

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.

Date of Hearing : **19.02.2008**

Date of Decision : **12.06.2008**

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 sets of information were 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 noting, 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. Each of the CPIOs provided a part of information while rest of the information was withheld. Some of the common grounds taken by the CPIOs justifying withholding of information may be summarized as follows:

- (i) The information relating to Civil Services Board which comprises the Cabinet Secretary and Secretaries of other departments are exempted under Section 8 of the Right to Information Act, 2005 and hence cannot be provided.
- (ii) The information concerning empanelment of officers contain personal information of the officers and that it has no relationship with any public activity or interest. Since it could cause

unwarranted invasion on the privacy of the individuals, it cannot be disclosed u/s 8(1)(j) of the RTI Act.

- (iii) The records which form part of the decision of the Appointment Committee of the Cabinet and recommendation of the same are 'privileged' and as such cannot be disclosed u/s 8 of the Right to Information Act, 2005.

3. The Appellant on 2nd January, 2006 and 22nd February, 2006 approached the Establishment Officer (designated as Appellate Authority in the Department of Personnel & Training) and filed appeals against the Orders of the CPIOs. The Appellant stated that the denial of information is a classic case of mischievous and mala-fide application of Section 8 of the RTI Act. The PIOs seem to have first made up their mind that the information was not to be provided and then they have simply taken shelter of Section 8 when that section was not even remotely applicable. The Appellant also pointed out that once the decisions are taken, even Cabinet papers have to be disclosed under Section 8(1)(i) of the RTI Act. The Appellant also asserted that the information that he is seeking does not at all pertain to Cabinet papers. In his appeal petition dated 22.2.2006, he also mentioned that the PIO of the Department of Personnel & Training has rejected the application stating that the information pertains to Cabinet Secretariat and that the Cabinet Secretariat rejected the same application stating that the application has not been submitted in the prescribed form. The Appellant submitted that by submitting his RTI applications he wanted to know how the officers were being selected and how their qualifications matched with the job requirements. He contended that the information so sought by no stretch of imagination could be concealed from the public and the Public Authority should *suo moto* put such information in public domain under Section 4 of the RTI Act. The Appellant requested the Appellate Authority to direct the PIO to provide complete and correct information immediately.

4. The Appellate Authority after hearing the parties passed separate Orders in respect of each of the appeal petitions. The two separate Orders were passed on 3.2.2006 and one Order was passed on 30.3.2006. The Appellate Authority allowed one of the appeals while the remaining two appeals were partly allowed. However, all the cases were remanded to the CPIOs for reconsideration in the light of the observations made by the Appellate Authority. Some of the observations made in respect of each of the appeal petitions may be cited as below:

- (i) CPIOs have denied some information to the Appellant on the ground that such information is covered under Section 8 of the RTI Act. It is not sufficient simply to quote the section of the Act under which the disclosure of information is exempted. It was obligatory on the part of the CPIOs to indicate under what sub-section and under what specific provisions of section 8 of the Act the information sought is exempted. It is also necessary for the CPIOs to give reasons how such information falls within the purview of a particular provision of the Act.
- (ii) The Appellant is working with an NGO and the information that has been sought by him does not pertain to him. Therefore, such third party information falls within the provisions of Section 11(1) of the Act. It is, therefore, obligatory on the part of the CPIO to issue notice to such third party and invite the third party to make submission in writing or orally as to whether the information could be disclosed. Submissions of the third party should be kept in view while taking a decision about the disclosure of the information.
- (iii) The information asked for will involve compilation of a huge amount of data. The compilation of this information in form sought by the Appellant needs to be examined in the light of Section 7(9) of the

RTI Act while considering the request of the Appellant for information.

- (iv) The decision of the Council of Ministers, the reasons thereof and the material on the basis of which the decisions were taken are to be made public after the decision has been taken and the matter is complete or over. The CPIO, therefore, has to see as to whether empanelment process is complete or over before such information could be considered for disclosure.

5. The Appellant submitted his 2nd appeal before this Commission on 10.4.2006 as no action was taken by the CPIOs even after the matter was remanded to them by the First Appellate Authority. Moreover, according to the Appellant the appellate authority had only allowed his appeal partly. The appellate authority while rejecting the decision of the CPIO concerning denial of information on certain points, had not given any time limit within which the information should be provided. It had also not given any direction to the CPIO on several points and sought to raise fresh grounds which were not raised by the PIO. The Appellant prayed for a penalty to be imposed on the PIO for malafide denial of information and a direction to the PIO to provide all the information within a week.

