

**IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD**

APPEAL NO. 1314-09-2021

Syed Karim Shah

Versus

Federal Public Service Commission

Date of Hearing: 27.10.2021

Fawad Malik: Information Commissioner

**A. APPEAL**

1. Mr. Syed Karim Shah, preferred his appeal dated 3.9.2021 before the Pakistan Commission on access to information, Islamabad. He alleged that the request for information has not been responded by the Federal Public Service Commission within the frame of time stipulated under the Right of Access to Information Act, 2017.
2. Through an application dated 10.08.2021 addressed to the Secretary, Federal Public Service Commission he has desired the attested copy of form submitted by Mr. Saqib Shahab s/o Mukamil Shah for the post of Assistant Educational Advisor (BS 18). The detailed particulars of the requested information are:
  - i. Case No. F4-36/2009-R
  - ii. Post Name: Assistant Educational Advisor (BS 18)
  - iii. Roll No. 0172/1

**B. PROCEEDINGS**

3. The notice of the Commission was responded by the Deputy Director (FS), Federal Public Service Commission vide letter dated 15<sup>th</sup> September, 2021. The same is reproduced as under:

*“I am directed to refer to your request regarding provision of information i.e. attested online form of Mr. Saqib Shahab, a nominee of the Commission in case No. F.4-55/ 2016-R. It is informed that the desired information is personal in nature and comes under Para 1 (f) and (g) of the Circular No. F.2-25/ CE-IV-2015 dated 12<sup>th</sup> November, 2015, which cannot be shared. Therefore your request cannot be entertained.”*

The Manuscript of Circular No.F.2-25/ CE-IV-2015 dated 12<sup>th</sup> November, 2015 are reproduced hereunder for appraisal:

No.F.2-25/CE IV-2015

FEDERAL PUBLIC SERVICE COMMISSION

Aga Khan Road, F-5/1

CIRCULAR

Islamabad the 12 November, 2015

**Subject: POLICY REGARDING PROVISION OF FPSC'S RELATED INFORMATION TO PRIVATE PERSONS /RESEACHERS**

The Commission has approved the following policy regarding sharing of FPSC's data With private persons/researchers:

Classified Information that cannot be shared:

- a. Name, contact numbers and particular of examiners, paper setters and external Psychologists
- b. Question papers/MCD papers the exam of which is yet to be held
- c. All question papers including MCU/Descriptive etc. which are required to be returned by the candidate to supervisory staff at the examination center on conclusion of the test/exam
- d. Written scrip's/OMR sheets of the candidates of CSS/GR/other exams
- e. Psychological tests, psychological group activities, psychological written/scripts/OMR sheet of candidates, psychological test results, dossiers of candidates, psychological reports, marks of Psychological Assessment of CSS/AFI/IB
- f. Personal/family particulars of the candidates CSS/GR/other exams
- g. Soft copy of data which can be manipulated for any ill purposes
- h. Marks/ position obtained by the candidates before announcement of results in Competitive/FPO exams
- i. Marks/position obtained by the candidate in GR Screening/ Descriptive tests
- j. Allocation charts of CSS CE
- k. Copies of the noting portions

II Information that can be shared:

- a. Annual report, news letters
  - b. Advertisements, public notices, rules, regulations, syllabi, time table, psychological/viva voce schedules etc.
  - c. Secondary information derived through database on approval of the Commission
  - d. Personal/family particulars of candidates, if they have given consent to share the same with someone else, subject to approval of the Commission that intents of sharing such information in any way shall not be used against fame/repute of the Commission
  - e. Personal data of candidates can be shared with Government Security Agencies, to investigate truthiness of facts
2. All concerned may implement the above decision strictly.

4. The appellant is not satisfied with the reply. He filed rejoinder to the appeal to the following effect:

*That abridgedly the facts giving rise in the instant application are that the applicant is a responsible and law abiding citizen of Pakistan and has been guaranteed Fundamental Rights as contained in Chapter 1 of Part. It of the Constitution of Islamic Republic of Pakistan and the applicant is also entitled to be dealt in accordance with the law under due process of law for equal treatment, enjoyment and protection of all such Fundamental Rights*

*2 That the applicant believing in Rule of Law, Equality and Fair-play cannot forgo illegal and unconstitutional acts and omission on the part of public*

*functionaries as well as the persons who are beneficiaries of such illegalities and unconstitutional acts by way of financial gains and also by usurpation of Public Offices causing loss to the Public Exchequer which is a sacred trust with such public office- holders and functionaries of the state.*

