

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

CIC/POSTS/A/2017/184861

Pratibha Hada v. PIO, Department of Posts

Order Sheet: RTI filed on 08.08.2017, CPIO replied on 21.09.2017, FAO - Nil, Second appeal filed on 22.12.2017, Hearing on 01.02.2018;

Proceedings on 01.02.2018: Appellant represented by Mr. Lakshman, Public Authority represented by Mr. Sita Ram Panchal, Assistant Director-Staff; Show-cause issued.

Proceedings on 27.03.2018: Appellant represented by Mr. Laxman from NIC Kota, Public Authority represented by Mr. R.S. Shekhawat, ADM-PLI and Mr. Harsh, ASP-Staff from NIC Jaipur;

Date of Decision – 16.04.2018: Penalty dropped.

ORDER

FACTS:

1. The appellant sought information on action taken on his representation dated 07.09.2016 and 20.12.2016 regarding MACP from 26.04.2011 and copy of minutes of 3rd financial upgradation of screening committee held on 22.07.2017. The CPIO on 21.09.2017 provided information on point no. 1 and denied on point no. 2 under the pretext of personal information. Being dissatisfied, the appellant approached this Commission.

2. The Commission's order dated 01.02.2018:

2. The officer stated that the information was provided on point no. 1 and denied on point no. 2 under section 8(1)(j) of RTI Act. The officer was not able to answer how the minutes of screening committee fall under the category of personal information.

3. The Commission directs the respondent authority to provide certified copies of the minutes of 3rd financial upgradation of screening committee, within 7 days and also directs Mr. R.S. Shekhawat, Assistant Director (Staff and CPIO) to **show-cause** maximum penalty should not be imposed against him for illegally denying the information, within 30 days from the date of receipt of this Order. The case is posted on 05.03.2018 for compliance and penalty proceedings.

Decision :

3. Shri R.S. Shekhawat, ADM-PLI in his written submission dated 28.02.2018, explained as under:

"The Humble respondent CPIO most respectfully submit as under before reply to the above show cause notice:

"That the answering respondent CPIO is the law abiding officer of the department and having highest regard for the orders passed by this Hon'ble CIC. However, if this Hon'ble Commission comes to the conclusion that the answering respondent CPIO has committed any mistake in complying the provisions of RTI Act/Hon'ble CIC, the same may kindly be treated as inadvertent mistake and respondent CPIO is tendering his unconditional apology before this Hon'ble Commission".

Before reply in the show cause notice, the humble respondent wants to submit few lines for your kind and sympathetically consideration please:

*That the undersigned while holding the charge of CPIO has hold the various responsibilities pertains to staff of whole Rajasthan Circle i.e. Asstt Director (Staff) dealing with all staff matter, Sports Officer, Welfare Officer, Hindi (Official Language) Officer, Savottam and Citizen Charter matter etc. In addition to above, the undersigned was also looking after additional charge of Asstt Director (Recruitment & Personal) and Asstt Postmaster General (Vigilance, Investigation and Public Grievances) while the concerned officers on leave or tour. I was also engaged in various inquiries as Inquiry Officer or Presenting Officer as well as various types of tasks i.e board proceedings, committees etc. These important tasks were given to me by superiors keeping in view of my dedication, devotion, discipline, determination and **20 years of my Army Service Base.***

That in addition to above routine work on the subjects/matters cited above, I was to disposed off average more than 100 RTI Applications as average receipt of RTI Application was more than 100 (45 applications by DAK and 60 to 65 RTI Applications through On Line per month.

That it was not possible for me to go through in detail each and every matter, so generally disposed off files in routine manner and merit basis. If any irregularity was committed by the undersigned in disposal of RTI matters, this irregularity/mistake committed only due to heavy/workload/unawareness of RTI knowledge and not deliberately/knowingly or denied with malafide intention.

Reply in the show cause notice

- 1. That Section 20 of RTI Act 2005 stipulating that "**Penalties:-** (1) Where the CIC at the time of deciding any complaint or appeal is of the opinion that the CPIO has without any reasonable cause has not furnished information within the time specified under sub-section (1) of section 7 or*

