

Appeal No. 1(162)/ 2015-FOS.

1. Before proceeding with factual and legal aspects of the case I deem it proper to give brief history of it. On 15-06-2015 complaint was filed by Mst. Zonia Mehmood the appellant against Muhammad Waseem Tariq the respondent, both employees of Pakistan Postal Services Faisalabad.
2. After going through documents placed on record and hearing parties judgment dated 07-09-2015 was delivered upholding findings of inquiry committee of 30-04-2014 and decision passed on basis of that inquiry report on 04-12-2015, whereas findings of Regional Deputy Post Master General dated 04-08-2015 were set aside.
3. Against this decision respondent Muhammad Waseem Tariq had preferred an appeal before the President Secretariat and by order dated 17-08-2016 matter was remanded back with observations that:

“Question arises that inquiry conducted on administrative side and how findings can be set aside by Federal Ombudsman instead of appellate authority. Federal Ombudsman should have passed independent findings if the accused was found guilty with an independent order for punishment of the accused under Protection against Harassment of Women at Workplace Act 2010”.

In this very remand order Federal Ombudsman was directed to decide case afresh after recording evidence produced by parties.

4. After remand order of President Secretariat on 08-09-2016 appellant has filed certain documents and statement of some witnesses recorded during inquiry proceedings, whereas respondent has filed his defense statement on 22-09-2016. He could not be cross examined because of absence of appellant. His side was closed for purpose of cross examination and matter was fixed for final arguments.
5. Parties were heard in person. My findings are as under:

Record shows that germs of this dispute were first planted by respondent on 10-10-2012 when he unauthorizely had a visit of Nurpur post office Faisalabad and on basis of his visit had issued charge sheet dated 25-10-2012 to appellant. Finally by his order dated 11-12-2012 he expressed that “however this time

taking a lenient view she is let of with severe **warning** to be careful in future”.

6. On 10-12-2012 a day before order of respondent dated 11-12-2012 appellant moved an application to Director General Pakistan Post Islamabad and three other higher officers that after issuance of charge sheet on 25-10-2012 respondent through different tactics i.e by calling her for personal hearing, through phones is disturbing and harassing her and has gone to the extent that he himself come to appellant's house to ask for reply of charge sheet issued to her. It is alleged in that application of 10-12-2012 that respondent was reminded many times to mend his illegal activities, but he did not stop and just to gain his illegal sexual desire he is harassing her through odd means.
7. It appears that instead of considering grievance of appellant, on 29-01-2013 charge sheet was issued to her on account of misconduct for moving applications / complaints directly to her officers instead of through proper channel. Anyhow by order dated 27-18-2013 inquiry proceedings were disposed of with warning to appellant to be careful in future in that regard.
8. Beside above inquiry conducted against appellant, inquiry report of 30-04-2014 has also been placed on record which shows that after lapse of about one year from 10-12-2012 charge sheet was issued to respondent on basis of allegations leveled by appellant in her first complaint moved on 10-12-2012. In this inquiry report allegations numbered as 1, 2, 3, 5 and 6 have been declared as proved whereas in respect of allegations numbered as 4 and 7 it is observed that appellant has not been able to prove them. In result of this inquiry report Divisional Superintendent Postal services Faisalabad by order dated 04-02-2015 has imposed penalty of stoppage of two increments for two years without future effect.
9. This order of 04-02-2015 was challenged by appellant Mst. Zonia Mehmood before Director General Post office Islamabad and copy of same was also dispatched to this office of Federal Ombudsman. Copy of complaint dispatched to Federal Ombudsman with consent of appellant was taken as appeal against inquiry report dated 30-04-2014 and decision dated 04-02-2015.
10. It is noteworthy that inquiry report of 30-04-2014 and decision passed thereon has never been challenged by respondent Muhammad Waseem Tariq before any forum. On contrary taking this punishment of imposing stoppage of two year

increment as insufficient, appellant has approached to different forums. It is also pertinent to note that findings of inquiry committee have neither been disputed by respondent before this forum of Federal Ombudsman nor in appeal before President Secretariat. It is also noteworthy that allegation numbered as 1, 2, 3, 5 and 6 and finding thereon in inquiry report of 30-04-2014 have neither been challenged by respondent nor those observation based on record produced before this forum has been contradicted by office of President's Secretariat in their remand order of 17-08-2016.

