

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, REGIONAL OFFICE, KARACHI

FORM OF ORDER SHEET

Appeal No: 456/2024

Date of Institution: 04.09.2024

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE	MR. BAHADUR ALI MAHAR	VS	THE SECRETARY (I&B) AND ORS
		DEPARTMENT: PAKISTAN BROADCASTING CORPORATION			
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05	22.11.2024	<p><u>Subject: Final Order on Merits</u></p> <p>1. The Appellant, Mr. Bahadur Ali Mahar, serving as a Senior Producer at Radio Pakistan Hyderabad, has filed an appeal under Section 6 of the Protection Against Harassment of Women at the Workplace Act, 2010 (“Act 2010”), assailing the memorandum (order) dated 04.06.2024 of the Anti-Harassment Committee constituted by the Pakistan Broadcasting Corporation (“Department”). The impugned order imposed the major penalty of reduction/demotion to the post of Programme Producer for a period of 5 years along with fine of Rs. 100,000/- as compensation to the complainant, Ms. Roshan Sodhar (“Respondent No. 4”).</p>			

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| | | <p>2. The Appellant was appointed as an Assistant Programme Producer in 2009 and, over the course of his career, has been promoted to the position of Senior Producer at Radio Pakistan Hyderabad. The Appellant asserts that he has served for 15 years without any prior complaints of a similar nature. However, a complaint dated 28.01.2024 was filed against him by Respondent No. 4, Ms. Roshan Sodhar, a Primary School Teacher (PST) in the Education Department and a former compere at Radio Pakistan. She has alleged that the Appellant harassed her and other women through blackmail, threats of removal from the Organization and repeated instances of online harassment.</p> <p>3. The Appellant claims that while serving as a Programme Producer at Radio Pakistan Larkana, Respondent No. 4 requested permission to conduct a Sindhi-language program for 21 days a month. He advised her that such an arrangement would violate the ethics and rules of government service due to her existing role as a Primary School Teacher. He further alleges that in response, she threatened him with dire consequences and later filed a complaint against him dated 28.01.2024.</p> <p>4. The Appellant stated that after submitting his written response to the inquiry committee in compliance of the Notice dated 27.03.2024, he was contacted informally via telephone by a staff member from the Director General's office, who briefly asked questions related to the allegations but disconnected the call before the Appellant could provide a detailed response. The Appellant further clarified that, in his written response dated 15.04.2024, he categorically denied all allegations. He also</p> |
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alleged that the conduct of the staff member indicated a predetermined intent to impose a penalty, rendering the phone call a mere formality rather than a genuine opportunity for him to present his defense.

5. The Appellant asserted that on 14.06.2024, he received a memorandum dated 04.06.2024 from Respondent No. 3 (Controller Legal), informing him of his demotion. He raised serious concerns about the impartiality of the inquiry report and the decision of the Anti-Harassment Committee, emphasizing that he was never afforded an opportunity to appear before the Inquiry Committee or defend himself through cross-examination of the Complainant or witnesses. He argued that this violated his fundamental right to a fair trial under Article 10-A of the Constitution and Section 3 of the Act, 2010, alleging that the Committee showed clear bias in favor of Respondent No. 4.
6. The Appellant has asserted that it was, in fact, Respondent No. 4 who harassed him by exhibiting unprofessional behavior and using unethical language toward him and other staff members. He further alleged that Respondent No. 4 has actively sought to undermine his career by tarnishing his reputation both within and outside the department.
7. He further argued that Respondent No. 3's role is limited to overseeing litigation and does not include imposing penalties. By doing so, he acted beyond his jurisdiction, violating the established rules and procedures set by the Competent Authority, Respondent No. 2.

8. In the light of above mentioned facts, the Appellant seeks the declaration that the Memorandum dated 04.06.2024 is void ab initio and ultra vires. He requests to set aside the penalties mentioned in the said memorandum and grant any other relief which is deemed fit by this Forum.

