

Pakistan Information Commission

Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No E24-01/21

Mubeen Mehr

(Appellant)

Vs.

Ministry of Foreign Affairs

Through its Public Information Officer

(Respondent)

ORDER

Date: October 14, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed Appeal through Online Appeal Management System on January 11, 2021 to the Commission, stating that he had submitted information requests to the Spokesperson, Ministry of Foreign Affairs on December 14, 2020, under the Right of Access to Information Act 2017 but did not receive any response from the public body.
2. The information sought by the Appellant is as follows:
 - i). Specific compelling reasons for prematurely recalling the undersigned from Parep Birmingham in December 2018 and the reason for not following the Ministry's Premature Recall Policy, in letter and spirit, in the undersigned's case (Annex A).*
 - ii). Reason for not approving the undersigned's appointment to BS-19 on Acting Charge Basis since October 2019 (Annex B).*
 - iii). Reason for non-provision of Honorarium to the undersigned in the last financial year (Annex C).*
 - iv). Reason for non-provision of Audit paras to the undersigned in a timely manner i.e. in Jan 2019 prior to DAC. (Such was in violation of Foreign Secretary's instructions and resulted in these paras advancing to PAC level-Annex D).*
 - v). Reason for non provision of complete documents related to grant of ex-post facto approval to the undersigned to marry Ms. Iryna Bezghinska including the proof that the purported Nikah Nama was obtained from the local mosque in UK (Annex E)."*

B. Proceedings

3. Through a notice dated January 19, 2021, sent to Spokesperson / Public Information Officer, Ministry of Foreign Affairs, the Commission stated that "Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the

receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The appeal was fixed for hearing on February 18, 2021 and both parties were informed through notices sent on February 04, 2021.
5. The Respondent through a letter vide no Spk-06/2021 dated February 02, 2021 submitted response which is as under:

“This is to inform that the requisite information has already been shared with the applicant vide this Ministry’s letter No. Estt (II)-25/10/2009 dated 25 January 2021.”
6. The Appellant through an email dated February 12, 2021 submitted rejoinder to the response of the public body which is as under:

“Reference our telephonic conversation today. Please find attached the latest correspondence received from MOFA on my queries. My queries still remain unanswered”.
7. The appeal was again fixed for hearing on March 04, 2021 and both parties were informed through notices sent on February 25, 2021.
8. The Respondent during the hearing held on March 04, 2021 submitted response which was received by the Appellant during the hearing.
9. The appellant also submitted his written response during the hearing held on March 04, 2021.
10. Response / written statement of the appellant was shared with the respondent on April 22, 2021 with the directions to respond to the queries of the Appellant within 7 working days of the receipt of the notice.
11. The appeal was again fixed for hearing on June 17, 2021. Mr. Bilal Akbar Advocate on behalf of Respondent attended the hearing. Hearing was adjourned for July 01, 2021.
12. The respondent through a letter dated June 01, 2021 submitted response to the queries of the appellant which was shared with the Appellant.
13. The appeal was again fixed for hearing on July 08, 2021. Mr. Faraz Raza, Assistant Legal Advisor, Ministry of Foreign Affairs and the Appellant attended the hearing.
14. The respondent through a letter vide No. Spk-06/2021 dated 14 July 2021 submitted response which was shared with the Appellant.
15. The appellant through a letter vide No. ECO&CARS-1/1/2020 dated 28th July, 2021 submitted his response which is as under:

“Reference undersigned's request No. E-24 submitted vide undersigned's letter of even number dated 02 March 2021 on the subject mentioned above.

2. It is submitted that the undersigned has not been provided complete information/record i.e. noting/approvals/correspondence (exchanged with extraneous department) etc as requested vide undersigned's above mentioned appeal. The justification provided by the Ministry for non provision of the same is untenable and has already been discussed in the last hearing held at the esteemed Pakistan Information Commission.

3. It is further humbly submitted that the record of noting/approval/correspondence solicited by the undersigned pertains to either decisions which have already been made and communicated to the undersigned (e.g. (a) Premature Recall from Parep Birmingham, (c) Acting Charge Appointment, (d) Ex post Approval for Marrying a Foreign National, (e) Non-Provision of Ilonorarium and (f) Non-Provision of Audit Paras) or is more than three years old on which no fresh inquiry has been initiated till date (e.g. (b) Disciplinary Proceedings).

