

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Date of Institution: 18-04-2022

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE:	Dr. Ayesha Kulsoom Assistant Registrar	VS	Registrar & others
		DEPARTMENT: PAKISTAN INSTITUTE OF DEVELOPMENT ECONOMICS			
1	2	3			
47	10-06-2024	<p><u>Subject:</u> Final order on Merits</p> <ol style="list-style-type: none">1. Ms. Ayesha Kulsoom (hereinafter referred to as “the Complainant”), Assistant Registrar (AR) of the Transport Section at the Pakistan Institute of Development Economics (PIDE), filed a complaint of workplace harassment. She claimed that despite joining PIDE as an AR (BS-17) in July 2012, she has been repeatedly denied promotions and discriminated against due to her gender.2. The Complainant averred that she had filed a case in 2019 before the Federal Service Tribunal (FST) for her promotion. Following this, the senior management of PIDE started victimizing her by subjecting her to frequent transfers and postings, denying her promotions, and promoting her juniors while her case was pending before the FST. Many times, she was verbally asked to withdraw from the case. She stated that her personal and professional life has been ruined, and she has become sick due to the continued harassment. On 12.04.2022, she was sitting in her colleague’s office when she learned of her transfer from the post of Assistant Registrar (Transport) to the post of Assistant Registrar (Academics). She became unconscious, fell on a glass			

table, and received several injuries on her face, after which her transfer letter was withdrawn. According to her, she had been working in the academic branch for 8 years and had no experience in the transport branch, yet she was transferred there as a form of punishment. Other examples of systematic harassment included:

- a. Her five transfers to various departments from 2020 to 2022, with some transfers being subsequently canceled;
- b. Preparation of an incorrect seniority list which was later corrected after filing of a departmental appeal.
- c. Denial of her promotion despite being eligible and having her name on the seniority list. Meanwhile, her juniors, Mr. Ubaid Simon (Serial No. 1) and Mr. Imran Hassan (Serial No. 3), were promoted.
- d. Interference in her work –
 - i. By office memorandum dated 07.04.2023 whereby all Daftaris/Naib Qasids/bus conductors were directed to report to the Transport Section instead of the General Section, and they were directed to perform their duties under the supervision of the AR Transport. However, in the office memorandum dated 26.12.2023, they were directed to report to the General Section under the supervision of the AR General without any justification.
 - ii. By Notification dated 03.05.2023 whereby the Complainant was given responsibility for purchase and procurement at PIDE. It was directed that all items and equipment would be purchased through her and that the purchase committee of PIDE would be reconstituted. On 04.05.2023, the purchase committee was reconstituted, naming the Complainant as a member and secretary of the committee. On 23.05.2023, she submitted SOPs for purchase, and by notification dated 24.05.2023, the

SOPs were approved, and instructions were accordingly issued. However, on 01.06.2023, both notifications were canceled, and it was directed that all purchases at PIDE would be made through Mr. Ejaz Ahmed, Assistant Director/ Assistant Registrar (General Section), PIDE, Islamabad .

3. After some time, it all started again where the management accused her of defaming the Institute because of an anonymous email from a whistleblower, which was shared with all the employees. She prayed that PIDE management be directed to refrain from workplace harassment and save her and her family from further damage.
4. It is noted that the online application filed by the Complainant was against PIDE only. Subsequently, an objection was raised by the accused on 21.06.2023 to implead a particular person as accused who has caused harassment to the accused and submitted list of members of management committee of PIDE. On 09.01.2024 the complainant filed an application that the names of Vice Chancellor, Registrar and Mr. Muhammad Imran Hassan (In-Charge HR, PIDE) be nominated as Accused persons. Her request was accepted.
5. Arguments of the parties were heard and record was perused.
6. The Accused persons, on the other hand, furnished their separate replies. Accused No. 1, the Vice Chancellor, in the written reply contended that since no role was attributed to him, the complaint against him is not maintainable. Furthermore, he argued that this Forum lacks jurisdiction as no harassment is spelled out from the contents of the complaint, which has been filed merely to blackmail and harass Accused No. 01. He also argued that the Complainant was never victimized in any way during her career; rather, she was given a good ACR in recognition of her performance which shows an unbiased attitude of the PIDE management.

