

Appeal No. 1(280)/ 2016-FOS.

1. On 05-10-2015 a complaint was filed by appellant Mst. Daniya Akbar, serving as Trade Development Officer in Consulate General of Pakistan, Los Angeles USA, now removed on 20-10-2015, against opponent Malik Qamar Abbas Khokhar, Head of Chancery at Consulate General of Pakistan, Los Angeles, stating that just after 7 months from the date of her appointment as Trade Development Officer, opponent had sexually harassed, manipulated, bullied her to show his position and power in the Consulate. It is alleged that he started sexual harassment against her from beginning of February 2015 with inappropriate comments about her personal appearance. He used to comment on her clothing, figure, jewelry and overall, physical appearance. These comments became a regular topic of discussion within every single interaction with opponent, combined with sexual innuendos and inappropriate close proximity, which was a feel to her an act of harassment and interference in her work. Because of opponents behavior complainant was extremely uncomfortable and began to rebuff the advances more forcefully. This rebuffing brought a new wave of harassment from opponent that is bullying. He constantly manipulate her with an effort to gain control over her in some aspect.
2. Just to punish complainant, instead of trade tasks opponent had given secretarial duties and menial tasks, for not acting in a way as desired. This exploitation of his power and position was an effort to minimize complainant's role towards her main function of trade. In spite of lack of respect and importance given to complainant's position she was trying to develop trade department, implementation of structural changes and improved outreach and initiatives. Complainant's initiatives were discouraged and priority was given to parties, events and personal tasks by Hamid Asghar Khan, Consul General and Qamar Abbas Khokhar, the opponent. Opponent's act of bullying started by his written orders with posting of complainant, to sit on the seat of reception desk from 22nd July to 31st July. Although complainant on multiple occasions volunteered to look after the reception desk for short periods of time but this act of opponent to place her at reception desk by a written order for which

complainant had no experience was an attempt of opponent to overpower her. This act of opponent was complained to Hamid Asghar Khan, Consul General through email dated 23-07-2015 and in reply Consul General has assured to solve the problem. On 21-07-2015 opponent issued a warning letter to complainant.

3. It is alleged that due to constant behavior of opponent, Consular General ordered to have communication in between opponent and complainant through electronic means. In spite of that, opponent was pressurizing complainant to have personal meeting with him and when she refused opponent forced complainant to go on leave. It is stated that she was given medical leave but thereafter was not allowed to join duty and was forced to obtain medical certificate which is normally not issued by medical officers in USA until and unless person has any chronic disease. Complainant on the pretext of this ground was sent on forced leave by opponent and was not allowed to draw salary for the month of August and September, 2015. Matter was reported to Consul General but no action was taken thereon. Being disappointed with the behavior of Consul General Hamid Asghar Khan and opponent, complainant has approached this forum.
4. Opponent Qamar Abbas Khokhar in his defence has pleaded that because of issuance of show cause notice and warning letter for being absent from duty without permission on 22-07-2015 she made complaint to Consul General on 23-07-2015 in retaliation. Before issuance of show cause notice and warning letter complainant never raised any objection nor complained against any act of opponent to any of senior officials being harassed by him either for work or for any other ulterior motives. Posting of complainant on the seat of reception during leave period of Zahoor Elahi, Protocol Officer-cum-Receptionist was in accordance to the term of contract executed in between complainant and Consul Office. Even otherwise complainant prior to this was regularly performing duty of receptionist in place of Zahoor Elahi during Friday prayer and was familiar with the work. Complainant could had done her office work related to trade on the computer available on reception desk. Refusal of complainant to do work at reception desk through letter dated 21-07-2015 was taken seriously with the issuance of show cause notice and warning letter dated 21-07-2015. Instead

of rectifying her behavior she remained absent from duty for which again a warning letter was issued to her on 23-07-2015. As complainant failed to give a solid reason for her absent from duty, therefore, she has accused opponent with the allegation of sexual harassment. Opponent has denied all allegations of sexual harassment, bullying and manipulating as alleged by complainant. According to opponent if someone has ulterior intention, they are reflected in the private SMS exchange between two parties and in support of his statement he has produced a Transcript of SMS in between him and complainant.