9. In her written response, Respondent No. 4 has denied all allegations made by the Appellant and reiterated the claims in her original complaint. She stated that she had worked as a Compere at Radio Pakistan Larkana for three years, during which the Appellant repeatedly pressured her to host programs of his choice, threatening her job security if she refused. She further alleged that he harassed her through persistent phone calls, and after she blocked him, he resorted to other means to continue his harassment. She initially reported his behavior to the then Station Director, Mr. Ali Murad Tamri which resulted in a confrontation between the Station Director and the Appellant, who then pressured the Station Director to ban her from the organization; however, the Station Director refused to comply.

10. Respondent No. 4 alleged that she, along with another female artist, Ms. Rukhsana, had filed formal complaints with the then Director General through the Station Director, which led to the Appellant's transfer from Larkana. However, shortly after, the Appellant returned, confronted the Station Director again, and resumed his harassment by pressuring him to impose a ban on Respondent No. 4. He was subsequently transferred to Hyderabad, but continued his behavior. This included sending voice notes, making threats to harm her professional reputation after she rejected his advances, persistently calling her even

after she blocked his number, and visiting her home to confront her family. He also pressured her relatives to provide character references against her, ultimately forcing her to resign from Radio Pakistan.

11. Respondent No. 4 further stated that she was initially appointed as a Primary School Teacher in 2008, but her employment ID was closed due to allegations of misappropriation of her basic pay in collusion with officials from the District Accounts Office. In 2021, she began working as a Compere at Radio Pakistan, where she alleged that the Appellant misused his authority to harass female employees, leading to multiple complaints against him. As a result, the Appellant was transferred to Khairpur Mirs and later to Hyderabad. She also mentioned that Respondent No. 4 further stated that after leaving Radio Pakistan and returning to her position as a Primary School Teacher (PST), the Appellant continued to harass her by submitting false complaints to multiple authorities, including the Education Department and the Anti-Corruption Department.

12. It is important to note a discrepancy in her statements: In her testimony before the Inquiry Committee, she stated that her resignation was a direct result of the Appellant's actions, while in her written defense submitted before this Forum, she indicated that her resignation followed the reinstatement of her position as a Primary School Teacher.

13. Since the arguments of the Respondent No.4 primarily concern the merits of the case rather than the procedural deficiencies identified in the inquiry, they will not be further elaborated upon in these proceedings. The focus of this order remains solely on the procedural lapse, as it is the central issue at hand. The

procedural aspects are of greater significance in determining the fairness and validity of the inquiry process, and as such, they take precedence over the substantive merits of the case.

14. To examine the procedural aspects and identify any deficiencies in the due process followed by the Inquiry Committee, this Forum requested the Inquiry Report from the department regarding the complaint filed by Respondent No. 4. The report, submitted on 30.09.2024, included witness statements collected via Zoom, the Committee's findings, and its recommendations to the Competent Authority. It confirmed the formation of an Anti-Harassment Committee, comprising three male members and a female Chairperson. The investigation revealed consistent testimony from six witnesses, including the Respondent, all indicating a history of inappropriate conduct and harassment by the Appellant toward multiple women, including Respondent No. 4. Notably, Witness No. 1, Station Director Murad Ali Tanwari, made serious allegations against the Appellant, including involvement in the gang rape of a minor and filing a false theft complaint. Based on these findings, the Anti-Harassment Committee imposed a major penalty on the Appellant, consisting of a demotion to Programme Producer for five years and a fine of Rs. 100,000/- as compensation payable to Respondent No. 4.

