

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1365-10-2021

Waheed Shahzad Butt

Versus

Federal Public Service Commission

Date of Hearing: 29-12-2021

Fawad Malik: Information Commissioner

A. APPEAL

1. Waheed Shahzad Butt, preferred his appeal dated October 04, 2021 before the Pakistan Commission on access to information, Islamabad. He alleged that the request for information has not been responded by the Federal Public Service Commission within the frame of time stipulated under the Right of Access to Information Act, 2017.
2. Through an information request dated 02-09-2021 addressed to the Chairman, Federal Public Service Commission followed by reminder dated 09.09.2021 he has prayed the following information and record related to the appointment of Judicial Members (BS-21) in Appellate tribunal Inland Revenue, Pakistan :
 - i. *“COMPLETE PARTICULARS OF LOW MERIT / FAILED CANDIDATES IN THE TEST / WRITTEN EXAMINATION / INTERVIEW UNDER CASE NO. F.4-195/2018-R [Shortlisted/Successful candidates list attached].*
 - ii. *COMPLETE PARTICULARS OF LOW MERIT / FAILED CANDIDATES IN THE TEST / WRITTEN EXAMINATION / INTERVIEW UNDER CASE NO. F.4-15/2020-R [Shortlisted/Successful candidates list attached].”*

B. PROCEEDINGS.

3. The notice of the Commission was responded by the Assistant Director (FS-IV), Federal Public Service Commission vide letter dated 27.10.2021. The reply is reproduced hereunder:

“Information with respect of both cases is tabulated as under:-

APPEAL NO. 1365-10-2021

<i>Case No.</i>	<i>No. Ofposts Advertisement</i>	<i>Applications Received</i>	<i>Candidates Appeared in</i>	<i>Failed in Test</i>	<i>Passed in Written Test</i>	<i>Shortlist.For Interview</i>	<i>Rejected</i>	<i>Low Merit</i>	<i>Nominated</i>	<i>Absent in Interview</i>	<i>Failed in Interview</i>	<i>Posts remained</i>
<i>F.4- 195/2018-R</i>	10	76	44	35	9	8	1	<i>Nil</i>	2	1	5	8
<i>F.4- 15/2020-R</i>	8	92	50	46	4	<i>Withdrawal of case as requested by the Ministry in hand</i>						

However, the information with respect to particulars of low merit/ failed candidates is personal and cannot be shared as per Section 7(g) of Right of Access to Information Act, 2017.”

4. Later during the course of hearing Mr. Qamar Hussain, Assistant Director representing the public body vide letter dated 22.12.2021 submitted the following reply:

“It is informed that the desired information is classified as the information that cannot be shared as it comes under para 1(f) & (i) of FPSC circular No. F.2-25/CE-IV-2015 dated 12th November, 2015 as well as the desired information is excluded from public record under section 7(g) and (h) of Right of Access to Information Act, 2017.”

5. The Manuscript of Circular No.F.2-25/ CE-IV-2015 dated 12th November, 2015 are reproduced hereunder for appraisal:

*No.F.2-25/CE IV-2015
FEDERAL PUBLIC SERVICE COMMISSION
Aga Khan Road, F-5/1
CIRCULAR*

Islamabad the 12 November, 2015

*Subject: POLICY REGARDING PROVISION OF FPSC'S RELATED
INFORMATION TO PRIVATE PERSONS /RESEACHERS*

The Commission has approved the following policy regarding sharing of FPSC's data with private persons/researchers:

Classified Information that cannot be shared:

- a. Name, contact numbers and particular of examiners, paper setters and external Psychologists*
- b. Question papers/MCD papers the exam of which is yet to be held*
- c. All question papers including MCU/Descriptive etc. which are required to be returned by the candidate to supervisory staff at the examination center on conclusion of the test/exam*
- d. Written scrip's/OMR sheets of the candidates of CSS/GR/other exams.*

APPEAL NO. 1365-10-2021

- e. Psychological tests, psychological group activities, psychological written/scripts/OMR sheet of candidates, psychological test results, dossiers of candidates, psychological reports, marks of Psychological Assessment of CSS/AFI/IB*
- f. Personal/family particulars of the candidates CSS/GR/other exams*
- g. Soft copy of data which can be manipulated for any ill purposes*
- h. Marks/ position obtained by the candidates before announcement of results in Competitive/FPO exams*
- i. Marks/position obtained by the candidate in GR Screening/ Descriptive tests*
- j. Allocation charts of CSS CE*
- k. Copies of the noting portions*

II Information that can be shared:

