

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.912 of 2021

Kinza Anwar

Versus

Office of the Ombudsman for Protection against Harassment of Women
at the Workplace through its Registrar and others

Date of Hearing:	08.02.2022
Petitioner by:	Rana Abid Nazir Khan, Advocate
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General, Ms. Aaliya Zareen Abbasi, Advocate for respondent No.2/accused, Barrister Junaid Zamurrad Khan, Advocate for respondent No.3/NEPRA.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, who is serving as Office Assistant (Human Resource) in the National Electric Power Regulatory Authority (“N.E.P.R.A.”), impugns the order dated 10.02.2020 passed by the Office of the Ombudsman for Protection against Harassment of Women at the Workplace (“Ombudsman”) setting aside the NEPRA’s decision dated 03.06.2019, whereby major penalty of reduction to a lower post from Director to Deputy Director was imposed on respondent No.2 (Ahmad Nadeem). The said penalty was imposed on the recommendations of the Inquiry Committee constituted pursuant to Section 3 of the Protection against Harassment of Women at the Workplace Act, 2010 (“the 2010 Act”). The said committee had inquired into the complaint submitted by the petitioner alleging therein that respondent No.2 had committed “harassment” as defined in Section 2(h) of the 2010 Act.

2. N.E.P.R.A.’s decision dated 03.06.2019 was set-aside by the Ombudsman primarily on the ground that the members of the Inquiry Committee lower in rank to respondent No.2 could not have conducted an inquiry against him. Furthermore, the Ombudsman decided to itself conduct a fresh inquiry in the matter.

3. The facts essential for the disposal of the instant petition are that vide Office Order dated 19.07.2013, a three-member inquiry

committee (**“the Committee”**) had been constituted in N.E.P.R.A. under Section 3(1) of the 2010 Act, which requires every organization (as defined in Section 2(l) of the said Act) to constitute an inquiry committee to inquire into complaints under the said Act.

4. On 26.03.2019, the petitioner submitted a complaint to the Assistant Director (Human Resource), N.E.P.R.A. against respondent No.2 alleging therein that the latter had harassed her. It is not necessary to go into the details of the allegations levelled by the petitioner in her complaint against respondent No.2. The Assistant Director (Human Resource), after expressing his views on the said complaint, forwarded the same before the Director General (Human Resource and Administration). Vide office order dated 04.04.2019, respondent No.2 was suspended pending an inquiry against him under the provisions of the 2010 Act.

5. The petitioner’s complaint against respondent No.2 was submitted before the Committee on 01.04.2019. The Committee framed the allegations against respondent No.2 and required him to submit his statement in defense. The Committee interviewed other employees of N.E.P.R.A.; recorded the statements of the petitioner and respondent No.2; and examined the CCTV footage, call data record and the biometric record. After affording an opportunity of a hearing to the petitioner and respondent No.2, the Committee compiled a report wherein it was concluded that respondent No.2’s behavior with the petitioner was sexually demeaning and that he had committed harassment as defined in Section 2(h) of the 2010 Act. The Committee recommended the imposition of the major penalty of reduction to a lower post from Director to Deputy Director on respondent No.2.

6. On the basis of the Committee’s recommendations, the penalty of reduction to the lower post from Director to Deputy Director was imposed on respondent No.2 vide N.E.P.R.A.’s office order dated 03.06.2019.

7. Respondent No.2 preferred an appeal under Section 6 of the 2010 Act against the imposition of the penalty on him before the Ombudsman. One of the grounds taken in the said appeal was that the

inquiry against respondent No.2 had been conducted by officers lower to him in rank. Respondent No.2 had been serving in pay grade-IV whereas one member of the inquiry committee was in pay grade-II and another member was in pay grade-I. According to respondent No.2, an inquiry conducted by officers lower in rank to him was a *“glaring error apparent on the surface of record grossly discouraged by law.”*

8. Vide order dated 10.02.2020, the Ombudsman, after making reference to Section 3(2) of the 2010 Act, held that the inquiry conducted by officers lower in rank to respondent No.2 *“violate[d] the law”* which could not be ignored. The Ombudsman set-aside the recommendations of the Committee as well as N.E.P.R.A.’s decision dated 03.06.2019. Furthermore, the Ombudsman decided to itself conduct a fresh inquiry in the matter and both parties were directed to appear before the Ombudsman on 24.02.2020. The said order dated 10.02.2020 has been assailed by the petitioner in the instant writ petition.

