



In the Pakistan Information Commission, Islamabad

Appeal No 1187-07/21

Taha Mir

(Appellant)

Vs.

Banking Mohtasib Pakistan

(Respondent)

Order

Date: September 20, 2021

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated July 06, 2021, to the Commission, stating that he Submitted an information request to the Secretary, Banking Mohtasib dated April 07, 2021 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as under:
 - i. *“Why Banking Mohtasib Pakistan does not follow the directives/standard terms and conditions of contract appointment issued vide O.M No. 10/52/95-R-II dated 18.07.1996 by the Establishment Division/Federal Government?”*
 - ii. *What terms and conditions apply to contractual employees working in Banking Mohtasib Pakistan and under which provision of law/rules/regulation the same have been approved and by whom? Provide a copy of the contract format being used in Banking Mohtasib Pakistan.*
 - iii. *Under what law Consultants, Advisors, and Senior Advisors are appointed in Banking Mohtasib Pakistan?*
 - iv. *How many Advisors, Senior Advisors, and Consultants are currently employed within Banking Mohtasib Pakistan and what are their current gross salaries?*
 - v. *Under what law salaries to all contractual employees including Advisors and Senior Advisors are determined in the Banking Mohtasib Pakistan and what is the salary structure for officers/staff?*
 - vi. *How many officers are employed in Banking Mohtasib Pakistan after attaining the age of superannuation and under what law they are employed after reported judgements 2013 SCMR 1752 and 2015 SCMR 456 regarding post retirement employment?*
 - vii. *How many officers beyond the age of 70 years and above are employed in Banking Mohtasib Pakistan? Provide their names, Equivalent Grades, Age Date of Birth, and gross salaries.*

- viii. *How many officers are working in Grade-21 or equivalent & above in Banking Mohtasib Pakistan and under which provision of law, when, and on what basis, they were allotted equivalence/appointed in Grade-21?*
- ix. *How and when the posts of Senior Advisors were created in Banking Mohtasib Pakistan and what was the required educational qualification, experience, and age limit for these posts?"*

B. Proceedings

3. This commission through a notice dated July 29, 2021 sent to the Senior Advisor, Banking Mohtasib Pakistan called upon the Respondent to submit reasons for not providing the requested information.
4. The appeal was fixed for hearing on September 14, 2021 and both parties were informed through notices sent on August 10, 2021.
5. Mr. Saleem Akhtar, Senior Legal Advisor, Banking Mohtasib Pakistan attended the hearing held on September 14, 2021 and submitted written statement which is as under:

“ (1) A brief about the establishment of Banking Mahtasio of Pakistan Office (hereafter called BMP) is that the grievance of consumers before the office of BMP were being handled by State Bank of Pakistan under its regulatory authority. However, in line with the best Practices prevailing in the world and to establish neutral body to resolve the complaints of Complainant against the commercial banks, the office of BMP was established by inserting Part IVA in Banking Companies Ordinance 1962 (hereinafter called ordinance). In the year 2013, a new Law was promulgated by the Federal Government namely Federal Ombudsmen Institutional Reforms Act 2013 (hereinafter called Act 2013). As until now no rules are framed under Section 22 of the Act 2013. The BMP is exercising power for appointment under Sub Section 3 of Section 82 B of the Ordinance read with Sub Section 3 of Section 17 of the Act 2013. The copies of the relevant Laws are enclosed Act 2013 Annexure (A) Ordinance 1962 Annexure (B)

(2) It is stated that 14 Contractual Employees have filled a Writ Petition No.D-1789 of 2021 in Sindh High Court, Karachi and Honourable Court passed an Interim Order on 15-03-2021. The contents of that Writ Petition and request of the Appellant are in respect of the similar facts. The Writ Petition was filled earlier whereas Complainant made request subsequently and as the subject matter is Sub Judice before the Honourable Sindh High Court, Karachi. Thus, the request of Appellant would have Prejudice interest of the BMP. Therefore request is exempted under Sub Clouse (V) of Clause) of Sub Section (1) of Section 16 of the Right of Access to information Act 2017 (copy of Writ Petition No.D-1789 of 2021 is at Annexure (C)

On Merit

(1) Need no answer due to knowledge.

(2) The Complainant has not mentioned any date upon his request however as alleged by him that he has made his request on 07-04-2021. As stated above the staff of the BMP has approached the Hon'ble High Court of Sindh. Therefore, the reply could not be conveyed to the Appellant as it would have been tantamount to the interest of justice since the matter is sub-judice.

(3) The contents of this para may be correct but exemption as stated above in reply to Para 2 of the Preliminary Note is reiterated.

(4) Policy & guidelines under Section 6 of the Act 2017 are public record but the alleged request of the Applicant also requested personal information's of the contract employees

which is exempted under Clause g & h of Section 7 of the Act 2017. The contents of Para 2 of Preliminary Note relied in reply to this Para.

(5) Denied as stated above in Para 2 of the Preliminary Note and Para 4 of reply on merit.

(6) The reason are given in Para 2 of the Preliminary Note as well as in reply to Para 4 of merit are reiterated in reply to this Para.

It is respectfully prayed that as the matter in issue and facts of the complaint of Appellant all most similar to the facts for determination as Sub Judge in the Sindh High Court, Karachi. Therefore, the request of the Appellant if acceded to, it will be Pre Judice the interest of answering Respondent.

In view of the above submissions the appeal of the Appellant be dismissed with cost.”

C. Discussion and Commission’s View on Relevant Issues

6. The commission has to decide that whether the information requested by the citizens falls within the ambit of the public record and whether the public body has responded or not to the information request and notices of the commission within time limit mentioned in the Right of Access to Information Act, 2017, hereafter referred to as Act.

Moreover, the commission also has to decide if the information requested by a citizen can be used in any court case, the public bodies shall provide that information to the appellant or not under the act.
7. The information requested by the appellant is declared as public record in section 5 (b) and (e) of the right of Access to Information act 2017 and the public bodies are bound to ensure that all such categories of the information and record defined in Section 5 of the Act are duly published including uploading over the internet or in a manner which best ensures that these are accessible to the public.
8. This commission holds as the requested information falls under the category of information that should be available on the website of the Respondent under Section 5 of the Act so the Respondent can not refuse to share such information.
9. 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 the other honourable courts to decided the cases on merit in short period of time.
10. The designate official of the public body is responsible for ensuring the requests are dealt with promoting full compliance by the public body for its obligation under this Act, the public body has failed to responds the information request and also to the notice of the commission, the commission observes that the wilful delay in the provision of the information to the citizen causes undue cost to the citizens both in terms of money and time.
11. According to Section 19 (d) of the Act, this commission is bound to make sure the all information determined in Section 5 of the Act available on the website of the public bodies. In this regard, the Pakistan Information Commission has developed a template to ensure proactive disclosure of information. The template is available on the website of this commission i.e. www.rti.gov.pk
12. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

D. Order

13. The appeal is allowed. The Senior Advisor, Banking Mohtasib Pakistan is directed to provide the information requested in Para 2 with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.
14. The public body is also directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission by October 17, 2021.
15. Copies of this order be sent to the Senior Advisor, Banking Mohtasib Pakistan and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:
September 20, 2021

This order consists of 4 (four) pages, each page has been read and signed.