

Pakistan Information Commission
Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 822-01/21

Tariq Badar

(Appellant)

Vs.

National Bank of Pakistan

(Respondent)

Order

Date: November 30, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant through email filed an appeal, dated April 04, 2021, to the Commission, stating that he submitted an information request to President, National Bank of Pakistan 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:

"I need Copy of my service agreement. I wrote two letters to several Manager, HBP, and Regional office, Quetta, on 02/01/2014 & 09/01/2014.

Although none of the but verbally, I was informed letter replied as usual that it is not available in Regional Office. Thereafter, I wrote a letter to President on 26/07/2017, which was responded by HRMS by enduring a copy of letter, addressed to PMW/P31 Relation endorsed to 4 various dipto/wing/albeit. 7/2 months late, on 13/03/2018.

As no response Shown by NBP, a legal notice on 17/01/2020, but it suffered was also dispatched the same fate.

In the prevailing circumstances I have no choice, but to file a FIR against you, for violating law of the land."

B. Proceedings

3. Through a notice dated January 19, 2021 sent to the President, National Bank of Pakistan the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The Appeal was fixed for hearing on February 11, 2021 and both parties were informed through notices sent on February 01, 2021.
5. Respondent requested time to respond to the information request of the Appellant. The hearing of the appeal was adjourned to March 04, 2021.

6. The appeal was again adjourned for March 11, 2021.
7. The Respondent submitted response through letter dated Nil, which is as under:

“PRELIMINARY OBJECTIONS

1. *The appellant has asked for the service record which has been provided to him. The appellant joined bank in the year 1981 and said letter of allotment and the Surety Bond document not only provided to him but are already in his possession.*
2. *That the appellant was a regular employee of the Bank, who retired from the bank's services upon attaining superannuation and has since been benefiting from the rewards that bank offers to its respected ex-employees in the form of Pension and other such returns as end of service dues. It is regretted that since his separation from bank Mr.Tariq Badar has become a habitual litigant and is always involved in litigation with Bank on one issue or the other. All his required service record is already available with him such as employment letter, appraisal letters, Promotion letters etc as he was very much in the service and there remains no document which he now needs. He has also been using that record at various forums while challenging Bank's credibility during the litigation in the past.*
3. *That present petition is ill founded as the record as demanded by him is not necessary to be available to bank.*
4. *That the Right to access to information Act, 2017 is a new law promulgated in 2017. Since it came into force at once hence institutions will need some time to follow the requirement and also there is no provision in the Act that it is applicable retrospectively. All information SO demanded by the appellant pertains to very old period i.e 1973 almost 44 years prior to the promulgation of this law. Hence the Honorable Commission has to take a lenient view and requested to not pass an adverse order to provide such information to an individual who happens to be a staff and a pensioner of the organization and remain associated with the organization for a long time.*

REPLY ON MERITS

1. *That Para under reply needs no response.*
2. *That the Para under reply is matter of record subject to submission of strict proof by the appellant.*
3. *That the Para under reply is denied as stated. As per bank record he joined service with bank in the year 1981.The copy of his service agreement is attached herewith.*
4. *That the Para under reply is not denied as stated.*
5. *That the Para under reply is denied as stated. The appellant is misleading the facts.*
6. *That the Para under reply is denied as stated. The appellant is misleading the facts only to pressurize the bank management for his ulterior motives and bring down the reputation of his ex-employer before the other institutions*
7. *That the Para under reply is denied as stated. The respondent did not receive any such request from the appellant.*
8. *That the Para under reply is denied as stated in the light of above reply on merits.*
9. *That the Para under reply is denied as stated. As already mentioned above that no such document currently available in Bank's record therefore bank cannot provide this document.*
10. *That the Para under reply is not denied as stated.*

11. *That the Para under reply is not denied as stated.*
12. *That the Para under reply is denied as stated. That there is no legal requirement to retain the personal record of any staff for 30 ,40 or 50 years as it is practically not possible. Even the banking company's law requires Banks to retain business related documents for ten years or seek permission before destroying them. The appellant is wrongly interpreting the legal provisions.*

That the Para under reply is denied as stated. The appellant is asking for record here which bank is not required to hold forever

13. *That the Para under reply is denied as stated in the light of detailed reply on preceding Paras.*
14. *That the Para under reply is denied as stated. the present appeal is false, baseless 7 waste of court's time ill-founded and malafide, hence liable to be dismissed with heavy cost.*

In the light above made submission it is humbly submitted that the appellant may be advised to ask for such information which the Bank would appreciate to search and provide as he is still associated with the bank as a pensioner but not the documents which he understands , were manually maintained and difficult to locate / dismissed in the light of above response of bank."

