



In The Pakistan Information Commission, Islamabad

Appeal No 685-10/20

Raja Khurram Shahzad

(Appellant)

Vs.

Pakistan Railways

Through its Public Information Officer

(Respondent)

ORDER

Date: February 10, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 16-10-2020, to the Commission, stating that he submitted an information request to Chairman, Pakistan Railways and Chief Executive Officer, Pakistan Railways under the Right of Access to Information Act 2017 but did not received any response from the public body.
2. The information request of the Appellant is as follows:

“With due respect, it is stated that the undersigned is an Advocate by profession and believes that every institution of the country may work within its domain under the supremacy of the Constitution of Islamic Republic of Pakistan. The undersigned visited your office in connection of a case, where it transpired that Shams ul Qamar, who was working as Senior Administrative Officer Benevolent Fund, Pakistan Railways, Lahore and retired in the year 2014 on attaining the age of superannuation. After probing the matter, it came to know that said Shams ul Qamar again appointed on the basis of contract, after one month's or nis retirement on the same post, from whom, he was retired. The appointment of said Shams ul Qamar is not only illegal but also against the violation of two letters i.e. M/MISC/2018, dated 21.03.2019 issued by Mumtaz Ahmad Baloch, Director Establishment and S.O/AGM-/MISC.Misc(P1-I), dated 21.07.2020 respectively issued by Wasif Ikram, Staff Officer to AGM/Infrastructure.

In view of Article-19A of the Constitution of Islamic Republic of Pakistan, 1973, the undersigned is entitled to take information either the said appointment of said Shams ul Qamar on the basis of contract is legal or not in the light of said two letters mentioned supra wherein policy of Railways shows clearly that "engagement of TLA above 65 years of age is not permitted and (d) Fresh contractual recruitment of retired officers/ officials over the Railway Establishments (including Projects and subsidiary companies) from those upto the age of 62 years, so that if required they may serve up to the age of 65 years but with the approval of the Ministry? Either the monthly salaries being received by said Shams ul Qamar is justified or not?

These facts are very important to know by the undersigned in order to ascertain the actual position of the department that when the department cannot get the policy

implemented formulated by the competent authority then why it made the said policies, which are being violated in ruthlessly manners and is also joke with the general public and upcoming youth, who are watching the illegal and unlawful act of the Federal Department of Pakistan, who firstly made its policies and subsequently on its own motion violated the same. Can the Law permit any department to make its rules and regulations and thereafter violated it?

In view of the above submissions, it is respectfully prayed that information may kindly be given to the undersigned regarding those persons who hat who have been appointed after their retirements as well as those who have above the age of 65 years and are still working with the department (under what policy), on violation of any policy of the Federal department, legal proceedings may be taken against Shams ul Haq by recovering all of his salaries, since his appointment on the basis of contract, so nobody or department can play mockery with the law, in the supreme interest of justice, equity and fair play.

It is further requested the Apex Court of the country has given its observation on the subject, which are being violated by the Federal department ruthlessly.”

B. Proceedings

3. Through a notice dated December 02, 2020 sent to Chief Personnel Officer, Pakistan Railways called upon the Respondent to submit reasons for not providing the requested information.
4. The Respondent was issued another notice on December 24, 2020. The text of the notice is as under:
*“In pursuance of the Standard Operating Procedures issued by the Government of Pakistan for the Covid-19 and to ensure public safety, the personal appearance before the Commission at the time of hearing, is condoned for the time being. Therefore, you are directed to submit your written reply and arguments to Pakistan Information Commission within fifteen days of the receipt of this notice.
Copies of the supporting documents may be annexed with the written arguments. If the written arguments are not submitted within 15 days, the appeal will be decided Ex Parte in the light of the record available on file and the Right of Access to Information Act 2017”*

C. Discussion and Commission’s View on Relevant Issues

5. The questions for the consideration of the commission are as under:
 - (a) Should a citizen have access to requested information in accordance with the provisions of the Right of Access to Information Act 2017, hereafter referred as Act?
 - (b) Did the Respondent follow procedure laid down in the Act in responding to the request of the citizen?
6. The requested information belongs to the category of information which public bodies are legally bound to proactively disclose, through their web sites, under Section 5 (1) c) of the Act which is as under:
“Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body”.
7. The requested information is also public information under Section 6 (a)and (c) of the Act which are as under:
“Policies and guidelines;

Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body”

8. The fact that requested information is not available in public domain and that the citizen has exercised the right of access to information also highlights that the citizens want to have improved access to records held by public bodies for following purposes enunciated in the Preamble of the Act:
 - a. *Making government more accountable to citizens’;*
 - b. *Greater level of participation of citizens in the affairs of the government’;*
 - c. *‘Reducing corruption and inefficiency’;*
 - d. *Promoting sound economic growth’; and*
 - e. *Promoting good governance and respect for human rights.*
9. In the instant appeal, Public Information Officer, (PIO) maintained radio silence and failed to respond to the duly sent notices of the commission.
10. The fact that the Respondent has caused delay in providing to the requested information to the Appellant highlights following two issues:
 - (A) That the Respondent has violated timeline mentioned in the Act to provide the requested information to the Appellant; and
 - (B) That had the Respondent implemented provisions of this Act, including, but not limited to Section 4 and 5 of the Act, the unwarranted delay in providing the requested information to the Applicant could have been avoided.
11. This commission has held through its different detailed judgements that federal public bodies are not giving primacy to proactive disclosure of information through their web sites and that proactive disclosure of information is not given serious consideration it deserves.
12. While all federal public bodies were legally bound to implement Section 5 of the Act within six months of the commencement of this Act, it is painfully obvious from the responses of the public bodies that work on proactive disclosure of information is progressing at a glacial pace. This clearly suggests that the public bodies have demonstrated paper-thin grasp of the significance of the transparent functioning of public institutions through proactive disclosure of information.
13. This commission has also established through its different Orders that not only information is to be made available to citizens as required under Section 5 of the Act but it has to be made available on the web sites in a manner that it is accessible for all citizens, including those with different disabilities by incorporating web accessibility standards in the design and development of web site.
14. Had the Respondent gone through the Act after receiving request for information of the citizen and notices of this commission, clearly referencing the Act, it would have saved time and resources of this Commission. It also demonstrates that the Respondent has not taken any steps for the implementation of the Act. It demonstrates that the powers vested in officers are not being exercised “reasonably, fairly, justly, and for the advancement of the purposes of the enactment” as required under Section 24A (1) of the General Clauses Act 1897.
15. This commission is of the view that the wilful delay or denial of the requested information causes undue cost to citizens and the commission. Citizens have to approach this commission for the exercise of their fundamental constitutional right of access to information which involves cost both in terms of money and time.

16. Citizens of Pakistan through their elected representatives have included the provision of imposing fine on public official who wilfully delay or deny access to the requested information so that they do not have to pay the undue cost in terms of time and money in exercising their right of access to information because of the dereliction of the duty of a public official.
17. 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

18. Appeal is allowed. The Public Information Officer, Pakistan Railways is directed to provide the following information to the Applicant, with intimation to this commission, within 10 working days of the receipt of this Order:

“Total number of persons who have been appointed after their retirements as well as those who are more than 65 years and are still working with the department;

Certified copies of Rules/Policy under which services of such persons have been hired; and

Certified copies of all such contracts.”

19. The Respondent is 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 by 07/03/2021.
20. 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 by 07/03/2021.
21. Copies of this order be sent to The Public Information Officer, Pakistan Railways and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
February 10, 2021

This order consists of 04 (four) pages, each page has been read and signed