



FEDERAL OMBUDSMAN
For Protection against Harassment of Women at Workplace
Islamabad

J U D G M E N T

1. Compliant Number: 1(48)/2012-FOS
2. Date of Institution: 28-03-2013
3. Date of Decision: 13-05-2013
4. Complainant: Shaista Shahzad
National Defence University
Islamabad.
5. Respondent: Col. Khushi Muhammad
National Defence University,
Islamabad.

Yasmin Abbasey,

Ombudsman:

Complaint No. 1(48)/ 2012-FOS.

1. An application has been moved by complainant Shaista Shehzad that she was an employee of Pakistan Air Force and subsequently after having NOC from parent department reserving her right of lien, she joined National Defense University (NDU) on 27-4-2005 on contract basis with assurance that after six or 12 months she will be regularized. She was posted as superintendent BS -16 in account branch, but instead of that her superiors had assigned the work of library which was accepted by the complainant inspite of the fact that the work assigned to her was not in accordance with the grade on which she was appointed.
2. It is stated that as soon Col. Khushi Muhammad Khan, became incharge of library, he started creating problems for her and tried to outrage her modesty through different tactics but complainant saved herself and did not allow him to gain his ill desires. Thereafter he started giving warnings and transferred her in evening time, which finding no way out she performed. Thereafter to avoid and save herself from the attitude and to have a favour of sexual desire from opponent she got herself transfer in fiction library. Where she served for about four years. Although fiction library was also under control of opponent Col. Khushi

Muhammad Khan but he did not have a direct approach therefore complainant worked in peaceful atmosphere. After lapse of some period opponent started visiting in complainant office once he came along with his friend Col. Iqbal and there again he tried to in-dignify the complainant. However complainant managed to save herself and became rude towards opponent. This incident was also brought in the notice of Col. Abbasi, AQ who counseled the opponent Col. Khushi Muhammad verbally. During period of six year of service complainant was warned three times on her late coming whereas the fourth one could not be issued as complainant got it removed through her Director Brig. Tawana.

3. It is alleged that in 2008 opponent kept the personal file of complaint with him and got stopped her house rent which complainant got restored after two years. According to complainant no ACR is required for contract employee but inspite of that opponent had prepared her ACR with adverse remarks. It is stated that although in 24-01-2011 Ministry of Defense has regularized all posts of Superintendent but as opponent Col. Khushi Muhammad Khan was a hurdle in case of regularization of complainant therefore in March 2011 she moved an application for her regularization on the ground that she may be transferred from permanent government service therefore she is entitle for regularization. Although this application was forwarded by the opponent Col. Khushi Muhammad Khan but with attachment of

three warnings issued to the complainant, whereon President NDU transferred complainant to registration branch which was a point of relief for the complainant but still opponent Col. Khushi Muhammad Khan was behind the complainant and he got removed the new file of her. It is alleged that on 04-6-2011 as soon she moved an application against opponent Col. Khushi Muhammad Khan of harassment to her, she was terminated on 07-6-2011. It is plead that she be reinstated on service as it is against the rules and was done at the instance of Col. Khushi Muhammad Khan, Col. Tahir Mehmood, Col. Shoukat Mansoor Cheema, Brig. Asif Ali Khan, Brig. Nazir Ahmed and Col. Riasat Ali Khan.

4. On 05-4-2013 defence was filed by Lt. Col. Mazhar Malik on behalf of President NDU and the four respondents Brig Nazir Ahmed, Col. Riasat Ali Khan, Col. Khushi Muhammad and Lt. Col. Mazhar Malik. It is stated by him that complainant is habitual litigant and tried to seek justice through illegal means. She filed number of cases at different forums and when she could not succeed in her attempts she has filed this complaint. It is stated that complainant was a contract employee in NDU w.e.f. 27-04-2005 for two years which was renewable after every two years as such on 27-04-2009 her contract was renewed upto 26-04-2011.

5. After expiry of contract she was no more employee of NDU. It is stated that the allegation of sexual harassment as alleged against Col. Khushi Muhammad are baseless as in her petition before supreme court of Pakistan in human right cell moved on 11-9-2011 she has not raise such issue and only the question of her service condition and termination of her contract was highlighted therein.
6. Heard complainant in person and learned counsel for the opponent.
7. Record reveals that complainant was appointed in NDU on contract basis vide contract executed on 27-4-2005 for a period of two years. On expiry of two years period another contract was executed between complainant and NDU w.e.f. 27-4-2007 for a period of two years and finally third agreement was executed on 27-4-2009 for period of two years ending on 26-4-2011. According to complainant she worked peacefully upto 2007 but as soon Col. Khushi Muhammad khan was posted in NDU he started giving warning to complainant and assigned her duties in evening hours in library where he usually after jogging in evening use to come. At that time complainant mostly worked all alone and during those visits once he brought Col. Iqbal alongwith him and tried to misbehave with her where after complainant became conscious and rude to the opponent. That attitude of complainant does not please to opponent Col. Khushi Muhammad and he

started giving warning of late coming to her. According to complainant this incident of misbehaviour was brought in the knowledge of Col. Abbasi by her. He also counseled to opponent Col. Khushi Muhammad but with no effect. Complainant in her main application and in the affidavit of evidence dated 04-6-2011 placed on record has alleged the act of sexual harassment against Col. Khushi Muhammad Khan but except these two documents referred above no corroborating evidence has been placed on record. Although she had moved different application at different forums i.e. before Supreme Court of Pakistan and in Human Right Cell and before Federal Service Tribunal but except raising the plea of illegal termination she has not raised any such issue of sexual harassment towards her by opponent Col. Muhammad Khushi Khan.