6. The appeal was heard on 21.06.2006. Shri S.N. Mishra, Establishment Officer & Appellate Authority of DOPT along with the concerned CPIOs, namely Shri V. Venkatesh, Shri Mukesh Puri and Shri Alok Kumar were present. The Appellant was present in person. During the course of the hearing, the following points were noted:

- (i) Even after the Orders passed by the appellate authority, there had been inordinate delay in disposal of cases by the CPIOs, which was a matter of serious concern.

- (ii) The information sought was voluminous and much of the information sought did not exist in the form in which it was requested.
- (iii) There was no question of denial of information, as the available information was disclosed by the CPIOs within the stipulated period.
- (iv) The information denied related to either third party or fell within the category of personal information or concerned matters that were yet to be finally decided upon.
- (v) There were changes and replacements of CPIOs and appellate authority due to routine transfer and postings, which caused a delay in disposal of the cases.

7. The Commission in its Order dated 14.7.2006 noted the respective submissions of the Appellant and the Respondents. The Appellant submitted that the plea of the Respondents was misplaced. He further submitted that he did not want information in any particular format. He may simply be allowed inspection of all files so that he could specify the documents, copies whereof he desired to have. The Respondents submitted that allowing inspection of so many files could disrupt the normal functioning of the DOPT as there would be more than 600 files (300 in each year). The Appellant, however, suggested that he should be allowed inspection of 10-20 files everyday in such a way that it did not disrupt the functioning of the Department.

8. The Commission vide its decision dated 14.7.2006 passed the following Orders:

“The Department of Personnel & Training, Ministry of Pensions, Personnel & Training is the nodal agency for implementation of the RTI Act. All the functionaries of this Department, particularly the CPIOs and the appellate authority, are naturally expected to act as ‘role models’ for the rest of the public authorities in the country. In the instant case, there is an apparent lack of understanding by the CPIOs and the appellate authority on interpretation of the provisions of the Act and timely disposal of cases. Even after the lapse of four months of the passage of the Order by the appellate authority who gave detailed advice and referred the case back to the concerned CPIOs, no worthwhile action was taken by the CPIOs. In the course of the hearing, it was agreed that the concerned PIOs would review and consider the advice given by the appellate authority and accordingly dispose of the cases within one month from the date of issue of this decision.

The Respondents agreed to provide all information as allowed by the first appellate authority in the next one month. On the issues which the first appellate authority had referred back to the CPIO for reconsideration, the CPIO would find ways & means to provide information to the Appellant in the light of these discussions. There seems to be no objection on the part of DOPT to provide information. The only issue is how to provide it considering its voluminous nature. The CPIO should work out ways & means so that all information was provided to the Appellant in the true spirit of RTI Act.

The case is posted for hearing one month from now.”

9. The Appellant vide his letter dated 11.12.2006 informed the Commission that he was yet to receive most of the information inspite of the Orders passed by the Commission. He requested the Commission to take up the matter on an urgent basis so that he could get the information requested by him under the Right to Information Act. He also requested the Commission to issue penalty notices to the concerned PIOs for violation of the Orders of the Commission passed on 14.7.2006. The Appellant also informed the Commission that:-

- (a) As regards information pertaining to the appointment at the level of Dy. Secretary and Director, he was allowed to inspect the files but was not provided with the copies of the certain documents from the files even after he had requested for the same. The CPIO informed him that providing copies of the documents from the files pertaining to two years would be very time consuming. When the request was reduced to providing copies of the files pertaining to one year that was also refused. The Department was not willing to allow copies of the documents from the files even pertaining to 3 months. This clearly showed that they did not have the intention to provide the information and the refusal was, therefore, malafide.
- (b) As regards information relating to the appointment at the level of Joint Secretary, the files were made available for inspection, but copies of the documents, although not formally refused, were not provided either. However, he was told that they would take the same stand as in the case of appointment of Dy. Secretary/Director.
- (c) As regards information relating to appointment at the level of Additional Secretary/Secretary, the information was agreed to be provided during the hearing before the Commission, but the DoPT stated that the information was not available with them but with the

Cabinet Secretariat. As such, he was not even able to see and inspect those files.

