

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, REGIONAL OFFICE, SINDH

FORM OF ORDER SHEET

Appeal No: 439/2024

Date of Institution: 29.04.2024

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsperson			
		TITLE	MR. MUMTAZ BULLO	VS	MS. NAGHMA & OTHERS
		DEPARTMENT: NATIONAL SAVINGS CENTRE (NSC)			
1	2	3			
07	12.06.2024	<p><u>Subject: Final Order on Appeal</u></p> <p>1. The instant appeal has been filed under Section 6 of the Protection against Harassment of Women at the Workplace Act 2010 (“Act”) by Mr. Mumtaz Bullo, Assistant National Saving Officer (ANSO), NSC, Dadu (hereinafter referred to as the "Appellant") against Ms. Naghma Ali and others (hereinafter referred to as the "Respondents"). The appeal assails the Order dated 07.03.2023 wherein the minor penalty of withholding one increment for three years was imposed on the Appellant on account of unwelcome</p>			

sexual advances and inappropriate language directed towards Ms. Naghma Ali, Naib Qasid, RDNS, Sukkur (hereinafter referred to as the "**Respondent No. 01**") at the workplace.

2. Brief history of the case is that the Respondent No. 1 filed a complaint against the Appellant on 06.01.2023 leveling following allegations:

- a. The Appellant, in exploitation of his official capacity physically harassed the Respondent No. 1 by committing unwelcome sexual advances towards her at workplace.
- b. The Appellant entered the washroom and blocked her way to go out and used inordinate dirty language.
- c. The Appellant offered her to sit in his car and go with him for bad purposes and sexual connection.
- d. The Appellant offered her money in lieu of his bad wishes and ulterior motives.

3. The Appellant received a Show Cause Notice/Charge Sheet dated 11.01.2023. In response, the Appellant submitted his reply on 18.01.2023. After conducting the inquiry, the Harassment Committee recommended the major penalty of "**Reduction to a lower post or time-scale, or to a lower stage in a time scale**". However, later an affidavit dated 27.02.2023 was received from the

Respondent No. 1 wherein she forgave the Accused and wanted to withdraw her complaint. The Impugned Order states that the Appellant also presented his affidavit regarding the apology to the Respondent and an undertaking that he will be careful in future. Given the newly presented grounds and developments, the Committee recommended a minor penalty, i.e., **“Withholding of Increment for three (03) years”**, instead of previously-imposed major penalty.

4. The report from the inquiry conducted by the Harassment Committee reveals the following points/findings:

“While conducting the inquiry, it transpired that the Complainant wrote the complaint by herself and that there was no pressure from anywhere/administration upon her. The Complainant stated during the inquiry proceedings that the Accused was trying to contact her in past and asking for her phone number but she ignored. However, she did not file a complaint in writing against the Accused thinking that he may not do it again.

At the time of occurrence, there was no staff present in the Admin room and the washroom was attached to the Admin room. She stated that washroom was locked and somebody was inside the washroom. She waited in Admin room, after some time the accused came out of the washroom and blocked her way by standing in front of the door and said “Come on hug me, let me

kiss you” then went out of the room. He looked left and right, again came in and started using dirty language and offered me to sit in my car and let me do sex with you and I will pay the amount as you say and tried to touch me. When I said please left me, otherwise I will start shouting then he left my way and got the side.”

5. The Harassment Committee reviewed the CCTV footage and confirmed that the Appellant exited the washroom around 3:57 PM and as he did so he glanced around before re-entering the room, aligning with the Complainant's account of the incident.
6. When questioned about the allegations by the Harassment Committee, the Appellant admitted being in the washroom at that time. He also stated that when he left the washroom, Respondent No. 1 was alone in the Admin room. He also acknowledged being the person seen on CCTV footage opening the door at 3:57 PM. However, he refused to admit the allegations leveled by the Respondent No. 1.
7. The Harassment Committee further noted in their report that the Appellant admitted to opening the door and looking out again before subsequently re-entering the room, but he could not produce any justifiable reasons for this act, raising questions about his intentions and behavior during the incident. Moreover, as per the CCTV

recording, when the Respondent No. 1 came out and went to the P.A room, the Appellant followed her to the said room.