- a. Annual report, news letters*
 - b. Advertisements, public notices, rules, regulations, syllabi, time table, psychological/viva voce schedules etc.*
 - c. Secondary information derived through database on approval of the Commission*
 - d. Personal/family particulars of candidates, if they have given consent to share the same with someone else, subject to approval of the Commission that intents of sharing such information in any way shall not be used against fame/repute of the Commission*
 - e. Personal data of candidates can be shared with Government Security Agencies, to investigate truthiness of facts*
- 2. All concerned may implement the above decision strictly.*

6. The appellant reacted to the reply and filed rejoinder stating therein that vital Information has intentionally being withheld under the week umbrella of Section 7(g) of the Right of Access to Information Act, 2017, solely to provide unholy benefits to the National Criminals of Pakistan, practically involved in destabilizing the homeland Pakistan to appoint inefficient/incompetent Judicial Officers in BS-21 (failed/low merit persons).

C. COMMISSION'S VIEW.

7. The appellant has asked for the information concerning to the complete particulars of low merit / failed candidates in the test / written examination / interview under cases no.F.4-195/2018-R and F.4-15/2020-R. The organization in the reply has claimed exclusion of the said record under section 7(g) of the Act and argued it classified under para 1(f) & (i) of FPSC circular No. F.2-25/CE-IV-2015 dated 12th November, 2015.
8. The Commission served upon the organization notice for the provision of the information under the Right of Access to Information Act, 2017. The organization instead responding under the Act, denied the fundamental right to a citizen while referring the above stated departmental circular. The referred circular provide policy regarding provision of FPSC's

APPEAL NO. 1365-10-2021

related information to private persons /researchers circulars and instructions issued by the organization, but it is settled principal that the Circulars cannot prevail over the statute. So far as the circulars issued by the Government are concerned they represent merely their understanding of the statutory provisions. The referred circular is thus not binding upon the Commission constituted on access to information. In short the circular which is contrary to the statutory provisions of the Act of Parliament has no existence in law.

9. The Right of Access to Information Act, 2017 is legislated for the provision of the fundamental right enunciated under article 19A of the Constitution of Islamic Republic of Pakistan 1973. The article 8 of the constitution is to invalidate all existing laws in so far as they are inconsistent with fundamental rights conferred by the Constitution. The article provides that any law or any custom or usage having the force of law shall be void if it is in contravention of the rights conferred by the fundamental rights. Moreover section 25 of the Act states that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. The Commission is of the considered view that merely on the basis of a departmental circular sharing of information cannot be denied to the citizens nor can the Circular override the Constitution and the Act of the parliament.

10. The information requested by the appellant is the complete particulars of low merit / failed candidates in the test / written examination / interview under case nos.F.4-195/2018-R and F.4-15/2020-R of Federal Public Service Commission related to the appointment of Judicial Members (BS-21) in Appellate tribunal Inland Revenue, Pakistan. The respondent has claimed it excluded from the category of public record terming it personal privacy of the individuals. The word 'personal privacy' although is not defined in the Act. The Commission is however of the view that the sanctity of personal privacy must be attached to the information related to the person of an individual. The personal privacy include the CNIC, Phone number, Bank Account number, address or any other information touching the family of the individual but does not include the detail of test, interview and merits of a competition or examinations. The information of the individuals who secure a seat or position through the competition merits to be made public forthwith likewise those who could not get through have the right to know the details of the result. The information concerning to the complete particulars of low merit / failed candidates in the test / written examination / interview cannot be termed as classified or matter of private privacy rather become public record

APPEAL NO. 1365-10-2021

open to access for the public at large, the moment it is finalized. It may not be out of place to mention here that the result of any examination is made public on the website than why the complete particulars of low merit / failed candidates in the test / written examination / interview are withheld under the garb of privacy.

11. 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 corruption, nepotism, misuse of authority and inefficiency in the governance.

12. It is noticed that the designated officer has not been notified by the respondent despite the lapse of considerable time as required under section 9 of the Act. In the absence of the designated officer the Principal Officer, the Chairman, Federal Public Service Commission, Islamabad will be treated as the designated officer.

D. ORDER.

13. The appeal is allowed. The Chairman, Federal Public Service Commission, Islamabad is directed to provide the appellant complete particulars of low merit / failed candidates in the test / written examination / interview under cases no.F.4-195/2018-R and F.4-15/2020-R forthwith but in any case not later than ten days of the receipt of this order.

He is further directed to implement sections 5&9 of the Act in letter and spirit, under intimation to the Commission within one month of the receipt of this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner
Announced on 11.1.2022

Certified that this order consists of five (05) pages, each page has been read and signed.