

Pakistan Information Commission
Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 1157-06/21

Sajid Abbas

(Appellant)

Vs.

Federal Public Service Commission

(Respondent)

Order

Date: January 26, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, date June 21, 2021, to the Commission, stating that he Submitted an information request to the Chairman and Secretary, Federal Public Service Commission dated November 20, 2020 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.

2. The information sought by the Appellant is as under:

“1. That I appeared in the CSS Examination 2020 under Roll No. 25958 and was declared fail in English, i.e. English Essay by awarding 25.

2. That on various grounds I have very strong reasons to believe that either my paper English Essays was replaced or the marks awarded by the respective examiners in the aforesaid paper were subsequently reduced though illegal and unjustifiable means to reduce the number of candidates to be interviewed by the interview board of the Federal Public Service Commission with a view to facilitate the bid Board.

3. That whatever administrative or other reasons the Federal Public Service Commission may have for doing the aforesaid acts, the Constitutional provisions granting unfettered fundamental rights to the applicant cannot be ignored or violated through subordinate legislation such as Rules, Regulations, Administrative orders. Etc.”

B. Proceedings

3. Through a notice dated July 07, 2021 sent to the Secretary, Federal Public Service Commission the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The Respondent through a letter vide No F. 2-2/2020-CE dated 19th July, 2021 submitted response, which is as under:

“ I am directed to refer to Pakistan Information Commission’s dated 07-07-2021 regarding Appeal No. 1157-06/21 on the subject cited above.

2. *Appellant Mr. Sajid Abbas requested for provision of certified copies of his answer sheets for CSS Competitive, which was rejected by the Commission in terms of Rule 16 (28) of CSS – Competitive Examination Rules, 2019.*

3. *Federal Public Service Commission Ordinance, 1977 offers ample remedies for grievances of candidates. Appellant/candidate has availed/exhausted two remedies (personal hearing and review petition). However, he failed to avail third remedy as per Provision 7 (3) of FPSC Ordinance 1977, which is appeal to the High Court.*

4. *It is pertinent to mention that Rules for Competitive Examination are made under FPSC Ordinance, 1977 and are approved by the Federal Government. Same are followed in true letter and spirit in the interest of merit, justice and fair play. Candidate/appellant maybe advised to avail the remedies available under the CSS – Competitive Examination Rules, 2019.”*

5. Response submitted by the public body was shared with the appellant on July 29, 2021.

6. The Appellant on August 03, 2021 submitted rejoinder to the response of the public body, which is as under:

“That the appellant had filed the titled appeal before the Honourable Commission wherein the respondent FPSC has submitted a reply in which they have refused to provide the required information/document on the basis of following arguments.

That the request of the appellant was rejected in terms of the provisions Rule 16(28) of the Competitive Examination Rules 2019 which were notified vide S.R.O. No. 1452(1)/2018 dated 27-11-2018.

That now that the respondent has solely relied upon the aforementioned rules for Competitive Examination (CSS), 2019, the appellant is duty bound to explain to the Honorable Information Commission the correct legal position about the Competitive Examination Rules 2019 which were framed and notified vide S.R.O. No. 1452(2)/2019 dated 27-11-2018. The same is as follows:

(i) That the Competitive Examination Rules 2019 were framed and notified vide by the Chairman FPSC vide S.R.O. No. 1452(1)/2018 dated 127-11-2018 purportedly while exercising powers under Section 7A & 10 of the FPSC Ordinance, 1977. A copy of first page of the aforesaid Rules is appended as ANNEX-A which reads as follows:

“S.R.O No. 1452(1)2018. In exercise of the powers conferred by sections 7A and 10 of the Federal Public Service Commission Ordinance, 1977 (XLV of 1977), the Chairman of the Federal Public Service Commission with the approval of the Federal Government, is pleased to make the following rules, namely:

1. “Short title and commencement. (1) These rules shall be called the CSS-Competitive Examination Rules, 2019,”

2. That in terms of section 10 of the FPSC Ordinance, 1977 it is the Federal Government who has the authority to frame rules through notification in the Official Gazette for carrying out the purposes of the Ordinance. A copy of the FPSC Ordinance, 1977, is appended as ANNEX-B. Section 10 is reproduced for his kind here:

“10. Rules:

The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.”