5. During course of proceedings of complaint No. 1(214)/2015-FOS it was observed that applications moved by complainant / appellant on 23-07-2015 and 11-08-2015 to Consulate General of Pakistan at Los Angeles USA were not investigated by Consulate General just because of reason that according to Consulate General this complaint were made by complaint / appellant in retaliation of warning letters received by her from respondents / opponents. Under these circumstances it was thought proper that Ministry of Foreign Affairs be directed to investigate matter on complaints of complainant / appellant moved on 23-07-2015 and 11-08-2015 through an inquiry committee having members of unbiased mind and impartial attitude.
6. Ministry of Foreign Affairs has played its role and on 28-04-2015 committee has given its report with recommendations as under:
 - i. That the unsubstantiated complaints of sexual harassment, bullying, manipulation and retaliation made by the complainant against the accused may be dismissed by the competent authority;
 - ii. That till the appointment of a commercial officer at the Consulate General of Pakistan, the TDO may work under the direct supervision of the Consul General. TDO and HOC may only be allowed to communicate only in official matters through electronic means under intimation of the Consul General;
 - iii. A question has arisen during the course of investigation that the TDO till today has never held or applied for any Pakistani Identity document (CNIC, NICOP, POC) or Pakistani Passport. The committee has been given to understand that the complainant has been of Pakistani descent. The legal question of invoking jurisdictions of the judicial forums in Pakistan by foreign nationals working in Pakistan Missions

abroad may be examined by the relevant authorities.

7. Against this decision of inquiry committee appellant has preferred present appeal alleging that inquiry committee has not followed due processes of law as guaranteed under Article 10(a) of Constitution of Pakistan. According to her whole exercise of constitution of inquiry committee by respondent No. 1 was cover up and to absolve respondent No. 3. All members of inquiry committee were fellow colleagues of respondent No. 3 and their attitude was very bias towards appellant. Inquiry committee has failed to follow prescribed procedure under Section 4 of Protection against Harassment of Women at Workplace Act 2010 which entitles every party to cross examine the witness produced by either party. No opportunity of cross examination of respondent No. 3's witnesses was provided to appellant. As appellant was not allowed to engage any lawyer in spite of her repeated request therefore she refuse to cross examine opponent / respondent No. 3's witnesses under protest. Entire proceedings were conducted by inquiry committee in a manner so as to harass and punish appellant for filing her complaint. Statements of witnesses were totally ignored.
8. During course of arguments it is further contended by appellant's representative that no proper notice was issued by inquiry committee to complaint about proceedings of inquiry committee. She was verbally informed. Most of witnesses cross examined by inquiry committee was subordinate to respondent No. 3. Inquiry committee has recorded statement of witnesses through phone who were also not cross examined by complainant. Statement of complainant was also not recorded.
9. On other side according to respondent No. 3's representative appeal is not maintainable as appellant is not Pakistani national and so also alleged incident happened outside country. It is argued that by virtue of section 4(3)(c) of Act of 2010 appellant was not allowed to be represented through counsel as advocates are not allowed in proceedings before Federal Ombudsman. So far as issue of cross examination is concerned complainant / appellant herself refused to cross examine witnesses. None of witnesses produced have deposed against any misbehavior of opponent / respondent No. 3 with appellant or any other office member of Consulate General at Los Angeles USA.