- malafidely denial the request of information or knowingly given incorrect incomplete** or misleading information, it shall be impose a penalty provided that the CPIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him.
2. That now the question is whether the undersigned is denied the information knowingly or with malafidely intention. The facts and circumstances of the case is submitted in the next Paras.
 3. The application dated 08.08.2017 received from the information seeker in which she asked (1) action taken her representation dated 07.09.2016 and 2012.2016 regarding MACP from 26.4.2011 and (2) copy of minutes of III financial up-gradation screening committee held on 27.7.2017.
 4. The Dealing Assistant put up the above application and reply letter on 18.9.2017 with noting in file at P6/N through Asstt Supdt of Posts (Staff) and both had come up to me in person to get signature of me keeping in view of a little bit delay in supply of information. "The matter was discussed with both of them that her applications for grant of MACP are still pending and under consideration, hence reply on point No 1 is correct. As regard point No 2 to provide copy of minute sheet, it was discussed that copies of minute sheets of DPCs/Screening committees having personal information of others also, moreover, earlier times copies of minute sheets were never provided to information seekers by my predecessor CPIO due of personal information of others under section 8(1)(j) of RTI Act 2005, **however, information art her part had already been provided to her while communication of decision of Screening Committee. Incase Hon'ble CIC will order to supply the copies of** minutes of sheet, it be supply to her free of cost as earlier Hon'ble CIC given direction in so many cases to provide information free of cost without imposing penalty". Accordingly the reply was signed by the undersigned as put up before me through DA/ASP(Staff) and disposed off it. **However, her application was treated as grievance and preceded for further action.**
 5. The information on her part in Screening Committee has also been provided to her at the time of communication of decision. Moreover, copies of all her ACRs have also been provided to her from time to time. The eligibility criterion of MACP is in public domain. As such she is well aware that she is not entitled to get MACP due to below bench mark.
 6. Earlier her case for grant of MACP was considered so many times, but the same cannot be granted due to below bench marks and punishment in current as well as deferment due to long period of AWL/diesnon710. Copies of minute sheet dated 28.11.2011, dated 26.6.2013, representation decision dated 4.8.2014, report on her conduct dated 29.7.2010, **decision dated 31.3.2008 in which penalty of compulsory retirement modified by revisionary authority considering that she can be given a precious chance to show distinct improvement in her work and conduct in future respectively. Her husband Shri Laxman Singh who is always accompanied her at the time of hearing, is ex employee of Department of Posts who was also compulsory retired from services. Both are well known to me, once a time came to myoffice and want to take a favour in connection with cancellation of her transfer from Jota to Chittorgarh in the Public Interest. I explained to them and shown my inability keeping in view of their conduct, however, assured to put up her representation immediately before competent authority for decision. Recently SPOs Chittorgarh Division vide their Memo No**

B-458/2016 dated 14.9.2016 has ordered to treat the period of absent from duty for 828 days from 15.3.2014 to 09.06.2016 as "DIESNON". Her whole services are full of indiscipline.

7. **That she has filed First appeal dated 27.9.2017 which has been received in this office on – which is time barred as not within 30 days from her application dated 8.8.2018.** The same has been put up before Appellate Authority through AD (Staff) on 09.10.2017 and on the same day file was returned to DA to put up draft for decision of Appellate authority. Since the undersigned was transferred, the matter has been dealt by present CPIO treating the appeal as Grievance of the Information seeker without deciding the appeal. The file was moved from time to time before competent authority to settle her grievance and after a due process the Competent Authority has rejected her representation on 12.02.2018. The whole process is enclosed in Note Sheet No P-6/N to P-14/N. The copy of decision of Competent Authority vide Memo No Staff/10-13/SBMCO MACP-III/201415 dated 28.2.2018.
8. Copy of IInd appeal has not been received in my office either from CIC or information seeker, hence it is not possible to say that this appeal is time barred or not as in case of Ist appeal. If decision of Hon'ble CIC will adverse to me it will be against the principle of natural justice as I have not yet received the copy of IInd appeal for my defense.
9. **That on perusal of Hon'ble CIC order dated 01.02.2018 in the present case, the information seeker has filed IInd appeal on 22.12.2017 after 136 days from his RTI application dated 08.08.2017 which is beyond 120 days and time barred as prescribed time limit for filing of first appeal is 30 days and further 90 days for IInd appeal.**

LAW LAID BY HON'BLE COURT OR CIC TO PROVIDE COPY OF MINUTE SHEET OF DPC (SCREENING COMMITTEE is also same which have personal information of others)

- (A) Hon'ble Delhi High Court observed in Para 10.2 & 11 while passing the decision dated 08.3.2013 in WP(C) No 2506/2010 in the case of THDC India Ltd v/s Smt T Chandra Biswas that "I must, however, not, at this stage, the contention of Mr Malhotra that the information contained in the DPC minutes would advert to the grading of the other employees who may wish to object to the said information being disclosed to the respondent" "I am of the view that the interest of justice would be served if the direction of the CIC contained in paragraph 6 of the impugned order is set aside and the matter remained for a denovo hearing by the CIC"
- (B) Hon'ble CIC held in Para 4 decision dated 26.6.2013 passed in case No CIC/SM/A/2013/000058 in the case of Manoj Arya v/s CPIO Cabinet Secretariat that "The Appellate Authority was very right in deciding that this entire class of information was qualified as personal information within the meaning of provisions of Section 8(1)(j) of the RTI Act 2005. In this connection, it is very pertinent to cite the decision of the Supreme Court of India in the SLP(C) No 27734 of 2012 (Girish R Deshpande vs CIC and others) in which it has held that "the performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression personal information, the disclosure of which has no relationship to any public activity or public

interest. On the other hand, the disclosure of which could cause unwarranted invasion of the privacy of that individual.

