

**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. No. D-7176 / 2022**

Date

Order with signature of Judge

**Present: *Mr. Justice Muhammad Junaid Ghaffar***  
***Justice Ms. Sana Akram Minhas***

**Petitioner:** Imran Qadeer,  
Through Mr. Malik Altaf Hussain,  
Advocate.

**Respondent  
No. 1:** Federation of Pakistan,  
Through Mr. Qazi Ayazuddin Qureshi,  
Assistant Attorney General.

**Respondent  
No. 2:** Federal Tax Ombudsman,  
Through Mr. Agha Zafar Ahmed,  
Advocate.

**Respondents  
No. 3 to 5:** M/s Helium (Pvt.) Ltd. & Others  
Nemo for the Respondents.

**Date of hearing:** 12.10.2023.

**Date of Order:** 12.10.2023.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Petition, the Petitioner being aggrieved with order / findings dated 7.7.2022 passed by Respondent No.2 / Federal Tax Ombudsman (“FTO”) has sought the following reliefs: -

- a. Declare that the Impugned Order dated 07-07-2022 issued by the FTO (Respondent No.2) is illegal, arbitrary, without jurisdiction, ultra vires the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000. The Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001 and in violation of Articles 4, 10-A, 9, 18, 19, 19-A read with 25 of the Constitution, 1973 the principle of audi alteram partem.
- b. Set-aside/quash the impugned order dated 07-07-2022 issued by the Respondent No.2.
- c. Grant permanent injunction restraining the Respondents No.1, 2, 4 and 5, their agents, officers and/or assignees from taking any adverse/coercive action against the Petitioner on the basis of the order dated 07-07-2022 issued by the FTO and/or from action upon it.
- d. Grant any other further, better and/or consequential relief that this Honorable Court deems fits in the facts and circumstances of this case.
- e. Grant costs.”

2. Learned Counsel for the Petitioner submits that Respondent No. 2 while passing Order/Recommendations dated 07.07.2022 on the complaint of Respondent No. 3, has recorded some adverse findings against the Petitioner who is working in Federal Board of Revenue ("FBR") as an Additional Commissioner (Audit) and it has been recommended by Respondent No. 2 that the Petitioner is not suitable for any field posting. According to him, this has been done without any notice to the Petitioner nor Respondent No. 2 has any lawful jurisdiction to do so. He has relied upon an unreported Judgment of this Court dated 21.03.2023 passed in **C. P. No. D-4079, D-4212, D-4341, D-4353 & D-4377 of 2021 (Shakeel Ahmed Kasana & Others Vs. Federal Tax Ombudsman & Others)** and Islamabad High Court Judgment dated 07.03.2022 in **Writ Petition No. 2332 of 2021 (Abdul Waheed Khan, Commissioner Inland Revenue & Others Vs. Federal Tax Ombudsman and another)** as well as Judgment dated 19.09.2022 in **Intra Court Appeal No. 2230/2022 in W.P. No. 2332/2021 (Waheed Shahzad Butt Vs. Abdul Waheed Khan and others)**.

3. On the other hand, learned Counsel appearing for Respondent No. 2 has contended that in terms of Sections 9, 10 (4), 13 and 14 (6), (7) & (8) of the Federal Tax Ombudsman, Ordinance, 2000 ("FTO Ordinance") read with Section 15 of Federal Ombudsman Institutional Reforms Act, 2013, ("2013 Act") it is within the ambit and jurisdiction of Respondent No. 2 to make any recommendations against an officer of FBR. He has further contended that Respondent No. 2 can even take Suo Motu Notice of any misconduct and recommend disciplinary proceedings, and therefore, the impugned action was justified in law and the petition does not merit any consideration. None of the other Respondents including DAG's office have made any submissions to defend the impugned action.

