

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 241-1-2020

Mushtaq Ahmad Warraich

Vs

National Transmission & Despatch Co. LTD

Fawad Malik : Information Commissioner

Date: 1.9.2020

A. APPEAL:

1. Mr. Mushtaq Ahmad Warraich appellant herein is former Additional Manager (HR&A) National Transmission & Despatch Co. LTD (NTDC). He has filed his appeal before the Commission, under the Right of Access to Information Act 2017, complaining the non-provision of the requested information/documents by the Deputy Manager (HR&A) , Deputy Managing Director (NTDC) and GM (project delivery) North NTDC, Lahore. The relevant portion of the appeal dated 2.1.2020, is reproduced as under;

“It is brought to your kind notice that I the undersigned had served for more than 25 years in WAPDA, PEPCO and lastly in NTDC. While working as Additional Manager (HR&A) in BPS-19 in NTDC, disciplinary proceedings on account of disorderly behavior were initiated by the Department against me and have been finalized. In this regard it is pointed out that I the undersigned applied to the DMD (AD&M) NTDC for provision of some documents vide my application dated 08.11.2019 (Annex-I). The matter was replied by the said office vide letter NO.1877 dated 15.11.2019 (Annex-II) vide which only copies of the two office orders have been provided whereas rest of the documents have not been provided without any convincing reasons. Subsequently on the direction of DMD I have submitted an application to GM (Project Delivery) North NTDC on 18.11.2019 (Annex-III) for provision of the required documents. After a period of 31 days the matter replied by the DM (HR&A) Madam Tehmina Sarwar vide letter No.7021-22 dated 19.12.2019 (Annex-IV). The reply furnished by DM (HR&A) was found irrelevant as I

have been advised to approach the office of DMD (NTDC) for provision of documents. Whereas Deputy Manager M.D already advised to GM (PD) provide the documents. Deputy Managers (HR&A) of both the offices are responsible to provide the documents as required documents are available in both the offices. Madam Tehmina Sarwar Deputy Manager (HR&A) as well as Mr. Bilal Bin Asghar Deputy Manager (HR&A) have violated the said act. The cases have been finalized and the record is no more confidential and can be provided to any individual being public documents. The department is reluctant to follow the provisions of the said Act and they are not providing the required public documents. However once again I have approached GM (Project Delivery) North NTDC vide my request dated 24.12.2019 which has been delivered through Registered Post on 27.12.2019 (Register # 272 RGL 36296272) but still there is no response (Annex-V).”

2. Earlier the appellant had submitted his application on 8.11.2019 in the office of Deputy Managing Director (AD&M) NTDC, Lahore for the provision of the following documents;
 - i. *Copy of charge sheet issued to Mr. Allah Wasaya the then Addl. Deputy Manager office of PD (EHV)-II NTDC Multan by the General Manager (GSC) NTDC Lahore being competent authority.*
 - ii. *The copy of decision on the basis of which has disciplinary case was closed including any instructions obtained from the office of CLO NTDC Lahore.*
 - iii. *Copy of office order DMD(AD&M)/NTDC/Admn/5381-89 dated 06.09.2017.*
 - iv. *Copy of office order No.DMD(AD&M)/NTDC/Admn/A-20/5427-32 dated 08.09.2017.*

B. PROCEEDINGS:

3. The Commission vide notice dated 14.1.2020 addressed to the Deputy Managing Director, directed to provide reasons in writing within seven working days of the receipt of the notice as to why the requested information has not been provided to the applicant as under section 14 of the RTI Act 2017, each federal public body is bound to respond to a request as early as possible and in any case not later than ten working days.
4. The notice remained unheeded therefore the appeal was fixed for hearing before the Commission on 11.2.2020 and both the appellant as well as the respondent were informed accordingly vide notices dated 27.1.2020.

5. Appellant in person whereas Mr. Noman Adil, Assistant Manager appeared before the Commission to represent the respondent public body at the time of hearing. The public body's representative stated that all the requested information will be provided to the appellant by 18.2.2020 hence the appeal was adjourned to the said date on the request of the public body. On 18.2.2020 no body from the public body appeared before the Commission however vide letter dated 18.12.2020 the information was shared with the appellant.
6. The appellant through his letter dated 27.2.2020, addressed to the Commission conveyed his dissatisfaction with the information shared by the respondent. The relevant part is reproduced as under;

.....The office of GM Project Delivery/GSC NTDC has played a trick and tried to deceive the Commission and through letter dated 18.2.2020 has provided some documents which I never requested in Appeal as these documents are already available with me. Not a single document has been provided as requested in my Appeal. Kindly see my request dated 24.12.2019 as mentioned in the last part of Appeal after comparing your office can see that not a single document has been provided. The department is deliberately wasting the time and reluctant to follow the instructions of the Commission.
.....