10. The Commission thereafter sent a Notice to the PIOs on 9.2.2007 asking them to submit a compliance report in respect of the Decision dated 14.7.2006. The Commission also required the PIOs to submit their comments by 28.2.2007 in detail in respect of each of the pointed raised by the Appellant.

11. The PIO dealing with the information concerning the appointments of DS/Director informed the Commission vide his letter dated 27.2.2007 that the Appellant had already examined all the files and noted down their details and, as such, the Order of the Commission dated 14.7.2006 stood complied with. He further submitted that copies of the examination report, files and notings include personal information of the officer and, as such, furnishing of this information would attract the provisions of Section 11(1) of the Right to Information Act, 2005 and since it would be a major exercise it would also attract the provisions of Section 7(9) of the said Act.

12. Shri S.K. Mohanty, Section Officer and CPIO of DoPT vide his letter dated 27.2.2007 informed the Commission that the Appellant has been allowed to inspect the files concerning the appointments at the level of Joint Secretary. However, copies of the examination report sought by the Appellant include ACR grading of the officer, their vigilance clearance etc. and, as such, providing of this information will attract the provisions of Section 11(1) of the Right to Information Act, 2005 and the CPIO has to issue notices to each of the officers concerned and ask them to make their submissions as to whether copies of the documents pertaining to them could be disclosed to the Appellant. Since the number of officers to whom such notices are required to be issued will be in hundreds, it would not be possible to provide copies of the documents in respect of Section 7(9) of the Right to Information Act, 2005.

13. As regards the appointment at the level of the Additional Secretary/Secretary is concerned, the CPIO informed that the Cabinet Secretariat was requested to provide the relevant information and based on the information received from the Cabinet Secretariat, a reply has been sent to the Appellant on 3.8.2006. The Appellant has also been requested to inspect the files relating to the appointment at the level of Additional Secretary/Secretary. The CPIO also averred that the directions of the Central Information Commission have, therefore, been complied with in true spirit of the Act.

14. The Commission considered the compliance report from the DoPT and since it was of the view that the Orders of the Commission have been complied with and that the relevant information, as permissible under the Act, has already been provided to the Appellant, there is, therefore, no justification for any further action. The Appellant was accordingly informed of this vide letter dated 18.04.2007.

15. The Appellant was not satisfied with this decision of the Commission and preferred an application for review before the Chief Information Commissioner on 20.4.2007 wherein he submitted that he had already filed a complaint under Section 18 of the RTI Act some time in November, 2006 seeking directions to the DOPT to provide copies of the documents identified by him and directions to the Cabinet Secretary to allow inspection of all files and allow copies of documents which he would identify after inspection.

16. On 3.9.2007, the Appellant challenged the aforesaid decision of the Commission dated 14.7.2007 by filing a Writ Petition No.6777 of 2007 before the High Court stating, inter-alia, as under:—

- (i) The Order of the Central Information Commission dated 14.7.2006 was passed after hearing the DoPT in respect of their objections taken under Sections 7(9) and 11(1) of the RTI Act. Since the objections of the DoPT were already considered, it was not

permissible for DoPT to once again take recourse to the same objections while refusing the information.

- (ii) That the Order is vitiated by non-application of mind and also on account of the fact that no notice was given to the petitioner and no hearing opportunity was provided. The Order of the CIC dated 14.7.2006 had not been complied with. Hence, the statement in the Order that the information has been given is incorrect.
- (iii) The Order of the CIC dated 18.4.2007 had been given without jurisdiction and in a highly improper manner in as much as the RTI appeals of the petitioner were heard by a bench of two Commissioners consisting of Prof. M.M. Ansari and Dr. O.P. Kejariwal. This Bench passed the Order on 14.7.2006 directing the DoPT to provide information on all three applications. When a complaint was made by the petitioner that the Order was not obeyed, a single member bench consisting of Prof. M.M. Ansari made the impugned Order dated 18.4.2007 holding that compliance had been done. Prof. M.M. Ansari sat singly and passed the impugned Order even though the other member Dr. O.P. Kejariwal had requested that he be associated with the hearing of the complaint.