9. It may be mentioned that N.E.P.R.A. filed a review application under Section 13 of the Federal Ombudsmen Institutional Reforms Act, 2013 (*“the 2013 Act”*) before the Ombudsman against the said order dated 10.02.2020. The said review application was dismissed by the Ombudsman vide order dated 24.11.2020. N.E.P.R.A. filed a representation to the President of Pakistan against the said order dated 24.11.2020, which was turned down vide order dated 02.02.2021. The said order dated 02.02.2021 has been assailed by N.E.P.R.A. before this Court in writ petition No.1083/2021.

10. Rana Abid Nazir Khan, Advocate, learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner had been subjected to harassment by respondent No.2; that respondent No.2 was one of the officers in N.E.P.R.A. who had accorded approval to the constitution of the Committee in the year 2013; that the inquiry proceedings conducted by the Committee did not suffer from any jurisdictional irregularity or impropriety; that the recommendations of the Committee are supported by strong reasons and based on cogent

evidence; that harassment of a female employee by a senior official in an organization is a serious matter and ought to be dealt with sternly; that the Committee had been most magnanimous by imposing a lenient penalty of reduction to a lower rank on respondent No.2; and that the retention of employees against whom allegation of harassing a female employee is proved ought to be deprecated.

11. Learned counsel for the petitioner further submitted that the Committee had been constituted strictly in accordance with Section 3(2) of the 2010 Act; that one of the members of the Committee was a female employee of N.E.P.R.A. and another member was senior in rank to respondent No.2; that the mere fact that one of the three members of the Committee was lower in rank to respondent No.2 did not *ipso facto* invalidate the proceedings conducted by the Committee; and that even though the law provides the remedy of a representation to the President of Pakistan against the impugned order dated 10.02.2020 passed by the Ombudsman, the instant petition is maintainable since the said order whereby the Ombudsman arrogated to herself the power to conduct an inquiry while hearing an appeal filed under Section 6 of the 2010 Act is without jurisdiction. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned order dated 10.02.2020 to be set-aside.

12. On the other hand, Ms. Aaliya Zareen Abbasi, Advocate, learned counsel for respondent No.2 raised an objection to the maintainability of the instant petition on the ground that the petitioner had the alternative remedy of filing a representation before the President of Pakistan under Section 9 of the 2010 Act or Section 14 of the 2013 Act. Furthermore, she submitted that the impugned order dated 10.02.2020 does not suffer from any legal or jurisdictional infirmity; that Section 3(2) of the 2010 Act requires the Committee to be comprised of members senior to the officer against whom an inquiry is conducted; that in the case at hand, two members of the Committee were junior to respondent No.2; that on account of the defect in the composition of the Committee, the proceedings culminating in the imposition of the penalty on respondent No.2 are rendered *non est*; that the Ombudsman did not commit any illegality by deciding to itself

conduct a fresh inquiry against respondent No.2; that under Section 8 of the 2010 Act, the Ombudsman has the jurisdiction to conduct an inquiry against an officer alleged to have committed harassment; that at no material stage during the twenty-year career of respondent No.2 in N.E.P.R.A. was any allegation of harassment or misconduct levelled against him; that respondent No.2's reply to the statement of allegations had not been given due weight by the Committee; and that the petitioner, in furtherance of her nefarious design to harm respondent No.2's reputation, decided to involve him in a frivolous case. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

13. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 9 above, and need not be recapitulated.

14. As mentioned above, learned counsel for respondent No.2 raised an objection to the maintainability of the instant petition on the ground that the petitioner had the alternative remedy of filing a representation before the President of Pakistan under Section 9 of the 2010 Act or Section 14 of the 2013 Act.

