

**Pakistan Information Commission  
Government of Pakistan**

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**In the Pakistan Information Commission, Islamabad**

**Appeal No 506-08/20**

**Farhat Ullah Babar**

**(Appellant)**

**VS**

**Ministry of Defence**

**(Respondent)**

**Order**

Date: March 07, 2022

**Zahid Abdullah:** Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated 12-08-2020, to the Commission, stating that he submitted an information request to the Secretary, Ministry of Defence dated 19-07-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellants is as follows:
  - i. "The retirement benefits (along with copy of law/rules & regulations) permissible to the
    - a. Chairman Joint Chief Staff and
    - b. The three services chiefs of the Army, Navy and Airforce.
  - ii. The retirement benefits (along with copy of the law/rules & regulations) permissible to three star generals of the Army and equivalent ranks of Navy and Air Force."

**B. Proceedings**

3. On August 24, 2020, the commission sent a notice to the Respondent on the Appeal of Senator Farhat Ullah Babar and its text is as under:

*"Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)."*

4. The commission received a letter dated September 30, 2020 from the Respondent and its text is as under:

*"Reference Pakistan Information Commission letter No. 506-08/20 dated 24th August 2020 on the above subject.*

*The information requested by the applicant is excluded from the public record in terms of Section 7(e) of the Right of Access to Information Act, 2017, therefore, it cannot be provided to the applicant."*

5. Response of the Respondent was shared with the Appellant on October 06, 2020.



6. The Appellant on 12-10-2020 submitted rejoinder to response of the Ministry of Defence and its text is as under;

*"I wish to thank the Honorable Commission for giving me an opportunity to comment on the MoD's letter stating that the information sought by me is excluded from the public record in terms of Section 7(e) of the Right of Access to Information Act, 2017 and therefore it cannot be provided.*

#### **1. Misreading of the Law**

*The Defence Ministry has misread the provisions of the RTI Act, 2017. Its position is not admissible in the law and challengeable before all available forums for the following reasons.*

*The information sought pertains to retirement benefits of General Officers of all Services along with copies the rules and regulations authorizing retirement benefits.*

*As a matter of fact this information should have been voluntarily published and placed on the internet by the Ministry. Members of the public should not waste the time and effort of public body (Defence Ministry) in responding to questions of this nature.*

#### **2. Proactive Disclosure**

*Attention is invited to Section 5 (1) "Publication and Availability of Record" which states:*

*"The Principal officer of each public body shall, within six months of the commencement of this Act, ensure that the following categories of information and record are duly published including uploading over the internet in a manner which best ensures that there are accessible subject to reasonable restrictions based on limited resources"*

*One of the several categories of information thus required to be proactively disclosed is outlined in Section 5 (b) as under:*

*"Statutes, statutory rules, regulations, by laws, orders and notifications etc applicable to the public body disclosing the date of their respective commencement or effect".*

*Proactive disclosure and publication of record is further emphasized under Section 8 "Computerization and voluntary disclosure of record" that states*

*"Each public body shall endeavor to ensure within the time prescribed in section 5 and that all record accessible under this Act is computerized and is available on line so that authorized access to such public record is facilitated".*

*Be that as it may the retirement benefits must be governed by rules and regulations. They must also be announced through orders and notifications indicating also the date of effect in each case. It is inconceivable that retirement benefits of General Officers are doled out whimsically, in an ad hoc and arbitrary manner, secretly and without regard to rules and procedures. It is also inconceivable that benefits are doled out without any orders and notifications being issued.*

#### **3. Public nature of Rules & Regulations**

*Laws passed by the Parliament are publicly debated in broad day light, are public documents and cannot be classified as secret or denied to public. All rules, regulations, by laws and orders are the result of legislation and likewise are public documents.*

*Either the rules, regulations, by laws and orders pertaining to retirement benefits of General officers are public documents and thus must have already been published. If these were not published within the mandatory period of 6 months then these must at least be provided on demand under the law.*

#### **4. Implications of position Taken by MoD**





By taking the position that neither retirement benefits of General officers nor rules/regulations/notifications to this effect can be provided the Ministry of Defence has not only misread the law it is also treading on a dangerously slippery slope.