11. So far as allegation leveled at No. 4 of harassing, blackmailing and intimidating Mst. Zonia Mehmood, clerk Nurpur through various unlawful tactics for fulfilling his sexual desires, it is observed that these allegations of adopting unlawful tactics for fulfilling his sexual desire is dubious one as appellant failed to provide any evidence regarding any unlawful activity committed by accused for fulfilling his sexual desires, but in very next line inquiry officer contravene his previous statement, stating, with reference to respondent Waseem Tariq, that "had he been innocent wholly he should have been appeared before inquiry officer and clear allegation".
12. Therefore casual denial of respondent in his written statement is not sufficient. Denial must be specific for each and every allegation even at the time of evidence before court. If respondent denies allegation of fact he must not do so evasively, but answer point of substance because if there is no specific denial of any statement of fact same will be deem to have been admitted.
13. This state of fact also appeared when inspite of leveling specific allegation of sexual harassment by appellant in para 4 of her statement before this forum filed on 05-08-2015, respondent has not cross examined appellant on this specific allegation leveled against him in spite of opportunity provided to him. In such aspect of the case doctrine of non-traverse will play its role that where material averment is passed over without specific denial, it is taken to be admitted. In terms of this rule any allegation of fact must either be denied specifically or by necessary implication or there should be a statement that the fact is not admitted. If the plea is not taken in the manner as required that allegation should also be taken as admitted. With this legal preposition I am of the view that allegation numbered at 4 in inquiry report of 30-04-2014 has also been proved.

14. So far as allegation 7 of creating general harassment among female postal staff Faisalabad is concerned, indeed has not been proved because except appellant no female staff has come forward to prove this allegation of general harassment but it does not mean that statement of appellant should also be ignored.
15. Question that as order of 04-08-2015 passed by appellate authority of postal authorities was on administrative side, therefore Federal Ombudsman has no jurisdiction to set it aside. While evaluating the inquiry proceeding the procedure for conducting inquiry as provided in Government Servants (Efficiency and Discipline) Rules 1973 also needs consideration. The whole procedure is based on principle of National Justice with full opportunity to parties to place their case. Therefore all steps taken during the entire proceeding are of quasi-judicial nature. Accordingly the root of observation of Regional Deputy Post Master General on 04-08-2015 was the very quasi-judicial inquiry report. Thus order of Appellate Authority of Postal Service cannot be said only on administration side. Even otherwise after approach of appellant to this forum by consent of parties matter was proceeded in the office of Federal Ombudsman for Protection against Harassment of Women at Workplace, therefore while deciding matter on its merits final order passed by any organization challenged before this forum has to be looked into and examined, because if that impugned order is left untouched in spite of observation against to it, very purpose of investigation and examination will be a futile exercise. Even otherwise technicalities unless are insurmountable should not come in way of administration of justice, because concept of administration of justice is protection of right of people. And for that presiding officer is bound to act fairly justly and in accordance with law and it is with this intent by Act of 2010 Ombudsman has been empowered to inquire into the matter according to rules made under this Act and conduct proceedings as the Ombudsman deem proper. In light of above discussion order passed by appellate authority on 04-08-2015 which was final decision after pendency of this complaint needs to be set aside, otherwise by following technicalities justice cannot be done with any party, if two orders are left in field.
16. With this observation I hereby allow appeal of appellant Mst. Zonia Mehmood with modification that beside stoppage of two years increments for two years under sub clause 4(i)(b) of Section 4, a penalty of Rs. One lac is also imposed on respondent under sub-clause 4(i)(d) of Section 4 for unnecessary dragging appellant in different inquiries and with object of taking benefit of them to gain

his illegal sexual desire.

17. Announced in open court.

18. Parties be informed accordingly.

19. Copy of judgment be delivered to the Organization for its implementation within a period of 15 days on receipt of this judgment and inform accordingly.