15. Under Article 199 (1)(a)(ii) of the Constitution, the High Court has the jurisdiction to issue a writ of *certiorari* by declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect. But Article 199(1) of the Constitution provides in explicit terms that the High Court may make such a declaration "*if it is satisfied that no other adequate remedy is provided by law.*" Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute must be availed. In the case of Tariq Transport Co., Lahore Vs. Sargodha-Bhera Bus Service (PLD 1958 SC 437), it was held that it was wrong on principle for the High Court to entertain petitions for writs, except in very exceptional

circumstances, when the law provides a remedy of an appeal to another tribunal fully competent to award the requisite relief. Furthermore, it was held that any indulgence to the contrary by the High Court is calculated to create distrust in statutory tribunals of competent jurisdiction and to cast an undeserved reflection on their honesty and competence and thus to defeat legislative intent.

16. But it is also well settled that where there was either absence or excess of jurisdiction or the order under challenge suffered from patent illegality on the face of the record a writ of *certiorari* could be granted even though the remedy, by way of appeal, had not been availed of. Reference in this regard may be made to the law laid down in the cases of Messrs S. A. Haroon and others Vs. The Collector of Customs, Karachi (PLD 1959 SC 177), Pakistan v. Ziauddin (PLD 1962 SC 440), Nagina Silk Mill, Layallpur Vs. The Income-Tax Officer (PLD 1963 SC 322), Ghulam Mustafa Jatoi Vs. Additional District and Sessions Judge (1994 SCMR 1299) and Ahad Sharif alias Muhammad Ahad Vs. Javed Tariq (2006 SCMR 1356). Furthermore, in the case of Adeel-ur-Rehman Vs. Federation of Pakistan (2005 PTD 172), the Hon'ble Supreme Court held *inter alia* that a “*Constitutional Petition is competent if an order is passed by a Court or authority by exceeding its jurisdiction even if the remedy of appeal or revision against such order is available.*” In the case of Riaz Hussain Vs. Board of Revenue (1991 SCMR 2307), it was held *inter alia* that “*where any tribunal in disregard of the law which confers jurisdiction decides a case in which the error becomes so apparent on the face of record that no judicial mind would accept it as an order passed in proper exercise of jurisdiction, the High Court would be justified to interfere under Article 199 of the Constitution.*” In the case of Allied Bank of Pakistan Ltd. Vs. Wafaqi Mohtasib (Ombudsman) (PLD 2001 Karachi 203), the Division Bench of the Hon'ble High Court of Sindh held as follows:-

“... if anything is done, any action is taken or is purported to have been taken, made or done under the President's Order No.1 of 1983 without jurisdiction, the High Court shall always have the jurisdiction to declare the same as illegal, without lawful authority and of no legal effect. If any authority is required on this point it is available in the Division Bench judgment of this Court in the case of National Bank of

Pakistan v. Wafaqi Mohtasib (Ombudsman), PLD 1992 Karachi 339. The burden to show that any action has been taken or any act has been done by assumption of jurisdiction not vested in the Wafaqi Mohtasib shall, however, always be on the person alleging the lack of jurisdiction so as to warrant interference by this Court in Constitutional jurisdiction."

17. Now, it needs to be determined whether the Ombudsman's order dated 10.02.2020 assailed in the instant petition is such as could be characterized as one without or in excess of jurisdiction or suffering from patent illegality so as to justify the issuance of a writ of *certiorari* in presence of the alternative remedy of a representation to the President under Section 14(1) of the 2013 Act. This Court would be well within its rights to assume jurisdiction and issue a writ of *certiorari* in presence of an alternative remedy of a representation to the President if the Ombudsman's decisions (i) to set-aside the recommendations of the Committee and N.E.P.R.A.'s decision to impose a penalty on respondent No.2 on the sole ground that two out of three members of the Committee were junior to respondent No.2, and (ii) to itself conduct a fresh inquiry against respondent No.2, while hearing an appeal under Section 6 of the 2010 Act against N.E.P.R.A.'s order to impose a penalty on respondent No.2, are found to be without or in excess of jurisdiction or suffering from patent illegality.