4. *Foregoing in view, the undersigned shall be grateful if the decision on undersigned's above mentioned appeal may kindly be communicated to the undersigned at the earliest.*”

16. Through a notice dated September 22, 2021, the commission asked the Respondent specific questions.

17. In Reference to Pakistan Information Commission letter dated 22 September, 2021, the Respondent submitted its response which is as under:

- i) *“It is certified that the official was recalled prematurely from Parep Birmingham for conducting inquiries against the official.*
- ii) *One inquiry is pending against the official which is likely to suffer harm in case the requested information (record of noting and approval of Foreign Secretary) is disclosed.*
- iii) *It is certified that the official was recalled prematurely from Parep Birmingham for conducting inquiries against the official. One inquiry is pending against the official which is likely to suffer harm in case the requested information (minutes of meetings and noting on the files pertaining to the disciplinary proceedings) is disclosed.* iii)
The record and information related to acting charge appointment of the official is attached”.

C. Issues

18. The instant appeal has brought to the fore following issues:

- (a) Has the Respondent provided the Appellant information permissible under the Right of Access to Information Act 2017, henceforth referred to as Act?
- (b) Can noting on the file and minutes of meetings pertaining to an on-going investigation into misconduct of an officer be disclosed under the Act?

D. Discussion and Commission’s View on Relevant Issues

19. The Appellant has sought “Specific compelling reasons for prematurely recalling the undersigned from Parep Birmingham in December 2018 and the reason for not following the Ministry's Premature Recall Policy, in letter and spirit”. The Respondent maintained that the “Consul, Parep Birmingham, reported to the Foreign Secretary, in September 2018, regarding officer's misconduct/involvement in financial wrongdoing such as forged air-ticket quotations with inflated price and fake inflated rent agreement for his accommodation. The Foreign Secretary ordered an inquiry under Government Servants (Efficiency & Discipline) Rules, 1973, and the officer was asked to report to the Ministry”. The Respondent also provided the Appellant copy of the O.M. No. DG (HR&CP)-1/2018, dated 24 October 2018.

20. This commission maintains that the response submitted by the Respondent that “officer's misconduct/involvement in financial wrongdoing such as forged air-ticket quotations with inflated price and fake inflated rent agreement for his accommodation” on the report of the Consul, Parep Birmingham along with the copy of the O.M. No. DG (HR&CP)-1/2018, dated 24 October 2018 are reasons based on the record available with the Respondent for his recall and the requested information has been provided to the Appellant. Furthermore, the Respondent also provided copy of the record indicating that the Authorized Officer imposed minor penalties of censure, withholding for a period of two years his annual increment and recovery of embezzled amount of GBP 3630.

21. This commission maintains that seeking “reason for not following the Ministry's Premature Recall Policy, in letter and spirit”, is a query of general nature and does not constitute request for access to records.

22. The Appellant also asked “reasons for not approving my appointment in BS-19 on Acting Charge Basis”. The Respondent submitted that “*The authority competent to approve promotions on regular basis or appointment on charge basis in BS-19 is the Departmental Selection Board (DSB).*”

It may be noted that in 2019, two meetings of DSB were held on 30 January 2019 & 31 July 2019 respectively. During both the meetings, the case of the officer for promotion to BS-19 on acting charge basis could not be considered because of him being under inquiry. The Inquiry was concluded in September 2019 but no meeting of DSB was convened after till 7 April 2020. Meanwhile, the officer completed the requisite length of service on 7 January 2020 for being eligible for consideration for promotion to BS-19 on regular basis. After completion of mandatory length of service in a certain grade, an officer can be considered for promotion to next higher grade only on regular basis and not on acting charge basis as per Rule 8-B of Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. Therefore, his case was considered by DSB held on 7 April 2020 for regular promotion to BS-19. However, the DSB decided to defer him because of incomplete PER record as well as Asset Declarations record in pursuance of Rule 7(b), (c) & (d) of Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019”.