*3. That the applicant moved an appeal before the honorable Chief information Commissioner against the respondent for provision of the requested information on 23 August 2021. That the honorable Chief Information Commissioner acknowledged the appeal and directed the respondent on 06 September 2021 to provide the reason in writing within 07 days of the receipt of the notice. 4.*

*That the respondent has denied the provision of the requested information on the following ground: "The desired information is personal in nature and comes under Para I (f) of the circular No F.2-25/CE-IV-2015, dated 12 November 2015 which cannot be shared." Vide letter No F.10-2/2021-RIES IV) PIC). Mere on the basis of a departmental circular sharing of information cannot be denied as:*

- i. That The Circular No F.2-25/CE IV-2015 dated 12" Nov 2015 is aimed at securing the corruption of officers and employees of FPSC*
- ii. A department Circular cannot be above the law.*
- iii. In application form of the candidate there is no Column whereby consent of the candidate there is no Column whereby consent of the candidate for sharing of information is being asked.*
- iv. According to RTI law an information cannot be shared where disclosure of the information cannot be shared where disclosure of the information shall or is likely to cause harm to-*
  - a. National Defense, Security, public order or International Relation Pakistan.*
  - b. Information cannot be shared if it hinders the process of Administration of Justice. As such it will help facilitate the administration of justice.*
  - c. A legitimate privacy interest (interest other than the personal particular, because the particular of a candidate are Name, Father Name, F/Name, qualification and experience of a candidate can pose threat to National Security or IR of Pakistan etc.*
  - d. I possess the photocopy of the desired online form. How could I possess I if it were classified information?*
  - e. It is worth mentioning here that the desired information is helpful in administration of justice to see whether the candidate has been recommended by the commission on merit.*
  - f. The Circular No F.2-25/CE-IV-2015pf FPSC is solely aimed at covering the corruption of officers and employees of FPSC and that it is never above the RTI laws according to which the desired information does not fall within the category of classified information.*

### **C. COMMISSION'S VIEW.**

- 5. The appellant is looking for the attested copy of form submitted by Mr. Saqib Shahab s/o Mukamil Shah, a nominee of the Commission in case No. F.4-55/2016-R for the post of Assistant Educational Advisor (BS 18), from the office of the Secretary, Federal Public Service Commission. The organization has denied the desired information while referring Para 1 (f) and (g) of the Circular No. F.2-25/ CE-IV-2015 dated 12<sup>th</sup> November, 2015, describing it personal in nature. The appellant has disputed the reply by way of filing the rejoinder to his appeal.**
- 6. The Commission served upon the organization notice for the provision of the information under the Right of Access to Information Act, 2017. The**

organization instead responding under the Act, denied the fundamental right to a citizen while referring the above stated departmental circular. The referred circular provide policy regarding provision of FPSC's related information to private persons /researchers circulars and instructions issued by the organization, but it is settled principal that the Circulars cannot prevail over the statute. So far as the circulars issued by the Government are concerned they represent merely their understanding of the statutory provisions. The referred circular is thus not binding upon the Commission constituted on access to information. In short the circular which is contrary to the statutory provisions of the Act of Parliament has no existence in law.

7. The Right of Access to Information Act, 2017 is legislated for the provision of the fundamental right enunciated under article 19A of the Constitution of Islamic Republic of Pakistan 1973. The article 8 of the constitution is to invalidate all existing laws in so far as they are inconsistent with fundamental rights conferred by the Constitution. The article provides that any law or any custom or usage having the force of law shall be void if it is in contravention of the rights conferred by the fundamental rights.

Moreover section 25 of the Act states that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. The Commission is of the considered view that merely on the basis of a departmental circular sharing of information cannot be denied to the citizens nor can the Circular override the Constitution and the Act of the parliament.

8. The information requested by the appellant is the category of record that should have been made available on the website of the organization as soon as the said nominee was selected for the post of Assistant Educational Advisor (BS 18), in the office of the Federal Public Service Commission. The appellant claim that he does possess the photocopy of the desired online form but has asked for an attested copy.
9. Transparency in the working of the government departments is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practice would improve the participation of the people in the public affairs aimed at reducing corruption, nepotism and inefficiency in the governance.

**D. ORDER**

The appeal is allowed. The Secretary, Federal Public Service Commission is directed to furnish the appellant the requested information and record after severing the information touching the private privacy of the said officer i.e. CNIC, Postal address, Phone Number or any other information related to his family members, forthwith, but not later than ten days of the receipt of this order.

He is further directed to implement the sections 5 & 8 of the Act, under intimation to this Commission within one month of receiving this order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on 09.11.2021

Certified that this order consists of five (5) pages, each page has been read and signed.