(iii) That Chairman FPSC can only frame Rules under Section 7A of the FPSC Ordinance, 1977 with the approval of the Federal Government and that too for running his own organization and not for carrying out the purposes of the Ordinance. For kind perusal, the same is reproduced hereunder:

"7-A Conduct of Business of Commission, etc.: -

The Chairman of the Commission may, with the approval of the Federal Government, make rules for regulating the conduct of the business of the Commission; and such rules may provide for any of the functions of the Commission specified by it being performed by a Committee composed of two or more members constituted by the Chairman for the purpose."

(iv) That even the Federal Government cannot allow the Chairman FPSC to exercise powers under Section 10 as there is the bar of Article 98 of the Constitution of Islamic Republic of Pakistan, 1973 as amended which provides as follows:

"Conferring of functions on subordinate authorities

98. On the recommendation of the Federal Government, Majlis-e-Shoora (Parliament) may by law confer functions upon officers or authorities subordinate to the Federal Government."

(v) That the provisions of Article 242 of the Constitution of Islamic Republic of Pakistan, 1973 bind the FPSC to act in accordance with the law and Chairman FPSC being integral part of the same is also bound to act accordingly besides the oath of office taken by him before entering upon his office binds him so to do. Copy of Article 242 ibid and that of the oath taken by him are appended as ANNEX-C and D respectively.

(vi) That in terms of Section 7(1)(b) of the FPSC Ordinance, 1977, the role of the respondent is only advisory.

(vii) That the appellant already had filed 2 Writ Petitions in the Lahore High Court to force the respondent to act in accordance with the law and the respondent wants the appellant to keep on wasting his precious resources in litigation which the appellant is not ready to oblige the respondent.

3. That summing up the discussion it is clear that the plea taken by the respondent vide letter F. 2-2/2020-CE dated 19-07-2021 is liable to be rejected amongst other on the following

(a) That under Section 7 (1) (b) of the Ordinance, the FPSC can only advise the President on matters mentioned in the aforesaid law and under no circumstances can frame Rules regarding its recruitment function of any type as prescribed in Section 7(1) (a) of the FPSC Ordinance, 1977 with or without approval of the Federal Government.

(b) That Article 242(2) of the Constitution provides that A Public Service Commission shall perform such functions as may be prescribed by law. Section 7A and 10 of the operating law, the FPSC Ordinance, does not allow the respondent or its Chairman to frame rules for the recruitment function. The respondent is thus bound to act in accordance with the law and cannot frame rules with or without approval of the Federal Government for conducting any kind of recruitment.

(c) That Article 98 of the Constitution provides that "On the recommendation of the Federal Government, [Majlis-e-Shoora (Parliament)] may by law confer functions upon officers on authorities subordinate to the Federal Government." Hence, the Respondent and its Chairman could not have framed rules for Competitive Examination 2019 without an Act of Parliament having been passed in accordance with the procedure prescribed in Article 98 of the Constitution.

(d) That Section 10 of the FPSC Ordinance provides that the Federal Government may make rules for carrying out the purposes of this Ordinance through notification in the official Gazette. Hence, the Respondent and its Chairman cannot frame rules with or without approval of the Federal Government regarding their recruitment functions. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The manner of framing Rules for carrying out the purposes of the FPSC Ordinance having clearly settled in Section 10 *ibid*, the respondent and its Chairman acted against the law as laid down in the aforesaid manner. Reliance is placed in this regard on the case law reported as (a) Khyber Tractors (PVT) Ltd through Manager Versus Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad (PLD 2005 SC 842), (b) Atta Muhammad Qureshi Versus The Settlement Commissioner, Lahore Division, Lahore and 2 others (PLD 1971 SC 61), (c) Raja Hamayan Sarfraz Khan and others versus Noor Muhammad, (2007 SCMR 307), (d) Muhammad Akram Versus Mst. Zainab Bibi (2007 SCMR 1086). (d) Haji Naseer Ahmed versus The Secretary, Ministry of Defence, Rawalpindi and another' (1999 SCMR 1121).

(e). That Article 19A of the Constitution of Islamic Republic of Pakistan, 1973 read with the provisions of Section 3 of the Right of Access to Information Act, 2017 and the Rules framed thereunder give the appellant the right to know if the marks declared in the Written Part of CSS Examination, 2020 in the case of the appellant were the same which were awarded to him by the paper examiners and if the respondent has acted justly, fairly and in a transparent manner, then why they are making it such a big issue.