10. Although inquiry committee in its recommendations has observed that complainant had made unsubstantiated complaint of sexual harassment, bullying, manipulating and retaliating against accused therefore it is liable to be dismissed. It is further observed that making complaint to Federal Ombudsman and sending its copies to non-concerned offices and individuals as per list provided by them is itself uncalled propagation of complaint by complainant and by this act complainant / appellant had herself compromised privacy and confidentiality of matter and put dignity and honor of herself and accused at stake. According to inquiry committee none of witnesses examined by them had made any statement against opponent, but while observing so they have totally ignored statement of Mrs. Ashraf Malik or had not taken it seriously because Mrs. Ashraf Malik has categorically stated that although she has not seen any physical objectionable thing in between appellant and respondent No. 3 Qamar Abbas, but whenever appellant came out of room of respondent No. 3 she seems to be very upset and while sharing some of the conversation that took place in between her and respondent No. 3, she started crying and expressed that "I do not know why he talk with her in this way". This witness has further stated that appellant had stated before me that respondent No. 3 instead of having job related talk usually appraises her physical appearance. Some time he admires her hairs and some time he admires her ear rings. According to this witness as stated by appellant / complainant this was routine habit of respondent No. 3. This statement of Mrs. Ashraf Malik has neither been denied nor challenged by inquiry committee or respondent No. 3 at any stage. May be according to members of inquiry committee or respondent No. 3 such conversation would not have been objectionable to them, but in a civilized society it is responsibility of every person to ensure dignity and respect of every person which he or she deserve as human being. If any indecent talk in office environment which makes another person particularly lady makes uncomfortable to her then that is to be termed as harassment because any behavior which is unwelcome to target either be verbal or non-verbal, physical or otherwise is an act of sexual harassment. Creating hostile or offensive work environment is an act of harassment as defined in Section 2(h) of Act of 2010. In this particular case beside statement of Mrs. Ashraf Malik opponent in his cross examination during trial at first stage before Federal Ombudsman has

admitted that he had sent message to appellant saying that you are loosing your weight and becoming more smarter. He had further admitted that "it is correct to suggest that on 22-02-2015 at 6:56 pm I sent message to complainant that "you are looking fabulous". Voluntary says that in culture of America this message is not objectionable". But while saying so respondent No.3 has ignored that neither he is an American nor America national. He is a member of foreign embassy of Pakistan and each and every member of embassy in foreign country is supposed to be an ambassador of his / her country. Therefore instead of promoting and following culture and behavior of country to which he is sent he is supposed to promote and follow culture of his own country, and definitely in Pakistan dignity of person has been ensured under Article 14 of Constitution of Pakistan. This disputed behavior of respondent No. 3 with remarks that such statements are not objectionable in American culture cannot be ignored or compromised as most important factor of Muslim community as prescribed in Quran is enjoying good and prohibiting evil in which both men and women stands side by side. They have to protect honor and dignity of each other.

11. In view of above I do not agree with recommendations of inquiry committee that there was no evidence against respondent No. 3.
12. It also should not be ignored that harassment usually occurs between colleagues when they are alone. Therefore it is difficult to produce evidence as in present case, single offensive incident will constitute violation as has been defined in schedule of Act of 2010 under title of Creating Hostile Environment and statement of respondent No. 3 itself discussed above is sufficient evidence against him, in addition to what has been further stated by appellant / complainant of attempts of opponent to touch physically to complainant.
13. So far as arguments advanced by learned representative of respondent No. 3 that this forum has no jurisdiction to entertain appeal of appellant because appellant is not Pakistani national and alleged incident happened outside the country. I regret to say that these arguments have no substance therein because although embassy where incident took place is situated in America, but the territory of that embassy is under control and management of Ministry of Foreign Affairs of Government of Pakistan, therefore Law of Pakistan is fully

applicable to all employees either serving within country or outside country because even if incident took place outside Pakistan even then territory of the premises of Embassy of Pakistan is in exclusive premises of the state. Under Vienna convention also property wherein embassy is situated belongs to receiving country but territory of that premises is hold by sending country. Thus this forum of Federal Ombudsman has jurisdiction in matter.

14. Next objection taken by them is that under section 4(3)(c) advocates are not allowed to be represented in proceedings before Federal Ombudsman, whereas complainant / appellant was and is being represented through their advocate. This objection too has not substance therein because very section refered by him, party can be represented through their bargaining agent, representative a friend or colleague. There is no strict prohibition of appearance of advocates therefore when there is no specific prohibition, appearance of counsels cannot be denied.
15. In view of above observations I hereby allowed this appeal of appellant to the extent that considering gravity of harassment I imposed minor penalty on respondent No. 3 under section 4 sub-section 4(1a) of censure. Ministry of Foreign Affairs is hereby directed to issue letter of censure to respondent No. 3 so that such kind of behavior should not be repeated again by him. So far as prayer made by appellant in her main complaint of her reinstatement in service is concerned is hereby dismissed as it is not within domain of Act of 2010 or Ministry of Foreign Affairs may followed the recommendations of Inquiry Committee as given in Para 22 (ii) of report dated 28-04-2015.
16. Announced in open court
17. Parties be informed accordingly.