8. Response submitted by the public body was shared with the appellant on March 05, 2021.
9. The appellant on March 24, 2021 submitted rejoinder to the response of the public body, which is as under:
"National Banka's counsel is not trustworthy and now he is trying to win a lost battle, in which he has lot respect, grace, status of humor being, and proved himself intellectually I have already provided all relive papers, but on 18/03, he briefed honorable court mischievously, incorrectly, detail about a case filed by me in Islamabad · High In order to reach a Count fair & just conclusion,

Annex a attested copy of my w.P N0255/2021. 5 intents of said petition has no relevance wily requirement of Medical Certificate, which your lordship has to decide."

10. The public body through a letter vide No. HRLCW/RR/T.B/2954 dated April 01, 2021 against submitted response to this commission, which is as under:
"Refer to your Appeal filed at Pakistan information Commission, Government of Pakistan, wherein you have complained the Commission against NBP Management that your Service Agreement executed by you with NBP is not provided to you despite your request,

In this regard, it is our submission that we have always tried to search your requested document but due to old record this effort could not succeed. As per your appeal we have again expedited the mater and from the record received from concerned Region, it is revealed that you joined HUP in June 1973 and tell bank's service in 2002 after remaining in Bank for 29 years. Your exit from the bank was your opting the Voluntary Handshake Scheme offered by the Bank. The document you are asking has been thoroughly searched and yet not traced as the service record is 49 years old and also please note because you severed your relation with Bank through Handshake Scheme", therefore record of such severed staff somehow difficult to trace. However some other but relevant documents that are available with Bank we are sending to you. The list as follows

1. Service Certificate dated 17.05.2002.
2. NBP VHS Option Form filled in and signed by you and the witnesses.
3. Voluntary Handshake Scheme -2001 letter dated: 28.02.2002.
4. Payment Schedule reflecting all payments received by you. 5. Promotion to OG-I Letter dated: 11.11.1993
6. Promotion to OG-II Letter dated: 05.05.1988.
7. Selection as Officer Grade-III letter dated, 30.07.1981
8. Promotion Letter from Clerical Scale V to Senior Assistant dated: 20.09.1979. 9. Promotion Letter from Clerical Scale IV to Scale V as Assistant dated: 08.11.1978.

Hope the above suffice your requirement.”

11. Response submitted by the public body was again shared with the appellant on April 06, 2021.

12. The appellant on April 07, 2021 submitted rejoinder to the response of the public body, which is as under:

“Please communicate chairman, BOD, all members of B.A.Eds., President, SEVP HR & MW, legal Head (Mehnaz Sallar) and all concerned with this appear, What contents, of Yowl letter are HR Low/RR/ TB 2934 all or/04/2021, addressed to the undersigned and copy indorsed information commission, Islamabad has been un-acceptable, not found explaining truth, fake a deliberate attempt to deceive, cheat, by destroying the arcade facts fraudulently, to mislead the honor commission

None of the documents found relevant to my appeal, pending for decision.

Yours contention that service record is 49 year old is not correct cannot be found is too inappropriate, as a survey sword executed in 1982, 40 years ago fond in the service file . My service file can be found in main Branch Quetta, Staff Colleges by Quetta or in Relational office, Quetta, where all files of ex-employees who retired under early retirement schemes are placed in the basement of RHQ building by undersigned himself.

In the light of above mentioned commentary, remarks, it is hereby decreed to execute a fresh Service agreement (Appends ix iv) annexed for your convenience to resolve my complaint amiably without further delay.

In order to have dull skills I quote relevant sections /mice from S.R & /F.R.

- I. Service recorded can be examined S.R 202 page 283
- II. Record of service S.R 196-205 Part III F.R. 74 (a) (iv)
- III. Maintain record of service

B. Non-payment of medics’ facilities intending hospitalization

I advised you to go through SNO ‘2’ Annex ‘ A’ pages c& 7 of index in appease No & 22/2021 (copies) once again attached for your ready reference and submit a certificate that Bank is not providing any kind of ME & Leah Facilities in Hospitalization to the undersigned ex-employees .

As now NBP employees are illiterate, I shave departed a certificate, annexed here with.”

13. The Respondent through council submitted as response to the rejoinder of the appellant, which is as under:

“The appellant served the bank till 2001, thereafter he left the bank under VSS in the year 2001, almost 20 years ago. As under the scheme of VSS there was no pension or any

other benefits in future. The individuals who opted for this scheme just took all benefits in one go and hereafter they have no relationship with bank in any manner. Under the law banks keep record for maximum of 10 years. The said time has lapsed in the year 2011. Thereafter there was no reason to keep this record. Hence no record is available with bank for this reason. The record is neither lost by any individual neither there was any reason for any inquiry. The record is not available due to the reasons mentioned above.