7. He further argued that the instant matter pertains to the transfer and posting of Complainant wherein the indulgence of this Forum is barred by law as held by the Honorable Supreme Court in judgment reported at **PLD 2021 SC 784** which was subsequently upheld in a review petition. Additionally, he argued that the Complainant was never transferred in isolation; rather, other officers and employees were transferred at the same time. She was suffering from epilepsy and had already submitted the medical report to PIDE and obtained a leave of 43 days with retrospective effect.
8. The PIDE management decided to transfer the AR (Assistant Registrar) Academic to AR (Assistant Registrar) Transport on 15.09.2021. She verbally requested to be transferred from the post of AR (Assistant Registrar) Transport since no other female is working in this department. Therefore, on compassionate grounds, she was transferred back to AR (Assistant Registrar) Academics, as per the notification dated 12.04.2022. It was stated that the PIDE management received an anonymous email along with photographs of the Complainant in injured condition on 12.04.2022 at 11 PM, in which someone was trying to create an impression of victimization. The PIDE management canceled the transfer order on 14.04.2022.
9. Accused No. 2, Dr. Arshad H.Hasmi (Registrar), in his reply, argued that he was not in the post of Registrar at the time of filing of the complaint. He joined his service subsequently; therefore, he has nothing to do with any of the contentions in the complaint. The rest of his arguments are the same as those of Accused No. 1. Similarly, Accused No. 3, Mr. Muhammad Imran Hassan (In-Charge HR, PIDE), also filed a similar written reply, contending that he was not a Principal Officer of the PIDE nor a member of the Senate or Syndicate of PIDE; therefore, he cannot be blamed for any allegation mentioned in the complaint.

10. The counsel for the Accused argued that all allegations mentioned in the complaint pertain to service matters. Since these are service matters, this Forum lacks jurisdiction to entertain this case. Furthermore, it was argued that the Complainant's epilepsy is a pre-existing condition, and the Accused cannot be held responsible for it. Additionally, the Complainant has a history of disciplinary issues, including working late hours and delaying the issuance of a transcript to a student while working as an Assistant Registrar (AR) Academics, which led to her transfer. There was also an incident where she requested the Chowkidaar to drive her car during her time in the Transport Department. Regarding the promotion issue, it was pointed out that it falls under the purview of the FST, and therefore, this Forum cannot intervene. Finally, it was argued that despite the Complainant's disciplinary record, the department has not taken any action against her due to involvement of this Forum.

11. The singular question that requires resolution in this instant matter is whether the grievances of the Complainant fall within the ambit of harassment as defined in Section 2(h)(ii) of the Act?

For reference, Section 2(h) of the Act is reproduced below:

“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 favors, 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, The attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or

(ii) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a

discriminatory and prejudicial mind set or notion, resulting in discriminatory behavior on basis of gender against the complainant;”

12. It is evident from the definition of harassment given above that harassment comprises two limbs. The first limb is regarding sexual harassment [refer Section 2(h)(i) of the Act] whereas the second limb is concerned with discrimination on the basis of gender. Therefore, only when a complaint falls under one of the said two limbs can it be considered by this Forum and any other kind of harassment, however serious and grave, is beyond its ambit. Keeping in view the stated legal context, the instant complaint must now be examined.

13. The Complainant has produced an office memorandum dated 15.02.2016, which placed her at Serial No. 3 among the Assistant Registrars at PIDE. She challenged this seniority list through a letter dated 29.02.2016. It is pertinent to mention that, by virtue of this list, Accused No. 3 was placed at Serial No. 1. As a result of the departmental appeal filed by the affected employees, Mr. Ubaid Simon, Mr. Nabeel Anwar, and Ayesha Kalsoom, the list was revised, and the Complainant was placed at Serial No. 2. By an office memorandum dated 20.04.2021, Mr. Nabeel Anwar, who was junior to the Complainant, was promoted. She has attached the minutes of the first meeting of the PIDE promotion board held on 26.03.2021 as Exhibit PW 1/10, wherein it was decided that, since the Complainant had filed a writ petition against PIDE contesting her promotion from BPS-17 to BPS-19, her promotion to the next grade would be deferred. Subsequently, by an Office Memorandum dated 11.04.2022, the post of AR (Transport) was renamed as Deputy Registrar in the same scale.

14. In the 8th meeting of senior management held on 08.02.2022, promotions were under consideration once again. Mr. Ubaid Simon, who was at Serial No. 1, was promoted to Deputy Director BPS-18. The Complainant was once again overlooked; despite being found eligible for promotion. The reason given was that she

had filed a petition in the FST for her promotion and related service issues. Therefore, her promotion was deferred. Meanwhile, Mr. Imran Hassan, who was junior to her, was promoted in the same meeting.

15. During the arguments, it was contended on behalf of the Accused persons that since the matter relating to promotion was in the FST, and therefore it could not be discussed in this Forum. This Forum acknowledges that it has no jurisdiction over service matters; however, it can consider the aspect of gender discrimination at the workplace. All documents placed on record clearly show that the Complainant is the only woman among the four Assistant Registrars (ARs) at PIDE. Every time promotions were considered, she was ignored without sufficient cause. The minutes of the meeting reveal that the only reason for the deferment was the pendency of her case before the FST. No documents were produced by the Accused to prove that the FST had issued any injunctive order regarding deferring the Complainant's promotion during the litigation. Neither was any policy letter nor any instruction from any authority produced to prove that an employee cannot be promoted during the pendency of a petition before the FST.