(f) The appellant humbly states that the Honorable Punjab Information Commission has decided in a case that after the announcement of the result, any candidate can obtain a certified copy of his or her answer sheet and the Federal and Provincial statutes being identical a similar decision is very earnestly prayed for. A copy of the aforesaid decision of Honorable Punjab Information Commission is appended as ANNEX-E.

PRAYER: That foregoing in view, it is most respectfully prayed that the Rules for Competitive Examination, 2019 being illegal exercise of powers on the part of the respondent and its Chairman, a direction may kindly be issued to the respondent to provide the appellant certified copy of his answer sheet of the paper of English (Essay) as already requested from him and from this Honourable Commission through the titled appeal.”

7. Rejoinder submitted by the Appellant was shared with the public body on August 04, 2021 with the directions to respond to the queries of the Appellant within 7 working days.
8. The Appeal was again fixed for hearing on September 21, 2021 and both parties were informed through notices sent on August 23, 2021.

- 9 Mr. Syed Muhammad Ayub. Director Federal Public Service Commission, attended the hearing and against submitted the same response that was yield on July 19, 2021 in response to the notice of the commission.
10. Response of the public body was again shared with the appellant on September 02, 2021.
11. The Appellant again submitted a rejoinder on September 10, 2021, which is as under:

"1. That the reply dated 31-08-2021 submitted by the Director (C.E) presumably on behalf of the Respondent (FPSC) is not acceptable amongst other on the following

GROUND

(i) That the request of the Appellant has been turned down on the basis of rules framed by the Chairman Federal Public Service Commission (FPSC) vide S.R.O. No. 1452(1)/2018 dated 27-11-2018 called the CSS-Competitive Examination Rules, 2019. Copy of the same is appended as ANNEX-A.

(ii) That these rules were framed by the Chairman FPSC purportedly by invoking powers under Sections 7A and 10 of FPSC Ordinance, 1977 (ANNEX-B), however, powers under Section 7A are only meant for conduct of business of the Commission, etc as can be seen from bare reading of the same which is reproduced for kind perusal:

"7-A Conduct of Business of Commission, etc: The Chairman of the Commission may, with the approval of the Federal Government, make rules for regulating the conduct of the business of the Commission; and such rules may provide for any of the functions of the Commission specified by it being performed by a Committee composed of two or more members constituted by the Chairman for the purpose."

Whereas powers under Section 10 are meant to be exclusively used by the Federal Government in a specified manner as can be see from bare reading of Section 10 of FPSC Ordinance, 1977 which is also reproduced for kind perusal:

"10. Rules: The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance." It is thus obvious that the aforesaid Rules were framed by the

Chairman FPSC by invoking jurisdiction not vested in him. (iii) That even if the Federal Government intended to delegate its authority vested in it under Section 10 of FPSC Ordinance, 1977 to the Chairman FPSC, it will require an Act of Parliament for this purpose as is provided in Article 98 of the Constitution of Islamic Republic of Pakistan, 1973 as amended which is reproduced for kind perusal:

"98. On the Government. Majlis-e Shoora (Parliament) may by law confer functions recommendation of the Federal upon officers or authorities subordinate to the Federal Government.

(iv) That lawyer of the Appellant Mr. Irfan Jahangir Wattoo, Advocate High Court confronted the Secretary law and Justice Division, Islamabad with the above two issues. His questions and the replies of the Secretary Law and Justice Division were as follows: In complaint # IS100821-88871188 dated 10-08-2021, it was asked by the undersigned "Secretary Law and Justice Division is kindly requested to state as to who is the designated authority to frame rules for carrying out the purposes of FPSC Ordinance, 1977 under Section 10 of FPSC Ordinance, 1977 and who has the power to notify the rules framed

under Section 10 of FPSC Ordinance, 1977." (ANNEX-C). The reply of the Law and Justice Division was:

"Dear Citizen, under section 10 of the Federal Public Service Commission Ordinance, 1977 the Federal Government is empowered to make rules under said Ordinance." (ANNEX-D).