2. *That the appellant is a habitual litigant. All his record is already with him. He has been using his record at various forums during the litigation in the past. The appellant has all record so needed for him if for any purposes.*

3. *That present petition was ill founded as the record as demanded by him is not available. The appellant is well aware of the fact of not availability of record for the reasons noted above. The purpose of instant petition is just to cause harassment to bank management.*

4. *That the present law promulgated in 2017. It came into force at once. There is no provision in the Act that it is applicable retrospectively. All information so demanded by the appellant pertains to 1973 almost 44 years prior to the promulgation of this law. Hence the honorable commission cannot pass an order to provide such information to an individual.*

In the light above made submission it is humbly submitted that the appeal may kindly be rejected / dismissed in the light of above response of bank."

14. Response submitted by the public body was shared with the appellant on April 21, 2021.
15. The appellant on April 24, 2021 submitted rejoinder to the response of the public body, which is under:
"I respond to your letter H 21/4/2021, as under:-
 1. *That material attached by you needs your attention as all annexures provided by me to you, once again sent back to me, This progress competency and deliberate negligence on concerned official's part.*
 2. *I have already responded in my previous letters dt-8/03.2021 (Rejoinder to reply on behalf of respondent (NBP) 6- pages Next letter delivered on 16/03/2021 2pages with 2 annexures & 24/03/4/7, response to NBP.s letter & 4/9 your letter dated with 10 ex-letters.*
 3. *Before parting with these quires, I advise you to decide the complaint on merit and on the basis of available recorded, and after reading all my letters evidence."*
16. Appeal was fixed for hearing on July 08, 2021. Mr. Chaman Ali Abbasi, Council National Bank of Pakistan and the Appellant, Syed Tariq Badar attended the hearing.

C. Issues

17. The instant appeal has brought to the fore following issues:
 - (a) Does the Right of Access to Information Act 2017, henceforth referred to as the "Act" apply retrospectively?
 - (b) Has the Respondent kept records in accordance with the relevant laws?
 - (c) Has the Respondent provided the requested information to the Appellant?

D. Commission's View on Relevant Issues

18. It is evident from the scheme and structure of the Act that it applies retrospectively, especially from Sections 5, 6 and Section 16 (1) (k) of the Act. The *proviso* to Section 5 stipulates that if the information or record requested pertains to a period earlier than the year 2008, the same shall be published within a “reasonable time”.
19. The Respondent stated, with regard to the requested information about the medical benefits that “*As under the scheme of VSS there was no pension or any other benefits in future. The individuals who opted for this scheme just took all benefits in one go and hereafter they have no relationship with bank in any manner*”. As such, the requested information about the medical benefits has been provided to the Appellant.
20. With regard to the access to the service record, the Respondent stated that “*Under the law banks keep record for maximum of 10 years. The said time has lapsed in the year 2011. Thereafter there was no reason to keep this record*”.
21. The Respondent has stated that the records are kept for a period of 10 years under the law but has not mentioned the particular law.
22. The service records of an employee are public records according to Section 6 (c) of the Right of Access to Information Act 2017 which is as under:
“Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body;”.
23. The National Archives Act, 1993 is applicable in the instant appeal as the Respondent has raised the issue of retention of records. The service records of an employee are also public records according to Section 2 (2) (e) of the National Archives Act, 1993 which defines public records as under:
“Papers, documents, records, registers, printed materials, books, maps, plans, drawings, computer records (machine readable records), photographs, microfilms, cinematograph films, and audio and video recordings of any kind whatsoever officially received or produced by any public office for the conduct of its affairs or by any officer or employees, of a public office in the course of his official duties, including records relating to Commissions and Committees appointed by the Federal Government;”.
22. Section 7 of the National Archives Act, 1993 pertains to the retention or otherwise of public records which is as under:
“Public records not to be destroyed or disposed of without the authority of the Director General. ~ (1) *No person or officer shall, without the consent of the Director General, destroy or otherwise dispose of, or authorize the destruction or disposal of, any public records which are in his possession or under his control.*
(2) *The Director General may, with the approval of a committee consisting of the Director General, one departmental representative and two academicians nominated by the Federal Government authorize the destruction of any specified classes of public records;”*.
24. This Commission has observed that information of public importance mentioned in Section 5 of the Act is not being published through the web site of federal public bodies. In fact, the Web sites of federal public bodies contain generic information and not specific information as required under Section 5 the Act. This is despite the fact that Principal Officer of each public body was required to ensure proactive disclosure of

information through web site within 6 months of the commencement of the Right of Access to Information Act, 2017.

25. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

E. Order

26. Appeal is dismissed to the extent of requested information in para 2 of this Order. However, the Respondent is directed to conduct an inquiry with respect to loss of service record and accordingly, present its report before this Commission within one month of the receipt of this Order.
27. The Respondent is directed to proactively publish all categories of information through its web site as required under Section 5 of the Act 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 at the earliest but not later than 10 working days of the receipt of this Order.
28. 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.
29. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: November 30, 2021

This order consists of 7 (Seven) pages, each page has been read and signed.