

**IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD**

APPEAL NO. E-62-01-2021

Mohammad Tarique Khan

Versus

Ministry of Commerce and Textile

Date: 28.7.2021

Fawad Malik: Information Commissioner

APPEAL.

1. Mr. Mohammad Tarique Khan through an application dated 21.09.2020 addressed to the Deputy Secretary (Admin & Finance), Ministry of Commerce and Textile, Islamabad has required information related to regularization of services of contract employees in the year 2017, under the Right of Access to Information Act, 2017. The detail of the information/documents sought is detailed below:

- i) *“Complete correspondence of Ministry with National Assembly and Trading Corporation of Pakistan (TCP) regarding “Unstarred National Assembly Question No. 49 moved by Mr. Lal Chand, MNA” in the year 2013;*
- ii) *Complete reply along with its annexures received from TCP in relation to the above question;*
- iii) *Complete reply along with its annexures furnished/submitted/forwarded to National Assembly in response to the above question by the Minister/Ministry in response to the above question;*
- iv) *Ministry of Commerce Office Memorandum No. 2(5)/2011-Admin-VI, dated 25-10-2011;*
- v) *Minutes of meeting chaired by Senior Minister for Commerce in the Committee Room of the Ministry of Commerce on 25-10-2011 regarding regularization of services of contract employees;*
- vi) *Implementation report received from Trading Corporation of Pakistan in response to Ministry’s OM No. 2(5)/2011-Admin-VI, dated 25-10-2011; and*
- vii) *Other relevant record/material.”*

2. Feeling aggrieved for no decision against the application within the frame of time provided in the Act, the appeal is filed before the Pakistan Information Commission.

#### PROCEEDINGS

3. The notice of the Commission was responded by Focal Person/Deputy Secretary (C&Lit) vide Letter No. F. No. 1(1)/2020/C&C/FP dated 20.1.2021, as under:

*“The undersigned is directed to refer to PIC, Govt of Pakistan letter No. Appeal E-62/01/2021 dated 13 January, 2021 and to state that applicant requested to provide information relating to attached department of this Ministry (TCP). This office wrote letter to quarter concerned and received reply in the matter whereupon applicant has been informed that this request does not qualify under section 5 & 6 under the Right of Access to Information Act, 2017, therefore, the same cannot be provided.”*

4. The appellant repelled the reply terming it without the mention of the specific reason with reference to the provisions of the Act, that despite the fact the requested information does not hit the exclusion clause as specified in section 7 of the Act and that the reply after an inordinate delay is an admission to the violation of section 14 of the Act.
5. Keeping in view the conflicting pleadings from the two sides the appeal was fixed for hearing before the Commission. On 17.2.2021 Mr. Asif Rajpar, PFO appeared to represent Trading Corporation of Pakistan (Pvt) Limited. He stated that the High Court of Sindh has dealt with the documents in issue before this Commission in Constitutional Petition No. D-3873 of 2014. He was directed to produce a copy of the petition and the order for the perusal of the Commission on the following date of hearing. After a couple of hearings the said copies were submitted on 16.6.2021.
6. The appellant feeling dissatisfied has reiterated for the provision of the relevant information desired in his application.

#### COMMISSIONN’S VIEW

7. The employees aggrieved by the decision taken on 16.7.2014 by the Board of Directors of Trading Corporation of Pakistan (Pvt) Limited, whereby they were reverted a grade lower, had challenged the decision before by the High Court of Sindh at Karachi through the Constitutional Petition No. D-3873 of 2014 titled

“Mohammad Asif & others versus Federation of Pakistan & others”. The petition was admitted for hearing by the hon’able court vide order dated 21.7.2014 when the ad-interim order was passed. Subsequently, Mohammad Tariq Khan, the appellant before this Commission, being senior to the writ petitioners’ no. 1 and 2 filed application under Order 1 Rule 10 CPC for impleading his name as respondent being necessary party for the reason that if the writ petition is allowed and impugned order is set-aside, he is bound to be effected directly. The application was allowed and Mohammad Tariq Khan was consequently impleaded as respondent no. 4 in the Constitutional Petition vide order dated 17.05.2017.

