

CENTRAL INFORMATION COMMISSION

Appeal Nos.CIC/WB/A/2008/00427, 813 & 956 dated 24.3.2008, 5.5.2008 & 27.5.2008 respectively
Right to Information Act 2005 – Section 19

Appellant - Mr. S. C. Agarwal

Respondent - Dep't. Of Personnel & Training (DoPT).

Date of hearing/Decision- 5.11.'08

Facts:

These are three appeals moved before us by Shri Subhash Chandra Agrawal of Dariba Delhi against the information provided by the Department of Personnel of Training, Ministry of Personnel, Public Grievances & Pension.

FILE NO. CIC/WB/A/2008/00427

In this case a request was moved on 19.12.07 by Shri Agrawal before CPIO Shri G.C.Sharma, Ministry of Personnel, PG&P seeking the following information:

“Inform about names of payees to be endorsed on postal-orders/pay-orders/ drafts etc towards RTI fees for various public authorities covered under RTI Act. Presently various public authorities have different names of payees in absence of a uniform name of payee for all public authorities, and not all public authorities provide information about names of payee for RTI fees on their websites. Please also inform if Union Ministry of Personnel, public Grievances & Pensions is aware of difficulties in this regard by users of RTI Act, and has made (or intending making) some initiative for having uniform name of payee for all public authorities.

Please also inform (with file notings) if the Chief Justice of India/ states and their offices are covered under section 2 of Right to Information Act for their administrative acts together with Supreme Court/ High Court, in the manner President's Secretariat under RTI Act responds to all communications addressed in personal names of President of India? Public authorities covered by RTI Act in general are responding to queries made on communications addressed to their respective heads like Central Information Commission responds to communications addressed in names of Chief Information Commissioner.

Please attach file notings on movement of this RTI petition. In case queries relate to some other public authority, kindly transfer this RTI petition to the CPIO there u/s 6 (3) of the RTI Act.”

To this he received a response on 4.1.08, as follows:

“Para 1: The competent authorities are defined under section 2(e) of the RTI Act, 2005 have been empowered under Section 28 of the Act to make rules to carry out the provisions of the Act. At present there is no proposal to amend the Act, in this regard.

Para 2: Public authority has been defined under section 2(h) of the Act. Therefore, all authorities covered under the definition are public authorities and therefore come under the purview of the Act. The Supreme Court and High Courts are also public authorities.”

Not satisfied Shri Agrawal moved his first appeal before Smt. Anuradha Chagti, OSD and FAA, DOPT, objecting specifically to the information provided against his second query as follows:

“My second specific query was if Chief Justices of Supreme Court and High Courts are also covered under RTI Act (for their administrative functions) or not.

But the learned CPIO in his reply dated 4.1.2008 sidelined my pin pointed and specific queries. I appeal your honour that the learned CPIO may kindly be directed to provide direct information on.

(1) Names of payees to be endorsed on postal-orders/ pay orders/ drafts etc towards RTI fees for various public authorities covered under RTI Act.

(2) Are Chief Justices of Supreme Court and High Courts are also covered under RTI Act for their administrative functions?”

Upon this, he received a reasoned order from Ms. Anuradha Chagti OSD on 7.2.08 as follows:

“Since the above applications and the appeal made by Shri Agarwal are on the same issues, the appeal considers all the three communications referred above. The replies given vide CPIO's letter dated 4.1.2008 covers the spirit of the questions put forth by

the applicant, which involves policy issues. In any case, the information as under is given:

- (i) The names of payees to be endorsed on Bankers Cheque/ Demand/Draft/Indian Postal Order etc towards RTI Fees for various public authorities covered are not being maintained centrally by this Department. However, it is already intimated that the competent authorities under the Act can make rules with regard to fee etc under section 28 of the RTI Act, 2005. However as per the fees rules prescribed for Government of India the fee has to be endorsed in the name of the Accounts Officer of the public authority. Copies of all notifications issued in this respect by Government of India are enclosed for reference.
- (ii) Supreme court and High Courts are the public authority in terms of Section 2 (h) of the RTI Act and the Chief Justice of India in the case of the Supreme Court and the Chief Justice of the High Court in the case of a High Court is the 'competent authority' in terms of section 2(e) of the RTI Act, 2005."

Appellant Shri Agrawal has then moved his second appeal before us with the following prayer:

"I sought information on both above matters also from CPIO at Department of Personnel & Training by a separate single RTI petition dated 19.12.2007 because information on both these matters could, in my view, be provided either by Central Information Commission or from Union Ministry of Personnel etc which is the nodal ministry handling Right to Information Act. But their replies were almost similar and inconclusive.