23. In the light of the answer provided by the Respondent, the commission is of the view that the Appellant has been provided reasons for not approving his appointment in BS-19 on Acting Charge Basis.
24. The Appellant also asked “reasons for not providing me Honorarium in FY 2019”. The Respondent submitted that the “officer from June 2019 to October 2019 was unassigned. Thereafter, he was posted as Director (Research) from October 2019 to March 2020. His attendance, however, was irregular during this time frame. Therefore, it was not deemed appropriate by the concerned authority to grant him honorarium”. The Respondent also provided record of his attendance.
25. In the light of the answer of the Respondent, the commission is of the view that the Appellant has been provided reasons for not providing him Honorarium in FY 2019.
26. The appellant also enquired as to “Why were the Audit paras not provided to me in a timely manner i.e. in Jan 2019 (before the DAC)? This was in violation of Foreign Secretary's instructions and resulted in advancement of these paras to PAC level”.
27. The Respondent submitted that “The audit paras were shared with the officer on December 31, 2019 and May 13, 2020 (copies enclosed). However, he did not submit his reply.

As per Audit Directorate of the Ministry, the officer still has an opportunity to present his views/comments on the said audit paras as the PAC meeting on the relevant AG Report has not been held so far and the DAC can consider these paras for settlement.”

28. This commission maintains that query as to “Why were the Audit paras not provided to me in a timely manner i.e., in Jan 2019 (before the DAC) and that the assertion of the Appellant that “This was in violation of Foreign Secretary's instructions and resulted in advancement of these paras to PAC level” does not constitute a request for access to records.
29. With regard to the noting on the file pertaining to the Ex-Post Facto approval for marrying a Foreign national, the Respondent submitted that “officer, applied for permission to marry a foreign national, Ms. Iryna Bezghinska, in November 2019. As per the existing procedure, his case was sent to the Establishment Division which is the competent authority to accord approval for marriage with foreign nationals.

During the course of processing the case, a document came to the surface exhibiting marriage of the officer with Ms. Iryna Bezghinska dated 25 July 2018. Apparently, the document was issued by Qadria Trust (UK), Alfred Street, Sparkbrook, Birmingham. It is pertinent to mention here that the officer remained posted at the Consulate General of Pakistan, Birmingham during the period of early 2017 to 2018.

As the case was still under process with the Establishment Division, information about the document was shared with them for view/comments. Establishment Division granted ex-post facto permission for marriage to the officer on the basis of the document in August 2020. The Establishment Division also advised to hold an inquiry into the matter

as marrying a foreign national without prior approval of the Government is considered as misconduct under rules.

Accordingly, a probe was conducted which required an attested copy of the above mentioned document from the issuing mosque to establish its evidentiary standard. The mosque required Mr. Mubeen Mehr's NOC to issue the attested copy. Despite repeated requests, Mr. Mehr did not provide the NOC. Hence, the attested copy of the document could not be obtained from the Mosque.

As the validity of the document could not be substantiated for reasons mentioned above, the case was again referred to the Establishment Division for reconsideration and grant of fresh approval of marriage instead of ex-post facto approval. A decision is awaited in this regard.

As the matter is subject to final decision of the public body therefore the requested information pertaining to noting/minutes and correspondence may not be shared with the appellant under Section 7(a), 7 (b) and 7 (c) read with Section 16 (1) (a), 16 (1) (b) and 16 (1) (i) of Right of Access to Information Act, 2017.

30. This commission holds that minutes of meetings and noting on the file can only be disclosed once final decision has been taken. Furthermore, minutes of meetings and noting on the file cannot be disclosed if these hit any of the exceptions clauses of Section 16 of the Act as is the case in the instant appeal.
31. In the instant appeal, the requested noting on the file and minutes of the meetings pertain to a matter which has not been finalised yet as well as pertain to an on-going investigation. As such, requested noting on the file and minutes of the meetings pertaining to enquiries already concluded cannot be disclosed as their premature disclosure is likely to cause harm to and influence another on-going investigation as these noting on the file and minutes of the meetings are interrelated and pertain to similar matter of the conduct of the officer.

E. Order

32. Appeal is dismissed as information permissible under the Act has been provided to the Appellant whereas requested noting on the file and minutes of the meetings, pertaining to a matter similar in nature, not finalised yet, cannot be disclosed as their premature disclosure is likely to cause harm to and influence another on-going enquiry as these noting on the file and minutes of the meetings are interrelated and pertain to similar matter of the conduct of the officer.
33. Copies of this order be sent to the Appellant and the Public Information Officer, Ministry of Foreign Affairs.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
October 14, 2021
This order consists of 5 (five) pages, each page has been read and signed