8. The Appellant, on the other hand, argued before the Harassment Committee that Respondent No. 1 had asked him to lend her Rs. 20,000/- due to her mother's serious illness and hospitalization. He claimed that, as he did not have the full amount, he gave her Rs. 4,000/-. However, when asked to provide evidence to support his claim, the Appellant failed to do so. The Harassment Committee also questioned Respondent No. 1 about receiving money from the Appellant, but she denied it. Additionally, the Committee found no evidence that Respondent No. 1's mother was ill. Neither were any of her colleagues aware of the situation, and nor had she requested leave either.
9. The Harassment Committee recorded the statement of Mr. Badar Ali, Junior National Saving Officer (JNSO) and Mr. Safer Hussain (Steno-typist). They both endorsed the viewpoint of Respondent No. 1, stating that they were present in the P.A room on 05.01.2023 when the Respondent No. 1 entered looking upset. When asked as to what was wrong, she told them about the "ill-mannered and bad intentions" of the Appellant. Subsequently, she complained to the JD, RDNS, Sukkur.
10. The Harassment Committee noted that the Appellant failed to present any witnesses, evidence, or other material in his defense.

Furthermore, his service record showed numerous charge sheets, reflecting a consistent pattern of undisciplined and ill-mannered behavior documented by various officers in the region. Specifically, there were nearly 10 complaints or charge sheets on record. Considering these factors, the Committee decided to impose the given penalty.

11. The Counsel for the Appellant has filed the instant appeal on the following grounds that the Impugned Order is contrary to the law and was passed in a hasty manner. He alleges that the Appellant has worked with male and female staff since 1998 and not once has there been a single complaint filed by anyone against the Appellant. That the allegations leveled against the Appellant are vague and are not supported by any corroborative evidence, including any independent witnesses to ascertain the truth of the allegations. Moreover, the Appellant was not even provided a copy of the complaint filed by the Respondent No. 1 to prepare his defence properly. He asserts that even Respondent No. 2 in Para 4 of their Written Reply has admitted that the Harassment Committee report was not provided to the Appellant, and has wrongly relied on Section 4(3)(a) of the Act. Furthermore, the Harassment Committee disregarded Section 4(1)(c) of the Act, which grants both the Complainant and Accused the right to cross-examine witnesses. Despite the Complainant acting as a witness for herself, the

Committee did not provide Appellant the opportunity to cross-examine, thereby violating his right to a fair trial. The Counsel in support of his contention relies on the **Appeal No. FOH-LHR/00000006/2022 titled MUHAMMAD AFZAL VS BANK OF PUNJAB ETC.**

12. He further asserts that at the time of filing of the harassment complaint by the Respondent No. 1 on 06.01.2023, the Appellant was not even posted at RDNS, Sukkur on the date of the alleged harassment, where the Respondent No.1 was working, neither the Appellant had any sort of supervisory role that could influence over the Respondent No. 1 and affect her in any manner. The Appellant was serving at National Savings Dadu on the date of alleged harassment and the same is evident from the fact that the Appellant was summoned for personal hearing by the Harassment Inquiry committee through a letter dated 23.01.2023 at the address of National Savings Centre in Dadu.

13. The Counsel for the Appellant argues that no date of alleged offence was mentioned in the Charge Sheet which shows the malafide and ulterior motive on the part of Respondent No. 1. He further argues that no witnesses were presented before the Harassment Committee, and no documentary evidence was submitted, casting serious doubt on the credibility of complaint. He submits that only the presence of the Appellant has been confirmed

by the CCTV footage however, the Inquiry Committee failed to consider that the alleged incident of harassment as alleged by the Complainant is not supported or confirmed by CCTV. Hence, the Inquiry Committee has merely relied on the words of the Complainant.

14. He further submits that the Respondent No. 1 herself executed the affidavit for withdrawal of her complaint without any duress, pressure or force in the presence of her father. Therefore, on the basis of the affidavit of the Respondent No. 1 for withdrawal of complaint, the complaint ought to have been dismissed there and then. However, the Respondent No. 2 passed the Impugned Order, in contravention of the law.

15. I have heard the arguments of the Learned Counsel for the parties and have perused the attached record including the record and CCTV footage summoned from the Respondent No. 2 and 3. Before dilating upon the merits of the appeal, I consider it appropriate to produce certain provisions of the Act:

“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 favours, stalking or cyber stalking 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, or 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;

...