The grave implication of this position is that retirement benefits and perks are doled out to General Officers arbitrarily, whimsically, at random, in the discretion of one or more individuals and without any rules and regulations.

One would strongly implore the Defence Ministry to seriously consider the explosive consequences of this implication not only for the public image of defence forces but also for the current practices governing the distribution of scant national resources and the impact of it on national economy. One shudders to even think of it.

The framers of the law were aware that certain benefits may be conferred on some individuals for outstanding services in the discretion of the Authority which may not be admissible to everyone as a rule. After debate and discussion they introduced sub section (d) in Section 5 of the RTI Act 2017 making "the criteria, standards or guidelines upon which the discretionary powers are exercised by (public body)" as an element that must be proactively disclosed and published for the information of general public.

### **5. Public Record**

Section 6 of the RTI Act deals with the record which is to be treated as public record, accessible to general public and provided to citizen on demand.

Sub clause (a) of Section 6 declares "policies and guidelines" as public record.

Further sub clause (c) of Section 6 declares as public record the following.

"information regarding ... allotments and other benefits, privileges..."

Reading sub clauses (a) and (c) together it is obvious that not only land allotments and retirement benefits but 'other benefits, privileges' and the policies and guidelines governing their award are public documents that cannot be withheld when demanded by a citizen.

### **6. Exemption**

The MoD has also misread Section 7 (e) of the law in claiming exemption.

Section 7 (e) exempts from public disclosure "record relating to defence forces, defence installations or connected therewith and ancillary to defence and national security excluding all commercial and welfare activities"

A closer examination of Section 7 (e) in the context of the overall scheme of the law to ensure transparency as an essential element of accountability would show the intent of legislature. The record pertaining to "defence forces and defence installations" is exempt but this exemption is neither unlimited nor infinite nor unbridled.

It is a universally recognized principle that defence forces and defence installations relate strictly to a military's combat objectives. They involve those things which by their nature, location, purpose or use significantly contribute to military objectives, defence preparedness and planned and anticipated actions and nothing more.

Anything beyond this cannot be deemed covered under the term "defence forces and defence installations". It is for this reason that in Section 7 (e), upon which the Defence Ministry has place reliance to claim exemption, excludes from exemption "all commercial and welfare activities". The legislature did so with a definite and specific purpose in mind.

By their very nature pension, land allotments and retirement benefits are welfare activities. A retired General is no longer a combatant. Even welfare benefits of a



combatant are liable to be public record. It is a grave misreading of the law to equate welfare related information including pensions, retirement benefits with information about combat objectives, strategies and with classified military information relating to operations and/or deployment of personnel and location of armaments.

## 7. Jurisprudence

Finally, one would not like to quote examples from Indian jurisprudence. However, since we justify ever increasing military expenditures because of Indian military spending I may be permitted to reluctantly quote from Indian jurisprudence on RTI as follows.

"In the case of First Appellate Authority, Additional DGP, CID of Haryana v CIC23, Hon'ble Justice Mehinder Singh Sullur stated that any sought information not concerning the security and intelligence of the state may be given.

"Justice Sullur said: "A combined reading of these provisions would reveal, only that information is exempted, which is directly effecting and co-related to the "Intelligence" and "Security" of that organization of the State and not otherwise."

"In the case of Harinder Singh vs. State Information Commission, Punjab & Ors.24, the Appellant had sought information pertaining to the recruitment procedure in the Punjab Armed forces and was declined the same as per the notification issued by the state government on 23.02.2006 which brought Punjab Armed Forces out of the purview of the RTI Act, 2005. The State Information Commission had complied with this notification and refused information sought by the appellant. However, the Hon'ble High Court of Punjab and Haryana, vide its order, directed the respondents to furnish the sought information as it was with regards to the recruitment and is not exempted from disclosure.

"Another important judgment was delivered in the case of Abid Hussain v State of Manipur 25, wherein the Appellant had sought information regarding the recruitment procedure of Sub Inspector of police. The police department of the government of Manipur is exempted under section 24 of the act and no allegation of Corruption or Human rights violation had been made by the Appellant. The Hon'ble High Court held that if any information doesn't form part of the core activity of an exempted organization, it is exempted from the purview of section 24 of the Act and can hence be released".