4. We have heard both the learned Counsel and perused the record. It appears that Respondent No. 3 had approached Respondent No. 2 in terms of Section 10(1) of the FTO Ordinance by way of Complaint Nos. 2097 & 2099/KHI/IT/2022 dated 31.05.2022 and alleged maladministration against FBR on the ground that some

refunds as due were not paid. It further appears that while deciding the complaint of Respondent No 3 certain findings have been recorded by Respondent No. 2 in Para 5 and 6 which are relevant for the present purposes and reads as under:-

“5. (1) The Instant complaint is a classic case of maladministration caused through inefficiency and red tapism in the department. **Additional Commissioner Audit is a senior officer of Grade 19, with more than 10-15 years of service. His lack of knowledge regarding processing of orders in IRIS is extremely shocking, passing of orders under Section 122(5A) and ensuing rectification & appeal effect orders is his core job responsibility. Anyone who is not conversant with the process of his core job responsibility is not fit enough to hold that position.** Alternatively if the order is deliberately left incomplete with the intention of non-creation of due refund on the basis of credit already allowed after due verification in order under Section 122(5A), the maladministration is evident.”

“6. **FBR to direct:-**

- (i) Commissioner-IR, Audit Zone-III GTO Karachi to Incorporate computation of tax in appeal effect order
- (ii) Commissioner-IR Enforcement-11 CTO Karachi to dispose of complainant's refund applications as per law and after giving opportunity of hearing.
- (iii) Commissioner-IR Enforcement-II CTO Karachi to grant compensation for delayed refund as per law from the date of appeal order.
- (iv) **Chief Commissioner-IR CTO Karachi to look into the conduct of Additional Commissioner Audit, from the perspective of his suitability for field posting;** and
- (v) report compliance within 30 days”

5. From perusal of the aforesaid decision of Respondent No. 2, it appears that a definite finding has been recorded against the present Petitioner that despite being a senior officer of Grade 19, with more than 10-15 years of service, his lack of knowledge regarding processing of orders in IRIS is extremely shocking, whereas, passing of orders under Section 122(5A) of the Income Tax Ordinance, 2001, and ensuing rectification & appeal effect orders is his core job responsibility and anyone who is not conversant with the process of his core job responsibility is not fit enough to hold that position. And thereafter, he has recommended and asked the Chief Commissioner-IR CTO Karachi to look into the Petitioner's conduct, from the perspective of his suitability for field posting. It further appears that pursuant to such findings a notice of explanation was issued to FBR on 15.08.2022 who in turn sought a reply from the present Petitioner who was then compelled to approach this Court as adverse orders had been passed against him. The primary grievance of the Petitioner is

that he was condemned unheard, whereas, to his extent FBR never assisted Respondent No.2 in an appropriate manner.

6. Before dilating upon the merits of the aforesaid findings, it may be of relevance to note that admittedly, while deciding the complaint and recording adverse observations against the Petitioner, he was never ever confronted with any notice or summons for explanation in any manner. This fact while confronted has been admitted by the learned Counsel appearing for Respondent No. 2. Insofar as the present Petitioner is concerned, during pendency of the Complaint, he has informed the concerned Chief Commissioner Inland Revenue, that since after passing of the Appellate order and annulment of the amended assessment order in favor of Respondent No.3, the position of original deemed assessment order stood restored; hence, it was neither required to insert any computation of new income; nor it was to be done by him. This reply of the Petitioner is though a matter of record before us, but nonetheless, it is not part of the impugned order; nor admittedly, the present Petitioner was ever directly issued any notice by Respondent No.2. Per settled law, before taking any adverse action against any person especially in respect of service matters, it is mandatory that a notice shall be issued to that person before initiation of any adverse action. Learned Counsel for Respondent No. 2 though admitted that no notice was issued but has argued that in terms of Section 15 of the 2013 Act, read with Sections 9, 10 (4), 13 and 14 (6), (7) & (8) of the FTO Ordinance, the office of Respondent No. 2 is authorized to initiate any action against any person involved in maladministration. It would be advantageous to refer to these provision which reads as under:-

**“Federal Ombudsman Institutional Reforms Act, 2013”**

“15. **Personal hearing.** --- It shall not be necessary for the President or the Ombudsman to give personal hearing to the parties and the matter may be decided on the basis of available record and written comments filed by the Agency.”

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**“FTO Ordinance, 2000”**

**“9. Jurisdiction, functions and powers of the Federal Tax Ombudsman.-** (1) Subject to sub-section (2), the Federal Tax Ombudsman may on a complaint by any aggrieved person, or on a reference by the President, the Senate or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, investigate any allegation of maladministration on the part of the Revenue Division or any Tax Employee.

(2) The Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which-

- (a) are subjudice before a court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint, reference or motion by him; or
- (b) relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation.

(3) 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.

(4) For carrying out the objectives of this Ordinance and, in particular for ascertaining the causes of corrupt practices and injustice, the Federal Tax Ombudsman may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(5) The Federal Tax Ombudsman may set up regional Offices as, when and where required.”

**“10. Procedure and evidence. - (1) -----**

(2) -----

(3) -----

(4) When the Federal Tax Ombudsman proposes to conduct an investigation he shall issue to the Secretary of the Revenue Division, and to the person who is alleged in the complaint to have taken or authorized the action complained of, a notice calling upon him to reply to the allegations contained in the complaint:

Provided that the Federal Tax Ombudsman may proceed with the investigation if no response to the notice is received by him from the Secretary or other person within thirty days of the receipt of the notice or within such longer period as may be allowed by the Federal Tax Ombudsman, for sufficient cause to be recorded.”

**“13. Reference by Federal Tax Ombudsman.-** Where, during or after an investigation, the Federal Tax Ombudsman is satisfied that any person is guilty of any allegations as referred to in sub-section (1) of section 9, the Federal Tax Ombudsman may refer the case to the Revenue Division for appropriate corrective or disciplinary action, or both corrective and disciplinary action, and the Revenue Division shall inform the Federal Tax Ombudsman within thirty days of the receipt of reference of the action taken. If no information is received within this period, the Federal Tax Ombudsman may bring the matter to the notice of the 10 President for such action as he may deem fit, besides action for contempt under section 16 hereof.”

**14. Powers of the Federal Tax Ombudsman.- (1) -----**

(2) -----

(3) -----

(4) -----

(5) -----

(6) If the Federal Tax Ombudsman has reason to believe that any Tax Employee has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by the Federal Tax Ombudsman.

(7) The Staff Members and nominees of the Office may be commissioned by the Federal Tax Ombudsman to administer oaths for the purposes of this Ordinance and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under the Ordinance without proof of the signature or seal or official character of such person.

(8) The Federal Tax Ombudsman shall have the power to review any finding communicated or recommendation made or any order passed by him."

7. First we would like to discuss the implication of Section 15 of the 2013 Act, on which much stress was laid by the learned Counsel for Respondent No. 2. From perusal of this provision though it appears that it is not necessary for an Ombudsman to give personal hearing to the *parties* and the matter may be decided on the basis of *available record* and *written comments* filed by the Agency. Now the word *parties* or *party* has not been defined in the 2013 Act; nor in the FTO Ordinance; however, one can easily draw an inference that it is referring to the **Complainant** before the Ombudsman, the other party being the Agency is the Revenue Division as defined in Section 2(7) of the Ordinance. Secondly, section 15 *ibid* further provides that in case no personal hearing is being provided, the matter can be decided on the basis of *written comments*, and a natural corollary would be that these comments would be coming from the Agency and no one else. The Petitioner before us is neither a Complainant; nor an Agency; hence, this provision would neither apply nor any protection can be claimed thereof while taking an adverse action against the Petitioner; nor even any recommendation for that matter. Moreover, for calling comments it would be mandatory to issue a notice to the Agency, whereas, in this matter, even if it is presumed that the Petitioner being an employee was by himself an Agency, even then he was never ever asked to file any comments by the FTO's office. It is a matter of commonsense that even for calling comments, it would be mandatory to issue notice to the Agency, and only then the requirement of dispensing with any personal hearing could be made. Lastly, if an Ombudsman intends to invoke the provision of Section 15 of the 2013, Act, he is, at least, required to pass an order for exercising such powers under Section 15 *ibid*, as this provision is an exception and not a rule for all cases. He must record his reasons to invoke this provision, which reasons must be based on fair and judicial exercise of discretion, whereas, it is not that in every run of a mill case this

provision can be invoked to the detriment of any person. Therefore, any protection so claimed on behalf of Respondent No.2 under s.15 ibid is of no help, and is not attracted in the facts and circumstances of this case.

8. Coming to the FTO Ordinance itself, it can be seen from perusal of Section 10(4) ibid that when the FTO proposes to conduct an investigation he is required to issue notice to the Secretary of the Revenue Division, and to the person who is alleged in the complaint to have taken or authorized the action complained of, calling upon him to reply to the allegations contained in the complaint: It is abundantly clear that a notice has to be issued to both i.e. Revenue Division as well as the person against whom the complaint has been filed. It has been admitted before us during arguments by the learned Counsel for Respondent No.2, that no notice whatsoever was issued to the Petitioner. In that case, we are at a loss to understand as to how the impugned action can be defended under the garb of Section 15 of the 2013 Act, or for that matter, under section 14(6) of the Ordinance, which only empowers Respondent No.2 to make a recommendation against an employee; but such recommendation, in no circumstances can be made without a prior notice to the said person.

9. Having said that, and coming to the above conclusion, in the alternative, even if it appears that there are certain provisions in the FTO Ordinance or for that matter under any other law, which empowers the FTO to initiate any proceedings and action against any person, without notice; but when looked into on the touchstone of Article 10(A)<sup>1</sup> of the Constitution of Islamic Republic of Pakistan, 1973, it appears that such an action cannot be sustained by the Courts. At least not in the manner as has been done by the Respondent No. 2 in this case. We may observe that though the vires of the provisions so relied upon by the learned Counsel for Respondent No.2 vis-à-vis. Article 10(A) of the Constitution are not under challenge before us; however, the Hon'ble Supreme Court in the case of **Mrs. Anisa**

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<sup>1</sup> 10A-For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

**Rehman**<sup>2</sup> way back in the year 1994 (even before insertion of Article 10-A in the Constitution) has been pleased to hold that the maxim "Audi Alteram Partem" is applicable to judicial as well as to non-judicial proceedings and has to be read into every statute as its part if right of hearing has not been expressly provided therein, whereas, violation of the maxim could be equated with the violation of a provision of law warranting pressing into service the Constitutional jurisdiction of the Court. Therefore, the entire exercise carried out by Respondent No. 2 against the Petitioner, whereby, his service record has been tarnished and adverse findings have been recorded without any memo of explanation or at least a notice cannot be sustained under any circumstances, notwithstanding the provisions of the Ordinance and law as noted hereinabove. In fact, the Respondent No.2, speaking through his Adviser (as noted from the impugned order) has even failed to consider the reply forwarded by the Petitioner to the Agency for onward submission of comments to the office of Respondent No.2. This is a glaring exercise of misuse of powers and authority on the part of Respondent No.2 which cannot be overlooked by this Court while exercising its jurisdiction under Article 199 of the Constitution, which requires this Court to correct such brazenly obvious and notable wrongs committed by the authorities below.

10. A learned Single Judge of the Islamabad High Court in the case of **Abdul Waheed Khan**<sup>3</sup> (maintained in Intra Court Appeal) while dealing with somewhat similar facts, whereby the FTO had passed an order of inspection of the offices of various Commissioners of Inland Revenue without any notice or explanation has been pleased to hold that notwithstanding various powers so conferred upon the office of the FTO in terms of Section 9(1) of the Ordinance, he is required to issue a notice to the Secretary Division and the official who is alleged to have indulged in maladministration, requiring such official to file a reply to the allegations to be investigated by the FTO and if he fails to comply with any such directions then FTO can proceed further<sup>4</sup>. Similarly, in

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<sup>2</sup> **Mrs. Anisa Rehman v PIAC (1994 SCMR 2232)**

<sup>3</sup> Maintained vide order dated 19.09.2022 in Intra Court Appeal No. 2230/2022 (Waheed Shahzad Butt Vs. Abdul Waheed Khan and others).