I appeal that I may kindly be informed about my specific queries by Central Information Commission and/or Department of Personnel & Training because Central Information Commission is nerve-centre for all matters concerning Right to Information Act, and Union Ministry of Personnel is the nodal ministry handling Right to Information Act. I also appeal that appeal orders by first appellate authority at Central Information Commission may be tried to be time bound, and all the fields, at website of the Honourable Commissions should be regularly updated including that of orders from first appellate authority. It is prayed accordingly."

FILE NO. CIC/WB/A/2008/00813

In this case the application of Shri S.C.Agrawal of 28.2.07 was as follows:

“I will be obliged if your honour kindly informs about correctness of HT report dated 28.2.2008 that Department of Personnel & Training (Government of India) has issued guidelines for government officials to seek government clearance before accepting any international award. If yes, please arrange to enclose a copy of the circular in this regard together with any other relevant information in this regard.”

To this he received a response on 19.3.08 through Shri A. Balaram, Under Secretary, Govt. of India informing him as follows:

“This Department’s website provides that information under the RTI Act does not include file notings. However, copy of the relevant notings leading to issue of the aforesaid O.M. is enclosed.”

Not satisfied, however, appellant moved his first appeal before Shri P. Prabhakaran, Dy. Secy. (E) and F.A.A., DOPT with the following plea:

“Since DOPT never approached Court against CIC’s earlier orders on file notings in stipulated period, CIC verdict on file notings should be taken as final. I appeal that DOPT website may be modified to include file notings as basic right of petitioners. CPIO may kindly be directed to remove confusion in regard of file notings, and to issue a letter to me clarifying actual position about file notings after recent CIC verdict in appeal numbers CIC/WB/A/2006/00830 & 889.”

In this case Ms. Anuradha Chagti, OSD & FAA in her order of 24.4.08 has directed as follows:

“The view of the DOPT, as reflected on the website, is that ‘file noting’ does not form the part of information under the RTI Act and that it is not to be disclosed. However, the Central Information Commission, in several cases, has held that the ‘file noting’ is an integral part of a file and should be disclosed. The matter is under examination and decision taken would be communicated to all concerned by way of an OM, as and when taken. Till then, it has been advised that the applications seeking copies of the ‘file noting’ may not be disposed of as per clarification given on the website. If the Central Information Commission, in any particular case, pass order to disclose the file noting, decision may be taken keeping in view the various provisions of the Ac.”

Shri Agrawal has, therefore, moved his second appeal before us with the following prayer:

“Department of Personnel & Training (DOPT) should be directed to remove all confusion in regard of file noting by immediately/time-bound correction on its website as per decisions in various verdicts by Central Information Commission including in the matter “SS Bhamra vs. President’s Secretariat and Department of Personnel & Training (CIC/WB/A/2006/00830 & 889). DOPT should be directed to issue the necessary circular/OM to all the concerned ones including the petitioner in present petition to take file noting as basic right of petitioners in a time bound period. In case DOPT fails to respond even at this stage, proceedings under section 18 of the RTI Act may be initiated against concerned ones at DOPT after fixing a short date of hearing for noting implementation of CIC verdicts on file notings.”

FILE NO. CIC/WB/A/2008/00956

In this case the request of Shri S. C. Agrawal to S.O. (JCA) and CPIO, Ministry of Personnel, Public Grievances and Pensions dated 24.4.08 was as follows:

“Kindly inform me about procedure (in detail and with copy of documents) to select national, gazetted and restricted holidays for government employees. What is the criterion for declaring birthdays of departed leaders as gazetted holidays? Do leaders like Netaji Subhash Chandra Bose or Pandit Jawahar Lal Nehru do not fulfill the criterion to have their birthdays also as national holidays on lines of birthdays of Mahatma Gandhi and Dr. BR Ambedkar? Is it fair that birthdays of leaders like Mahatma Gandhi or Dr. BR Ambedkar are made holidays contrary to their noble ideas of hard work? Has government made any research on maximum availed restricted holiday/s on particular occasion/s (like Raksha Bandhan in Delhi) to be converted in a gazetted holidays for practical reasons? If yes, please provide details. Please attach file notings.

If some of the queries relate to some other public authority, please transfer this RTI petition under section 6 (3) of the RTI Act to CPIO there.”