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.

(2) Subject to the provisions of this Act and any rules made thereunder the Inquiry Committee shall have the power to regulate its own procedure for conducting inquiry and for the fixing place and time of its sitting and, where applicable, apply appropriate child-sensitive procedures.

(emphasis added)

16. Two things are evident from the afore-noted provisions, namely, that:

- a. The applicable portion of Section 2(h) of the Act is its Sub Clause (i) which deals with sexual harassment. This provision defines harassment as an unwelcome sexual advance, request for sexual favors etc. meaning thereby that any act of sexual advance or sexual favor etc. must be an unwelcome act on behalf of the aggrieved/victim party; and
- b. It is the discretion of the Inquiry Committee to conduct the inquiry as per their own procedure.

17. If one examines Section 4(1)(c), it explicitly recognizes that every party has the right to cross-examine the witnesses produced against him/her. The learned counsel contends that the Appellant was not given this opportunity with Respondent No. 1. However, the Department explains, as confirmed in its letter dated 04.07.2024, that both the Appellant and Respondent No. 1 were indeed given the chance to cross-examine each other face-to-face. The letter states, "The Accused was then provided with the complainant's statement and the inquiry proceedings in a question-and-answer format. The accused expressed satisfaction at that time." The Appellant's unethical conduct during the proceedings necessitated the termination of the cross-examination. Furthermore, there is no

record of any application or objection before the Committee claiming that the Appellant was denied the opportunity to cross-examine. Nonetheless, the Superior Courts have also held that the principles of natural justice are adaptable and must be tailored to the circumstances of each case. Where an individual has been given a fair chance, which satisfies the requirements of the elementary and essential principles of fairness, then they cannot justifiably raise a grievance relating to violation of the principles of natural justice. In exceptional cases, the application of the doctrine of 'audi alteram partem' may even be excluded. Reliance is placed on **High Flying Solar Development Pakistan Ltd. vs. National Electric Power Regulatory Authority (2016 CLC 1805)** at para 16:

"16. It is, therefore, obvious that the principles of natural justice are flexible and not rigid. The determination of the application of these principles depends on the circumstances of each case, and various factors may be taken into consideration for this purpose, such as the nature of the enquiry, the subject matter being dealt with, whether anything unfair can be inferred if the opportunity is not afforded, whether there is no apprehension of injustice etc. However, depending on the facts and circumstances of each case, it would be sufficient if the 'elementary and essential principles of fairness' have been fulfilled. Therefore, in a given situation it may be sufficient if the person affected has been made aware of the nature of the allegations, has been afforded a fair and reasonable opportunity to defend the allegations and to controvert any statement made against him or her. It would not be mandatory in every case to examine witnesses in the presence of the person against whom allegations have been made, or to afford him or her an opportunity for cross examination. If a person who has been afforded a fair opportunity, which satisfies the requirements of the elementary and essential principles of fairness, does not appear or fails to avail the opportunity, or is otherwise defiant, then he or she may not be able to raise a grievance relating to violation of the principles of natural justice, as they would have no application in the given circumstances. In exceptional cases the application of the doctrine of 'audi alteram partem' may even be excluded."

(emphasis added)

18. Be that as it may, the Harassment Committee is empowered to conduct the inquiry in accordance with its own regulations, provided they do not contravene the law. The fact that the Appellant received the charge sheet, which clearly outlined the allegations against him, was sufficient and did not necessitate providing him with a copy of the complaint. The primary objective is to ensure that the accused is fully aware of the charges and allegations leveled against him, enabling him to adequately counter them, which the Appellant did by submitting his written response dated 18.01.2023 before the Committee. It is trite law that rules of procedure must serve as instruments to facilitate rather than impede the delivery of justice. They should never be construed in a manner so as to frustrate the ends of justice.

19. In my opinion, the Appellant has failed to point out any infirmity, perversity and illegality in the inquiry conducted by the Harassment Committee as well as in the decision of the Competent Authority.