17. The matter was heard by the Hon'ble High Court on 14.9.2007 . The Hon'ble High Court after hearing the matter passed an Order directing that the matter be duly considered by a Bench of Commissioners to be constituted by the Chief Information Commissioner. Remanding the matter back to the CIC, the Hon'ble Court also directed that the said Bench shall consider the application and complaint of the present petitioner in accordance with the normal practice and in accordance with law. The proceedings were Ordered to be continued from the stage when the last public hearing was held on 14.7.2006.

18. Pursuant to the directions of the Delhi High Court dated 14th September, 2007, a Bench consisting of Information Commissioners, Professor M.M. Ansari, Dr. O.P. Kejariwal and Ms. Padma Balasubramaniam was constituted to hear the matter. Notices of hearing were issued and the matter was heard on 19th February, 2008 at 12.30 PM before the Bench so constituted. The following were present:

APPELLANT:

1. Shri Arvind Kejriwal
2. Ms. Divya Jyoti Jaipuria

RESPONDENTS:

1. Shri A.K. Singhal, Director, DoPT
2. Smt. Trishaljit Sethi, Director DoPT
3. Shri S. Imran Ahmed, Section Officer, DoPT
4. Smt. Vimla Bakshi, Under Secretary, DoPT
5. Shri Nirmal Kumar, Section Officer, DoPT
6. Shri S.K. Mohanti, Section Officer, DoPT

19. During the hearing on 19.2.2008, Shri Nirmal Kumar, Section Officer & CPIO submitted on behalf of the Respondents that copies of the Examination Reports and file notings and correspondence sought by the Appellant includes personal information of the officers which is not only voluminous but also involves information relating to 3rd parties which would be several hundreds since it covers all Ministries, Cadre Controlling Authorities and all State Governments. He submitted that the work relating to contacting and writing to all these Ministries and State Governments under Section 11(1) of the RTI Act in Order to seek their permission to give the personal records of their officers itself would be a major exercise. It was also submitted that the Appellant, in any case, has already examined all the files and noted down their details, which fact has already been brought to the notice of this Commission vide their letter dated 17.12.2007.

20. Shri S.I. Ahmed, Section Officer & CPIO, appearing on behalf of the Respondent Public Authority submitted that since the information sought by the Appellant was voluminous, the direction of this Commission to find out ways and means so that the information could be provided to the Appellant were duly obeyed in as much as the Appellant was allowed to inspect all files on which information had been sought by him. Pursuant to this, the Appellant Shri Kejriwal along with his representatives examined all the files pertaining to appointments at the level of Deputy Secretary and Director for the years 2004 and 2005 for about two hours each day for several days. The Respondent submitted that the Appellant was also provided a list of all appointments made during 2005 at the levels of Deputy Secretaries and Directors. As regards the Appellant's request to provide copies of files for the year 2006, the same was not provided to him as it attracted the provisions of Section 7(9) of the RTI Act according to which "an information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question."

21. Smt. Vimla Bakshi, Under Secretary, appearing on behalf of the Respondent Public Authority stated that the information desired by the Appellant had been provided to him. She submitted that information relating to the number of officers in the select list of Joint Secretary. As for the number of officers in the list of those who were found eligible and grounds on which they were not found eligible, the Appellant was informed that the grounds for determining the eligibility have been laid down in the provisions of Central Staffing Scheme, a copy of which was provided to him. As regards consideration of officers in various batches, the Appellant was informed that all the officers from a given batch were not sponsored by the respective Cadre Controlling Authorities of Group A Services in the earlier years. The Appellant was further apprised that the relevant information as to why the remaining officers were not sponsored for empanelment, would be available with the respective Cadre Controlling Authorities. The Appellant was accordingly provided a list of the Services and their Cadre Controlling Authorities. However, so far as the Department of

Personnel & Training was concerned, the Department itself being the Cadre Controlling Authority in respect of the Indian Administrative Service, information in respect of IAS officers was provided to the Appellant.