In complaint #IS100821-88871245 dated 10-08-2021 it was asked by the undersigned "Will the Secretary Law and Justice Division be pleased to state that can Federal Government or any other authority delegate the executive authority of the Federal Government to any other authority or officer without observing the provisions contained in Article 98 of the Constitution of Pakistan, 1973 as amended and if anybody ignores the provisions of Article 98 as aforesaid and starts exercising authority of the Federal Government for framing rules for which Federal Government had the exclusive authority, then what would be legal status of the rules so framed or action so taken? (ANNEX-E). The reply of the Law and Justice Division was as follows:

"Dear Citizen, yes the Federal Government and such other authority may, subject to enabling provision of law in this behalf, delegate its power further. Any deviation therefore, is unlawful." (ANNEX-F)."

Honourable Information Commission may kindly take notice of the fact that the rules on the basis of which the Respondent FPSC is declining the request of the Appellant were illegally framed and that the approval of Federal Cabinet or the Establishment Divisions becomes meaningless in view of the legal position explained above.

That it is a well settled principle of law long established that when the manner of doing a thing is prescribed in a statute, that thing must be done in that particular manner and not otherwise. The manner of framing rules for carrying out the purposes of FPSC Ordinance, 1977 was clearly laid down in Section 10 of the FPSC Ordinance, 1977 no other manner is authorized or legal, Reliance in this regard is placed on judgments of Honourable Apex Court reported vide (a) Khyber Tractors (PVT) Ltd through Manager Versus Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad (PLD 2005 SC 842); (b) Atta Muhammad Qureshi Versus The Settlement Commissioner, Lahore Division, Lahore and 2 others (PLD 1971 SC 61); (c) Raja Hamayun Sarfraz Khan and others versus Noor Muhammad, (2007 SCMR 307); and (d) Muhammad Akram Versus Mst. Zainab Bibi" (2007 SCMR 1086).

(vi) That FPSC is well aware of the fact that they are doing illegal act by framing rules for CSS Examination, therefore, as a measure to protect their interests they force the candidates to sign a declaration that they will abide by the rules framed by the FPSC. Kind attention of the Honourable Information commission is drawn towards the provisions of Section 383 of Pakistan Penal Code which describes the aforesaid act as Extortion which is punishable under Section 384 ibid.

(vii) That the FPSC does not condone delay of even a single day to any candidate. It is on record that twice the Appellant had to file Writ Petitions to seek directions from Lahore High Court for obtaining disposal of his representation and review petitions filed under Section 7(3)(a) and 7(3)(b) of the FPSC Ordinance, 1977, FPSC thus cannot chose what remedy the appellant is to avail.

(viii) That the rules framed by the respondent in the aforesaid illegal manner cannot be used to decline request of the Appellant under any Section of the Right to Access of Information Act, 2017.

(ix) That the Punjab Information commission has already announced that after announcement of the result of the examination, the candidates become entitled to get certified copies of their papers should they apply for the same.

PRAYER

It is most respectfully prayed that the plea of the FPSC being illegal, unjust and whimsical may kindly be turned down and they may be directed to provide certified copy of the Appellant's paper of English (Essay) as the result of the CSS Examination 2020 has already been announced, therefore, nothing should be confidential or secret now and if FPSC had acted in a transparent manner, there should be no hesitation on their part to provide the requisite information to the Appellant. It is also prayed that they may be directed not to destroy the examination record of the Appellant till the final decision of this appeal."

13. Rejoinder submitted by the Appellant was shared with the public body on September 14, 2021, with the directions to respond to the queries of the Appellant within 7 working days.
12. The Appeal was again fixed for hearing on October 19, 2021 and both parties were informed through notices sent on October 08, 2021.
13. The public body through a letter vide No F. 2-2/2020-CI dated October 08, 2021 again submitted response which is as under:

"I am directed to refer to Pakistan Information Commission's notice dated 14 September, 2021 regarding appeal no 1157-06-21 on the subject cited above. Appellant Mr. Sajid Abbas requested for provision of certified copier of his answer sheets for CSS Competitive Examination the request was rejected by the Commission in terms of Rule 16 (28) of CSS-Competitive Examination Rules, 2019, which stipulates that Answer Books are confidential documents and cannot be permitted to be seen by candidates. Same was conveyed to the candidate vide memoranda dated 20" April and 21" May, 2021 and vide replies addressed to Pakistan Information Commission dated 19th July and 31 August, 2021.

