

APPEAL NO. 1206-07-2021

M. Raza Ahmed Khan

Versus

COMSATS University Islamabad

Date of Hearing: 5.1.2022

Fawad Malik: Information Commissioner

A. APPEAL

1. Mr. Raza Ahmed Khan, preferred his appeal dated July 14, 2021 before the Pakistan Commission on access to information, Islamabad. He alleged that the request for information has not been responded by the Rector of COMSATS University within the frame of time stipulated under the Right of Access to Information Act, 2017.
2. Through an application dated 28-05-2021 addressed to the Rector COMSATS University, Islamabad, he has desired following Information/documents/record pertaining to the COMSATS University Islamabad, which is a body corporate constituted under the COMSATS University Islamabad Act, 2018.
 1. *“In accordance with CUI Act, who is the competent authority to remove, transfer, and/or appoint senior officers in O64/OG3 scales and what is the procedure to be adopted for removal, transfer, and/or appointment of OG4/G3 officers of the CUI?”*
 2. *Under what legal authority or statutory provision the salary of a CUI employee, a public sector university, can be stopped? if there are any Statutes or approved regulations in this regard, a copy thereof.*
 3. *Copy statutory approval of the erstwhile CIT Board of Governors or CUI Senate for establishment of Faculty Development Academy?*
 4. *Copy of any Approval erstwhile CIT Board of Governors or CUI Senate or any statute or approved regulations whereby a substantive position of an OG-4 level officer exists in the Faculty Development Academy?, if one exists, then provide duly approved Terms of Reference for the same position.*

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5. *Any statute or approved regulations or provision in the Act, 2018 ibid whereby a senior of OG-4 level can be asked to report to a two-grade junior officer in an administrative set-up at CUI?*
6. *Duly approved policy according to which a signed clearance form is required for issuing official joining of an employee when transferred from one department to another on Cur's Principal Seat?*
7. *What is the policy for appointment of faculty members on tenure track system in administrative positions in light of clear direction by Higher Education Commission Tenure Track Statutes Version 2.0 that faculty on tenure track cannot be appointed on administrative positions?*
8. *Funds accumulated and their utilization report vis-à-vis the funds provided by the Higher Education Commission of Pakistan for the Office of Research Innovation & Commercialization as 15% overhead of NRPU projects from 2011 to-date?*
9. *Current seniority list of all OG level non-academic CUI employees?*
10. *Seniority list of all OG level non-academic CUI employees as of January 01, 2019?*
11. *Current promotion policy in vogue at CUI?*
12. *What was the promotion policy at erstwhile CIIT (now CUI) in 2005, 2010, 2015, and 2018?*
13. *Statutory provision/duly approved rule under which advertisement was a requirement for promotions made at CIIT (now CUI) from the year 2000 till April 2019?*
14. *List of all non-academic employees promoted in response to an advertisement in the newspapers during the period 2000 to April 2019?*
15. *List of all filled/unfilled sanctioned/substantive positions in OG Scale as of December 31,2018*
16. *List of all non-academic employees promoted without an advertisement in the newspapers during the period 2000 to April 2019?*

I would like to have a hard copy of the requested documentation within the time frame stipulated under the Right to Information Act 2017,”

B. PROCEEDINGS

3. The Commission vide notice dated 26.07.2021 directed the respondent to provide reasons in 7 working days of the receipt of the notice as to why the requested information has not been provided to the appellant within ten working days as required under section 14 of Right of Access to Information Act, 2017.
4. The notice was not responded, therefore the appeal was fixed for hearing on 22.09.2021 and both the parties were informed accordingly vide notices dated 23.08.2021. At the time of hearing, the representative of public body requested to seek some time so the date was adjourned to 29.09.2021.
5. The respondent organization vide letter dated 22.09.2021 responded as follows:-

