

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1179-07-2021

Saif Ullah Awan

Versus

Ministry of Climate Change

Date of Hearing: 26.08.2021

Present: Mr. Syed Ali Raza Zaidi, Deputy Director, Law on behalf of the Ministry of Climate Change and the appellant in person.

Fawad Malik: Information Commissioner

APPEAL

1. The brief facts of the appeal are that Mr. Saif Ullah, Deputy Director, Pak-Environmental Protection Agency states that he is out of portfolio since 2016. He is being victimized time and again under the Government Servants (Efficiency & Discipline) Rules, 1973. Now a fresh charge sheet dated 8.6.2021 is received for de novo inquiry on the same allegations, he is facing since 2016. The appellant is seeking information and record from the office of the Secretary, Ministry of Climate Change under the Right of Access to Information Act, 2017, but of no avail. The detail of the information/record is detailed below:

- i. *Inquiry No. 1 by Rana Muhammad Yousaf Khan, Deputy Secretary (Dev) 28-09-2016 twelve allegations four examined and non-established. This inquiry was initiated by Mr Irfan Tariq DG (Env), who was occupying the office of DG Pak EPA beyond 03 months of his additional charge. No charge was established, even then was penalized by Syed Abu Akif Ex Secretary. FST annulled the penalties. The court orders are not implemented till to date. Allegation not established.*

- ii. *Inquiry No. 2 Mr Tahir Hussain Addl. Secretary/Authorized Officer 2016. He refused to conduct inquiry.*
- iii. *De Novo Inquiry No. 2 by Mr Rizwan Sheikh JS(IC) and Mr Muhammad Siddique DS (Dev) 12-01-2018, twelve more allegations. Not established.*
- iv. *De Novo Inquiry No. 2 by Mr Usman Yaqoob JS(Dev) and Mr Muhammad Mureed Rahimoon DS(Admin-II) 12-01-2018 same allegations repeated. Refuse to conduct enquiry.*
- v. *De Novo Inquiry No. 2 by Mr Syed Mehmood Nasir IGF and Mr Muhammad Mureed Rahimoon DS(Admin-II) 12-04-2018 same allegations repeated. Refuse to conduct enquiry, later on forced to conduct enquiry. Allegations not established.*
- vi. *De Novo Inquiry No. 2 by Mr Syed Mehmood Nasir IGF, Mr Muhammad Din Chakrani JS(Dev) and Dr Raja Muhammad Umer DIG (Forest) dated 5-3-2019 same allegations, Allegations not established.*
- vii. *De Novo inquiries (No. 1&2) by Mr Shehzad Durrani JS Authorized officer Mr Azeem Khoso Director and Mr Asif Sahibzada Director. Allegations not established.*
- viii. *Now again 11th time De novo enquiries (No. 1&2) by Syed Mujtaba Hussain JS (IC). Allegations not established.*
- ix. *De Novo inquiries (No. 1&2) 12th & 13th time by Mazhar Hayat DS 2021. Allegations not established.*
- x. *De Novo inquiries (No. 1&2) 14th time by Syed Mujtaba Hussain JS (IC) etc 2021. Allegations not established.*
- xi. *De Novo inquiries (No. 1&2) 15th time (on going) by Mr Judat Ayaz AS/Authorized Officer and Dr Mazhar Hayat DS. 2021.*

PROCEEDINGS

2. Mr. Syed Ali Raza Zaidi, Deputy Director, Law vide letter dated 30.07.2021 responded to the notice of the Commission to the following effect:

“It is respectfully submitted that the subject appeal is not maintainable as the same falls under the exemption in terms of Section 16 Sub Section (1) of Sub clause (v) of the Right of Access to Information Act, 2017 due to the reason that the issue in question raised in the subject appeal regarding the de-novo inquiry(s) has already been challenged by the appellant before the Federal Service Tribunal in MP NO.206/2021 in appeal No. 2409@/CS/2017 (Copy of appeal is enclosed at annex-I). The said Misc. application is pending for adjudication before the FST, Islamabad and next date of hearing has been fixed on 13-9-2021. The FST is the

competent forum to adjudicate the matter on the appeal filed by the serving Civil Servant.”

COMMISSION’S VIEW

3. The appellant is a serving officer in Pakistan Environmental Protection Agency, an attached department of the Ministry of Climate Change, the answering organization. During the arguments he states that ironically he has faced fifteen inquiries for the same allegations under the garb of *de novo* inquiry, that earlier on the said allegations he was exonerated by the Federal Service Tribunal, that he is being waxed twice for the same allegations violating the principal of *double jeopardy* and that seven times the allegations levelled against him were not established by the inquiry officer. He has requested in appeal the requisite information and record pertaining to the inquiry No. 1 and 2 from the department, under the right of access to information and record, to avail the legal remedies for his rights before the forum of competent jurisdiction.

On the contrary the representative of the answering organization has claimed exemption from disclosure of the record under section 16(i)(v) of the Act. The reason narrated for denial is the Contempt Petition filed by the appellant against the Secretary and DG of Ministry of Climate Change before the Federal Service Tribunal, Islamabad for non-compliance of the judgement dated 4.4.2019 through which the appeal of the appellant was accepted.

4. The jurisdiction of this Commission is confined to the extent of the provision of the information and record held by the public body if permissible under the Act. The core issue to be resolved before this Commission is to determine whether the requested information is exempted from disclosure as claimed by the respondent or merits to be provided to the appellant under his privileged right.

Admittedly the appellant presently is serving in the attached department of Ministry and has locked horns with the organization for his rights provided under the Civil Service Laws to defend the proceedings initiated against, under the E & D Rules. The appellant reserves the following rights assured

by the law and Constitution of Islamic Republic of Pakistan, for the provision of the requested information and record.

- a. Article 19A of the Constitution of Islamic Republic of Pakistan provides the right to have access to information in all matters of public importance to every citizen.
 - b. The Right of Access to Information Act, 2017 provides the right of access to information to the public record held by the public body.
 - c. Article 10A of the Constitution of Islamic Republic of Pakistan provides the right of fair trial to every citizen for his rights.
 - d. Civil Service Laws and Article 27 of the Constitution of Islamic Republic of Pakistan, safeguards the service rights and discrimination in the Service.
5. On the contrary the arguments of the respondent organization that the sharing of the requested documents will prejudice the proceedings of contempt petition, pending adjudication before the Federal Service Tribunal do not carry weight. Pendency of the contempt petition does not disentitle or bar the appellant from seeking the record related to the issue in petition nor can the appellant be denied and record withheld as punishment for filing the petition before the forum of competent jurisdiction for the redresser of his grievances. The Commission is of the considered view that the right of the citizen is further fortified when the appellant is facing departmental inquiry in order to provide him full opportunity to defend his rights.
6. The appellant has asked for all documents pertaining to the two inquiries he is facing before the department. Mr. Syed Ali Raza Zaidi, Deputy Director, Law has handed over the record pertaining to the inquiry No. 1, to the appellant during the course of proceedings. The appellant has however requested the provision of record pertaining to the inquiry No. 2 in which he has been summoned time and again for interrogation before the different inquiry officers. The appellant claims that most of the inquiry officers have exonerated him of the charge as the allegations remained not proved.

ORDER

7. The appeal is allowed. The Deputy Director, Law/Public Information Officer, Ministry of Climate Change is directed to furnish the appellant all the information and record pertaining to the inquiry no. 2 forthwith, but not later than seven days of the receipt of this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 30.8.2021

Certified that this order consists of five (5) pages, each page has been read and signed