15. Based on the facts and circumstances outlined above, this Forum summoned the Counsel for the Appellant, the Respondent No. 4, and the Members of the Anti-Harassment Committee to present their final arguments. On 01.11.2024, Mr. Ahmed Ali Gabol, Counsel for the Appellant, appeared in person. Members of the Anti-Harassment Committee from the Department—Ms. Asma Hafeez, Controller News and

Chairperson of the PBC Anti-Harassment Committee; Muhammad Iqbal, Controller Personnel and Member of the Anti-Harassment Committee; Muhammad Javaid, Admin Manager and Member of the Anti-Harassment Committee; Muhammad Aijaz, former Secretary General of the CBA Union, Radio Pakistan, and Member of the Anti-Harassment Committee—along with Respondent No. 4, Ms. Roshan Sodhar, appeared before the Forum via Zoom video link.

16. Counsel for the Appellant reiterated the grounds of the appeal, challenging the credibility of the Inquiry Report and the Decision of the Anti-Harassment Committee. He further directed this Forum's attention to the fact that the inquiry report lacked specific dates, times, or Zoom IDs for the recorded Statements. He alleged that the delay between the recording and certification of the Statements demonstrated the Committee's intent to marginalize the appellant.

17. He further argued that the 2010 Act mandates the inclusion of a Senior Representative of the Employees; however, the Statements lacked the signature of Muhammad Aijaz, as the Ex-Secretary General of the CBA Union Radio Pakistan, thus undermining the credibility of the Inquiry Report prepared by the Committee.

18. The Respondent No. 4 has reiterated the position outlined in her Complaint and Written Statement, which do not need to be considered for the reasons mentioned above.

19. To address the concerns raised by the Appellant, Members of the Anti-Harassment Committee were asked to provide their response. The members collectively emphasized the

thoroughness and adherence to due process throughout the extended inquiry. They explained that all witnesses were examined via Zoom Video Link, and each testimony underwent meticulous documentation and scrutiny. The members clarified that converting recorded statements into typed hard copies took additional time, as they had other responsibilities beyond their duties with the Committee. The Committee further argued that the need to verify facts from all perspectives made the process time-intensive, which contributed to delays in the recording and certification of statements.

20. During the course of the arguments, the Presiding Officer inquired whether the Appellant was given an opportunity to cross-examine the witnesses on their testimony and whether a senior representative from the CBA was present when the statements were recorded. In response, the Committee acknowledged that the Appellant was not allowed to cross-examine the witnesses, as their statements were not recorded in person, making cross-examination unfeasible. The Committee further explained that permitting the Appellant to cross-examine the witnesses could have led to confrontations or even violence, given concerns about the Appellant's temper. This decision, they asserted, was made to maintain order and safeguard the participants' well-being.

21. The Committee further clarified that the CBA representative was present during the inquiry proceedings and the recording of Statements, but due to his election campaign schedule, he was not present at the certification of the Statements.

22. During the course of the hearing, and in light of the serious nature of the allegations, including those made by the Station Director regarding the rape of a minor, this Forum requested additional evidence to substantiate the claims of Respondent No. 4 and the Station Director. In response, the Department stated that all relevant evidence had already been submitted to this Forum. They further contended that the Station Director's allegations were unrelated to the current matter and, as such, no additional records could be provided, as the Anti-Harassment Committee was not tasked with investigating these particular allegations.

23. Before examining the merits of the Inquiry Committee's Report and the decision of the Competent Authority in this appeal, it is essential to first address the issue of time limitation. The present appeal was filed before this Forum on 04.09.2024, while the order issued by the Inquiry Committee is dated 04.06.2024. According to Section 6(1) of the Act, an aggrieved party has thirty days from the receipt of written communication of the Competent Authority's decision to file an appeal with the Ombudsperson.

24. The records show that the Appellant received the decision from the Competent Authority, dated 04.06.2024, on 14.06.2024. However, the Appellant filed the present appeal before this Forum on 04.09.2024, resulting in a delay of 83 days. It is important to note that the Appellant initially submitted his appeal to the Director General (Respondent No. 1), rather than the appropriate Forum. After being advised by letter on 06.08.2024 to approach the correct Forum, the appeal was filed on 04.09.2024. To assess the maintainability of this appeal, it is pertinent to refer to Section 14 of the Limitation Act, 1908:

“14. Exclusion of time of proceeding bona fide in Court without jurisdiction.-

(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.”

