

**Pakistan Information Commission
Government of Pakistan**

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In The Pakistan Information Commission, Islamabad

Appeal No. E128-07/21

Raheela Sajid

(Appellant)

Vs.

National Engineering Services Pakistan (Pvt) Limited.

(Respondent)

Order:

Date: December 14, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal:

1. The Appellant filed Appeal through online Appeal Management System on July 13, 2021, to the Commission, stating that she had submitted information requests to the National Engineering Services Pakistan (Pvt) Limited on October 23, 2020, under the Right of Access to Information Act 2017 but did not receive any response from the public body.

2. The requested information in the complaint is as under:
“For your kind consideration, Information Requested is as follows:

*1 The Statement of Allegations and the Report of Official Enquiry held on May 05, 2010
Rel 1201/TQ/2010/35806-08 Dated: May 04, 2010*

2 My Entry Date Seniority and total Assessment points year-wise till day.

3. Service Rules of Nespak (Up to Date),

4. The Published and in Practice Procedure of Promotion and Job Regularization,

5 The Criteria of Induction to Nespak

6 The Evaluation process for Promotion

7 The Seniority Lists

8. Educational Allowance Criteria

9 My APRs (Annual Performance Review Reports), submitted; in the last 15 years ie,

- i 2005-2006*
- ii: 2006-2007*
- iii: 2007-2008*
- iv. 2008-2009*
- v. 2009-2010*
- vi. 2010-2011*
- vii. 2011-2012*
- viii. 2012-2013*
- ix. 2013-201*
- x. 2014-2015*
- xi. 2015-2016*
- xii. 2016-2017*
- xiii. 2017-2018*
- xiv. 2018-2019*
- xv. 2019-2020”*

B. Proceedings:

3. Through a notice dated June 17, 2020, sent to Respondent, the Commission stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The Respondent through a letter vide No. 099/1201/TBZ/149M/1036 dated August 17, 2021 submitted the response to the notice of the Commission, which is as under:

“Please refer to your Appeal No E128-07/21 dated July 28, 2021 on the above subject

We would like to inform you that the case of Ms Raheela Sajjid has also been dealt at the Ministry level. In response to letter No. Ent-7(11)/2017-Vol-II dated October 28, 2019 from the Ministry of Energy (Power Division), we have submitted a detailed reply vide letter No 099/1201/NA/149M/1174 dated November 05, 2019 justifying all the queries of Ms Raheela Sajid as mentioned in her complaint to the Federal Ombudsman, Islamabad.”

5. Response submitted by the Respondent was shared with the Appellant on August 25, 2021

6. The Appellant on September 01, 2021 submitted response to the information shared by the public body, which is as under:

“The deprivation of Access to this Data is falling under denial of my Right to Justice and also on record violation of Article 4, 10A, 25, 37(d) Constitution of Pakistan by NESPAR Management

Despite multiple requests to all relevant appropriate forums and Court Orders respectively lowe tot been provided the required data regarding the Rules Regulations and particular to my carpen required for an under trial FOSPAH Woman Harassment Case The data is urgently needed for Litigation Purposes and in best interest of Justice

The painful fact is that Organizations tend to discourage female employees fighting for the band Constitutional Rights and are biased towards males. In the last 2 years while striving for my bai Rights I was made to believe that it is really "Man's World" This Data is sufficient proof asinss the culpot and Nespak Management is safeguarding interest of the Accused by unjustifiably hiding the Data

The Data required is neither under control of Our Relevant Ministry (Energy Power Dived not it is the jurisdiction of Ministry to decide on my basic personal Rights duly ended in Constitution of Pakistan. It is purely under the purview of "Right to Information Ac

For your kind consideration, Information Requested is as follows:

1 The Statement of Allegations and the Report of Official Enquiry held on May 05, 2010 Rel 1201/TQ/2010/35806-08 Dated: May 04, 2010

2 My Entry Date Seniority and total Assessment points year-wise till day.

3. Service Rules of Nespak (Up to Date),

4. The Published and in Practice Procedure of Promotion and Job Regularization,

5 The Criteria of Induction to Nespak

6 The Evaluation process for Promotion

7 The Seniority Lists

8. *Educational Allowance Criteria*

- 9 My APRs (Annual Performance Review Reports), submitted; in the last 15 years ie,
i 2005-2006
ii: 2006-2007
iii 2007-2008
iv. 2008-2009
v. 2009-2010
vi. 2010-2011
vii. 2011-2012
viii. 2012-2013
ix. 2013-201
x 2014-2015
xi. 2015-2016
xii. 2016-2017
xiii. 2017-2018
xiv. 2018-2019
xv. 2019-2020”

