

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 174-11-2019

Mian Mohammad Altaf
Vs
National Bank of Pakistan

Date: 12.10.2020

Fawad Malik: Information Commissioner

A. APPEAL.

1. The brief facts of the appeal are that Mr. Mian Mohammad Altaf filed an information request dated 15.10.2019, addressed to the President, National Bank of Pakistan at its head office at Karachi requesting therein the provision of his service record while serving as temporary go down keeper in the main branch Karor Paka district Lohdran for a period from 1987 till 2002, under the Right of Access to Information Act 2017 read with Article 19.A of the Constitution of Pakistan 1973.
2. Feeling aggrieved of the non-provision of the information within the stipulated period of ten days, he has filed his appeal before the Pakistan Information Commission for the reprisal of the grievance. The appellant along with the appeal has appended the photocopies of the following documents/record reflecting the name of appellant as temporary go down keeper of the bank.
 - i. *Bank certificates vide letter No. 410 dated 30.4.1989.*
 - ii. *Bank certificate vide letter No. 356 dated 10.9.1989.*
 - iii. *Bank certificate vide letter No. 357 dated 21.2.1998.*
 - iv. *Application dated 23.11.1987 endorsed with recommendation for appointment as temporary go down keeper.*
 - v. *Bank certificate vide letter No. 886 dated 25.3.1991.*
 - vi. *Appointment letter dated 30.11.1992, issued by zonal office Vehari.*
 - vii. *Copy of the register in proof of his withdrawal of pay.*

B. PROCEEDINGS.

3. The President, National Bank of Pakistan at its head office Karachi vide letter dated 13.11.2019, was directed to provide reasons in writing within seven working days as to why the requested information has not been provided to the applicant as under section 14 of the Right of Access to Information Act 2017,

4. The reply was not submitted therefore the appeal was fixed for hearing before the Commission on 13.2.2020 and both the appellant as well as the respondent were informed accordingly.
5. No one appeared before the Commission at the time of hearing therefore the appeal was adjourned for 25.3 2020 under intimation to the respondent. The bank however vide letter dated 20.3.2020 has submitted the reply with the request to condone the appearance for the time being amid coronavirus. The relevant part of the reply is reproduced as under;
 1. *The applicant was hired as temporary go-down keeper by our clients, on time-to-time basis during 1980s and 1990s, on contract of 179 days, on different occasions, He has no service record with the Bank as he was never an employee of the Bank, per his any contract.(copy enclosed)*
 2. *The applicant has already filed several petitions in the Honorable High Courts as well as Federal Service Tribunal for regularization of his service and the same have been declined by every court of law.*
 3. *The applicant seeks record of stock Register, Cash Book, Transfer Scroll and General Abstract, all this financial record of our Kehror Pacca branch under the Right of Access to Information Act 2017. The Bank seeks exclusion for production of any such record under the clause of Act 07(d).*
 4. *All the record (Stock Register, Cash Book, Transfer Scroll and General Abstract) pertains to loan accounts of our customers (on whose request the Applicant was hired and worked for them)*
 5. *Similarly, the Banks/DFIs are required by the State Bank of Pakistan to keep record of financial data and transactions for ten years vide their CFT/AML Regulation No. 05. The applicant seeks information that is 20-40 years old and of the time most of financial data had not be computerized yet.*
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6. The appeal after the coronavirus pause was fixed again for hearing before the Commission on 7.10.2020. Both the appellant and the respondent were informed accordingly vide notices dated 23.9.2020.

C. COMMISSION'S VIEW.

7. Mr. Muhammad Tariq AVP/Head HR Department appeared before the Commission to represent the bank at the time of hearing. He has submitted his written reply at the time of hearing with the same stance which was filed earlier. The bank with the reply has appended a copy of the contract dated 30.11.1992 through which the appellant was appointed as temporary go-down keeper in the bank. During the course of arguments, on a query

8. by the Commission he has candidly admitted that the record of the appellant as temporary go down keeper, appended by the appellant with his appeal is available with the bank.
9. The primary and core issue in the instant appeal to be resolved by the Commission is to decide whether at the time of filing the application before the bank authority and appeal before the Commission seeking his service record for the period from 1987 to 2002 in the said bank as a temporary go down keeper, the service of the appellant for the length of the period was established, and the appellant was legally and morally eligible for asking the record under the Right of Access to Information Act, 2017 and Article 19-A of the Constitution of Pakistan 1973 ?
10. It is an admitted fact that litigation between the appellant and the bank in the Multan Bench of Lahore High Court has reached a conclusion regarding the service of the appellant in the bank. The brief facts are that the appellant sought his regularization of temporary service in the bank through constitutional petition No. 3393/2014 before the Multan Bench of Honourable Lahore High Court which was decided on 5.6.2014 with the direction to the bank to decide the matter in the light of the case titled *Ikram Bari & 521 others vs NBP (2005 SCMR 100)*. The bank authority vide letter dated 30.10.2014 after providing the personal hearing to the appellant has decided and declined the request of the appellant holding as under;
 - *In view of the foregoing, we regret to inform you that your case does not fall under the parameters set out in Ikram Bari and 524 others vs. NBP and another (2005 SCMR 100), in any manner and you do not qualify for induction/ absorption in Bank's regular service as such your request for the same is declined.*
11. After going through the appeal, the reply submitted by the respondent and hearing the arguments it is denuded that the appellant is seeking his record for the length of period he has served as temporary go down keeper in the bank. The temporary induction of the appellant on time-to-time basis is not denied by the bank in its reply rather is claiming dismissal of the appeal for the reason that the appellant has filed petitions in the Honourable High Court and Federal Services Tribunal against the bank for the regularization of his service and the same has been declined to the appellant and that the record of banking companies and financial institutions related to accounts of their customers is excluded under section 7 of the Act, from the declaration of public record. The bank has objected that the record (stock register cash book transfer scroll and general abstract) pertaining to loan

