

CENTRAL INFORMATION COMMISSION

Room No. 305, 3rd Floor, CIC Bhavan, Baba Gangnath Marg, Munirka,
New Delhi-110067, website:cic.gov.in

Appeal No.:-CIC/LICOI/A/2017/110899-BJ+
CIC/LICOI/A/2017/110879-BJ+
CIC/LICOI/A/2017/155095-BJ

Appellants : 1- Mr. Paresh J. Bhatt,
2- Mr. Piyush J. Bhatt,
Respondent : CPIO & Manager (CRM & CPI),
LIC of India,
CRM Deptt., Jeevan Prakash,
Tagore Marg, Rajkot
Date of Hearing : 13.04.2018
Date of Decision : 16.04.2018

Date of RTI application	29.04.2016
CPIO's response	05.05.2016 and 15.09.2016
Date of the First Appeal	07.09.2016
First Appellate Authority's response	Not on record
Date of diarised receipt of Appeal by the Commission	17.02.2017

ORDER

FACTS:

The Appellants vide their RTI applications sought information regarding the details of days for which he had worked at Dhoraji Branch from December, 1985 to April, 1986, etc.

The CPIO, vide its letter dated 05.05.2016 stated that the matter pertaining to appointment of temporary staff was sub-judice hence the information could not be furnished in terms of section 8 (1)(4) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Appellants approached the FAA. The CPIO and Manager (CRM and CPI) returned the First Appeal on the ground that it was not filed within 30 days from receiving the letter from the information officer.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellants: Mr. Sunil V Bhatt, Appellant's Representative through VC;

Respondent: Mr. S. M. Maru, Manager (CRM) / CPIO and Mr. P. V. Shukla, Deemed CPIO / Manager (Pers.) through VC;

The Appellant's representative reiterated the contents of the RTI applications and stated that information sought by them had not been received although a reply had been received from the CPIO / FAA in all these matters. Explaining the background of the case, the Respondent argued that initially the information sought was sub-judice as it was related to CGIT Award dated 18.06.2001 being contested before the Supreme Court. That matter had since been disposed off and that they were ready to provide information wherever available. In the instant matter, the information was not available and therefore, it could not be furnished being 30 years old. However, it was agreed to recheck the records.

In its written submission dated 06.04.2018, the Appellant referred to the submission of the Respondent dated 04.04.2018 wherein it was stated that information relating to the service performed by him were not available. It was stated that disclosure of information would help him to secure a job with the Respondent Public Authority. It was also submitted that if the matter was pending adjudication before the Court then the records ought to have been preserved by the Respondent and the plea of non-availability of records could not be taken by them. The Appellant also informed that he learnt from his sources that certain individuals secured jobs in the other divisions of the Public Authority. While explaining that he was entitled to get the job as per the decision of the Hon'ble Supreme Court, the Appellant stated that he had completed the prescribed tenure of 85 days of service.

The Respondent vide its written submission dated 09.04.2018 stated that matter regarding which information was sought was sub-judice earlier before the Hon'ble Supreme Court in case no. 6950/2009 and related to CGIT award dated 18.06.2001. The matter was now decided vide orders dated 18.03.2015, 09.06.2016 and 22.02.2017. Since the matter was no more sub-judice, they had provided all the available information to the Appellant.

The Commission referred to the definition of information u/s Section 2(f) of the RTI Act, 2005 which is reproduced below:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

“(j) right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes”

In this context a reference was made to the Hon’ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

Furthermore, the Hon’ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. “...Under the RTI Act “information” is defined under Section 2(f) which provides:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”

7. “...the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”

However, considering the large number of Second Appeals/ Complaints received by the Commission regarding granting of permanent status to

temporary employees as per the directives of the Apex Court, the Commission felt that information relating to name of the persons granted appointment in compliance with the aforementioned decision should be disclosed in the public domain for the ease and convenience of all the stakeholders. In this context, the Commission observed that voluntary disclosure of all information that ought to be displayed in the public domain should be the rule and members of public who *having to seek* information should be an exception. An open government, which is the cherished objective of the RTI Act, can be realised only if all public offices comply with proactive disclosure norms. Section 4(2) of the RTI Act mandates every public authority to provide as much information *suo-motu* to the public at regular intervals through various means of communications, including the Internet, so that the public need not resort to the use of RTI Act.

The Commission also observes the Hon'ble Delhi High Court ruling in WP (C) 12714/2009 Delhi Development Authority v. Central Information Commission and Another (delivered on: 21.05.2010), wherein it was held as under:

“16.It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word disseminate has also been defined in the explanation to mean - making the information known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet. There is no denying that the petitioner is duty bound by virtue of the provisions of Section 4 of the RTI Act to publish the information indicated in Section 4(1)(b) and 4(1)(c) on its website so that the public have minimum resort to the use of the RTI Act to obtain the information.”

Furthermore, High Court of Delhi in the decision of General Manager Finance Air India Ltd & Anr v. Virender Singh, LPA No. 205/2012, Decided On: 16.07.2012 had held as under:

“8. The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:

A. Publish inter alia:

- i) the procedure followed in the decision making process;*
 - ii) the norms for the discharge of its functions;*
 - iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;*
 - iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;*
 - v) the particulars of recipients of concessions, permits or authorizations granted. [see Section 4(1) (b), (iii), (iv), (v); (xii) & (xiii)].*
- B. Suo moto provide to the public at regular intervals as much information as possible [see Section 4(2)].”*

As observed by the Hon'ble Supreme Court of India in the decision of *R.B.I. and Ors. V. Jayantilal N. Mistry and Ors*, Transferred Case (Civil) No. 91 of 2015 (Arising out of Transfer Petition (Civil) No. 707 of 2012 decided on 16.12.2015

“The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy.”

DECISION

Keeping in view the facts of the case and the submissions made by both the parties, the Commission advised the Respondent to re-ascertain the availability of records and respond to the Appellants accordingly within a period of 15 days from the date of receipt of this order.

The Appeals stand disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar