

**PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR**

No.41/BM/2022

Dt: 26.12.2022

Mr. Muhammad Ali Vs Allied Bank Ltd

Subject: REPRESENTATION FILED BY MR. MUHAMMAD ALI AGAINST THE REVIEW ORDER OF THE LEARNED BANKING MOHTASIB DATED 15.11.2021 IN COMPLAINT NO. 2019-1725

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

This representation has been filed by Mr. Muhammad Ali on 30.12.2021 against the Order-in-Review of the learned Banking Mohtasib dated 15.11.2021, whereby it has been held that:

“After hearing the parties in length, it is observed that complainant/petitioner has failed to bring any plausible material on record to review the order passed by this forum on 27.10.2020, therefore, the instant review petition is not tenable as per Law.

In view of my above observations, I under the powers vested in me vide Section 82D of the BCO,1962 read with Section 9 of the Federal Ombudsmen Institutional Reforms Act, 2013, decline the petition.”

2. The learned Banking Mohtasib vide Order-in-Original dated 27.10.2020 observed as under:

“The Banking Mohtasib Pakistan is not empowered by law to call the outside witnesses. Power to call outside witnesses rests with the Civil Court. You may therefore institute proceedings before Court of competent jurisdiction, if so advised.

In view of above, the Banking Mohtasib Pakistan has directed to close the case and convey to you accordingly.”

3. Mr. Muhammad Ali (the complainant) stated that he placed a sum of PKR.21,250,000/- in Term Deposit on 09.04.2015 and a receipt bearing No. MM1627700165 was issued for one year. However, on 04-10-2016 he again invested the funds vide TDR bearing No. MM1728200021 for further one year till 09-10-2017. He alleged that Mr. Shahid Maqbool Mirza, Manager of the Branch obtained a blank cheque from him stating that it was a requirement for issuance of the Term Deposit Placement. He therefore handed over a blank cheque to the Manager and on maturity i.e. 09.10.2018, funds of PKR 21,250,000/- placed in the Term Deposit were transferred to his account. Later, he personally visited Bank on October 25, 2018 with intention to reinvest the funds for better returns and invested the amount in the Actively Managed Certificates (AMC) and that time as well he handed over a blank cheque to the Manager who himself filled in the amount and delivered him Certificates (AMC). In Feb, 2019, when his profit was not credited in his account, he visited the Bank and then it emerged that last time the Manager did not invest his money and issued him a fake Investment Certificates. Besides, the Manager illegally and unlawfully withdrew the funds through the same blank cheque which was earlier handed over to the Manager being a basic requirement for investment of funds as demanded by the Manager. Although, he lodged a complaint with the Bank but the issue remained unresolved. Thus, he escalated his complaint with the learned Banking Mohtasib for refunding of his amount defrauded by the Manager of the Bank.

4. The Bank's stance before the learned Banking Mohtasib was as follows:

- That their Audit Team reviewed his statement of account and noted that an amount of PKR. 21,250,000/- was credited into his account on 09.10.2018 on maturity of his TDR.
- On 25-10-2018, his account was debited from ABL's Wandala Road (0601) Lahore Branch for PKR. 21,250,000/- vide cheque # 31469019 for online funds transfer transaction.

- The Cheque was drawn in favour of “Three Lions Traders” and the amount was transferred to their account # 0010045420230039 maintained at the same Branch i.e. Wandala Road. Lahore through Deposit Slip # 3124605 signed by Mr. Adil Mehmood Rana, the sole proprietor of the said concern.
- It is observed that on 25.10.2018, M/s Three Lion Traders (Mr. Adil Mehmood Rana) further transferred amount aggregating RKR 16.000 (M) through two Demand Drafts in the account of Mr. Sher Zaman in the Wandala Road Branch Lahore. Similarly, on 26.10.2018, a further amount aggregating RKR 3.000 (M) was credited in the account of Mr. Muhammad Nafees Hameed maintained with the Shahdarah Branch.

5. The learned Banking Mohtasib proceeded to rejected the petitions. Hence, the representation by the complainant.

6. The hearing of the case was fixed for 11.10.2022 and 13.12.2022. Mr. Muhammad Ali complainant alongwith Syed Sajid Ali Bukhari have appeared, whereas, no representative of the Bank has appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

7. It is established on record that Mr. Shahid Maqbool Mirza, Ex-Branch Manager alongwith others had committed a mega fraud in the Bank in 2019 and an FIR was registered with the FIA Lahore on 06.02.2019. Consequently, the Bank received 33 claims of the accountholders. As per FIR, the complainant’s name is at Serial No.20 of the affectees having claim of Rs.21,250,000/-. The accused was challaned accordingly. Later on, the accused Shahid Maqbool Mirza made a settlement with the Bank by transferring his landed property in favour of the Bank and also paid Rs.186 million to refund the amount to the victims as well as other liabilities if subsequently established. Thus, on the basis of the said settlement, the learned Banking Court granted bail to the accused on 04-02-2020. Surprisingly, the learned Banking Mohtasib closed the matter vide Order-in-Original dated 27-10-2020 by observing, inter alia, as follows:”