Whether the proceedings conducted by the Committee constituted under Section 3(1) of the 2010 Act are vitiated on account of two members of the Committee being lower in rank to respondent No.2:-

18. The sole ground that prevailed with the Ombudsman in setting-aside N.E.P.R.A.'s decision to impose a penalty on respondent No.2 was that two of the three members of the Committee that conducted the inquiry against respondent No.2 were junior to him. Now, Section 3(1) of the 2010 Act requires every organization to constitute an inquiry committee to inquire into complaints under the said Act. Section 3(2) provides for the composition of the Committee which is to inquire into complaints under the said Act. The said provision reads thus:-

"(2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the

employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.”

19. Section 3(2) of the 2010 Act requires at least one member of the Committee to be a woman. One of the members of the Committee constituted by N.E.P.R.A. under Section 3(1) of the said Act was Ms. Saman Saqlain, Senior Assistant Director (M&E). Admittedly, Ms. Saman Saqlain is the most senior female employee in N.E.P.R.A. Section 3(2) does not require for such member to be senior to the person against whom the inquiry is to be conducted. Furthermore, Section 3(2) requires one member to be *“from senior management.”* It is not disputed that one member of the Committee (namely Hassnain Zaigham, Director General (Technical), N.E.P.R.A.) who conducted the inquiry against respondent No.2 was from the senior management in N.E.P.R.A. and was also senior to respondent No.2. Section 3(2) also requires one member to be *“a senior representative of the employees or a senior employee where there is no [Collective Bargaining Agent]”*. The third member of the Committee who conducted the inquiry against respondent No.2 was Abdul Rashid, Protocol Officer, N.E.P.R.A. He is admittedly the most senior among N.E.P.R.A.’s staff. Therefore, the composition of the Committee constituted by N.E.P.R.A. under Section 3(1) of the 2010 Act was compliant with the requirements of Section 3(2) of the said Act.

20. There is no requirement in Section 3(2) of the 2010 Act for the members of the Committee constituted under Section 3(1) to be senior to the person against whom an inquiry is to be conducted on a complaint filed under the provisions of the said Act.

21. Learned counsel for respondent No.2 had contended that since the Establishment Division’s Office Memorandum (“O.M.”) dated 24.01.1995 provides *inter alia* that it is not appropriate to appoint an inquiry officer junior to the officer being proceeded against under the Government Servants (Efficiency and Discipline) Rules, 1973 (“the E&D Rules”), the inquiry conducted against respondent No.2 by three officers, two out of whom were junior to him, was unlawful. There is no force in this argument. The inquiry conducted against respondent

No.2 was under the provisions of the 2010 Act, which is a special law, and not under the E&D Rules, and therefore the safeguards and principles applicable to an inquiry under the E&D Rules would not be applicable to an inquiry under the 2010 Act. Hence, the said O.M. has no application to inquiry proceedings conducted under the 2010 Act. Even otherwise, the 2010 Act, being a special law, shall also prevail over the said O.M. which was applicable only to civil servants and not to employees of statutory bodies that do not adopt the E&D Rules. The National Electric Power Regulatory Authority (N.E.P.R.A.) Service Regulations, 2003 has a Chapter on Efficiency and Discipline, which does not require the members of an inquiry committee to be senior to the person against whom an inquiry is to be conducted. It may be mentioned that Rule 9(1)(a) of the Civil Servants (Efficiency and Discipline) Rules, 2020 requires only the convener of the inquiry committee to be of a rank senior to the accused and that only as far as possible.

22. Since Section 3(2) of the 2010 Act does not require the members of the Committee to be senior to the person against whom the Committee is to conduct an inquiry under the provisions of the 2010 Act, the Ombudsman committed a jurisdictional error and a patent illegality by setting-aside N.E.P.R.A.'s decision dated 03.06.2019 (which had been taken on the recommendations of the Committee) on the ground that all the members of the Committee were not senior to respondent No.2.