To this he received a response from Shri J. S. Meena, Section Officer on 30.4.08 point-wise as follows:

- “(1) Procedure of Holidays: As per the existing policy the Central Government administrative offices observe 17 holidays in a year, 14 compulsory holidays as pre-notified including three national holidays, viz. Republic Day, Independence Day and Mahatma Gandhi’s birthday. The remaining three holidays also require to be selected from another notified list of 12 occasions. The individual employees are also allowed to avail two restricted holidays in a year to be selected from the notified list of Restricted Holidays. Thus there is a ceiling on the number of holidays that can be declared in a year.
- (2) Criterion for declaring birthdays of departed leaders as holidays: There is a policy decision that no holiday should be declared on the birthday of any national leader other than that of Mahatma Gandhi.
- (3) Holiday on Dr. B. R. Ambedkar’s birthday: It is not one of the regular annual holidays. However, since 1990 this occasion has been declared as a closed holiday for all Central Government administrative offices.
- (4) Research on restricted holidays: As per available information/ record in JCA Section, no such order has been issued to make any research on maximum availed restricted holiday/s on particular occasion/s (like Raksha Bandhan in Delhi) to be converted in a gazetted holiday for practical reasons.”

Upon this Shri Agrawal moved his first appeal before Shri Mohinder Kumar, Director (JCA) and FAA pleading as follows:

“The learned CPIO revealed that Dr. B. R. Ambedkar’s birthday was not an annual holiday, but a closed holiday since 1990 without mentioning the rules under which 14th April is a closed day without being listed as a holiday anywhere. Neither is it mentioned if this holiday is from a notified list of 12 occasions listed for availing restricted holidays. I appeal that details and rules may be clearly mentioned under which Dr. B. R. Ambedkar’s birthday is being observed as a closed holiday since 1990 without being a listed holiday anywhere. Can such breaking of rules be possible to make birthday of some leader also a closed holiday? Kindly also arrange file notings on Dr. B. R. Ambedkar’s birthday having been made a

closed holiday in 1990. Please also arrange file notings on movement of present RTI petition followed by this appeal.”

Upon this he received a somewhat curious response from Shri Mohinder Kumar, Director (JCA) in a letter of 22.5.08, as follows:

- “1. As per RTI Act Section 8 (I) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, therefore, under the provisions of act, no information can be provided to the first Para of your appeal.
2. It is a decision of the Government to declare closed holiday on Dr. B. R. Ambedkar’s birthday since 1990, with the due approval of the competent authority. As per the guidelines prescribed on the website (<http://www.persmin.nic.in>) of Ministry of Personnel Public Grievances and Pension under RTI-FAW, information does not include “File noting”, hence no file noting can be provided.”

Shri Agrawal’s prayer in his appeal before us is as below:

“Details and rules under which Dr. B. R. Ambedkar’s birthday is being observed as a closed holiday since 1990 without being a listed holiday anywhere may be provided mentioning if such breaking of rules is possible to make birthday of some other leader also a closed holiday.

Copy of file notings on Dr. B. R. Ambedkar’s birthday having been made a closed holiday in 1990 may be provided together with copy of file nothings on movement of my RTI petition followed by first appeal.

Since DOPT has not approached Courts on CIC decisions on ‘Information’ including file notings under RTI Act, penal action against those responsible at DOPT for not obeying CIC decisions on file notings may be initiated.

DOPT may be directed to immediately modify its website to mention file notings as part of ‘Information’ under RTI Act.”

At the request of appellant Shri Subhash Chandra Agrawal in all these cases, a public notice was issued by this Commission on 13.10.’08 seeking

response from interested parties/persons or organizations on the following issues:

- i) Whether the Chief Justice of the Supreme Court and High Court are also covered under RTI Act.
- ii) The criterion for declaring Birth Days of departed leaders as Gazetted holidays.
- iii) Whether the DOPT Government of India has issued guidelines for Govt. Officials to seek Govt. clearance before accepting any international award.
- iv) Information about names of payees to be endorsed on pay order/draft etc. towards RTI fees for various Public authorities covered under the RTI Act.

The appeals were heard on 5.11.08. The following are present:

Appellant

Shri Prashant Bhushan, Advocate
Shri Mayank Misra, Advocate

Respondents

Ms. Anuradha S. Chagti, Dy. Secy., DOPT
Shri A. Balaram, Under Secy., DOPT
Shri Dinesh Kapila, Dy. Secy (JCA), DOPT
Shri D. C. Sharma, SO (IR) DOPT
Shri J. S. Meena, S.O. (JCA), DOPT

In the meantime, we had received an Email from appellant Shri Agrawal dated 4.11.2008 at 9.38 p.m., as follows:

“My five appeals against Supreme Court and DoPT are fixed for hearing before your honour (four before full bench) between 4 pm and 5 pm on 5.11.08.

But I have just received a message about death of my brother-in-law at Pune. As such I will have to rush to Pune to attend cremation. However, my Counsel Shri Prashant Bhushan Ji Advocate will take care of all the appeals on my behalf.”