7. The Appeal was fixed for hearing on September 23, 2021 and both parties were informed through notices sent on September 06, 2021.
8. Mr. Talal Bin Zahid, Deputy Manager, NESPAK, attended the hearing held on September 23, 2021. On his request hearing was adjourned for September 30, 2021.
9. Mr. Talal Bin Zahid, Deputy Manager, NESPAK, again attended the hearing held on September 30, 2021, and submitted documents title “INQUIRY (ER DIVISON”, which were shared with the Appellant on October 08, 2021.
10. The appellant through an email dated October 21, 2021 submitted rejoinder to the information shared by the public body, which is as under:
“I have received one of the documents which is an important Inquiry report but still other Documents have not been provided by NESPAK. As my case is under trial in FOSPAH and these documents are required to facilitate the process of justice. Kindly ensure provision of all the requested documents.”

C. Issues:

11. This Appeal has brought to the fore following issue:
Do the employees of the federal government have the right of access to their own entry Date of the Seniority list, and total Assessment points, Service Rules of the public body, published and in practice Procedure of Promotion and Job Regularization, criteria of Induction in the public body, evaluation process for Promotion, the Seniority Lists, Educational Allowance Criteria and Annual Performance Reports, (APRs)?

D. Discussion and Commission’s View on Relevant Issues:

12. The right of access to information in matters of public importance is guaranteed protection under the Constitution of the Islamic Republic of Pakistan through Article 19-A which states:
“Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law”.
13. Our ability to exercise our fundamental right of access to information enables us to attain our other fundamental rights such as gainful employment, right to life, right to clean drinking water, right to breathe in clean air and right to healthcare services etc. In fact, the constitutional right of access to information helps citizens in the exercise of right of access to justice as well by having access to records/information to effectively present their cases in the court of law.

14. This commission maintains that provisions of the Act 2017 dictate that Service Rules of the public body, Procedure of Promotion and Job Regularization, criteria of Induction in the public body, evaluation process for Promotion, Seniority Lists and Educational Allowance Criteria should be published on the web sites of the federal public bodies.
15. This commission holds that record generated during the course of service of an employee and placed on personal file of the employee is public record which should be made available to the employee concerned on his or her request.
16. This commission maintains that Annual Performance Report, (APR) cannot be treated as a secret document to the extent of its availability to the employee concerned after the enactment of the Right of Access to Information Act 2017. There is no absolute exemption from disclosure to any document in its entirety. Furthermore, public bodies cannot classify documents arbitrarily. If a document or a part of it is to be classified, the method of its classification is mentioned in Section 7 (f) of the Act.
17. The government employees have every right to see remarks recorded about their performance by their seniors as part of their official responsibilities. Section 24A (1) of the General Clauses Act 1897 requires civil servants to exercise their powers “reasonably, fairly, justly, and for the advancement of the purposes of the enactment”.
18. What is the harm in disclosing APR to the employee concerned if ‘reasonable’, ‘fair’ and ‘just’ reasons have been recorded in the ACR by a relevant senior? On the other hand, how can government employees improve their performance if they do not know questions raised about their performance?
19. As the country graduates from post-colonial era where secrecy has been a norm and provision of information an exception after the insertion of Article 19-A into the Constitution and the enactment of the Right of Access to Information Act 2017, civil servants are expected to ensure that transparency becomes a norm and secrecy an exception, and that too on justifiable legal grounds. This commission holds that there are no justifiable grounds of withholding access to their own APR from the employees.
20. This commission maintains that the disclosure of the requested information is not only in accordance with both the letter and the spirit of the right of Access to Information Act, 2017, but its disclosure will also help achieve the stated objectives of this Act which are as under:
Making government more accountable to citizens’;
Greater level of participation of citizens in the affairs of the government’;
Reducing corruption and inefficiency’;
Promoting sound economic growth’; and
Promoting good governance and respect for human rights.
21. 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.
22. 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:

23. The appeal is allowed. The Respondent is directed to provide the requested information to the Appellant at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
24. The Respondent is directed to proactively publish all categories of information through its web site as required under Section 5 of the Act, including Service Rules of the public body, Procedure of Promotion and Job Regularization, criteria of Induction in the public body, evaluation process for Promotion, Seniority Lists and Educational Allowance Criteria 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.
25. 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.
26. 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: December 14, 2021
This order consists of 5 (five) pages, each page has been read and signed.