16. All the other Assistant Registrars, except the Complainant, have been promoted. The reason for deferring her promotion demonstrates the unconscious bias the organization has against her due to her filing a petition before the FST. There is nothing on record to suggest that her work performance was inadequate.

17. The matter relating to the transfers on the specified dates also reveals a pattern of harassment. Although it is correct that male colleagues were also transferred, the Complainant is the one who has been specifically targeted through these transfer orders.

18. The third aspect is the interference in the working of the Complainant. There is nothing on record to suggest that she was not working properly or that she failed to perform her duties with due diligence. The only evidence produced by the Accused is an

application filed by a student for obtaining a transcript of her M.Phil program, in which he stated that the Complainant was on leave and he was unable to obtain his transcript. This is not the fault of the Complainant; it is the department's duty to make alternative arrangements to handle these requests in the absence of the officers.

19. Interference in the duties of the Complainant is evidenced through documentary proof that all the duties assigned to her were withdrawn within a few days without any specific reason. She was not given sufficient time to demonstrate her competency. The record shows that she is the most qualified person among all the employees of her cadre. During her current posting, she formulated the SOPs for the purchase committee, which were accepted, and she was nominated as secretary of the committee. There is no evidence on record to explain what influenced the authority's decision to withdraw this order.

20. Another objection raised by the Accused persons is that all the matters alleged in the complaint are service matters, and this Forum does not have the jurisdiction to entertain service matters. While transfer and posting are internal matters of an organization, and they have the right to transfer any employee according to their needs and the employee's expertise, there should be some order or justification for the displacement of employees within a very short period. In the present case, within about seven months, the Complainant has been transferred four to five times. This reflects poorly on the performance of the PIDE administration and does amount to harassment. An employee's career depends on the evaluation reports given to them, which are based on their performance on assigned tasks. In a short period of a few days or months, no one can complete job assignments adequately, which can adversely affect their performance evaluation.

21. The victim's perspective is crucial in harassment cases. The Complainant was unable to concentrate on her work and felt humiliated due to being superseded. Changing the nomenclature

of her job from Assistant Registrar to Deputy Registrar without a change in grade or promotion was like adding insult to injury. All the material on record reveals that this is not merely a service matter but a case of systematic workplace harassment. Therefore, this Forum will consider the nuances of harassment, particularly from the victim's perspective. The context of harassment is inherently subjective, heavily influenced by societal norms, power dynamics, and individual experiences. In light of this, the perspective of the victim outweighs the statements of the Accused persons. Such behavior undoubtedly contributes to a pervasive sense of discomfort and unease among the affected individuals.

22. The Complainant contends that the frequent transfers caused her significant mental stress, and at one point, she fell unconscious upon receiving information about a transfer. In contrast, the Accused claimed that she suffers from epilepsy and is prone to seizures, often falling unconscious during working hours. They referred to her medical report, which she had submitted to the department, indicating that she had some health issues.

23. During the evidence, the Registrar admitted that her work performance was not affected by her disease. If the Complainant was indeed suffering from a disease, the department should have been more sympathetic towards her. Instead of showing empathy, she was subjected to humiliation by being assigned tasks only to have them subsequently withdrawn. This behavior by the organization fosters gossip and suspicion about her work and conduct, creating a hostile environment. The fact that she has not been promoted, while all her juniors have superseded her, and that her departments are frequently switched, is sufficient to cause her mental distress.

24. Lastly, the issue of an anonymous email received by the PIDE was raised. This email contained pictures of the Complainant and comments about victimizing employees. The Complainant explained that after she was transferred from the transport

section, she fell unconscious and collapsed onto a glass table. She stated that she posted her picture on WhatsApp for her colleagues, who were inquiring about her health, and that she was unaware of who sent it to the official email. This was also her response to the explanation requested by the department. The Accused admitted in their evidence that they had previously received anonymous emails as well. It is an admitted fact that no inquiry or proceedings have been conducted to identify the person who sent the email. Without taking such steps, seeking a reply only from the Complainant shows the prejudicial mindset of the Accused.