S. No.	Information requested by Mr. Muhammad R.A. Khan	Response from COMSATS University Islamabad
1	<i>In accordance with CUI Act, who is the competent authority to remove, transfer, and/or appoint senior officers in OG4/OG3 scales and what is the procedure to be adopted for removal, transfer, and/or appointment of OG4/OG3 officers of the CUI?</i>	<i>The authority for appointment and removal of OG4/OG3 level Officers is Senate of CUI. However, Rector CUI is authority for transfer and posting of all the employees, as clearly laid down in the Terms and Conditions of appointment that “He will work under the direction of Rector or any such persons as may be nominated by him”</i>
2	<i>Under what legal authority or statutory provision the salary of a CUI employee, a public sector university, can be stopped? if there are any Statutes or approved regulations in this regard, a copy thereof.</i>	<i>Clause 20 of Employee Service Statutes 2009, ASSUMPTION OF CHARGE states that “an employee shall begin to draw the pay and other emoluments attached to a post with effect from the date on which he or she assumes the duties of the post”. Mr. Khan failed to assume the duties of post (when he was transferred in FDA), therefore, the salary could not be released</i>
3	<i>Copy statutory approval of the erstwhile CIT Board of Governors or CUI Senate for establishment of Faculty Development Academy?</i>	<i>Establishment of faculty Development Academy was approved in 43rd meeting of the then Board of Governors held on 5th July 2017.</i>
4	<i>Copy of any Approval erstwhile CIT Board of Governors or CUI Senate or any statute or approved regulations whereby a substantive position of an OG-4 level officer exists in the Faculty Development Academy?, if one exists, then provide duly approved Terms of Reference for the same position</i>	<i>Substantive positions are created scale wise and designation wise and are approved from the relevant fora for the university/campus. Positions are allocated to department as per requirement, Presently, Mr. Raza Ahmad Khan is working in OG-IV against the designation of General Manager which is not a substantive post and has already been challenged before a learned single Bench of the Honorable Islamabad High Court.</i>
5	<i>Any statute or approved regulations or provision in the Act, 2018 ibid whereby a senior officer of OG-4 level can be asked to report to a two grade junior officer in an administrative set-up at CUI?</i>	<i>Not disallowed by Statutes. Rather, the fact allows for example an HoD can be Associate Professor while Professor serves in the same Department.</i>
6	<i>Duly approved policy according to which a signed clearance form is required for issuing official joining of an employee when transferred from one department to another on Cur's Principal Seat?</i>	<i>Not disallowed by Statues, Rather, the fact allows, for example, an HoD can be Associate Professor while Professor serves in the same Department.</i>

7	<i>What is the policy for appointment of faculty members on tenure track system in administrative positions in light of clear direction by Higher Education Commission Tenure Track Statutes Version 2.0 that faculty on tenure track cannot be appointed on administrative positions?</i>	<i>In case, a tenured faculty member is not available for any of the above mentioned positions, a faculty member on tenure-track may be appointed on such a position, if considered suitable as per HEC's letter No. Ref. CON.QA/HEC/TTS-137/332 dated December 04, 2017.</i>
8	<i>Funds accumulated and their utilization report vis-à-vis the funds provided by the Higher Education Commission of Pakistan for the Office of Research Innovation & Commercialization as 15% overhead of NRPUs projects from 2011 to-date?</i>	<i>Reference HEC-Pak letter titled "ORIC Fund Utilization Report (15%) needs to be utilized for recurring expenditure of ORIC. Later through letter dated 25th August 2020 titled Financial Governing HEC Competitive Research grants it is provided in IV University Overheads. There are three purposes for allowing payments of overhead costs to sponsoring HEIs: First to compensate HEIs for expenses needed to provide research support in the form of campus facilities, secretarial or administrative services, tuition waivers to research assistants or project development expenses, second, to enable HEIs to build up order to enable their faculty members to attract research funding from other sources as well, including, e.g., capacity building activities and third, and to ensure that universities exercise proper quality control over research project.</i> <i>The amount is being utilized for the same purposes as mentioned above.</i>
9	<i>Current seniority list of all OG level non-academic CUI employees?</i>	<i>We are in the process of preparation of seniority list formally, it will be provided as and when it is formally approved by competent fora.</i>
10	<i>Seniority list of all OG level non-academic CUI employees as of January 01, 2019?</i>	<i>This is irrelevant and has no nexus to any issue in CUI.</i>
11	<i>Current promotion policy in vogue at CUI?</i>	<i>Promotion policy prevailing at CUI is as per Employees Service Statutes – 2009.</i>
12	<i>What was the promotion policy at erstwhile CIIT (now CUI) in 2005, 2010, 2015, and 2018?</i>	<i>Promotion policy prevailing at CUI is as per Employees Service Statutes – 2009.</i>

