

# IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO 217-12/2019

Babar Aziz Khan

Vs

National Bank of Pakistan

18.03.2020

**Fawad Malik: Information Commissioner**

## **A. APPEAL**

1. The brief facts of the appeal are that Babar Aziz Khan (appellant) has filed the appeal before the Commission desiring his service record under article 19 A of the Constitution of Pakistan. In his application submitted in the office of the President, National Bank of Pakistan (respondent), he has desired the provision of his service record for a period span from 15.01.1990 till 1997, period he claims to be employed as a temporary godown keeper at "CHOWH SHAH ABBAS" Multan branch of the Bank.

## **B. PROCEEDINGS**

2. The Commission vide letter dated 17.12.2019 addressed to the President, National Bank of Pakistan, at its head office, Karachi directed to provide reasons in writing within seven days as to why the requested information has not been provided to the applicant in response to his application. The reply was not submitted therefore the appeal was fixed for hearing before the Commission on 26.2.2020 and both the appellant as well as the respondent were informed accordingly at their respective addresses vide notices dated 12.2.2020.

3. At the time of hearing Mr. Khadim Hussain appeared on behalf of the appellant whereas no body turned up to represent the Bank. The appellant has further supplemented his appeal by furnishing a copy of the order of the Lahore High Court, Multan Bench, in ICA 455/2018 titled "*Babar Aziz Khan vs National Bank of Pakistan*".

4. The respondent did not file the reply nor the Bank was represented at the time of the hearing of the appeal therefore the Commission taking a serious note intimated the respondent of the consequences of willful and deliberate obstruction in the activity of the Commission, through interim order dated 3.3.2020. The appeal was adjourned and fixed for hearing on 18.3.2020.

5. At the time of hearing Mr. Nasir Abbass OG-1, Incharge HR litigation, National Bank of Pakistan, Regional office, Multan appeared before the Commission and filed written reply on behalf of the respondent/Bank. The relevant portion of the reply is reproduced as under;

- *That appellant filed writ petition No.3393-2014 before Lahore High Court Multan Bench for regularization of temporary service in the Bank which was disposed by Hon'ble*

*Court vide Order dated 30.4.2014 with a direction to treat the petition as representation and decide the same in accordance with parameters laid down in case of Ikram Bari & 521 Others Vs NBP (2005 SCMR 100). Copy of the court order is attached as (Annexure-A)*

- *That after hearing the appellant in person, going through the contents of subject writ petition and scrutinizing the documents attached with the petition as well as the record produced by the appellant and record available with the Bank, case of the appellant for induction in Bank's regular service was accordingly considered and well-reasoned Speaking Order issued vide letter No. HRM&AG /P&IRD/2014 / 3595 dated 19.08.2014. Copy attached as (Annexure-B).*

- *The appellant again filed writ petition No.523/2015 before Lahore High Court Multan Bench which was dismissed by the Hon'ble Court vide Order dated 15.05.2017 being not maintainable, copy of the court order is attached as (Annexure-C)*

- *That appellant filed ICA No.455/2018 before Division Bench, Lahore High Court Multan Bench which was disposed by the Hon'ble Division bench vide Order dated 20.01.2020 with a direction as follows:- copy of the court order is attached as (Annexure-D)*

*"Since the basic controversy has not been resolved, therefore, the Respondents are directed to look into the matter and decide the same after providing proper opportunity of hearing to all the concerned including the Appellants strictly in accordance with law expeditiously within a period of two months from the receipt of certified copy of this order. The Appellant shall appear before the Respondent concerned on 28.01.2020."*

- *In compliance of Court Order dated 20.01.2020, the appellant appeared before Regional Head, NBP, Regional Office Multan on 28.01.2020 and submitted application (copy attached as Annexure-E) for personal hearing by the concerned authority and the schedule of hearing has since been conveyed to the petitioners in the light of above-referred Court Order (copies attached as Annexure-F).*

- *That appellant concealed the above-mentioned facts while filing application/appeal before Information Commission.*

Along with the written reply, copies of the order dated 30.04.2014 in writ petition No. 3393/2014, order dated 19.08.2014 by NBP authorities, order dated 15.05.2017 in writ petition No. 523/2015, order dated 20.01.2020 in Intra Court Appeal No. 455/2018, application of the appellant to the bank authority for his personal hearing and notice for personal hearing of the appellant dated 19.03.2020 are annexed."

6. During the course of the arguments the representative of the Bank has controverted the contents of the appeal. He has submitted that the appellant was appointed temporarily on contract basis and never served regularly and that the litigation regarding the regularization of the temporary service was pending adjudication between the bank and the appellant before the Lahore High Court at Multan bench, at the time of filling the instant appeal before the Commission, but the same has been concealed in the appeal therefore the appeal is not maintainable.

### C. COMMISSION'S VIEW:

7. 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 15.1.1990 to 1997 in the said bank as a godown 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 ?

8. It is an admitted fact that litigation between the appellant and the bank in the Multan Bench of Lahore High Court, has completed the second round to reach 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 which was decided on 30.4.2014 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 19.8.2014 declined the request of the appellant holding as under;

- *As evident from the only alleged appointment/engagement letter produced by you during the hearing, you were temporarily hired only for two months and 19 days and you would appreciate that this is contrary to the criteria/qualification for absorption/ induction in the Bank's regular service as laid down in above quoted para 18 of the judgement in Ikram Bari's case (2005 SCMR 100).*

9. The decision of the bank was assailed by the appellant through Writ Petition No. 523/2015 before the Multan Bench of the Lahore High Court which was dismissed vide order dated 15.5.2017, being not maintainable. The appellant filed ICA No. 455/2018 before the Honorable Court which was disposed of by the Division Bench vide order dated 20.1.2020 with the following direction;

*“ Since the basic controversy has not been resolved, therefore the Respondents are directed to look into the matter and decide the same after providing proper opportunity of hearing to all the concerned including the Appellants strictly in accordance with law expeditiously within a period of two months from the receipt of certified copy of this order.”*

10. After going through the appeal, the reply submitted by the respondent and hearing the arguments it is denuded that, the appellant, at the time of filing the application before the bank authority and appeal before the Commission was aware of the fact that his matter of regularization of service was pending adjudication before the High Court, but this fact has been concealed in the appeal deliberately. The appellant has not filed the appeal with clean hands.

The matter in issue in the writ petition filed by the appellant which was pending adjudication before the Hon'ble High Court, at the time of filing the appeal, was directly and substantially related to the relief/information sought by the appellant in his appeal before the Commission. The appellant has filed the instant appeal without securing his right and ripening of the remedy. *“ubi jus ibi remedium”* (Wherever there is a right, there is a remedy).

11. Without waiting the outcome of the case regarding the regularization of the appellant, it can safely be drawn from the floating facts on the surface that the service of the appellant for the period from 15.1.1990 to 1997 as temporary godown keeper in the bank was not established at the time of filing the appeal therefore his right to file the instant appeal was not recognized. This premature appeal is not maintainable however if the legal battle is decided in favor of the appellant he will be at liberty to file fresh appeal before the Commission.

12. The Commission is of the view that the information/record desired by the appellant does not fall within the category of record as defined in the Right of Access to Information Act 2017. This Commission cannot decide the contingent appeals.

13. The Commission is concerned vis-à-vis the demeanor 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 willful and deliberate obstruction in the activity of the Commission. The respondent is advised to be vigilant in future for the implementation of the Act.

**D. ORDER.**

14. The appeal is not maintainable, hence dismissed.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner  
Announced on 4.6.2020.

Certified that this order consists of 4 (four) pages, each page has been read and signed by me.