

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

FBR, Versus Mr. Riaz Ali, Multan

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE, ISLAMABAD
AGAINST FINDINGS / RECOMMENDATIONS DATED 08.03.2017 PASSED BY THE FTO IN
COMPLAINT NO. FTO-MLN/0000709/2016**

I am directed to refer to your representation No. 1(709)S(TO-II/2016 dated 28.03.2017 on the above subject and to say that the President has been to pass the following order:

2. This Representation dated 28.03.2017 has been filed by the Agency/FBR against the revised findings of the FTO dated 08.03.2017, whereby it has been held that:

"FBR:-

- i. Direct the Commissioner IR to process and sanction reward admissible to the complainant, as per law, under the relevant Reward Rules with 45 days; and
- ii. Report compliance within 10 days thereafter."

3. The brief facts of the case are that the complainant, a superintendent of Custom, Central Excise & Tax (Rtd) is aggrieved against delay in sanction of reward for detection of sales tax evasion.

4. Brief facts of the case are that the complainant joined Central Excise & Sales Tax Departments as UDC on 01.05.1967 and retired as Superintendent on 11.10.2004. During his service he detected concealment of FED and Sales Tax in the cases of D.'G. Khan Cement, Sh. Faizan Rehman & Sons, Al-Hilal Ghee Mills Multan, Zam Zam Enterprises, Bahawalnagar and Overseas Blue Star, Bahawalpur. Tax levied was realized and he applied for reward for detection of tax evasion to the Collector Customs, Central excise & Sales Tax, Multan on 05.10.2014, 04.06.1992, 21.06.2004 and 21.05.2007. In the meanwhile Central Excise & Sales Tax Deptt was merged with the Income Tax Deptt and all the reward cases files were transferred to said Deptt. He visited all the relevant offices from time to time, met the Chief Commissioner IR and Commissioner IR, RTO, Multan on 21.06.2013, provided them documents and letters on 25.06.2012 and 20.02.2014. The Chief Commissioner promised to decide the case by constituting reward committee. He kept on visiting the office till 08/2016, but reward was not sanctioned.

5. The complaint was sent for comments to Secretary Revenue Division in terms of section 10(4) of the FTO Ordinance, 2000 (the Ordinance). In response, the Chief Commissioner-IR, (CCIR) Multan vide letter dated 16.12.2016 submitted comments wherein it was stated that the complainant had filed complaint on 17.05.2016 before the Wafaqi Mohtasib on the same ground. Under the circumstances, wrong affidavit has been filed before this forum that no suit, appeal, petition, reference or other judicial proceedings in connection with the subjudice matter of this complaint are pending in any court, tribunal or any other authority. Jurisdiction of this forum has also been challenged in terms of the provisions of Section 9(3) of the Ordinance on the ground that issue of reward in a service matter. In view thereof, this forum had no jurisdiction to entertain this matter. On facts, it was stated that complainant has not provided record of contravention report, order decided, proof of payment/recovery adjustment which are required for scrutiny and ascertaining admissibility of reward. However, CCIR has constituted reward committee vide C. No. CCIR/RTO-MN/SO(HRM)/7595-R dated 31.05.2016 to decide the cases of reward. Meeting of the committee would be convened shortly and Complainant's case would be decided as per recommendations of committee.

6. Rejoinder was submitted by the complainant wherein he stated that no complaint was spending with the Wafaqi Mohtasib on the date of filing complaint in the office of FTO. He, however, submitted that a complaint was filed with the Wafaqi Mohtasib, but he was advised to approach the proper forum as Wafaqi Mohtasib had no jurisdiction to entertain complaints pertaining to Revenue Division.

The oral and written submission of both parties, have been considered by FTO. Thus FTO has issued aforementioned findings.

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8. The instant representation has been filed by FBR. The Agency has taken grounds that being aggrieved with the recommendations of the Federal Tax Ombudsman, the petitioner seek for representation before the Honourable President of Islamic Republic of Pakistan for setting aside the findings/recommendations of FTO. The aforesaid recommendations of FTO are contrary to express provisions of Reward Rules, 1984 and 1998 and those of the Establishment of the Office of the FTO Ordinance, 2000 which need to be set aside.