Source:

<https://cic.gov.in/sites/default/files/Section%20of%20the%20RTI%20Act%20-%20Ankur%20Mishra.pdf>

Also

<https://www.mod.gov.in/dod/proactive-disclosures>

Enclosed are also copies of two notifications of the Indian Department of Defence showing that they not only have designated Nodal Officer (RTI) but also a special Transparency Officer in the Department for whatever worth it may be."

7. The hearing was held on March 03, 2022, attended by both the Appellant and the representative of the Respondent. Dr Muhammad Nasir Saleem, Deputy Secretary, Ministry of Defence and Mr. Kishwar Sultan Ali, Section Officer, Ministry of Defence maintained that the Response of the Respondent was the same as earlier submitted in writing. Mr. Farhat Ullah Babar maintained that the Rules and Regulations pertaining to pension and retirement benefits of officers are public records as these pertain to the welfare of officers and have nothing to do with the defence records.

## C. Issue:

8. The instant Appeal has brought to the fore following question for the consideration of this commission:





Can the Act of the Parliament and the subordinate legislation governing retirement benefits of Army officers be disclosed under the provisions of the Right of Access to Information Act 2017, henceforth referred to as the Act, 2017?

#### **D. Discussion and Commission's View on Relevant Issues**

9. This commission holds that the Act, Rules and Regulations governing retirement benefits are public records not only under the provisions of the Act, 2017 but also in line with the judgement of Hon'ble Supreme Court of Pakistan.
10. This commission maintains that whether or not Acts of the Parliament and subordinate legislation be disclosed has already been settled by Hon'ble Supreme Court of Pakistan. In constitutional petition 39 of 2019, Juris Foundation through Chairman VS Federal Government through Secretary, Ministry of Defence, the Hon'ble Supreme Court said: "Acts of the Parliament or subordinate legislation are public documents and must be readily available to the citizen of the country subject to the exceptions provided under the Right of Access to Information Act, 2017. Those exceptions extend only to record relating to defence forces, defence installations or connected therewith and ancillary to defence and national security, and not to the Army Laws".
11. This commission holds that the requested information pertaining to the Act, Rules and Regulations governing retirement benefits of Army officers is public under Section 5 (1) (b) of the Act, 2017 which Secretary, Ministry of Defence as its Principal Officer was legally bound to proactively publish on the web site. Section 5 (1) (b) of the Act, 2017 is as under:

*"Statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect".*

12. This commission also maintains that the requested information is public under Section 5 (1) (e) of the Act, 2017 which is as under:

*"The condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including, contracts of employment which can be entered into with the public body, along with particulars about the recipients of any concession, permit, license or authorization granted by the public body".*

13. The Respondent has invoked Section 7 (e) of the Act, 2017 to exempt from disclosure requested information which is as under:

*"Records relating to defense forces, defence installations or connected therewith and ancillary to defence an national security excluding all commercials and welfare activities".*



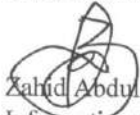
This commission holds that the plea of the Respondent that records governing retirement benefits of Army officers be treated as belonging to excluded records does not hold water on three grounds. Firstly, as observed earlier, these records pertain to categories of records to be proactively published under Section 5 (1) (b) and (e) of the Act, 2017. Secondly, the Act, Rules and Regulations governing retirement benefits of Army officers have no nexus with defence preparedness. Thirdly, Act, Rules and Regulations governing retirement benefits of Army officers pertain to the welfare activities which are not excluded under Section 7 (e) of the Act, 2017.

**E. Order**

15. Appeal is allowed. Secretary, Ministry of Defence is directed to provide the Appellant information requested in para 2 of this Order and also proactively publish on its web site Act of the Parliament and the subordinate legislation governing retirement benefits of Army officers within 7 working days of the receipt of this Order.
16. Copies of this order be sent to the Secretary, Ministry of Defence and the Appellant for information and necessary action.



Mohammad Azam  
Chief Information Commissioner



Zahid Abdullah  
Information Commissioner

Announced on: May 12, 2022

This order consists of 6 (six) pages, each page has been read and signed

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