3. It is once again reiterated that since CSS Competitive Examination Rules are approved by the Federal Government, the requisite information is not only confidential in terms of Rule 16 (28) of CSS-Competitive Examination Rules, 2019 but also in terms of Section 7 (f) of Right to Access of Information Act, 2017."

14. The Appellant on October 12, 2021 submitted application to reschedule the hearing. On request of the appellant the hearing was again schedule for hearing on October 21, 2021.
15. No one appeared before the Commission in the hearing held on October 21, 2021.

C. Discussion and Commission's View on Relevant Issues

16. The commission has to decide that whether the information requested by the citizens falls within the ambit of the public record and whether the public body has responded or not to the information request and notices of the commission within time limit mentioned in the Right of Access to Information Act, 2017, hereafter referred to as the "Act".
17. The information requested by the appellant is declared as public record in section 5 (e) of the right of Access to Information act 2017 and the public bodies are bound to ensure that all such categories of the information and record defined in Section 5 of the Act are duly published including uploading over the internet or in a manner which best ensures that these are accessible to the public.
18. The only argument that the Respondent submitted is that request for provision of certified copies of answer sheet for CSS Competitive Examination is rejected by the Respondent in

terms of Rule 16 (28) of CSS – Competitive Examination Rules, 2019. However, the Section 24 of the Act have an overriding effect on other laws, hence this Commission observes that information can't be denied only on the basis of Rule 16 (28) of CSS – Competitive Examination Rules, 2019. Section 24 of the Right of Access to Information Act, 2017 is as under:

“24. Act to override other laws: The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

19. This Commission observes that any information held by any federal public body, except exempted under Section 16 of the Right of Access to Information Act, 2017, comes in public domain and citizen can avail such information under the Act.
20. This Commission believe that after the disclosure of the result, any candidate can avail the certified copy of the answer sheet, it will not will only help the candidate to improve or examine his performance but will also build trust of the citizen on the CSS Examination System.
21. This Commission in an order on Appeal No. 813-12/20 Amer Ejaz Vs Comsats University, Islamabad has held that answer sheet after declaration of the result is a public document, and candidate has the right to avail his/her answer sheet under the Act.
22. Punjab Information Commission, in an order dated February 01, 2021 title Muhammad Nauman ul Haq Vs Punjab Public Service Commission has also held that *“answer sheets are classified or secret only upto announcement of results.”*
23. The Central Information Commission (CIC) of neighbouring country India in a similar case title Aditya Bandopadhyay Vs CBSE has also declared access to the answer book by a candidate is his/her right under the Right to Information Act, 2005.

The order of the CIC India was later upheld by the Supreme Court of India. The Supreme Court of India in the decision CBSE Vs Aditya Bandopadhyay, (2011) 8 SCC 497 held that:

“... every examinee will have the right to access his evaluate answer books, by either inspecting them or taking certified copies thereof unless the same was exempted under Section 8(1)(e) of the RTI Act, 2005.”

24. The Order of SCI further states, *“this right is claimed by the students, not with reference to the rules or bye-laws of examining bodies, but under the RTI Act which enables them to have access to answer-books as “information” and inspect them and take certified copies thereof.*

Therefore the provision of the RTI act will prevail over the provisions of the bye-laws/rules of examining bodies is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of the section 8(1) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examination ”

25. According to Section 9 of the Act, each public body shall, within thirty days of the commencement of this Act, notify one or more designated officials, not below the rank of an officer in BPS -19 or equivalent; but the Respondent has not so far nominated any official to deal with the information request of the citizen.
26. According to Section 19 (d) of the Act, this commission is bound to make sure the all information determined in Section 5 of the Act available on the website of the public bodies. In this regard, the Pakistan Information Commission has developed a template to

ensure proactive disclosure of information. The template is available on the website of this commission i.e. www.rti.gov.pk

27. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

D. Order

28. The appeal is allowed. The Secretary, Federal Public Service Commission is directed to provide the information requested in Para-2 with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.
29. The Respondent is also directed to designate Public Information Officer as required under Section 9 of the Act and upload its notification along with the name, designation and contact details on its website as required under Section 5 (1) (b) and (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.
30. The Respondent is also directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission within 30 days of the receipt of this Order.
31. The Respondent is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
32. Copies of this order be sent to the Secretary, Federal Public Service Commission and to the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: November 29, 2021

This order consists of 9 (nine) pages, each page has been read and signed.