25. To further analyze the issue of time limitations for filing the appeal, this Forum refers to the case of **Iramat Khan vs. IG, Frontier Corps (2023 SCMR 866)**, where the Supreme Court clarified that for a litigant to benefit from Section 14 of the Limitation Act, 1908, they must demonstrate due diligence and good faith in pursuing their remedy before an incorrect forum. The Court emphasized that "due diligence" requires a reasonable person to carefully select the appropriate forum.

26. Similarly, the Gilgit-Baltistan Chief Court in **Jan Alam v. Ghulam Mohammad (2020 CLC 1907)** held that Section 14 permits the

exclusion of time only for proceedings conducted in good faith in the wrong forum. The Court further defined "good faith" under Section 2(7) of the Limitation Act as actions taken with due care and attention, indicating that if an appellant acts with reasonable care but in the wrong forum, it is beyond their control.

27. In light of these principles, this Forum finds that the Appellant, though initially unaware of the correct forum, acted in good faith when filing the appeal with the Information Secretary. Following advice on 06.08.2024, the Appellant refiled with this Forum on 04.09.2024. As such, the period for filing the appeal effectively began on 06.08.2024, making the 04.09.2024 filing timely and the present appeal maintainable.

28. With the issue of limitation resolved, the principal question that calls for determination in the instant matter is:

Whether the inquiry conducted by the Anti-Harassment Committee complied with the due process requirements under Sections 3 and 4 of the 2010 Act and whether the Appellant was afforded a fair trial.

29. These issues are closely linked and will be addressed together. It is important to highlight that the Anti-Harassment Committee, as per Office Order No. A-II/1(7)/2019, consisted of four members, which deviates from the statutory requirement of three members under the 2010 Act. Additionally, the inquiry and the Committee's decision relied solely on the Statements of the Complainant, the Accused, and six witnesses, all of which were recorded via Zoom Video Link. No further evidence was sought

to corroborate the statements made by the witnesses. The Committee also acknowledged that the Accused neither requested cross-examination of the witnesses nor was he provided the opportunity to do so, contrary to Section 4(1)(c) of the 2010 Act, which mandates:

“4. Procedure for holding inquiry.– (1) The Inquiry Committee, within three days of receipt of a written complaint, shall–

(a) communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;

(b) require the accused within seven days from the day the charge is communicated to him to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed ex-parte; and

(c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him.”

(emphasis added)

30. Clause (c) of Section 4, Subsection 1, unequivocally grants each party, including the accused, the right to cross-examine witnesses who have provided testimony. The denial of this right represents a significant procedural lapse by the Anti-Harassment Committee, which, in effect, limits the accused's ability to defend themselves adequately. A fair and thorough examination of any matter is incomplete without the critical scrutiny of cross-examination. Relying solely on unchallenged statements and

unevaluated evidence undermines the fundamental principles of justice and fairness, casting doubt on the impartiality of the inquiry. Such an approach risks rendering the proceedings arbitrary and unjust, with the potential perception of bias against the accused.

31. In **2023 SCMR 1135, Raja Muhammad Shahid Vs The Inspector General of Police and Others**, the Hon'ble Supreme Court underscored the importance of cross-examination:

“The purpose of Cross Examination is to check the credibility of witnesses to elicit truth or expose falsehood. When the statement of a witness is not subjected to the cross-examination, its evidentiary value cannot be equated and synchronized with such statement that was made subject to cross examination, which is not a mere formality, but is a valuable right to bring truth out.