9. The Agency has contended that the findings/recommendations of FTO are against the express provisions of Establishment of the Office of the FTO Ordinance, 2000 having no jurisdiction to investigate or inquire in to the matter of a tax employee concerning matters relating to the Revenue Division in respect of any personal grievance relating to his service. Therefore, due to specific bar of sub-section 3 contained in Section 9 of the FTO Ordinance, 2000, the very assumption of jurisdiction by FTO was illegal, void and without jurisdiction. It is a trite law that exercise of jurisdiction by an authority is a mandatory requirement and its non-fulfillment would entail the entire proceedings to be illegal and coram-non-judice. For reference, relevant provisions of law are reproduced as under:-

“Notwithstanding anything contained in sub-section (1), the Federal Tax Ombudsman shall not accept for investigation any complaint by or on behalf of a tax Employee concerning matters relating to the Revenue Division in respect of any personal grievance relating to his service.”

10. The Agency has pleaded that from bare perusal of above quoted provisions of law, it becomes vivid that the FTO has no jurisdiction to investigate any complaint filed by at ex-employee concerning matters relating to the Revenue Division in respect of any personal grievance relating to his service. Since, the FTO had entertained and decided the matter of reward of the respondent who was an employ of the revenue department i.e. Senior Auditor at that juncture of time therefore, the very assumption of jurisdiction was illegal and unlawful. It is well-settled principle of law that if the Statute enacts that certain action shall be taken in a certain manner and in no other manner, such requirement is absolute and that negate to attend or non-compliance will invalidated the whole proceedings.

11. The Agency has pointed out that since assumption of jurisdiction by the Honourable FTO was an act contrary to Law, as such, all the subsequent order based thereupon are also liable to be set aside as there can be no exception to the principle that order passed or an act done by a Court or a Tribunal or an Authority incompetent to entertain proceedings, in without jurisdiction. Reliance is placed on the judgment of August Supreme Court of Pakistan in case of “Sardar Ahmad Yar Khan Jogezer and 2 other vs. Province of Balochistan through Secretary, C&W Department” reported as (2002 SCMR 122) wherein it was held as under:-

“Where essential feature for assumption of jurisdiction is contravened or forum exercises powers not vested in it, or exceeds authority beyond limits prescribed by law, the judgment is rendered coram-non-judice and inoperative.” That in another case of “Izhar Alam Farooqi, Advocate vs. Sheikh Abdul Sattar Lasi other” reported as (2008 SCMR 240), the Honourable Supreme Court of Pakistan has laid down as under:-

“If a mandatory condition for the exercise of a jurisdiction before Court, Tribunal or Authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any order passed in continuation of these proceedings in appeal or revision equally suffers from illegality and is without jurisdiction.”

12. The Agency has expressed that in recent past, the Honourable Lahore High Court, Lahore in case of “Collector of Sales Tax vs. M/s Khurshid Spinning Mills Ltd. & another” reported as (PTCL 201 CL 73) has held as under:-

“Inherent of statutes or enactments affecting the jurisdiction of a forum. An order passed against a person by any forum against express provisions of law on the subject, if allowed to stay intact, would cause serious prejudice to legal right of citizens.”

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13. The Agency has stated that nevertheless, provisions of sub section 3 of Section 9 of the Ordinance, 2000 starts with a non obstante clause, "Notwithstanding anything contained in sub section (1)". Meaning thereby that sub section 3 has an overriding effect on the other provisions of section 9(1) of the Ordinance, 2000. Non obstante clause is usually used in a provision to indicate that the provision should prevail despite anything to the contrary in the provision mentioned in such non obstante clause.

14. The Agency has requested that in view of above narrated circumstances and facts of the case, it is humbly prayed that the findings / recommendations of the Honourable Federal Tax Ombudsmen in complaint No. FTO-MLN/0000709/16 may very be set aside.