20. Now coming to the main allegation of sexual harassment of the Respondent No. 1 at the hands of the Appellant. I have thoroughly reviewed the available record, including CCTV footage, the Appellant's previous records, and witness statements. It is evident that the Appellant has a documented history of ill-mannered behavior and disciplinary issues. Multiple charge sheets from

various departments document his prior misconduct. The Appellant's record reveals complaints, explanations, and investigations dating back to 2003, although not all pertain specifically to harassment. This pattern of behavior reflects the overall nature of the Appellant. Of particular note is the Investigation Report dated 09.04.2013, which addressed complaints from Mr. Babo and Mr. Sudham regarding the Appellant's misbehavior and bad character. The latter complaint specifically mentioned his inappropriate behavior towards female visitors, including blatant staring and misbehavior. Such behavior, as documented in various instances, suggests a pattern. The investigation concluded that the complaints were substantiated. During this investigation, it was also found that the Appellant had a history of threatening staff members and officers.

21. Prior to the afore-mentioned investigation, the Appellant had been served with 14 explanations and 14 warnings from RDNS, Sukkur. Till date, the Department records indicate that the Appellant has received more than 20 explanations and has been subjected to both major and minor penalties for various issues throughout his tenure.

22. It is important to note that in 2019, Ms. Parveen filed Complaint No. 46/2019 against the Appellant before this Forum, alleging harassment through inappropriate offers. However, the case was dismissed vide Order dated 31.08.2020 because Ms. Parveen did

not pursue the same. Consequently, this Forum instructed the In-charge, NSC, Larkana Division to investigate the matter.

23. The witness statements from Mr. Badar Ali (JNSO) and Mr. Safeer Hussain (Stenotypist) further corroborate the allegations made by Respondent No. 1. Both witnesses confirm that they were present in the P.A. room on 05.01.2023 when Respondent No. 1 entered, appearing upset and worried. Upon inquiry, she informed them about the Appellant's indecent conversation and misconduct. Their accounts align with the timeline of the incident and corroborate Respondent No. 1's version of events. Furthermore, her account of the Appellant exiting the Admin room, looking around suspiciously, re-entering the room, and then following her after she left the room is substantiated by the CCTV footage on record. The Appellant has also admitted that he is the individual seen in the CCTV footage.

24. Furthermore, the Learned Counsel for the Appellant asserted that Appellant was not posted at RDNS, Sukkur on the date of the alleged harassment, where Respondent No. 1 was working, and that he had no supervisory role over her. Such assertion is misplaced and misconceived. The crucial point is that a) the Appellant held a position much senior to the Respondent and that position not only carried administrative powers, it also carried social power that plays an important role in determining relations within organisations and b) the alleged misconduct took place within the

premises where Respondent No. 1 was employed, regardless of the Appellant's official posting location. The fact that the Appellant had access to the victim by virtue of her workplace is sufficient. This distinction is pivotal as workplace harassment laws are designed to protect employees from inappropriate conduct within their professional environments, irrespective of the perpetrator's specific job assignment or supervisory capacity at the time.

25. In this case, the Inquiry Committee, for the most part, conducted a diligent inquiry, interviewing key witnesses whose testimonies supported the allegations made by Respondent No. 1. Given the substantial evidence, including the Appellant's history of misconduct and the corroborative witness statements, it is clear that the majority of the findings of the Inquiry Committee are well-founded. However, the submission of an affidavit by Respondent No. 1 forgiving the Appellant appears to have been given under duress, influenced by societal pressure. It remains crucial to recognize the economic vulnerabilities that women often face, exacerbating their susceptibility to intimidation and coercion. Women, particularly in our society, frequently find themselves in precarious economic circumstances, which can make them more prone to external pressures. This economic disadvantage perpetuates a cycle of silence and impunity. The threat to their reputation and potential consequences for their livelihoods often

force them to withdraw or compromise on their complaints. Such circumstances indicate that the withdrawal was not free from coercion or undue influence. The Competent Authority had a duty to diligently examine the context and conditions under which the withdrawal was submitted before accepting it. Therefore, I find that the acceptance of the withdrawal was improper and unjust.

26. For the aforementioned reasons, I find it necessary to not only dismiss the instant appeal but also to reinstate the original penalty recommended by the Harassment Committee. The decision of the Harassment Committee is upheld, and in light of the circumstances and evidence presented, the penalty imposed on the Appellant is increased to the original recommendation of "**Reduction to a lower post or time-scale, or to a lower stage in a time scale**". The appeal is therefore rejected.

FEDERAL OMBUDSPERSON