<sup>4</sup> Para 12 thereof.



the case of **Syed Nusrat Nasir**<sup>5</sup>, a learned Division Bench of this Court while interpreting Section 10(4) of the Ordinance, in somewhat similar circumstances, (wherein, the FTO while hearing a complaint of maladministration and without issuing any notice to the officer concerned, recommended that an action be taken under Removal from Service Ordinance, 2000, against an Additional Collector for having passed an erroneous order while adjudicating a matter), has held that such an act of the FTO cannot be sustained in law. The Court at Para 11 held as under;

11. From perusal of hereinabove provisions, it is clear that even if it is presumed that through impugned order the learned Federal Tax Ombudsman wanted to assume jurisdiction against the petitioner on his own motion (though in the absence of any complaint of maladministration against the petitioner) he was required to conduct an investigation and to issue a notice to the petitioner calling upon him to reply to the allegations whereafter the petitioner was entitled to appear in person or through a representative before the Federal Tax Ombudsman to rebut the allegations and further to explain his position with regard to allegations against him. Admittedly, no notice was issued to the petitioner nor any opportunity was provided to him before making the impugned recommendations against the petitioner in the instant case, which is not only the violation of the legal procedure provided under the Federal Tax Ombudsman Ordinance, 2000, but also negates the principles of Natural justice, which entitles a person for a fair trial and a reasonable opportunity of being heard. The decision and recommendations against the petitioner under the circumstances are liable to be set aside on this account also.

11. It appears to be a matter of record that time and again the Courts have interpreted the law including the FTO Ordinance, as well as the jurisdiction which can and cannot be exercised by FTO; and notwithstanding these judgments, the FTO is passing somewhat similar orders by completely ignoring the dictum laid down by the Courts. Such an act of his office, on the face of it appears to be contemptuous and against the law settled by the Courts. This tendency of his office has to be looked into as time and again the judgments of the Constitutional Courts are being disobeyed as if they are worthless piece of papers for him. It is high time that the office of FTO realizes its domain and jurisdiction while dealing with Complaints and shall not become the supervisory body or authority of all the employees of FBR as they are to be dealt with strictly in accordance with the Civil Servants Act, 1973 and the Rules framed thereunder. Per settled law, once the Ordinance or any law has been interpreted by a Constitutional Court, then the

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<sup>5</sup> Syed Nusrat Nasir v Federation of Pakistan (2013 PTD 486)

office of Ombudsman is bound to accept the same and cannot be said to be aggrieved of, if the powers to redress mal-administration vested in him under the law are modified (enhanced or curtailed) through interpretation of Constitutional Court, whereas, even the Ombudsman has no locus standi to challenge an order passed by the Constitutional Court that interprets its jurisdiction or powers under the law<sup>6</sup>. Lastly, it is also settled law that the act(s) and functions, i.e. (passing of Orders) by the Officers of FBR while performing Quasi-Judicial functions under the Tax Laws, are not always subject to an administrative control of FBR so as to bring disciplinary proceedings against such Officers for passing orders while performing such functions<sup>7</sup>.

12. In view of the above, in our considered opinion the conduct of Respondent No. 2 whereby, adverse findings have been recorded against the Petitioner while deciding a complaint of a taxpayer cannot be sustained as it was done without any notice and without following the principles of natural justice. Moreover, such an act is also in violation of the judgment(s) of the Constitutional Courts as above and therefore, the impugned order amounts to violating such judgments. However, for the present purposes, showing restraint we have decided not to initiate any proceedings against the office of Respondent No. 2 and leave it open to be taken up in an appropriate case as and when brought before this Court.

13. Accordingly, the impugned order and all subsequent actions so initiated could not be sustained and therefore, by means of a short order dated 12.10.2023, this petition was allowed by setting aside the findings of Respondent No. 2 at Para 5 and 6(iv) and these are the reasons thereof.

**J U D G E**

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<sup>6</sup> WAFaqI MOHTASIB SECRETARIAT V SNGPL (PLD 2020 SC 586)

<sup>7</sup> M.A.Rahman v Federation of Pakistan (1988 SCMR 691)

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