakistan image through media of Visual Arts. She had a smooth transition in PNCA, but problem occurred when Mashud Ahmad Mirza who was Joint Secretary, Ministry of Information, Broadcasting & National Heritage was assigned additional / Acting charge of the post of DG PNCA in 2013. Opponent who was unfamiliar with the working of attached department (PNCA), created obstacles in smooth working of department by abusing his subordinates and colleagues, male or female over trivial issues. There was total lack of decorum in the department. One such incident occurred when Mashud Ahmad Mirza ordered complainant to issue NOC for an exhibition of painting shipped to foreign country which was supervised by Director Admin and Account Intikhab Alam, as at that time complainant was abroad (on foreign tour). As such as a matter of principle NOC should

have been issued by the officiating officer who was working in her place when she was on tour abroad.

3. Act of harassment continued against her when on 23-01-2014 she was charge-sheeted on false grounds by opponent Mashud Ahmad Mirza in consonance with Dr. Nazeer Saeed, the then competent authority. Inquiry committee was constituted, while Inquiry order dated 23.01.2014 was issued by Mashud Ahmad Mirza. All staff working under her was fired, thereby creating hurdles in the smooth running of her position. Though she was not expecting justice from the inquiry officer supervised by opponent but was forced to attend inquiry proceedings which she attended under protest.
4. As complainant was in dread of her termination therefore she filed writ petition No. 616/14 before Islamabad High Court where degrees of complainant were handed over to the pleader of PNCA Mr. Awais on 3rd July 2014. With delivery of academic documents petition was disposed of leaving the other issues raised in Petition for PNCA to finalize the matter within 3 weeks after receiving the order of Court.
5. Finally inquiry committee declared complainant guilty of misconduct and awarded penalty of withholding of 2 increments for two years.
6. According to complainant even thereafter by getting published Inquiry Committee Report in newspaper "The Nation" on 20th July 2014 opponent continued his act of harassment when interestingly opponent himself had acknowledged receipt of her academic documents from Mr. Awais in court.

7. Reverting to the opponent's statement it is stated by him that complainant approached Islamabad High Court for grant of stay of inquiry proceedings initiated against her. The Honorable High Court Islamabad did not pass any stay order and disposed of the writ petition with the observation that the inquiry may be finalized within three weeks after considering documents produced by complainant. The authority after perusal of academic documents and material produced by complainant and against her, concluded that allegation of misconduct stood proved against her.
8. Heard parties and perused record.
9. Record reveals that dispute arose in between complainant and opponent on 24.09.2013 when according to complainant she was forced by opponent as acting Director General to issue NOC and fulfill other documentations pre-requisite for exhibition which was going to be held in some foreign country. Though in those particular days for which NOC was required she was in China, one another Director Administration and Account Mr. Intikhab Alam was supervising that project and it was under his supervision packing was done, therefore he was told to take NOC from person under whose supervision packing was done. In spite of that opponent was insisting that as complainant staff was involved in that packing, therefore it is responsibility of complainant to issue NOC.
10. Beside that more hot talks occur in between complainant and opponent on 23.09.2013. As per record both these incidents were reported by complainant to Federal Secretary and Ministry of Information and Broadcasting on 24.09.2013 and 26.09.2013.
11. Complaint moved on 24.09.2013 was dismissed vide order dated 30.10.2013 stating that case of complainant does not fall within definition of harassment as defined in Act of 2010 hence does not merit consideration. This observation of Secretary Ministry of Information and

Broadcasting restricting himself to very confined interpretation of law to sexual harassment ignoring the objections of Act of 2010, does not seem to be correct, because I have already observed in complaint no. 1(35)/2012-FOS that:

“It is not debatable that right to life means live with dignity, and these fundamental rights have also been protected by Article 9 and 14 of the Constitution of Pakistan. The object of enactment of Act IV of 2010 was also with same intent to provide a healthy and protected environment to the persons working at workplace so that they should not be harassed, ridiculed by the employers as defined in section 2 (g) of Act IV of 2010. The term harassment as defined in the Act cannot be examined in isolation but the other aspects of creating and intimidating, hostile or offensive work environment which leads to the sexual request or sexual favor also needs to be examined. Gender discrimination is a pervasive evil that potentially confronts women who enter in any job either in public or private sector. The element which poisoned the workplace by creating hostile or offensive work environment even unrelated to sexual desire are not tolerated. If an employer is engaged in a pattern of harassment which creates a hostile work environment for the complainant as defined in Section 2 (h) of Act IV of 2010, the cause falls under the definition of ‘Harassment’, because the term used as “causing interference with work performance” or “creating an intimidating, hostile or offensive work environment” have to be read separately and not in conjunction to each other as the creation of hostile work environment by an employer has a significant determination impact on protected term of employment.