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13	<i>Statutory provision/duly approved rule under which advertisement was a requirement for promotions made at CIIT (now CUI) from the year 2000 till April 2019?</i>	<p><i>Relevant provisions o the Employees Service Statutes, 2009 are reproduced as under:-</i></p> <p><i>According to clause 8 (a) Appointments to all posts shall be made by initial recruitment on the basis of merit and fitness, after due publicity of the vacancies in the national press, in accordance with the conditions of educational/professional qualifications and experiences as shown in schedules appended with statutes except for meeting the urgent requirements of the Institute with the approval of the Competent Authority.</i></p> <p><i>8 (a). Appointments to the posts may also be made by transfer or deputation, or by promotion (In the case of non-faculty appointments), subject to fulfilment of the conditions of educational qualifications land experiences, as shown in schedules appended with ESS Statutes, 2009.</i></p>
14	<i>List of all non-academic employees promoted in response to an advertisement in the newspapers during the period 2000 to April 2019?</i>	<i>In the light of Clause 8(b) of Employees Service Statutes, 2009 this question has no relevance.</i>
15	<i>List of all filled/unfilled sanctioned/substantive positions in OG Scale as of December 31,2018</i>	<i>The matter of some pr9omotions of empl9oyees is sub-judice at Islamabad High Court. The exact list of filled and unfilled will be provided after the decision of High Court.</i>
16	<i>List of all non-academic employees promoted without an advertisement in the newspapers during the period 2000 to April 2019</i>	<i>In the light of Clause 8(b) of Employees Service Statutes, 2009 this question has no relevance.</i>

6. The appellant through E-mail dated 13 October 2021 has shown his dissatisfaction. The points of the dissatisfaction are as under:

- i. *There is not a single reference to relevant portions of CUI Act or any statutory document while listing the information.*
- ii. *What are the **Terms and Conditions of appointment** and where are they stated?*
- iii. *How does the **Terms and Conditions of appointment** stating "He will work under the direction of Rector or any such person as may be nominated by him" translate into Rector being the authority for transfer and posting of all employees?*
- iv. *There is no information provided by CUI on the procedure to be adopted for removal, transfer and or appointment of OG4/OG3 officers at CUI.*

7. Moreover, vide letter dated 5.1.2022 the appellant has reacted that the information provided in respondent's reply is evasive, no substantive information has been provided and the information is being concealed on false

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pretexts. He has alleged that the respondent body is dilly-dallying the matter in clear violation of the Act thereby causing irreparable harm and injury to his rights as the non-provision of the information would amount to hampering his defence, since the respondent;

- a. Without jurisdiction and any just and legal cause has blocked payment of my salary for the last 16 months, which is sole source of earning for my family,
- b. Is seeking to revert my promotion based on false information provided to the Senate of CUI by the respondent,
- c. Has initiated E&D proceedings to remove me from service based on a whimsical transfer order ruled illegal by the Hon'ble Islamabad High Court vide its judgement in ICA 68/2021 dated 23.09.2021.

C. COMMISSION'S VIEW.

8. The respondent organization has not claimed exemption of any information or record desired by the appellant, in the reply or during the arguments before the Commission. The each number of information sought by the appellant has been responded separately by the Deputy Registrar of the University. The appellant however is not satisfied with the response objecting it evasive, improper and not substantive therefore the Commission during the course of hearing on 22.12.2021 with the assistance of the representative of the University and the appellant evaluated and scrutinized the request and the response thereto. The Commission is of the view that the response of the organization is not up to the satisfaction of the appellant and to the point in the light of the Act. The public body is under obligation to provide the citizens the substantive and proper information and record. The bare reading of the application depicts that the requested information is sort of record that ought to have been published proactively on the website, by the public body, as mandated under section 5 of the Act.
9. Admittedly differences between the appellant and the organization are pending for the service rights and for that end the appellant has the preferential right to seek the information and record in aid of his defence. Article 19A of the Constitution of Islamic Republic of Pakistan read with the Right of Access to Information Act, 2017 envisage the appellant the fundamental right to have access to all the public record held by the public bodies.
10. The frame of time provided in the Act for the provision of the information and record has been violated by the respondent organization. The deliberating delay, obstruction or denying the provision of information amounts to hampering the fundamental right, warranting the imposition of fine under section 20(f) of the Act.

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11.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 Principle Officer, the Rector, COMSATS University Islamabad will be treated as the designated officer.

D. ORDER.

12.The appeal is allowed. The Rector, COMSATS University Islamabad is directed to provide the appellant all the requested information and record, to his satisfaction, 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 seven (07) pages, each page has been read and signed.