“Upon perusal of all the documents and record presented by both the parties, it is observed that Mr. Shahid Maqbool Mirza, Manager has played pivotal role in whole episode and therefore recording of his statement about consideration against which your cheque was passed and paid and amount was credited into the account of “Three Lions Traders Lion Traders’ essential. Similarly, evidence of Mr. Adil Maqbool Rana’ proprietor of “Three Lion Traders’ is also very important. Besides, funds were also transferred in the accounts of Mr. Sher Zaman and Mr. Muhammad Nafees Hameed maintaining accounts both in ABL Wandala Road Branch Lahore and ABL Shandarah Branches and their statements and evidences regarding consideration of these funds are also required. In order to record evidences of above witnesses for verification of various questions of facts the office of the Banking Mohtasib for want of jurisdiction cannot summon them for the purpose highlighted above.

The Banking Mohtasib Pakistan is not empowered by law to call the outside witnesses. Power to call outside witnesses rests with the Civil Court. You may therefore institute proceedings before Court of competent jurisdiction, if so advised.

In view of above, the Banking Mohtasib Pakistan has directed to close the case and convey to you accordingly.”

While processing the Review Petition, the learned Banking Mohtasib has acknowledged vide para 7 as follows:-

“The learned Advocate of the complainant/petitioner stated that fact came to the knowledge of petitioner that many other account holders were also defrauded by the Ex-Branch Manager Shahid Maqbool Mirza. Bank has admitted that the said BM has committed fraud with the various customers of the Bank and they have filed complaint with FIA. The FIA has challaned the accused including 10 other Bank officials and 4 other persons; therefore, the review petition may be accepted and Bank be directed to refund the amount of PKR 21,250,000/- which was misappropriated by the Bank Manager. In support of his arguments has cited orders/decision of the various cases decided by the courts, (PLD 2018 LHR 322, 2004 CLD 1640, 2006 CLD 1011, 1989 CLC 1789, 2011 SCMR 837, 2016 SCMP 274, 2020 SCMR 214).”

However, the subsequent Review Petition was also rejected vide order dated 15.11.2021 as follows:-

“After hearing the parties in length, it is observed that complainant/petitioner has failed to bring any plausible material on record to review the order passed by this forum on 27.10.2020, therefore, the instant review petition is not tenable as per Law.

In view of my above observations, I under the powers vested in me vide Section 82D of the BCO,1962 read with Section 9 of the Federal Ombudsmen Institutional Reforms Act, 2013, decline the petition.”

8. Needless to mention that the complainant was fatally injured by the decoits. Resultantly, he became permanently disabled and was unable to earn his livelihood. Thus, he sold all his property /business and deposited the said amount in the TDRs for regular income enabling him to meet his medical and household expenses. Statedly, he has no other source of income and is totally dependent on the TDRs profit. However, due to this fraud, he has become destitute unable even to meet his most essential expenses. His case deserved to be inquired passionately keeping in view his peculiar circumstances but unfortunately it was dealt with in a most casual manner.

9. It may be appreciated that in order to record the conclusion as to any maladministration, the learned Banking Mohtasib is vested with vast powers to investigate the matter. Instead of relegating a party to other forum, it could hold inquiry to decide the complaint. It cannot be lost sight that the Manager of the Bank who defrauded many others was the employee of the Bank management and the Bank is responsible for his deeds and misdeeds. It is thus a fit case to be investigated by the learned Banking Mohtasib by himself in terms of powers vested in him by law i.e. S.82-A, 82-B, 82-D to 82-F of the Ordinance. Hence, the complaint needs to be decided in accordance with law after giving due opportunity of hearing to the parties. The closure of the complaint, thus, is liable to be set aside/reversed.

10. As per law, this forum which partakes an appellate authority as held in Tariq Pirzada case (1999 SCMR 2189) can, on consideration of the matter, relevant material, confirm, set aside, vary or modify the decision/order. In the circumstances, it is just and fair to dispose of the representation of the complainant with the modification as indicated at para-9 above.

11. Accordingly, the Hon’ble President, as per his decision above, has been pleased to dispose of the representation, set aside the closure findings with the direction to the learned Banking Mohtasib to process, enquire and deal with the complaint of the petitioner in accordance with law after affording opportunity of hearing to the parties.

-Sd/-
(Muhammad Saleem)
Director (Legal)

The President/Chief Executive,
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Copy for information to:

- (1) Ms. Samreen Tanveer, PSO to Banking Mohtasib Pakistan, Banking Mohtasib Pakistan Secretariat, 5th Floor Shaheen Complex, M.R. Kiyani Road, Karachi.
- (2) Master file.

-Sd/-
(Muhammad Saleem)
Director (Legal)