It is a golden rule of law of interpretation that in case of having more than one meaning of “word” the judge can choose the

preferred meaning to provide justice to the parties”.

12. It has also been brought on record by complainant that in spite of fact that two applications were moved by complainant against opponent's behavior, with which complainant was facing, taking decision to initiate Inquiry proceeding against complainant by opponent himself vide order dated 23.01.2014 is nothing but an act of retaliation against complainant because of complaints referred above moved by complainant on 24.09.2013 and 26.09.2013, because this fact cannot be denied that Protection against Harassment of Women at Workplace Act 2010 was enacted on 11.03.2010 and by that it is mandatory to constitute an Inquiry Committee in each organization within 30 days of enactment of this Act. Other mandatory provision is display of code of conduct, as is in schedule of this Act within the organization at a conspicuous place. Purpose of display of this code of conduct is to make employee and employer of that organization to know about enactment of this Act and facilitate them to take benefit of it. In spite of this specific legislation, if opponent who is claiming himself as Director General, an authorized officer of PNCA is ignorant of the fact that after having any complaint on the ground of harassment by any employer or employee of organization by virtue of sub-clause X of code of conduct it is a duty of employer to make best temporary adjustment so that accused and complainant do not have to interact for official purpose during investigation period. Instead of following the law, he himself became violator of it by ordering inquiry against complainant, also issued charge sheet along with statement of allegation under his signature.
13. The main purpose of making this temporary arrangement is that anyone of them may not have excessive powers over other job conditions as is appearing in present case. It is also important to note that application moved by complainant on 24.09.2013 was disposed off by order dated

30.10.2013 but second application moved by complainant on 26.09.2013 seems to be still pending as there appears no specific order thereon.

14. Even otherwise from perusal of record I found that charges leveled against complainant of non submission of educational documents as shown in statement of allegations starts from October, 2007 to 2013, no reason has been assigned by opponent that if opponent was guilty of disobedience as shown in charge sheet and statement of allegation then why they have waited so long and consider it best to dig out all previous incidents after moving application by complainant on 24.09.2013 and 26.09.2013. Most of allegations have been properly replied by complainant in her reply to charge sheet and statement of allegation. So far allegation leveled at para 1 and 2 about non submission of academic certificates and date of birth is concern. According to complainant all of them were submitted by her at time of her appointment as Program Organizer, beside that same were provided to department during proceedings in Islamabad High Court and matter was finalized there. Taking it up again in Inquiry proceeding with adverse observation is nothing but an act of harassment that also reflects in newspaper Daily The Nation of 20.07.2014. If according to PNCA this act of non submission of academic certificates was such a heinous offense then no reason has been assigned by opponent that what action has been taken against other officials to whom simultaneously notices were issued for same purpose up till May, 2013, reference can be made to last circular issued on 06.05.2013 and placed at Page-62 of file.
15. Rest of allegations leveled against her have been properly replied by complainant and some of them were also dropped in favor of complainant. It is also not worthy that clarifications made by complainant in her reply of statement of allegation also have not been rebutted by opponent neither in his defense filed before this forum nor during course of arguments. Only stand taken up by him is that it is not he who has ordered for initiation of

inquiry / disciplinary proceeding against complainant, but it was under order of Secretary Ministry of Information and Broadcasting and as he was holding additional charge of Director General PNCA w.e.f 20.12.2013, therefore he had just complied with order of Secretary Ministry of Information and Broadcasting and for sake of impartiality and fair play Nadeem Iqbal Abbasi, Executive Director NLPD was nominated as Chairman of Committee to conduct inquiry and that when inquiry committee had given its decision penalizing complainant he was in National Defense University undergoing National Secretary and War Course from 11.08.2014 to 11.01.2015, but because of this defense taken up by opponent his previous conduct of issuance of order for holding inquiry proceedings and issuance of charge sheet and statement of allegations cannot be ignored. Record shows that inquiry committee decided the matter very partially without considering actual facts of incidents happened during period as alleged against complainant.

16. In view of above I hereby set aside decision in Inquiry report of 21.05.2014 and penalizing complainant with stoppage of increments of 2 years, with immediate effect. Complaint allowed.

JUSTICE (R) YASMIN ABBASEY
Federal Ombudsman