



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

TITLE: Ms. Alina Hashir Vs Bank Alfalah (Pvt) Ltd & others

ORDER

1. Appeal Number: 1(464)/2018-FOS-Reg
2. Date of Institution: 30-04-2018
3. Date of Order: 29-04-2019
4. Appellant: Ms. Alina Hashir
House No. 214, Street 36
Sector G-9/1,
Islamabad
5. Respondents:
 - i. Bank Alfalah (Pvt.) Limited
Through Ms. Hira Habib
HR Representative, Alfalah Bank
Shahdin Manzil,
Lahore
 - ii. Bulls & Bulls Private Limited
Through Mr. Muhammad Ali
HR Representative
Beach View Building, Ground Floor
BC-6, Block-4, Clifton
Karachi

**KASHMALA TARIQ
Federal Ombudsman:**

TITLE: Ms. Alina Hashir Vs Bank Alfalah (Pvt) Ltd & others

Through this order, this forum will decide the instant appeal filed by Ms. Alina Hashir (hereinafter referred to as Appellant) whereby the Appellant impugns termination letter “impugned decision” dated 06-04-2018 sent by HR Manager, Bulls & Bulls Pvt. Limited (hereinafter referred to as Respondent no.2), reproduced below: -

“You are absent from duty since 12th July, 2017 without any authorization. Despite notices to resume duty, you have not resumed the duty, rather continued to draw salary up to the month of December, 2017.

You failed to establish further any reasonable explanation in support of your conduct and absence. A show-cause notice was also issued to you but you failed to submit any rational explanation for your continued absence from job.

You are aware of the fact that as a private company your employer cannot pay salary for indefinite period to an employee who is perpetually absent and not willing to join the work.

In view of above, your service contract is hereby terminated with effect from 12th July, 2017 on grounds of misconduct, dishonest withdrawal of salaries and continued absence from duty.”

Briefly, the facts giving rise to this appeal are that the Appellant was hired as an Officer Sales and Personal Loan (Auto Loan Sales Officer) on 11.06.2017 by Respondent no.2 as third party contractual staff in Consumer Finance Centre, Bank Alfalah Sector I-8 Branch, Islamabad through HR Representative. The Appellant alleged that from the beginning of her employment the attitude of Mr. Aamir Zaidi (hereinafter referred to as accused) Regional Sales Officer, Consumer Finance Centre, Bank Alfalah was sexually demeaning towards her and that he made inappropriate and offensive comments on numerous occasions thereby, creating an

intimidating and hostile work environment, causing interference with her work performance.

On 12.07.2017, the Appellant wrote an email to the management of Bank Alfalah (hereinafter referred to as Respondent no.1) wherein the following allegations were made: -

From the beginning, the Appellant was given extra work without any proper training.

- i. The Accused is a known habitual abuser and is abusive towards his staff and juniors.
- ii. The Appellant had an eye infection and the accused commented: -

"کس کے ساتھ کن جھاڑیوں میں گئی تھی جو آنکھیں خراب ہو گئی ہیں۔"

"Who did you go with in the bushes that your eyes are infected?"

- iii. Similarly, he again commented on her eye infection: -

"انسان اپنی آنکھوں کا ٹھیک استعمال کرے تو خراب نہیں ہوتی۔"

"If a human being uses his/her eyes correctly, they will not get infected."

- iv. On another occasion, he was invasive and asked the Appellant: -

تم کس کے ساتھ آتی جاتی ہو۔ روز آپ کو لینے کے لیے نئی گاڑی آئی ہوئی ہوتی ہے

"Who do you come and go with? Everyday a new car comes to pick you up."

- v. Once he displayed his authority and threatened the Appellant by saying:-

تمہارے پر پرزے بہت نکل رہے ہیں۔ جتنا میں تمہیں دے رہا ہوں اسی میں رہو۔ زیادہ اونچا نہ اڑو۔

"You are getting way out of hands, stay within the limits I have set for

you. Do not exceed them.”

- vi. Another time, the Appellant’s mother in law was hospitalized and the Appellant asked for a casual leave to which the accused responded: -
خیر ہے تمہاری ساس بی ہے جا کر کام کرو۔

“It is okay. It is just your mother in law, go work.”

- vii. The accused used to stare her constantly whenever she used to go to his cabin making the Appellant very uneasy and uncomfortable.
- viii. The previous female working on the same position as her; resigned due to sexual harassment and abusive language used by the accused.
- ix. Furthermore, on 10.07.17, she was at her cousins’ funeral when the accused called her even though she had asked her colleagues to mark her casual leave. The accused shouted at her on the phone for not informing him before taking leave.

After her email dated 12.07.2017, the Appellant discontinued going to her work and initially she was in correspondence through emails with the management of Respondent no.1. Upon her complaint, a fact finding probe was conducted followed by which, a formal Inquiry Committee was constituted consisting of Mr. Faisal Farooq Khan, Group Head, HR & Learning Group (Chairman), Mr. Khuram Hussain, Group Head – Retail Central & North and Consumer Banking (Member), Ms. Maliha Khushnood, Head Legal Affairs Department, Islamic Banking Group (Member) and Mr. Amin Dosani DGM Human Resources HR & Learning Group (Member). The Appellant appeared before the Inquiry Committee for the first time on 12.10.17. She alleged that the decision of the Inquiry was not communicated to her despite her repeated emails to the management.

