

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 980-04-2021

Muhammad Naeem

Versus

Commissionerate of Afghan Refugees, Khyber Pakhtunkhwa

Date: 28.7.2021

Fawad Malik: Information Commissioner

APPEAL

1. Mr. Muhammad Naeem invoking the right under the Right of Access to Information Act, 2017 has filed request dated 5.4.2021 for the provision of following information/record from the office of Public Information Officer, Commissionerate of Afghan Refugees, Peshawar for the period 2013 to date at his email Naeem 982@yahoo.com:

1. *“How many people have been hired/appointed on Contract/Project in the Afghan Commissionerate, KP.*
2. *Whether these posts were advertised or not?*
3. *If no advertisement for these posts then what was the criterion to call the candidates and what was merit for selection.*
4. *Whether regional quota and other quota prescribed by Government of Pakistan was observed while appointing these Assistant Directors, RVAs etc?*
5. *Who is the competent authority to appoint Assistant Directors, RVAs etc under the law with quoting specific sections?*
6. *Is it true that the Accountant General of Pakistan Revenues informed the federal government in January 2017 that the post of refugee village administrator had been upgraded to BPS-17 by the Establishment Division with effect from March 31, 1991 and it had asked from Afghan Commissionerate Peshawar that how the recruitment was made in BPS-16 instead of BPS-17?*
7. *Provide Rules, regulations and directives under which RVA has been elevated to the post of additional commissioner despite being the junior most employee.*
8. *Provide Rules under which RVA has been appointed the District administrator.*
9. *Why most of the new recruits belong to Bannu, Lakki Marwat, Mardan and Dera Ismail Khan. Why no representation from other districts of KP. Provide names, designation, date of appointment and union council name of recruit belong to aforementioned cities on contract, project, daily wage fixed pay etc?*

10. *Why the Federal Public Service Commission has been bypassed and no advertisements were placed in newspapers.*
 11. *Why quotas for women, minorities and disabled persons were not observed.*
 12. *What is the budgetary allocation for carrying an advertisement in the newspapers for any post in CAR.*
 13. *Provide the correspondence between the Afghan Commissionerate and NAB regarding corruption in procurement of machinery/illegal appointments etc.”*
2. Feeling aggrieved of no response from the public body the appeal was preferred before the Pakistan Information Commission on 6.4.2021.

PROCEEDINGS

3. The notice of the Commission was responded by Assistant Commissioner (Admin) vide Letter No. CAR/Admn/RTI/547-49 dated 9.6.2021, with a copy to the appellant. The same is reproduced as under:
1. *“The exact same information was provided by this commissionerate letters dated 2.12.2020, 10.2.2021, & 22.2.2021 placed at F/A, F/B & F/C respectively. Moreover, a hearing on dated 11.3 2021 was also attended before the Pakistan Information Commission, Islamabad bearing appeal No. 725-11/20 (Muhammad Naeem vs Commissionerate Afghan Refugees, KP).*
 2. *&3 UNHCR funded positions in Commissionerate Afghan Refugees, KP are purely on contract basis which are renewed at the end of each year as reflected in the Partnership Agreement (PPA) between UNHCR and CAR KP. No social security benefits/pension/retirement benefits are given to the said employees working against the UNHCR budgeted positions. The Commissioner Afghan Refugees, KP is the competent authority in ARO KPK for making appointments against the UNHCR funded positions.*
 4. *No regional quotas are applicable on these project positions.*
 5. *The Commissioner Afghan Refugees, KP since inception of this department is making appointment against the UNHCR budgeted positions.*
 6. *Office of the Accountant General Pakistan Revenues, Sub Office, Peshawar had raised some queries which are clarified vide M/O SAFRON letter dated 3rd February 2017.*
 7. *Incorrect. No RVA has been elevated to the post of Additional Commissioner.*
 8. *Incorrect. No RVA has been appointed as District Administrator.*
 9. *Moreover, the same information was already given vide this Commissionerate letter No. CAR/Admn/RTI/249-51 dated 22.2.2021 as requested by the same applicant in appeal No. 725/11/20.*
 10. *Since inception of ARO KP all appointments were made directly without any advertisement due to absence of Service Rules framed by the Provincial/Federal*

Government. Moreover, Service Rules for the gazetted posts of ARO KP were duly notified by the M/O SAFRON 3rd May 2018 and since then no recruitment has been made.

Furthermore, posts of ARO KP do not fall within the purview of FPSC.