7. Keeping in view the appeal was again fixed for hearing before the Commission on 12.3.2020. On the said date Mr Noman Adil, Assistant Manager appeared before the Commission and after discussing and arguing the appeal at full length made the following statement before the Commission where after the appeal was adjourned till 24.3.2020 on the request of the public body.

The remaining information will be provided on the next date of hearing i.e. 24th of March, 2020.

-sd-
12/03/2020.

8. The appeal could not be taken up on 24.3.2020 due to the outbreak of the pandemic Covid 19. The appeal was re fixed on 5.8.2020 vide notice dated 23.7.2020 and both the appellant as

well as the respondent were informed accordingly. On the said date Mr Noman Adil along with Miss Faiza Safdar Advocate appeared before the Commission. She insisted for short adjournment to prepare the brief therefore the appeal was fixed for 11.8.2020.

9. On 11.8.2020 Appellant was present in person and has described the irony at the hands of the public body, while on behalf of the public body Mr Ghulam Nabi Advocate, Manager Litigation assisted by Miss Tehmina Advocate appeared before the Commission at the time of hearing. It would be worth to point out that Mr Noman Adil who has had been appearing on the previous dates and who submitted written undertaking on 24.3.2020 to do the needful absented himself. After discussing and arguing in detail the Manager Litigation of the public body agreed to provide all the requested information to the appellant.

C. COMMISSION'S VIEW:

10. Admittedly the appellant served in WAPDA, PEPCO and NTDC for over 25 years. Under the disciplinary proceedings he was imposed major penalty of dismissal from service while serving as Additional Manager (HR&A) in NTDC. It is also not denied by the public body that the appellant has locked horns with the department in the legal battle before the Courts of Law impugning his punishment.
11. The conduct of the respondent public body and particularly Mr Noman Adil towards the Commission throughout the course of the hearings of appeal is objectionable. Apparently the public body has played tricks through false promises and tried to deceive the Commission by seeking adjournments on lame excuses. Mr Noman Adil has deceived the Commission time and again by wilfully and deliberately dishonouring his promise and written undertaking made on 24.3.2020. The appeal has been lingered on for a long period with the intention to create hurdles in the working of the Commission and in providing the appellant his fundamental right. The obstinate and adamant behaviour of the public body towards the Commission and towards the implementation of the Act warrants the imposition of fine under section 20(f) of the Act. The Commission taking a lenient view is warning the public body to be careful in future.

12. The argument advanced by the respondent that during the pendency of the litigation between the parties the seeking of the requested information by the appellant is frivolous is ill founded and do not carry weight. The pendency of the litigation is not a bar for the provision of the information under the Act. The appellant has asked for the provision of the documents/information *prima facie* to defend the charge levelled against him by the department. Article 10.A of the Constitution of Pakistan provides right of fair trial for the determination of civil rights and obligations.
13. The Right of Information is considered as “key to all rights”. Every citizen has been provided the Right to have access to the information held by the public bodies under the Right of Access to Information Act 2017. This right cannot be denied during the pendency of the litigation between the parties rather it provides the right to have access to the necessary information required for the perusal of the litigation. The respondent has failed to point out the relevant proviso of the Act that bars the public body to share the requested information during the pendency of the litigation.
14. Article 19.A of the Constitution of Pakistan provides every citizen right of access to information subject to reasonable regulations and restrictions. This is fundamental right guaranteed by the Constitution, cannot be denied.
15. The respondent has not claimed the requested information as exempted from disclosure under the Act, in the reply submitted before the Commission nor has argued during the course of the arguments. All the public bodies are required to publish including uploading over the internet and computerisation for voluntary disclosure of category of record as mandated in sections 5 & 8 , within six months of the commencement of the Act.
16. The public bodies are required to make arrangement for the publication and computerization of record for voluntary disclosure, including uploading over the internet, all categories of

information and record mentioned in section 5 of the Act, within six months of the commencement of the Act.

17. The appellant has also complained in his appeal that the designated officer for the respondent public body has not been appointed despite the lapse of two years from the filing of the appeal. Each public body is required under section 9 to notify one or more designated officials, within thirty days of the commencement of the Act.

D. ORDER:

The Appeal is allowed. The Deputy Managing Director (AD&M) NTDC is directed to provide the appellant all the requested information forthwith but not later than five days of the receipt of this order.

A copy of this order be sent to the Secretary, Ministry of Energy (Power Division) for the appointment of the designated officer as required under section 9 of the Act, implementation of the order and voluntarily disclosure of record as mandated in section 5 & 8 of the Act.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

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