In January 2018, the respondents offered the Appellant to join another department of the bank, but she refused to work in the same branch where the accused was posted by stating that she has suffered from panic attacks and anxiety caused by working with the accused. The request of the Appellant was not entertained and on 27.02.18, she received a Show Cause Notice from Respondent no. 2 because of her absence from work since 12.07.18. The Appellant in her email replied contesting the Show

Cause Notice and showed her willingness to join another branch of the Bank. She also inquired about the decision of the Inquiry Committee.

Following which, on 06.03.2018, she gave her resignation via email and requested for her salary slips, for the month of January and February 2018, and Experience Certificate from her joining date till resignation. In response, on 28.03.2018, she was asked to submit written resignation for issuance of experience certificate to which the Appellant replied on 03.04.2018, wherein she reiterated her abovementioned demands. Finally, on 06.04.2018 she was served the impugned decision.

On the other hand, Respondent no.1 contended that they fulfilled all legal obligations and the inquiry was conducted after a fact finding probe. The Inquiry Committee in its findings on 12.10.17 recommended a penalty of stoppage of Performance Bonus-2017 and letter of reprimand for the accused. The decision was communicated to the Appellant. Respondent no.1 also stated that they tried their best to be sensitive to the issue and to accommodate the Appellant in another department. However, the Appellant refused to join and since she was on the pay roll of Respondent no.2, the impugned decision dated 06.04.2018 was issued by Respondent no.2. Meanwhile, Respondent no.2 contested that they did not have any option but to terminate the Appellant as she did not join the office for over the span of 8 months thus the issue of harassment stood resolved on 12.10.17.

Arguments were heard and record was perused.

At the outset, the issue whether the instant appeal is maintainable in its present form require consideration. It is noted that the Appellant has impugned the decision letter dated 06.04.18 on the pretext that the decision dated 12.10.17 of the Inquiry Committee was not communicated to her. This part requires an examination of Section 8 (1) of the Protection against Harassment of Women at the Workplace Act, 2010 (hereinafter referred to as “the Act of 2010”), reproduced below: -

“Ombudsman to enquire into complaint.-(1) Any employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee”.

Bare reading of the Section 8 shows that the Act of 2010 allows an employee to prefer a complaint either before this office or the Inquiry Committee of the organization. Reference worth mentioning in this regard is 2018 MLD 327, wherein the ***Honourable Islamabad High Court*** stated that *the Act of 2010 does not provide remedy to ex-employees. Thus, without prejudice to the merits of the instant appeal, the complainant is not justified in seeking reinstatement from this forum after her services were terminated when she had eight months to knock the door of this forum; reinstatement under such circumstances is beyond the scope of the Act of 2010. However, since the incident occurred while the complainant was an employee thus, this office has the lawful jurisdiction to adjudicate upon merits of the instant appeal.*

Analyzing the inquiry conducted by Respondent no.1, the recommendations of the Inquiry Committee are reproduced below: -

“Having reviewed the above narrated facts, the Inquiry Committee recommend that following punishment may be awarded to Mr. Syed Aamir Raza Zaidi, who though did not commit sexual harassment or physical pestering of the complainant, but is found responsible for doing workplace harassment which is supported/corroborated by the Investigating Team in writing as well as through oral statements of other employee.

- ***Stoppage of Performance Bonus 2017 payable if any during the Year 2018.***
- ***Issuance of Letter of Reprimand”***

Perusal of the record shows that the Inquiry Committee followed the provision under the Act of 2010 albeit with an amount of delay. However, right to cross examination was given to the parties and as the imposition of penalties of stoppage of bonus and issuance of letter of reprimand has not been challenged by the accused person in appellate jurisdiction, hence the allegations leveled by the Appellant stand established and proved. Respondent no.1 stated that they informed the Appellant about the decision, however, there is nothing on record to suggest that the Appellant was officially or formally notified about the decision. Therefore, prima facie, we have strong reasons to believe the version of the Appellant to the extent of allegations of harassment and non-communication of the decision.

In the instant case, the Appellant refused to join her office stating reasons i.e. anxiety and panic attacks. Harassment at workplace leading to hostile working environment can be a traumatizing experience for the victim and certainly lead to psychological harm in the form of depression, anxiety and extreme amount of stress. Under the Code of Conduct, the respondents as employers should have provided counseling to the Appellant at earliest in order to address her psychological issues and shift her mindset from victim to survivor mentality.

In light of the above discussion, the instant appeal is partially rejected to the extent of reinstatement.

Respondent no.1 is directed to implement the decision of Inquiry Committee in true letter and spirit, and submit the compliance report to this office within 15 days.

Appeal is disposed off accordingly.

**KASHMALA TARIQ
Federal Ombudsman**