15. On the other hand, the Complainant has filed comments against the instant representation of Agency on 14.4.2017 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

16. After perusal of record and examination of all documents, it has been observed that the Mohtasib has no jurisdiction to investigate any complaint by or on behalf of public service concerning any matter relating to Agency, in which he is or has been working regarding personal grievances of complainant relating to his service. The Supreme Court of Pakistan in various cases has already examined the power/ jurisdiction of the Wafaqi Mohtasib to investigate the complaint relating to service matters and has been pleased to hold as follows:

- 1) In case of PIA reported as 1998 SCMR 841, while examining the jurisdiction of the Wafaqi Mohtasib it has been held that: "A plain reading of Article 9 [of P.O. I of 1983] indicates that barring matters referred to in the proviso to Clause (1) in the said Article, the Mohtasib has been empowered to undertake any investigation into any allegation of maladministration on the part of any "Agency" or any of its officers or employees. Clause (2) in the said Article, however, bars the jurisdiction of the Mohtasib to accept any matter for investigation relating to the "Agency" if a complaint has been by its functionary in respect of a personal grievance relating to his service therein. The said clause being a nonobstante clause stands on a higher pedestal than clause (1). The legislative intent is, therefore, clear that the matters referred to in clause (2) have been excluded from the jurisdiction of the Mohtasib.
- 2) In case of Brig. (R) Zulfiqar Ahmad Khan, [2007 SCMR 1313] it has been held that: "By looking at the very grievance of the respondent, as it has been agitated before the High Court and also before Wafaqi Ombudsman was with regard to the award and non-award of pensionary benefits depending on the conditions as to whether he has completed tenure of 10 years in the civil service which is purely relatable to the terms and conditions of service. By no stretch of imagination, this case could be brought out of the ambit of the terms and conditions of civil servant and in such view of the matter bar contained under Article 212 of the Constitution attracts and the High Court has wrongly assumed the jurisdiction despite the constitutional bar while accepting writ petition of the respondent ... According to Article 9(2) of the P.O. I of 1983, Mohtasib cannot accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matter relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein. In view of this implicit bar that petitioner being a civil servant and the matter relating to the terms and conditions of his service and for the redressal for such grievance a proper forum is available, i.e. Service Tribunal which could, in case the respondent was having a good case on merits, pass an effective order which may be favorable to the respondent, but the respondent instead of adopting a proper legal course, has divulged him-self in the litigation courses which were not available to him under the law ... The Mohtasib has wrongly assumed jurisdiction while entertaining the complaint of the respondent and giving findings on it, which he could not do and when such matter comes before the Court i.e. consideration of the order of Mohtasib, as an ancillary one or incidentally and not under direct challenge, that can very conveniently be ignored i.e. the order being without jurisdiction and without lawful authority."
- 3) In case of PESCO (CP No. 701/2015) it has been held that: It is not possible to mould the term "mal-administration" used Article 9(1) of the Order under a rigid definition. The dictionary meaning of the term 'maladministration' is "to handle a matter inefficiently or improperly". In its wider sense, it refers to


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various types of mal-practices which are opposed to law, fair play and principles of equity and justice. In common parlance, the introduction of the office of the Ombudsman and the conferment of powers upon it through the Order was styled to check administrative excess and abuses of bureaucracy. However these powers, within the Order, are not absolute and are subject to the restrictions contained in Article 9 of the Order. In other words, the Wafaqi Mohtasib can only exercise powers which are not in conflict with the language of Article 9 (1) and (2) of the Order.

17. Islamabad High Court in case of PIA in writ petition No.1156/2015 vide judgment dated 26.02.2016 has also taken the similar view in respect of a complaint before the Wafaqi Mohtasib filed by a former employee of PIA and held that: "In the instant case, it is admitted that the complaint was regarding personal grievance relating to the service of respondent No.2 and was, therefore, barred as provided under Article 9(2) of the Order of 1983. Consequently the impugned order dated 30.08.2013 and the super-structure built thereon were without jurisdiction and lawful authority."

18. In such circumstances, in the service matters, the FTO could not interfere even in the matter of assessment of tax and interpretation of law. Thus FTO having gone beyond the scope and powers, the impugned findings are not sustainable/maintainable in the eyes of law. Consequently, the Agency's representation is liable to be accepted. However, the complainant can seek remedy available to him from the relevant forums under the law, if so advised.

19. Accordingly, the President has been pleased to accept the instant representation of FBR-Agency and to set aside the findings /recommendations of learned FTO.



(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

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The Chairman,
Federal Board of Revenue,
Islamabad.

No.76/FTO/2017 dated 31.05.2017

Copy for information to:

1. Mr. Riaz Ali, House No. 204-C, Mumtazabad, Multan.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file


(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

