ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

I.C.A. No.148 of 2016
Muhammad Shafi Khan
Versus
The Pakistan International Airlines Corporation (PIAC), etc.

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.05.2017	**Mr. Rashid Mehmood Ansari, Advocate for the appellant,** **Mr. Muhammad Umar Khan Verdag, Advocate for respondent No.1,** **Ch. Abdul Khaliq, learned A.A-G.**

Through the instant intra court appeal, the appellant, Muhammad Shafi Khan, impugns the judgment dated 26.02.2016, passed by the learned Judge in-Chambers, whereby W.P. No.1156/2015 instituted by respondent No.1 (Pakistan International Airlines Corporation), was allowed. In the said writ petition, respondent No.1 had challenged orders dated 30.08.2013 and 03.12.2014, passed by the Wafaqi Mohtasib and the President of Pakistan, respectively.

2. Learned counsel for the appellant submitted that the appellant retired on 10.09.2006 as Country Manager while serving respondent No.1 at Oslo (Norway); that while serving in Oslo, the appellant had been paying house rent from his own pocket from 05.05.2004 to 31.12.2005; that respondent No.1 had approved an increase in amount equivalent to Rs.160,000/- as house rent for the appellant, but the said amount was not remitted until January 2006; that the appellant had also sought a reimbursement of an amount equivalent to Rs.4,000/- as foreign earned

leave; that as the said amounts were not paid to the appellant, the appellant submitted a complaint against respondent No.1 to the Wafaqi Mohtasib; that on 30.08.2013, the Wafaqi Mohtasib gave findings in the appellant's favour and recommended that respondent No.1 should reimburse the appellant the approved rental ceiling for the period between 05.05.2004 to 31.12.2005 as well as the amount spent by the appellant during his approved earned leave while posted at Oslo; that respondent No.1's representation to the President of Pakistan against the said findings/recommendations of the Wafaqi Mohtasib, were turned down on 03.12.2014; that against the said findings, respondent No.1 filed W.P. No.1156/2015 before this Court, which petition was allowed vide judgment dated 26.02.2016; that the said order is not in accordance with the law; and that the grievance raised by the appellant before the Wafaqi Mohtasib came within the jurisdiction of the Wafaqi Mohtasib. Learned counsel placed reliance on the law laid down in the case of Peshawar Electric Supply Company Ltd. Vs. Wafaqi Mohtasib (Ombudsman) Islamabad (PLD 2016 SC 940) in support of his contention that the High Court can entertain a constitutional petition against an order of the Wafaqi Mohtasib, if the appellant satisfies the Court that the order of the Wafaqi Mohtasib is without jurisdiction. Learned counsel for the appellant prayed for the impugned judgment dated 26.02.2016 to be set aside.

3. On the other hand, learned counsel for respondent No.1 submitted that the appellant's intra court appeal was not maintainable; that

the said appeal is barred under the *proviso* to Section 3(2) of the Law Reforms Ordinance, 1972; that the applicable law to the proceedings with respect to which the writ petition was filed by the appellant was the "Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O.No.1 of 1983)"; that the said law provided for a right of review; and that since the said law provided for review, the instant intra court appeal was not maintainable. Learned counsel for respondent No.1 prayed for the intra court appeal to be dismissed.

4. In rebuttal, learned counsel for the appellant submitted that since the original findings/recommendations of Wafaqi Mohtasib were in the appellant's favour, there was no reason for the appellant to have filed a review petition.

5. We have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

6. Since an objection to the maintainability of this appeal has been raised by the learned counsel for respondent No.1, we consider it unnecessary to go into the merits of the case before deciding the question of the maintainability of this appeal. It is not disputed that a complaint was filed by the appellant before the office of the Wafaqi Mohtasib in terms of Section 9 of P.O.No.1 of 1983. The Federal Ombudsman Institutional Reforms Act, 2013 ("Act No.XIV of 2013") was enacted on 20.03.2013. This statute was admittedly enacted before the Wafaqi Mohtasib decided the appellant's complaint on 30.08.2013. In the case of Basai Vs. Qaim Ali and others (PLD 2003

Supreme Court 325), it has *inter-alia* been held that intra court appeal is competent only in a case in which the statutory remedy of appeal etc is not available at the time of the passing of the original order in the proceedings.

7. Act XIV of 2013 was enacted to make institutional reforms for Standardizing and Harmonizing the law relating to the institution of Wafaqi Mohtasib and matters ancillary and akin thereto. One of the purposes of Act XIV of 2013 was to enhance effectiveness of the office of the Wafaqi Mohtasib so as to provide speedy and expeditious relief to citizens by redressing their grievances and to promote good governance. Section 13 of the Act XIV of 2013 is reproduced herein below:-

> *"13. Review.-----(1) The Ombudsman shall have the power to review any findings, recommendations, order or decision on a review petition made by an aggrieved party within thirty days of the findings, recommendations, order of decision.*
> *(2). The Ombudsman shall decide the review petition within forty five days.*
> *(3). In review, the Ombudsman may alter, modify, amend or recall the recommendation, order or decision."*

8. The provisions of Act XIV of 2013 are supplementary and in addition to P.O. No.1 of 1983. Section 24 of Act XIV of 2013 provides that the provisions of Act XIV of 2013 shall have effect not withstanding anything in any other law for the time being in force. Furthermore, it is provided that in case there is a conflict between the provision of Act XIV of 2013 and the "relevant legislation", the provisions of Act XIV of 2013 to the extent of inconsistency, shall prevail. Section 2(c) of Act XIV of 2013 defines "relevant legislation" as P.O. No.1 of 1983 in addition to other statutes. Therefore, since the

remedy of review was available in the law which was applicable to the proceedings before the Wafaqi Mohtasib, the instant appeal is not maintainable.

9. Having held that this appeal is not maintainable, we do not deem it appropriate to go into the merits of the appellant's case against respondent No.1.

10. In view of the above, the instant appeal is dismissed as not maintainable. There shall be no order as to costs.

(AAMER FAROOQ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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