

**No.CIC/MA/A/2006/00204, 207 & 208
CENTRAL INFORMATION COMMISSION**

Block IV, 5th Floor, Old JNU Campus
New Delhi-110 067

(Under Section 19 of the Right to Information Act, 2005)

Name of the Appellant: Shri Arvind Kejriwal
C/o Parivartan, G-3/17
Sundernagri
Delhi-110093.

Public Authority: Department of Personnel & Training
Ministry of Pensions, Personnel & Training,
Government of India, North Block
New Delhi.

Cabinet Secretariat
Rashtrapati Bhavan,
New Delhi

Date of Hearing : 12.11.2008

Date of Decision : 27.11.2008

Facts:

The Appellant submitted three separate applications on 17th November, 2005 seeking information relating to empanelment of officers in the Government of India each at the levels of (i) Deputy Secretary and Director; (ii) Joint Secretary; (iii) Additional Secretary and above. The following information was sought under each category:

- (i) Service-wise list of all the officers empanelled during Financial Years 2004-05 and 2005-06 for the posts of Deputy Secretary, Director, Joint Secretary and Additional Secretary & above and date of empanelment of each officer.
- (ii) List of all posts of Deputy Secretary, Director, Joint Secretary and Additional Secretary & above on which, appointments were made under Central Staffing Scheme (CSS) during the Financial Years 2004-05 and 2005-06.

- (iii) After the panels of suitable officers have been made, what is the procedure for appointing officers at various posts falling vacant at these levels. Which clause of the Central Staffing Scheme deals with the selection of officers from the panels and their final appointment? Please give copies of all Rules, Regulations etc., which guide this process.
- (iv) Inspection of all files, including file notings, through which the officers were picked up from panels for particular posts during the period from January, 2005 till date.
- (v) For each of the appointments done at these levels during the Financial Years 2003-04 and 2004-05 and till date in the current year, please indicate how the bio-data of appointed officer was considered more suitable than the others for that post.

2. The Commission heard the Respondents (DoPT) on 19.02.2008 and vide its decision dated 12.06.2008 directed the DoPT and the Cabinet Secretariat to allow inspection of the relevant files concerning empanelment of Additional Secretaries and Secretaries to the Government of India and to provide copies of the documents and records, as might be specified by the Appellant after inspection. As inordinate delay had already been caused for no fault of the Appellant so all copies of the documents were to be supplied free of cost.

3. Respondent No.2 (Cabinet Secretariat) sought a review of the Decision dated 12.6.2008 stating that the Cabinet Secretariat had not been put under notice by CIC in the 2nd Stage appeals in which the said Orders were passed by CIC. Therefore, they sought review of orders of the CIC by being provided an opportunity to be heard.

4. Accordingly, on 29th August, the Commission issued a notice for a hearing to be held on 22nd September 2008. In this hearing, the Commission ordered that the earlier Order allowing inspection of documents by the Appellant be kept in abeyance till the matter was heard again. Further, in its communication of 6th October 2008, the Commission directed the CPIO, Cabinet Secretariat, to submit a detailed response within 15 days of the issue

of the letter, with a copy to the Appellant, who would be free to submit his rejoinder.

5. Subsequently, the Appellate Authority and Joint Secretary of the Cabinet Secretariat filed a written submission dated 7 October 2008 wherein he prayed for some more time to make submissions on this issue. He further stated that the decision regarding the question of allowing access to the panels at the level of Additional Secretary and Secretary had to be taken at higher levels in the Government and that the Cabinet Secretary was in the process of obtaining necessary instructions in the matter from the appropriate authority. In the same letter he also took recourse to Section 2(1)(f) of the RTI Act stating that the information asked for by the Applicant did not qualify as 'information' as it amounted to creating information not explicitly available in the records already.

6. In the same submission the Respondents added that "the Commission would consider the written submission and the rejoinder, if any filed, and pass their order on the basis without granting any further hearing." The basis of making such a statement is not clear, for, the Commission had never given up its right to hold another hearing in the matter, if it was considered necessary.

7. The Commission once again issued a notice for a hearing to be held on 12 November 2008. The Respondents were given yet another opportunity to file their written submission, if any, so as to reach the Commission by 10 November 2008. No written submission, however, reached the Commission by that day and the hearing was held on 12 November at 4.30 p.m. as scheduled. On this day, the Respondents presented a written submission to the Commission through the junior officials who attended the hearing. In this submission, the Respondents stated: "In compliance of the oral directions of the Hon'ble Commission on the last date of hearing held on 22.09.2006 [2008], the CPIO, Cabinet Secretariat had already filed detailed submission to CIC ...". The Commission was surprised to receive a mis-statement from the Cabinet Secretariat the second time, for, the instructions were not oral but conveyed through a written communication dated 6 October 2008.

8. The following were present at the hearing on 12 November 2008 at 4.30 p.m.:

APPELLANT:

1. Shri Arvind Kejriwal

RESPONDENTS:

1. Shri K..A. Sivadas, S.O., Cabinet Secretariat
2. Shri B.B. Bharadwaj, S.O., Cabinet Secretariat

DECISION

9. During this hearing which was attended by junior level officers of the Cabinet Secretariat (Section Officers), the Respondents sent a communication to the Commission to the effect that they had complied with the oral directions of the Hon'ble Commission and filed their submission, with a copy to the Appellant, Shri Arvind Kejriwal. They also stated that in case the Commission still desired to hear the Cabinet Secretariat they could be given another date as the CPIO and the Director concerned would not be available that day due to unavoidable reasons.

10. The Commission views the attitude of the Respondents with some concern as they not only made mis-statements about the entire case but had taken recourse to dilatory tactics in providing the information. In case they had any problem in obeying the directions of the Commission, they should have taken recourse for relief as laid down under the RTI Act, and moved the High Court in a writ. Instead they delayed the matter stating that the decision in the matter had to be "taken at higher levels in the Government." In fact, they should have known that no level in Government is higher than the provisions of an Act passed by Parliament. In fact the issue boils down to an Authority like the Cabinet Secretariat going against the sanctity of the very Act itself. As such, the Commission sees no reason whatsoever to delay the matter further and directs the Respondents to abide by the decision of the Commission handed down on 12th June 2008 in which it has specifically stated:

“The Commission, therefore, directs the DoPT and the Cabinet Secretariat to allow inspection of the relevant files concerning empanelment of Additional Secretaries and Secretaries to the Government of India and to provide copies of the documents and records, as might be specified by the Appellant after inspection. As inordinate delay has already been caused for no fault of the Appellant, providing of copies of the documents shall be free of cost.”

11. These Orders may now be complied by December 30, 2008.
12. The Appellant would be free to approach the Commission again if he is not satisfied with the compliance of the Orders passed by the Commission.
13. Ordered accordingly.

Announced on this the 27th day of November, 2008. Notice of this decision be given free of cost to the parties.

(Prof. M.M. Ansari)
Central Information Commissioner

(Dr. O.P. Kejariwal)
Central Information Commissioner

(Mrs. Padma Balasubramanian)
Central Information Commissioner

Authenticated true copy. Additional copies of Orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(M.C. Sharma)
Asstt. Registrar