11. As per the revised sanction of posts existing on the strength of ARO KP issued vide M/O SAFRON in letter dated 7th June 2017, no such quota has been given.

12. Rs. 280000/- have been provided under the relevant head by the Federal Government of Pakistan during the current financial year 2020-21. However, no expenditure has been incurred so far.

13. Inquiry regarding corruption in procurement of machinery etc has been closed vide NAB letter dated 26th Feb, 2020.”

4. The appellant is not satisfied with the response of the answering public body. He has filed the rejoinder to the appeal with following objections:

“In para 1 no list of employees of Contract/project with their destinstion is provided so far.

In para 2 the partnership agreement is not provided.

In para 5, I asked that under which law quote specific section for the appointment of Assistant Director, RVA etc.

In para 9, I requested the name, designation, dates of appointments and union council of those employees recruits belong to Bannu, Lakki Marwat, Mardan and Dera Ismail Khan on contract, project and daily wages is not provided though they mention in their letter that the same information was provided.

In para 13 it was requested to provide the correspondence between the NAB and Commissionerate for Afghan Refugees but they did not provide the same while making the lame excuses of the closure of enquiry even if the enquire stop even then the correspondence was made which need to be provided.

It is requested that all the information may be uploaded on the Afghan Commissionerate website under section 5 of Right of Access to Information Act,2017 and the Afghan Commissionerate fine under section 20 subsection (f) and section 22 of Right of Access to Information Act,2017 for obstructing/hiding information.”

5. The appeal was fixed for hearing before the Commission on 28.7.2021, but no one appeared to represent the answering public body.

COMMISSION’S VIEW

6. In the reply it is pointed out by the Commissionerate that earlier the appellant was provided exactly the same information vide letter No. CAR/Admn/Right to Information/905-07 dated 2-12-2020 & letter No. CAR/Admn/RTI/249-5 dated 22-2-2021 in Appeal No. 725-11-2020 titled “*Muhammad Naeem versus Commissionerate Afghan Refugees, KP*”. The Commissionerate has however despite the protest has provided the information.

7. The Appeal No. 725-11-2020 was closed by the Commission on 25.3.2021 after sharing the information on 11.3.2021 to the appellant with the option to inform the Commission within ten days if the information is not correct or incomplete.
8. Reading the contents of the two requests reveals that although the queries of the instant appeal are closer to that of the earlier appeal but not exactly identical as alleged by the Commissionerate. The public body has the authority to reject a request under section 13(2)(b)(iii) of the Act where the same applicant has desired the same information that was provided during the last six months. The applicant however cannot be restrained or barred from expanding the net wider in the subsequent request for the deeper and broader research onto the subject matter.
9. The Commissionerate in the reply has not pleaded the exemption clause for the denial of the information requested by the appellant. The information has been provided as well but the appellant has filed rejoinder to the appeal raising objection to the extent of reply of paras 1, 2, 5, 9 and 13. The Commission address the objections as under:

Para 1

The objection is that list of employees of Contract/Project with their designation is not provided. The reading of the request depicts that this was not requested specifically, but substantially relates to the query therefore the objection is accepted. The list of employees with their designation will be provided after severing the information touching the privacy of the employees or their families i.e. account No., Cell No. or CNIC No. etc.

Para 2

The objection that partnership agreement is not provided. The reading of the request depicts that this was not requested specifically, but substantially relates to the query therefore the objection is accepted.

Para 5

The law under which appointments of Assistant Director, RVA are made is not answered. This objection is accepted.

Para 9

The particulars of the employees recruited from D.I.Khan and Mardan are provided earlier however the particulars of the employees from Bannu and Lakki Marwat will be provided. The objection is partially accepted.

Para 13

The correspondence between the Afghan Commissionerate and NAB regarding corruption in procurement of machinery and illegal appointments has not been provided. The objection is accepted.

10. The appellant apart from the above mentioned objections in the rejoinder has pointed out that the Commissionerate is in violation of the mandatory provisions of Sections 5 and 9 of the Act.

11. 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 nepotism, corruption and inefficiency in the governance.

ORDER

12. The appeal is partially allowed. The Assistant Commissioner (Admn), , Commissionerate of Afghan Refugees is directed to provide the appellant the remaining information/record mentioned in para 9 of this order, forthwith but not later than seven days of the receipt of this order.

He is further directed to implement section 5 & 9 of the Act in letter and spirit within one month of the receipt of this order, under intimation to this Commission.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner
Announced on 2.8.2021

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