22. The Appellant arguing his case submitted that since the files concerning empanelment of Deputy Secretaries, Directors and Joint Secretaries have already been shown to him, therefore, there should be no harm in providing copies of the concerned files as disclosure of such information is in larger public interest. The Appellant also stated that so far as MM-II Section of the DoPT is concerned, they had shown all the documents but not provided copies of the required documents. He also submitted that even though the number of files may be more but there were only two general files copies whereof could be made available to him. He also submitted that he did not want to take copies of the Annual Confidential Reports of each of the officers but only the chart which contained the grading of the officers and not their detailed ACRs as the people have a right to know as to what is the grade assigned to an officer who had been put in the panel. The Appellant also submitted that DoPT being the administrative department for implementing the Right to Information Act, it should place sufficient resources for implementing the Act. However, if they needed more time for providing photo copies of the documents, the DoPT could take more time for the purpose but resource crunch could not be taken as a plea to deny him the information. In so far as the information concerning empanelment of Additional Secretaries and Secretaries to the Government is concerned, the Appellant submitted that no file had been shown to him and no inspection had been allowed and as such, it was a clear case of non-compliance. At this stage, it was submitted that the information concerning the Additional Secretaries and Secretaries was available with the Cabinet Secretariat and not with the DoPT. The Appellant submitted that the application under the RTI Act was indeed filed with the Cabinet Secretariat and it is they only who transferred the same to the DoPT. It was, therefore, improper on the part of the Cabinet Secretariat to transfer the applications to the DoPT even though they themselves were the custodians of the information.

23. The Commission carefully considered the issues involved in the case. It seems that the Respondent Public Authority had some difficulty in implementing the Commission's Orders which they voiced in the hearing of 19.2.2008. The information asked for was voluminous and that providing of this information would attract the provisions of Section 11(1) of the RTI Act and that since the number of officers to whom notices were required to be issued would be in hundreds, it would not be possible to provide copies of the documents without diverting the resources of the Public Authority. These points were duly considered by deciding the matter earlier and the Commission has already recorded in its Order dated 14th July, 2006 that DoPT would find ways and means to provide the information to the Appellant. The Commission had also gone to the extent of recording that there seemed to be no objection on the part of the DoPT to provide the information. The only issue was how to provide it considering its voluminous nature. In this connection, it must be mentioned that initially the Appellant had wanted the information concerning the appointment of the senior officers for three years which had been subsequently agreed to be kept limited to three months. In regard to the MM-II Section of the DoPT, the Appellant submitted that even though there were the number of files but there were only two general files copies whereof could be made available. In regard to the information concerning the officers at the level of DS/Director/JS, inspection of files had already been done and the only question that now remained was whether photo copies of the concerned files could be given or not. For this, the DoPT had not advanced any reason for not providing photo copies of the concerned files.

24. Therefore, since the right to information includes the right to take notes, extracts and certified copies of the documents or records, the Appellant cannot be prevented from taking copies of the documents or records which he had already seen and inspected. The denial of photocopies of the documents by the DoPT was, therefore, not justified.

25. As for copies of the ACRs, the Appellant at the time of hearing submitted that he did not want to take copies of the Annual Confidential Report of each of the officers but required only the chart which contained the grading of the officers. Since the charts as such would not contain any personal information, the Commission saw no objection in providing these to the Appellant, hence, directs the Respondents to provide the same within 20 working days of the date of receipt of this Order.

26. In so far as the information concerning empanelment of Additional Secretaries and Secretaries to the Government of India was concerned, it appears that the information is held not by the DoPT but by the Cabinet Secretariat. It has been made to appear before us that the Appellant submitted his RTI application initially with the DoPT which was subsequently transferred by the DoPT on 30.11.2005 on the ground that the matter was dealt by the Cabinet Secretariat. However, the Cabinet Secretariat has rejected his application stating that the Appellant should submit a fresh application with the requisite fees in a form issued by the Cabinet Secretariat. It is not understood as to why and how DoPT has responded back to this RTI request even though it was initially transferred to the Cabinet Secretariat under Section 6(3) of the RTI Act. Once the RTI application was transferred to the actual custodian of the records, it was incumbent on the part of the Cabinet Secretariat to respond to the RTI request. The Cabinet Secretariat did not respond to the RTI request and instead, the reply was furnished by the DoPT probably after consulting the Cabinet Secretariat. The Cabinet Secretariat has, therefore, clearly evaded their responsibility. Being the custodians of the information, it was mandatory on their part to have decided the matter.

27. 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 the 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.

28. 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.

29. Ordered accordingly.

Announced on this the 12th day of June, 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.

(L.C. Singhi)
Additional Registrar