The possibility cannot be ruled out in the inquiry that the witness may raise untrue and dishonest allegations due to some animosity against the accused which cannot be accepted unless he undergoes the test of cross-examination which indeed helps to expose the truth and veracity of allegations. The whys and wherefores of cross-examination lead to a pathway which may dismantle and impeach the accurateness and trustworthiness of the testimony given against the accused and also uncovers the contradictions and discrepancies.”

32. The present case clearly demonstrates that the Appellant was denied a fair trial. The denial of due process, a cornerstone of

justice and an inviolable right, is evident in this case. The Committee's findings and subsequent decisions relied solely on witness statements, the veracity of which could not be tested by the Appellant through cross-examination. Consequently the validity of these statements is now questionable, as they were not obtained or recorded in adherence to the required legal process. This failure not only infringes upon the Appellant's constitutional right to a fair trial under Article 10-A of the Constitution of Pakistan but also undermines the integrity of the entire inquiry. Even if the Committee's decision was influenced by the actions of the Accused, the imposition of severe penalties in the absence of a fair and lawful process calls into question the very foundation of the inquiry, rendering it fundamentally flawed and unjust.

33. Reliance is placed on the remarks made by Justice Mansoor Ali Shah in **PLD 2024 Supreme Court 67, Bashir Ahmed Vs Additional District Judge, Hafizabad and Others**, which are reproduced here verbatim:

“Doing what is right may still result in unfairness if it is done in the wrong way. The right thing must be done in the right way. Just ends are not justified unjust means.”

34. Further, in **2024 SCMR 1689**, Justice Muhammad Ali Mazhar in the case of **Muhammad Yousaf Vs Province of Sindh and others** emphasized the critical importance of due process and its integral role in ensuring a fair trial and upholding natural justice. He stated:

“7. Due process is a prerequisite that needs to be respected at all stratum. Right to fair trial is a

fundamental right. In case of stringency and rigidity in affording this right, it is the function, rather a responsibility, of the court to protect this right so that no injustice and unfairness is done to anybody. The concept of natural justice is intended to restrain arbitrary actions within the bounds of upholding and protecting the supremacy of law. This fundamental principle is consistently and squarely applicable to the proceedings, whether judicial, quasi-judicial, or administrative.”

35. Subsequently, this Forum deems it appropriate to set-aside the prior order and requires that the inquiry be conducted afresh. This inquiry must adhere strictly to principles of justice and fairness, ensuring that the Appellant is afforded all procedural rights, including the right to cross-examine each witness. Additionally, the Anti-Harassment Committee must adhere to the requirements for forming an Inquiry Committee as set forth in Section 4 of the Act 2010.

36. Protecting the constitutional right to a fair trial is of utmost importance. Consequently, this Forum directs that any procedural lapses be corrected in future proceedings. The Inquiry Committee must strictly adhere to due process, as any decision made outside of proper procedures undermines the integrity of the process and distorts the pursuit of justice.

37. A just society relies on the judiciary as the foundation of fairness, guided by natural justice. It is imperative that we reject any notion of arbitrary decision-making and impose penalties without careful examination. True justice involves a meticulous and impartial

review of each case, ensuring both parties have an equal opportunity to present their arguments.

38. Upholding these principles is essential for maintaining public trust in the legal system and protecting against wrongful penalties. Only through a fair and impartial process can we ensure that no individual is unjustly penalized without the opportunity to defend themselves.

39. The Inquiry Committee is directed to investigate whether the accused has taken retaliatory actions against the complainant after the complaint was filed. It is also concerning that while Respondent No. 4 filed her complaint with the Director General on 28.01.2024, the Show Cause Notice issued to the Appellant was dated 27.03.2024. The Inquiry Committee stated that the complaint was received at the PBC Headquarters on 25.03.2024. Given the nature of the complaints, it is crucial that the relevant authorities take immediate action to streamline their internal procedures and ensure that complaints are promptly received by them and addressed, without unnecessary delays or issues in transit.

40. The appeal is allowed in above stated terms.

FEDERAL OMBUDSPERSON