Whether the Ombudsman, while hearing an appeal under Section 6 of the 2010 Act, could decide to itself conduct an inquiry:-

23. Section 8(1) of the 2010 Act provides that an employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee. In the case at hand, the petitioner opted not to submit a complaint before the Ombudsman but before the Assistant Director (Human Resource), N.E.P.R.A., whereafter the matter was referred to the Committee.

24. Section 8(2) to (5) of the 2010 Act provides for the procedure to be followed by the Ombudsman in cases where a complaint is preferred before the Ombudsman. Where an employee exercises the

option of filing a complaint before the Ombudsman instead of the Committee, Section 8(2) of the 2010 Act requires the Ombudsman to issue a show cause notice to the accused within three days of receiving the complaint. The said provision also requires the accused to submit his written defense within five days failing which the Ombudsman can proceed *ex-parte*. Section 8(3) of the said Act provides that the Ombudsman shall conduct an inquiry into the matter according to the rules made under the said Act and conduct proceedings as the Ombudsman deems proper. Section 8(5) of the 2010 Act provides that the Ombudsman shall record his decision and inform both parties and the management of the concerned organization for implementation of the orders. The decision that the Ombudsman records under Section 8(5) of the said Act is only on the inquiry conducted by him on a complaint filed before him by an employee under Section 8(1).

25. Section 5(2) of the 2010 Act specifically empowers the Committee to inquire into matters of harassment under the said Act and to recommend an appropriate penalty against the accused. Section 4 sets out the procedure which the Committee is to follow on receipt of a written complaint. Section 4(4) requires the Committee to submit its findings and recommendations to the competent authority within thirty days of the initiation of the inquiry. Furthermore, it is provided that if the Committee finds the accused to be guilty, it shall recommend to the competent authority to impose one or more of the penalties listed in Section 4(4) *ibid*. Section 4(5) provides that the competent authority shall impose the penalty recommended by the inquiry committee under Section 4(4) of the 2010 Act.

26. The inquiry conducted by the Committee against respondent No.2 culminated in NEPRA's decision dated 03.06.2019 whereby major penalty of reduction to a lower post from Director to Deputy Director was imposed on him.

27. Any party aggrieved by the decision of the competent authority to impose a minor or major penalty on him can prefer an appeal to the Ombudsman under Section 6(1) of the 2010 Act. Section 6(2) of the said Act also gives a right of appeal before the Ombudsman to a

complainant who is aggrieved by the order of the competent authority. The right of appeal conferred on an aggrieved party and the complainant is against the decision of the competent authority. "Competent authority" has been defined in Section 2(d) to mean the authority as may be designated by the management for the purposes of the said Act. Now, respondent No.2 had preferred an appeal, against NEPRA's decision dated 03.06.2019 before the Ombudsman under Section 6 of the 2010 Act. Respondent No.2, in his appeal before the Ombudsman, did not take issue with the fact that the decision to impose the penalty on him, vide office order dated 03.06.2019, was indeed passed by the competent authority in N.E.P.R.A.

28. Vide order dated 10.02.2020, the Ombudsman set-aside the N.E.P.R.A.'s decision to impose a penalty on respondent No.2 and also went ahead and decided to conduct an inquiry against respondent No.2. The Ombudsman, while hearing an appeal under Section 6 of the 2010 Act, cannot arrogate to himself the power to conduct an inquiry. The appellate powers of the Ombudsman are circumscribed by Section 6(3) of the 2010 Act, which reads thus:-

"(3) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set-aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer."

29. Under Section 6(3), the Ombudsman, in his capacity as an appellate authority, has the power either to confirm, set-aside, vary, or modify a decision taken by the competent authority (i.e., the authority that imposes the penalty recommended by the Committee) but he could not assume the power to hold an inquiry while hearing an appeal under Section 6 of the 2010 Act.

