

OFFICE OF THE OMBUDSMAN

Islamabad

FORM OF ORDER SHEET

Appeal No. **1 (421)/2018-FOS (Reg)**

Serial No. of Order of Proceedings	Date of order of Proceedings	Order of other proceedings with Signature of Federal Ombudsman Title: Zohaib Hassan Vs Deputy Post Master General (Admin) & others
1	2	3
	10-01-2019	<p>Appeal No. <u>1 (421)/18-FOS (Reg)</u></p> <p>Through this order, this Forum intends to decide upon the appeal filed by Zohaib Hassan hereinafter referred to as "Appellant" male peon, Murree Brewery Post Office, Rawalpindi against the Impugned order dated 30-01-2018. Para 4 of the impugned order reproduced here below:</p> <p><i>“The competent authority shall impose the penalty recommendations made by the Inquiry Committee under Section 4of the Protection against Harassment of Women at Workplace Act, 2010 and in exercise of the powers delegated under Section 4(5) of the act ibid impose the minor penalty with the punishment of stoppage of one increment for one year without future effect”.</i></p> <p>Brief facts of the case are that Shama Pervaiz hereinafter referred to as "Respondent No.2" was working as a stamp vendor in Controller Military Account (CMA) post office Rawalpindi city. On 26.05.17, she filed a complaint to Deputy Post Master (Admin) Pakistan Post. Wherein she stated that Waqas Zaheer Baig, Assistant Superintendent Post Office south Cantt was proposing her transfer from Army Medical College (AMC) Post Office without jurisdiction as no post of stamp vendor existed at Controller Military Account (CMA) Post Office. She stated that Mr. Waqas did not allow the postmaster to grant her leave and that Mr. Zohaib asked her to call Mr.</p>

		<p>Waqas from her personal number. She further alleged that Mr. Zohaib being Mr. Waqas's friend was equally responsible for creating an undesired work environment in the office.</p> <p>The matter was referred to Inquiry Committee by the Postmaster General northern Punjab circle Rawalpindi on 04-08-2017. The proceedings of Inquiry Committee were held on 10-08-2017 in the chamber of Assistant post master general.</p> <p>On 04-08-2017 based on the complaint by Respondent No.2, a memorandum was sent to the Appellant to clear his position. Inquiry was initiated and both the parties appeared before the Inquiry Committee. The Appellant submitted his reply and denied all the allegations leveled against him.</p> <p>The Inquiry Committee recorded the statements of Respondent No.2, Appellant, Nabeel Anjum, Muhammad Nazir, Muhammad Serfraz, Ms. Robina Shaheen and Tahira Rasheed . The Inquiry Committee completed its proceeding and submitted its report recommending the imposition of minor penalty i.e. stoppage of one increment for one year without future effect.</p> <p>In his appeal, the Appellant argued that the impugned order was against law and facts of the case. As there was no harassment in the first place and the complaint was filed with malafide intend. Moreover, the Inquiry Committee was biased and was not constituted as per the requirement of law and did not provide ample opportunity to the Appellant to defend himself. Furthermore, the Appellant contended that the Inquiry Committee was in violation of Section 4(4) and Section 4(5) of the Protection against Harassment of Women at Work Act 2010. Produced as below:</p> <p><i>Section 4(4) of the Protection against Harassment of women at work place 2010 Act states that the Inquiry Committee shall submit its findings and recommendation to the competent authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommended to the competent authority for imposing</i></p>
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following penalties.

Section 4(5) states that the competent authority shall impose the penalty recommended by the Inquiry Committee under section 4 within one week of receipt of the recommendation

The Appellant's argument was that the Inquiry Committee awarded the punishment in January 2018 whereas the Appellant was granted the punishment on the basis of same inquiry report on 30-01-2018 thus the punishment awarded to the Appellant is without jurisdiction. **It is a well established principle of law that when law requires a thing to be done in a particular manner, that thing has to be done in that particular manner and not otherwise**, therefore, the impugned order is null & void in the eyes of law and is set aside.

The Inquiry Committee while concluding the inquiry in para 6(d) of its report stated that the allegation i.e. Appellant was also party to Mr. Waqas's actions was not proved in the investigation because Respondent No.2 could not prove that Mr. Waqas forced her to call him on his personal phone.

The Appellant claimed that the punishment awarded on the basis of recommendations of Inquiry Committee was not justified in the report of Inquiry Committee.

On the other hand Respondent No.2 took the ground that Appellant was clearly guilty of sexually harassing her as he was party to the acts by Mr. Waqas and on this act the punishment of stoppage of one increment for one year without future effect is not enough and needs to be enhanced.

Arguments were heard and perusal of the record shows that the main allegation against the Appellant was that Appellant being Mr. Waqas's friend was responsible for creating an undesired work environment in the office which created problems for female staff. This allegation has no nexus with the reality and remained unproven during the inquiry proceeding. Same is evident from the record available on file. The Inquiry Committee was in sheer violation of Section 4(4) and Section 4(5) of the Protection against

		<p>Harassment of Women at Workplace Act, 2010.</p> <p>Moreover, the Inquiry Committee was in contravention of Section 9 of the Protection against Harassment of Women at the Workplace (Filing and Disposal of Complaints) Rules, 2013. Produced as below:</p> <p><i>Section 9 of the Act 3013 (Imposition of penalty) states that on receipt of recommendations and findings of the inquiry committee or the ombudsmen, the competent authority shall, within one week of receipt of the recommendations and findings, imposed the penalty recommended by the inquiry committee or ombudsman or otherwise refer back the case to inquiry committee with observation to be addressed immediately.</i></p> <p>For the aforementioned reasons, this forum disagrees with the findings of the Inquiry Committee. However, there is no doubt that mischief has been caused by the Appellant to the effect that the office environment became unpleasant. This office does not wish to dwell into whether the Appellant was ‘forced’ by Mr. Waqas, as he is an adult and the allegation does not attract a reasonable prudent mind. Similarly, exchange of phone numbers is common between office workers and the Appellant should have been careful and responsible enough not to forward or float Respondent No.2’s number in such a manner.</p> <p>Therefore, in view of the above mentioned discussion, Impugned Order dated 30-01-2018 is hereby set-aside. Minor penalty is imposed on the Appellant Zohaib Hassan under Section 4(i)(a).</p> <p style="text-align: right;">OMBUDSMAN</p>
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