8. The applications moved by complainant to Principal NDU on 19-11-2011 and on 20-12-2011 are also silent as to the charge of sexual harassment by opponent Col. Khushi Muhammad. In spite of the fact that according to her just after posting of opponent Col. Khushi Muhammad Khan in her department he started his ill activities and tried to attempt on her with ill will. Even if it is taken that she could not place on did not deem it proper to place the offensive and ill attitude of opponent Col. Khushi Muhammad before Supreme Court of Pakistan and Federal Services Tribunal, but when she is making a complaint before the very appointing authority i.e. Principal NDU with certain allegation of

mal-administration against her then the reason behind that as alleged should also have been placed by him before Principal NDU. In such circumstances the defence dated 04-6-2011 placed by opponent cannot be over looked that after termination of contract on 26-4-2011 when her termination was communicated to her on 05-05-2011 she has come up with this allegation of sexual harassment to gain sympathy to continue her service in NDU. For which she was fighting from pillar to the post. The defence pleaded by opponent seems to have weight therein because inspite of the fact that complainant had alleged allegation of sexual nature against opponent Col. Khushi Muhammad, but in her application before this forum the main prayer that has been sought by her is of her alleged termination from service and not regularization of her service on the post she was working.

9. Although this forum has no jurisdiction to entertain the matter relating to the terms of service but in the circumstances of the present case where both issues of regularization of her job on the post of superintendent and termination of her service have been mixed up with the allegation of sexual harassment on the part of Col. Khushi Muhammad then nature of job of complainant with NDU needs proper examination.

10. It is an admitted fact that the appointment of complainant with NDU was on contract basis and all the subsequent extension in her contract with NDU were on the same terms and conditions as were originally settled on 27-4-2005. In this context standards terms and conditions of contract employment issued by Establishment Division on 18-7-1996 as amended from time to time have been placed on record by opponent, para 2 sub clause “b” of it states that:

“Where the terms and conditions of a post are prescribed in a statute or a statutory notification, the provisions of the statute or the statutory notification, as the case may be, should be prevail”.
11. With reference to this settled principle if we go through the contract executed in between complainant and NDU the status of complainant has nowhere been stated to be of a civil servant. As such the claim of complainant that she was not considered for regularization on the post of superintendent BS-16 in terms Ministry of Defense letter dated 19-6-2004 does not seem to have any logic therein. Even otherwise record is silent to the fact that during her contract from April 2005 till 26-4-2011, she was ever considered for regularization, though her name was placed before the committee but her name for regularization was turned down with the remarks that “the recruitment and promotion rules does

not apply to contractual staff.

12. Further the claim of lien as claim by complainant of her parent department i.e. Pakistan Air Force, also does not seem to be correct because a photocopy of a letter issued by Assistant Director of Civil Person, Air Headquarter Peshawar on record with reference to the application moved by complainant to them for joining the post of superintendent in NDU shown that it was observed by the Air HQ Peshawar that:

“In event his selection as superintendent Shaista Shehzad will have to resign from his present appointment and to submit proper clear certificate before she relieved of her duties to take up new appointment”.

13. The definition of Civil Servant as prescribed in civil servant Act 1973 clearly indicates that a person who is employed on contract does not include in civil servant, until and unless regularized through proper process. In view of above discussion I am of the view that charge as alleged by complainant against opponent Col. Khushi Muhammad Khan has no substance therein because if that would have any weight therein no reason has been assigned by the complainant that why she has kept mum for such a long period and had raised voice only when she was terminated from

service on completion of her contract.

14. However the record show that although the contract expired on 26-4-2011 but formally she was communicated of that termination vide letter dated 07-6-2011. No termination letter said to be issued on 05-5-2011 has been placed on record by the opponent therefore the date of communication of termination of complainant's contract will be deemed as 07-6-2011 and still that time she was kept in hope of her renewal, she was performing her duty without any objection from NDU. As such complainant is entitled to the salary upto 07-6-2011 and the benefits attached to it as in contract executed on 07-04-2009.
15. The application is disposed off accordingly. NDU is directed to clear the arrears of complainant up 07-6-2011 without any further delay and compliance report is submitted to this office within a fortnight.

YASMIN ABBASEY
Ombudsman