30. The scheme of the 2010 Act shows that an inquiry is to be conducted by the forum before which the complainant opts to prefer a complaint. Indeed, under Section 8(3) of the said Act, the Ombudsman has the jurisdiction to conduct an inquiry into the matter and conduct proceedings as he may deem proper, but this is only where an employee opts to file a complaint before the Ombudsman under

Section 8(1). The Ombudsman's power to conduct an inquiry under Section 8(3) is conditioned on the submission of a complaint under Section 8(1) to him by an employee. The 2010 Act does not give *suo moto* powers to the Ombudsman to conduct an inquiry. *Dehors* a complaint before the Ombudsman, the latter cannot conduct an inquiry. Therefore, the Ombudsman's decision to himself conduct a fresh inquiry against respondent No.2 is clearly in excess of jurisdiction as such a course was not permissible to him while hearing an appeal.

31. Now that I have taken the view that the Ombudsman committed a jurisdictional error and patent illegality by setting aside NEPRA's decision to impose a penalty on respondent No.2 on the sole ground that two of the three members of the Committee that conducted the inquiry against him were junior to him, and that the Ombudsman's decision to conduct a fresh inquiry against respondent No.2, while hearing an appeal against NEPRA's said decision was without jurisdiction, it is in this perspective that this Court is to decide whether or not to dismiss the petition as not maintainable.

32. Section 9 of the 2010 Act provides to any person aggrieved by a decision of the Ombudsman under Section 8(5) of the said Act a right to file a representation to the President. The said Act does not provide for a right to file a representation to the President against an appellate order passed by the Ombudsman under Section 6. The Ombudsman's order dated 10.02.2020 was admittedly not passed on an inquiry conducted by the Ombudsman under Section 8(3). Since Section 9 provides the remedy of filing a representation to the President only to a person aggrieved by a decision of the Ombudsman under Section 8(5) and not against an appellate order passed by the Ombudsman under Section 6, the petitioner could not have filed a representation to the President against the Ombudsman's appellate order dated 10.02.2020, which could not by any means be termed as an order passed under Section 8(5).

33. Be that as it may, Section 14(1) of the Federal Ombudsmen Institutional Reforms Act, 2013 ("the 2013 Act") provides that any person or party aggrieved by a decision, order, findings, or

recommendations of an Ombudsman may file representation to the President within thirty days of the decision, order, findings, or recommendations. Section 24(1) of the 2013 Act gives an overriding effect to the provisions of the said Act to any other law for the time being in force whereas Section 24(2) provides that in case there is a conflict between the provisions of the 2013 Act and the “relevant legislation” (which is defined in Section 2(c) of the 2013 Act to include the 2010 Act), the provisions of the 2013 Act, to the extent of inconsistency, shall prevail. There is a clear inconsistency between Section 9 of the 2010 Act and Section 14(1) of the 2013 Act inasmuch as the former provides for a right of representation only against the Ombudsman’s decision made under Section 8(5) of the 2010 Act whereas Section 14(1) of the 2013 Act is of a much wider amplitude as it gives any person or party aggrieved by a decision, order, findings or recommendations of an Ombudsman a right to file a representation to the President. The appellate order dated 10.02.2020 passed by the Ombudsman is indeed an order against which the petitioner could have preferred a representation to the President under Section 14(1) of the 2013 Act. However, since I have already held that the Ombudsman’s order dated 10.02.2020 is patently illegal, suffering from jurisdictional error and without jurisdiction, the petition against the said order is held to be maintainable.

34. N.E.P.R.A., being aggrieved of the Ombudsman’s appellate order dated 10.02.2020, had filed a review petition under Section 13(1) of the 2013 Act before the Ombudsman. This review petition was dismissed vide order dated 24.11.2020 primarily on the ground that the said petition was time-barred. Although there is no provision in the 2010 Act for filing a review petition against the decision of the Ombudsman, Section 13(1) of the 2013 Act provides that 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, or decision. N.E.P.R.A. had, on 23.04.2020, filed a review petition against the Ombudsman’s order dated 10.02.2020. Since the review petition was filed by N.E.P.R.A. beyond the limitation period of

thirty days prescribed in Section 13(1) of the 2013 Act, the Ombudsman did not commit any jurisdictional irregularity by dismissing the said review petition. Be that as it may, N.E.P.R.A. preferred a representation against the Ombudsman's orders dated 10.02.2020 and 24.11.2020 before the President. The said representation was turned down by the President on 02.02.2021. The President turned down N.E.P.R.A.'s representation as "incompetent" on the ground that neither the petitioner nor respondent No.2 had filed a representation against the Ombudsman's decision. Furthermore, it was held that the Ombudsman's decision to conduct an inquiry was in conformity with Section 8(3) of the 2010 Act. By holding so the President, in effect, gave a finding that the Ombudsman, while hearing an appeal under Section 6 of the 2010 Act, could conduct a fresh inquiry on the complaint that was submitted by the employee to the Committee and not the Ombudsman.

35. Since N.E.P.R.A.'s review petition had been dismissed on the ground of limitation, the President ought to have confined himself to the question of whether the Ombudsman was correct in dismissing N.E.P.R.A.'s review petition on the ground of limitation. The President's order dated 02.02.2021 has not addressed the question of limitation at all. Instead, the President has held that N.E.P.R.A.'s representation was not maintainable on the ground that neither the petitioner nor respondent No.2 had filed a representation against the Ombudsman's decision. This observation of the President finds no support from any provision of either the 2010 Act or the 2013 Act. The President erred by not appreciating that the right to file a representation to the President against a decision of the Ombudsman had been provided to "*any person or party aggrieved*" by *inter alia* a decision of the Ombudsman. Since the penalty imposed by N.E.P.R.A. on respondent No.2 had been assailed by the latter in an appeal before the Ombudsman, N.E.P.R.A. was most certainly a party in the appellate proceedings before the Ombudsman. As a party, it did have a right to file a representation under Section 14(1) of the 2013 Act against the Ombudsman's decision dated 24.11.2020 whereby N.E.P.R.A.'s review petition had been dismissed.

36. As mentioned above, the President in his order dated 02.02.2021 (whereby N.E.P.R.A.'s representation against the Ombudsman's orders dated 10.02.2020 and 24.11.2020 had been dismissed), had made the following observation:-

"10. By setting aside the proceedings of the inquiry committee and the order of the competent authority the learned Ombudsman has decided to conduct the inquiry in accordance with Section 8(3) of the Act 2010 which empowers the Ombudsman to conduct proceedings as deemed proper. The parties may participate in the proceedings to advance their respective stances."

37. The President's order dated 02.02.2021 had already been passed when the petitioner filed the instant petition on 05.03.2021. If this Court were to dismiss the petitioner's writ petition on the ground that she has the alternative remedy of filing a representation under Section 14(1) of the 2013 Act before the President, it would amount to causing the petitioner to go before a forum which has already expressed its views by giving findings which operate to her detriment. In other words, since the President has already held that the Ombudsman, while hearing an appeal, could conduct an inquiry under Section 8(3) of the 2010 Act, the President cannot be expected to give a finding which is in absolute contrast to the findings given by him on N.E.P.R.A.'s representation. Therefore, to require the petitioner to file a representation to the President against the Ombudsman's decision dated 10.02.2020 would be a total exercise in futility. In these circumstances, the remedy of filing a representation cannot be held to be an efficacious or an adequate remedy for the petitioner against the Ombudsman's order dated 10.02.2020.

38. In the premises aforesaid, I am clearly of the view that the Ombudsman committed a patent error of law and committed a jurisdictional error by setting aside NEPRA's decision dated 03.06.2019 on the sole ground that two of the three members of the Committee that conducted the inquiry against respondent No.2 were junior to him and that the Ombudsman's decision to conduct a fresh inquiry against respondent No.2 is without jurisdiction. The instant petition is allowed and the Ombudsman's order dated 10.02.2020 is, accordingly, quashed. The matter is remanded to the Ombudsman for

a decision on respondent No.2's appeal against NEPRA's decision dated 03.06.2019. The parties shall bear their own costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 05/04/2022

*Qamar Khan**

APPROVED FOR REPORTING

(JUDGE)

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