25. The Vice Chancellor's defense is that he delegated his duties to Shahid Razzak, the then Registrar, via an order dated 13-11-2019; therefore, he cannot be held responsible for any actions complained about before this Forum. However, delegation of duty does not absolve the principal from the acts committed by the delegate. The record shows that several applications and complaints filed by the Complainant were not properly addressed by him. The Vice Chancellor of the university is overall in charge of the university's affairs and must take responsibility for the workplace harassment caused by the PIDE administration. The evidence on record proves that he played an active part in the harassment by ignoring the complaints filed by her.

26. The Registrar's defense was that he joined in January 2023 through a fresh appointment for a tenure post and was not present at the time of the Complainant's transfers and promotions. However, the record shows that the harassing policy continued during his tenure as well. The Complainant was assigned the duty of the purchase committee, which was withdrawn during his tenure, and all the Daftaris/Naib Qasids were reassigned. Thus, he continued the harassment.

27. Accused No. 3 benefited from all actions taken against the Complainant. He was unjustly placed at No. 1 on the seniority list, which was later corrected after an appeal was filed. He was again

granted an out-of-turn promotion, ignoring the Complainant. He actively participated in the harassment of the Complainant by issuing the aforementioned orders. He is also guilty of passive complicity and endorsement in the instant matter.

28. Gender harassment does not mean that all persons of a particular gender are discriminated against. Such a restrictive interpretation of gender discrimination would render the inclusion of 2(h)(ii) in the definition of harassment meaningless, as no woman would be able to file a complaint of workplace harassment unless all the women working in the organization joined her. When interpreting statutes, the cardinal rule is to take a purposive approach, which means looking at the meaning of the words and the object and purpose of the law. This approach clarifies the aim and objective of the law (**PLD 2023 SC 588**). The title and preamble of the PAHAW Act 2010 are intended to provide a remedy to a person facing harassment at the workplace. Even if an organization has many female employees, any one of them who is subjected to harassment can file a complaint before this Forum.

29. Gender Based Discrimination often goes unseen due to “collective ignorance”. It is only evident to the person being discriminated against due to his/her gender, as for others, it is so subtle that it is almost normal. Vulnerabilities remain underrepresented in the literature because victims, particularly those of lower occupational status, seldom make formal complaints, let alone have the knowledge or resources to challenge the indignities they experience. Sexual Harassment “is violence directed against any person based on gender norms and unequal power relationships”. Thus, violence against women perpetuates gender stereotypes and seeks to maintain women’s subordinate position and control by men. This entails that people suffer harm not because they are individuals but because they belong to a particular class, race, group or gender. Even in that class, race, group or gender the extent of harm sustained differs.

It is important to note that the harm that women suffer in society is quite different from the harm suffered by men.

30. This viewpoint is supported in the case of Campbell Scientific Africa (Pty) Ltd v Simmers and Others ([2015] ZALCCT 62), the Labour Appeal Court held as follows;

“At its core, sexual harassment is concerned with the exercise of power and in the main reflects the power relations that exist both in society generally and specifically within a particular workplace. While economic power may underlie many instances of harassment, a sexually hostile working environment is often “...less about the abuse of real economic power, and more about the perceived societal power of men over women. This type of power abuse often is exerted by a (typically male) co-worker and not necessarily a supervisor” (Campbell case para 20).

31. In light of the above, the PIDE administration as well as all the Accused persons are found guilty of workplace harassment on account of gendered harm to the Complainant as defined section (2)(h)(ii). Therefore, a penalty of stoppage, for a period of 3 years, at the efficiency bar in the time-scale, under section 4(i)(c) is imposed upon each of the Accused Persons, as well as compensation should be imposed. Whilst it is true that compensation for deferred promotion serves an important purpose, the appropriateness of compensation must be understood within the context of the deferred promotion. This means that when the reason for such inaction is sexual harassment, this must be taken into account. This is because our Constitution not only provides for the right to fair labor practices, but maintains that our constitutional democracy is founded on the explicit values of human dignity, integrity and the achievement of equality in a non-racial and non-sexist society under the rule of law. Yet, sexual harassment strips away at the core of a person's dignity and is the antithesis of substantive equality in the workplace. It also promotes a culture of gender-based violence that dictates the lived experiences of women and men within public and private spaces and across personal and professional

latitudes. Since, the Complainant was deferred promotion since 2019, the entire time period of these 5 years and the financial and other benefits that she was denied therewith should be taken into account. This Forum therefore, imposes a compensation of Rupees 2 Lac to be paid to the Complainant, recoverable from each Accused person under section 4(i)(d) of the Act of 2010. As for the issue of Promotion, since the matter is already pending adjudication before the Federal Service Tribunal, it warrants no interference.

32. PIDE is also directed to incorporate a diffusion of responsibility into training programs to create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals. A compliance report in this regard should be submitted by PIDE Management within 15 days of the date of receipt of this Order.

FEDERAL OMBUDSPERSON