In the case in File No. **CIC/WB/A/2008/00427** Ms. Anuradha Chagti, Director, DOPT submitted that it is only possible for a public authority to provide such information as is held by it. In this case the DOPT were not competent to

respond to the questions asked, since these require an interpretation of the law rather than information held on the subject.

Learned Counsel for appellant Shri Prashant Bhushan conceded that it is not open to the DOPT to provide an answer to the questions asked but invited our attention to the contents of appellant's prayer pleading that this Commission pronounce a decision on the subject ruling on whether the Supreme Court and its Chief Justice are separate public authorities. He also requested that although the DoPT has authorized Accounts Officers of public authorities to accept fees, there is no standard procedure followed in State Governments and the Commission may pronounce a decision in this regard.

The question in **File Nos. CIC/WB/A/2008/00813 & CIC/WB/A/2008/00956** both concern the disclosure of file notings, upon which the Commission has already given a decision.

DECISION NOTICE

It will be seen that in all three cases the only remaining cause of action is disclosure of file notings. In File No. **CIC/WB/A/2008/00427** respondent CPIO has clearly stated that there was no information to give. In that case the statement regarding file noting came up only in appeal and has been explained in terms of DoPT policy, however faulty or even in transgression of the law. On the learned counsel for appellant Shri Prashant Bhushan pleading for pronouncements by this Commission on various issues, we can only make such decisions after having heard concerned parties. As regards the Supreme Court judges and those of the High Courts, we propose to address the issue when raised in cases in which these public authorities are party. In this case, DoPT is clearly not so. Besides, the State Governments are not within the jurisdiction of this Commission. It is open to the DoPT, administrative Ministry of the Union of India for the RTI Act to advise State Governments in this regard. We are aware

that the question of bringing homogeneity in rules prescribed by State Govts. as competent authorities under the Act, is already engaging their attention.

In File No. **CIC/WB/A/2008/00813**, while stating the DoPT's stand, CPIO Shri Balaram has indeed provided "*copy of the relevant notings leading to issue of the aforesaid O.M.*" He cannot therefore be faulted either for denial or providing misleading information.

In File No. **CIC/WB/A/2008/00956**, however, although the question of the validity or otherwise of declaring holidays in memory of eminent citizens lies beyond our jurisdiction, as conceded by learned counsel for appellant Shri Prashant Bhushan, there is in this case a clear refusal of information holding file notings to be exempt. On this issue, in a similar case in File No. **CIC/WB/A/2007/00657**, we have, in a ruling of 31.10.08 held as follows

"It is clear that file notings fall well within the definition of information, as defined in sec. 2(f) and instructions given in this regard in Decision dated 26.6.2008 in **Appeal No. CIC/WB/A/2007/00223, Shri Anil Agrawal vs. D.O.P.T.** Moreover, the reasons given for refusal, giving weight to departmental instructions over the law as ruled, in a series of decisions of this Commission unchallenged by the errant public authority through Writ in any court, the response can only be described as flippant and vexatious. Moreover, as emphasizes by us in quoting from the Decisions of both CPIO and 1st appellate authority, the refusal seeks no justification on the law but only on the basis of the Department's own convenience, by citing no better source of such a law other than the Departmental website, which can hardly be described as law. We are, therefore, forced to conclude that the denial of information in this case amounts to a malafide denial of a request for information which makes it squarely liable for penalty of Rs. 25,000/- u/s 20(1). The only remaining question is which individual should be held responsible either for direct violation being CPIO, or by being provided malafide directions by an officer thereby rendering that officer liable u/s 5(5) of the Act. Ms. Urmila Rawat Section, denied the information and Ms. Zoya under whose orders this information was denied will, therefore, show cause as to why each of them or both jointly should not be held liable for penalty of Rs. 25,000/- for malafide refusal of information, given that the orders of this Commission are explicit and unequivocal in

this matter. They will do this by personal **appearance before us on 27.11.2008 at 10.30 a.m.** “

In the present case therefore, CPIO Shri JS Meena Section Officer (JSA) will also appear before us on the date and time appointed as above. In the hearing, however, Ms Chagti has informed us that although indeed orders issued were those of Ms Zoya, US, this was done with the approval of Secretary, DoPT. The respondents will therefore present to us at the appointed time and date the file on the basis of which the orders for issue of the impugned circular was made to enable us to determine the identity of the errant official and proceed accordingly.

Part of the appeal in File No **CIC/WB/A/2008/00956** is thus allowed. Announced in the hearing.

Notice of this decision be given free of cost to the parties.

(Ms A. Dixit)
Information Commissioner
5.11.2008

(Prof. M.M. Ansari)
Information Commissioner
5.11.2008

(Wajahat Habibullah)
Chief Information Commissioner
5.11.2008

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.

(Pankaj Shreyaskar)
Joint Registrar
5.11.2008