The Constitutional Petition was finally disposed of vide order dated 14.10.2020 on the following terms:

*“Learned counsel for respondent No.2 / Trading Corporation of Pakistan files statement dated 17.9.2020 in pursuance of the order dated 18.8.2020. According to the above statement and the decision taken by the Board of Trading Corporation of Pakistan on 10.09.2020, the newly constituted Board of respondent No. 2 / Trading Corporation of Pakistan has decided to reconsider the case of the petitioners. Learned counsel for the petitioners is satisfied with the above statement. He, however, has expressed apprehension that there is a strong likelihood that the case of the petitioners will not be decided on merits because of the present litigation. Needless to say the case of the petitioners shall be decided by respondent No. 2 strictly in accordance with law and the prevailing rules, regulations and policy, and after providing opportunity of hearing to them. By consent, the petition and listed applications stand disposed of in the above terms with no order as to costs.”*

8. The copies of the Constitutional Petition No. D-3873 of 2014 titled “Mohammad Asif & others versus Federation of Pakistan & others” and the order sheet are produced by the respondent organization before the Commission in support of the argument that the High Court of Sindh has stayed the provision of the requested information. After reading the petition and going through the order sheet it transpires that no restraining order against the provision of the requested information was prayed nor granted by the learned divisional bench of the high court of Sindh rather the effected employees aggrieved by the decision taken on 16.7.2014 by the Board of Directors of Trading Corporation of Pakistan (Pvt) Limited, whereby they were reverted a grade lower, had challenged the decision before by the High Court. The Commission considers the documents produced in support of the respondent’s version of no relevance.
9. The appellant in his application dated 21.09.2020 has requested the correspondence of the Ministry with National Assembly and Trading Corporation

of Pakistan (TCP) regarding National Assembly Question No. 49 moved by Mr. Lal Chand, MNA in the year 2013, reply along with its annexures from TCP, reply along with its annexures from Ministry, Ministry of Commerce Office Memorandum No. 2(5)/2011-Admin-VI, dated 25-10-2011, Minutes of meeting chaired by Senior Minister for Commerce on 25-10-2011 regarding regularization of services of contract employees, Implementation report received from Trading Corporation of Pakistan in response to Ministry's OM No. 2(5)/2011-Admin-VI, dated 25-10-2011 and other relevant record/material incidental thereto.

10. The Commission is of the considered view that the requested information is the public record as defined in the Act of 2017 for the following reasons:
- a. The respondent has not claimed exemption against the desired information in the reply or during the course of arguments.
  - b. Section 6 of the Act reveals that the information sought is the category of public record, available for the access to the citizens.
  - c. The correspondence of the Ministry with the organizations, minutes of meeting that has been finalized and implementation report are required to be published including uploading over the website of the organization as mandated in section 5 of the Act.
  - d. Apart from being a citizen of the country the appellant admittedly an employee of Trading Corporation of Pakistan (Pvt) Limited, under article 27 of the Constitution of Islamic Republic of Pakistan has the right to be safeguarded against discrimination in service and for that end he has the preferential right to ask for the requested information.
  - e. The appellant was impleaded as necessary party in the Constitutional Petition decided by the High Court of Sindh.
  - f. The appellant has the legal right to avail the available remedies provided under the law and for that purpose he reserves the right to ask for the provision of the documents, for or against, permissible under the Right of Access to Information Act, 2017.
  - g. Article 19A of the Constitution of Islamic Republic of Pakistan ensures the access to information of public importance as a fundamental right that cannot be delayed or denied at the whims of the beurocratic hierarchy.
  - h. 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

11. The appeal is allowed. The Deputy Secretary (C&Lit), Ministry of Commerce and Textile / Focal Person is directed to provide the appellant all the information/record mentioned in his application dated 21.09.2020, forthwith but not later than seven days of the receipt of this order.

He is further directed to implement section 5 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.