- (C) Hon'ble Delhi High Court passed decision dated 21.11.2014 in WP(C) No 7923/2013 in the case of THDC India Ltd v/s Smt T Chandra Biswas and held that "I find no reason to differ from the aforesaid decision. I am also unable to agree with the contention that the matter be remanded back to the CIC for considering it afresh as the conclusion in the case of R.K. Raturi (Supra) is definite; DPC minutes cannot be disclosed except in public interest and that too after following the procedure specified under Sections 11(1) and 19(4) of the Act".
- (D) In another similar matter in same WP(C) 7923/2013 vide order dated 21.11.2014, Hon'ble Delhi High Court held that "It must be pointed out that the DHC Orders examined above have the effect of creating a class exemption for DPC minutes. Section 8(1) of the RTI Act does not exempt entire categories of documents from disclosure. They are circumstantial exemptions requiring harm tests to be administered in order to determine the effect of disclosure. Further, in the cases discussed above DHC has frequently placed the burden of demonstrating public interest in support of disclosure on the requestor for information. Within the deepest respect to the wisdom of the Court it must be pointed out that such a burden is not placed on the requestor in other jurisdictions where the public interest test is incorporated in the RTI laws. It is for the adjudicatory authority such as information Commission(ers) and Courts to make a determination regarding the public interest would be served by transparency and balancing them against the public interest requiring the information to be kept confidential. Last but not the least, going by the definition of the term "public records" contained in Section 2 of the Public Records Act, 1993, DPC minutes are undoubtedly public records to which the protection of privacy may not be attracted given the finding of the Hon'ble Supreme Court in R. Rajagopal discussed above. **This issue requires to be settled through a definitive pronouncement of the Supreme Court in an appropriate case after examining the jurisprudence that has hitherto developed in favour of both disclosure and against it for its correctness. Until then the issue of access to DPC minutes will remain unresolved.**

10. It is submitted that Hon'ble CIC in its latest decision dated 05.06.2017 in case No CIC/DITIN/A/2016/308082-BJ in the case of Mr T C Gupta v/s CPIO & ITO held that "**the Commission directs the respondent to provide information regarding the DPC Minutes to the Appellant, after severing the details of the other employees in the DPC minutes after duly complying with the provisions of Section 10 of the RTI Act 2005, within a period of 15 days from the date of receipt of this order.**" Whereas Hon'ble CIC in the present case ordered vide Para 3 of decision dated 01.02.2018 that "**The Commission directs the respondent authority to provide certified copies of the minutes of 3rd financial upgradation of screening committee within 7 days.**" Hence verdicts of Hon'ble CIC are different on same issue in different orders. **However, to honour the above order of Hon'ble CIC, certified copies of minute sheet of screening committee without severing the details of the other employees in the minutes sheets were provided within the stipulated time.**

In view of the above, facts and circumstances, denial of information by the undersigned is not deliberately, knowingly or malafidely however, its

because of unawareness of law or complicated matter. Now the grievances raised vide point No 1 of the information seeker has been settled finally by the Competent Authority in rejoinder and speaking order and communicated to the information seeker vide memo No Staff/10-13/SBCO MACP-III/201415 dated 28.02.2018. **If Hon'ble CIC is still not satisfied with the reasons of denial, to avoid discrimination a detailed inquiry through a senior officer may kindly be ordered in the line of below mentioned order passed in similar case by the Hon'ble Commission in the interest of natural justice.**

Earlier, in similar other case No. CIC/BS/C/2014/000299 filed by Dr. Ashok Kumar Parashar against Department of Post, CIC had ordered on 27.09.2016 as under:

"CPMG, Jaipur the nominated officer should send the inquiry report to the commission within 45 days from the date of receipt of this communication containing the reasons for **not furnishing the complete** and / or the delay in furnishing the information by the CPIO affixing responsibility and identifying the officer(s) so responsible."

I request your kind honour with folded hands and apologies for the unknowingly mistake committed by the undersigned and the same is regretted. It is assured that I will be more careful in RTI matter and such kind of violation will not be repeated in future."

4. After perusing detailed submissions, the Commission observes that denying promotion related information and copy of minutes of financial upgradation of screening committee on grounds of privacy is absolutely not justified. The CPIO has no valid ground to say that it contained some personal information. He should have justified how that part was 'personal' even if it was so, he should have separated it and furnished the remaining information. It is sad that officers are using the exceptions illegally to harass a colleague like this. The Commission directs furnishing of minutes of the committee, provide action taken report on grievance of the appellant and all relevant papers, free of cost, within 10 days. The Commission also directs the respondent authority to pay Rs. 1000/- as token of compensation to the harassed appellant. Taking a lenient view, accepting the apology, the penalty is dropped. Disposed of with warning not to harass.

SD/-
(M.Sridhar Acharyulu)
Central Information Commissioner