12. accounts of our customers, on whose request the appellant was hired is excluded from disclosure. The bank in the reply has further objected that the banks/DFIs are required by the state bank of Pakistan to keep the record of ten years of financial data and transactions.
13. The question arises that whether the filing of the writ petition in the High Court or appeal before the Federal Services Tribunal for the regularization of service, blocks the right of the appellant to ask for the record of his temporary service performed in the bank that has never been denied by the bank in its reply. Article 19-A of the Constitution of Pakistan and the Right of Access to Information Act 2017 has empowered the citizens to have access to the record held by the public body. This Constitutional and statutory right cannot be denied or delayed at the whims of the public body nor can be withheld on the pretext or as a punishment that the appellant filed writ petition against the bank for the regularization of his service. More particularly the appellant is asking for the provision of his personal service record for the period he served as temporary go down keeper. Even otherwise the regularization of service is different matter and does not create a bar in the provision of record pertaining to temporary service. The Commission is of the considered view that the personal service record whether as temporary or regular service is the Constitutional and statutory right of the citizens that cannot be denied.
14. The representative of the bank during the course of arguments has candidly admitted that the record annexed by the appellant with his appeal is available with the bank. It is worth considering here that the bank itself has placed on file along with the reply a copy of the appointment/ contract letter dated 30.11.1992 through which the appellant was appointed as temporary go-down keeper in the bank. On this score alone it can be concluded that the bank hold the record of the appellant in its custody. The stances of the bank that the appellant is not an employee of the bank rather has been engaged by the contractor do not carry weight. The appellant although engaged by the contractor but the fact remains that the appellant has been performing his duty in the bank as temporary go down keeper and has been drawing his salary from the bank.
15. The exclusion claimed by the bank regarding the record pertaining to stock register, cash book, transfer scroll and general abstract pertaining to loan accounts of other customers carries weight. Section 7(d) safeguards the accounts of the customers in the banking companies and financial institutions and section 16(c) of the Act exempts the disclosure that would involve invasion of privacy of the third party. The record of the other customer/ third party therefore cannot be shared with the appellant.

16. The objection raised by the respondent that the bank/ DFIs are required by the state bank of Pakistan to keep the record of financial data and transactions for ten years vide CFT/AML regulation no. 05 is not relevant in the case in hand. The said regulation vis-à-vis the record of financial data and transactions whereas here in this appeal the appellant is demanding his personal service record for the period he served as temporary go down keeper. The regulation no. 05 of the state bank is not applicable and has no nexus with request of this appeal. Moreover the service record of an employee falls within the category of public record as defined in the Act 2017 as well as in section 2(2)(e) of National Archives Act 1993. It is worth to mention here that the bank has annexed with the reply letter dated 30.11.1992, appointment letter of the appellant as temporary go down keeper; suffice to conclude that the bank is holding the desired record.
17. The Commission is of the view that the information/record desired by the appellant does fall within the category of record as defined in the Right of Access to Information Act 2017.
18. The Commission is concerned vis-à-vis the demeanour of the respondent's responsiveness towards the implementation of the Act. At the preliminary stage the respondent has violated the mandatory provisions of section 12 and 13 of the Act. Later the two notices of the Commission remained unheeded and no one represented the respondent at first hearing when the Commission wrote of stern action. This amounts to wilful and deliberate obstruction in the activity of the Commission. The respondent is advised to be vigilant in future for the implementation of the Act.
19. It is mandatory for the public bodies to publish including uploading over the internet and computerization for the voluntary disclosure of the categories of record and information mention in section 5, within six months of the commencement of the Act.
20. The respondent has failed to appoint designated officer as required under section 9 of the Act.

D. ORDER.

21. The appeal is allowed. The SVP/ Regional Head, National Bank of Pakistan, Bhawalpur is directed to provide the appellant only his service record for the length of period he worked as temporary go down keeper in the bank, forthwith but not later than seven days of the receipt of this order.
22. The President, National Bank of Pakistan is further directed to take measures for the proactive disclosure of all the information and record mentioned in section 5 and notify the designated officer under section 9 of the Act.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 19.10.2020

Certified that this order consists of six pages, each page has been read and signed.