Complaint No. CIC/VS/C/2015/900128

Complainant: Mr. Ashwin Shukla,
V/502/C Railway Officers Colony,
Rail Saurabh,
Burn Company Compound,
Kanchghar Road,
Jabalpur-482001.

Respondent: Central Public Information Officer,
Chief P.O.,
West Central Railway,
O/o. G.M.
General Admn.
RTI Cell,
Jabalpur,
M.P.


ORDER

Facts:

1. The complainant filed RTI application dated 4.2.2015 seeking certified copy of the complaints based on which certain investigations have been undertaken by WCR Vigilance organization in Sr. DSTE/Wks./Kota’s CA No. KTT/S&T/Works/2006/4 dated 31.7.2007 regarding work of supply of material, installation and commissioning of signalling equipment in connection with shunt back facility at Bhartpur station of Kota division, certified copy of investigation report, certified copy of statements taken in connection with the investigations etc.

2. The CPIO responded on 20.2.2015. The complainant filed first appeal dated 9.3.2015 before the first appellate authority (FAA). The FAA responded
on 27.3.2015. The complainant filed a complaint on 16.4.2015 with the Commission requesting to impose penalty both on PIO and Appellate Authority.

**Hearing:**

3. Both the parties participated in the hearing through video conferencing,
4. The Complainant stated that the contractual work of supply of material, installation and commissioning of signalling equipment in connection with shunt back facility at Bharatpur station of Kota division under Contract Agreement No. KTT/S&T/Works/2006/4 dated 31.7.2007 was executed at Bharatpur station of West Central Railway (WCR). During the execution of the work multiple, serious irregularities were committed by certain officials involved with the work. The irregularities included non-maintenance of essential records and making payments to contractor for work which was not completed. The complainant stated that complaints were made against these officers. The complainant further stated that Vigilance department of WCR undertook an investigation into this work in 2009. However, in the investigation, clean chit was given to the actual culprits who had committed gross misconduct and disciplinary proceedings were advised against some other officials, including the complainant. The complainant said that he was never posted in the unit which had executed the contractual work and had never dealt with the above said contract.

5. The complainant stated that on receipt of the advice for disciplinary action, General Manager, WCR (who was also the disciplinary authority) referred back the case to CVC for reconsideration, stating that complainant (Shri Ashwin Shukla) was not involved in the case and he has not committed any misconduct, hence no disciplinary proceedings are warranted against him. However, CVC insisted on the disciplinary proceedings and accordingly, major penalty charge-sheet was served on the complainant. As part of disciplinary proceedings, inquiry was conducted in the case. The inquiry officer held the charges against the complainant as “Not Proved”. However, Vigilance Department and CVC insisted on imposition of major penalty and consequently
major penalty was imposed on complainant. In the meantime at least two more complaints against the actual culprits were received by WCR, but WCR Vigilance Deptt. repeatedly gave clean chit to the actual culprits. In 2014, CVC itself undertook investigation in the matter and gross irregularities on part of the actual culprits were revealed. However, no irregularity on the part of complainant was found in CVC’s investigation. Accordingly, CVC advised WCR Vigilance Deptt. to undertake fresh investigations in the matter. The complainant stated that as per his information, as a result of investigation, major penalty disciplinary proceedings have been recommended against the actual culprits. Hence, it is clear that the initial investigation into the case, based on which major penalty was imposed on him, was unfair and biased. Moreover, it is clear that WCR Vigilance Deptt. has repeatedly tried to protect the actual culprits and frame innocent officers. This indicates serious corruption within the Vigilance Deptt.

6. The complainant stated that through his RTI application he was seeking information regarding all the investigations in this matter which have been completed and closed.

7. The complainant stated that through his RTI application he was seeking following information/documents:
   i) certified copy of complaints based on which investigations were undertaken,
   ii) certified copy of investigation report including field test or inspection reports if any,
   iii) certified copy of statements taken in connection with the investigations,
   iv) certified copy of report sent by vigilance Department of WCR and Railway Board to competent authority, including the action proposed to be taken,
   v) certified copy of remarks of various officials of WCR Vigilance, Railway Board Vigilance, GM, PHOD, ML, officers of CVC etc. on the cases,
vi) certified copy of CVC/Rly Bd. Igilane advice/decision obtained in these cases.

vii) certified copy of all correspondence and noting made in connection with these investigations,

viii) certified copy of any other reference, correspondence or advice received from CVC/Rly. Bd. regarding any investigation/examination in contract, including ongoing investigation,

ix) certified copy of all vigilance clearance given during past 5 years to the officials against whom the investigation was done.

x) certified copy of all vigilance clearance given by WCR vigilance in last 5 years for promotion to senior scale in S&T department. remark of various officials of WCR Vigilance.

8. The complainant stated that the CPIO has denied the information u/s 8(1)(j), 8(1)(g) of the RTI Act. The complainant stated that the first appellate authority has forwarded his first appeal to the nodal officer/Vig. and communicated the views of the nodal officer to him without any application of mind. The complainant said that the FAA has not passed a speaking order.

9. The complainant stated that in his application he had clearly indicated four departments where the information could be available, still it appears that PIO and Appellate Authority has sought the information only from one nodal officer and no attempt was made to seek information from other nodal officers. The complainant stated that information would be available with Vigilance Department, Establishment Section, G.M. Office and SDGM office who is also Vigilance Officer.

10. The complainant stated that the information sought by him is regarding apparent corrupt practices of public servants including vigilance officials which concerns public interest, hence the desired information cannot be denied. Also no personal information about any individual, which may cause unwarranted invasions of privacy, has been asked by him. Hence, the information cannot be denied on this ground also and desired information does not fall under the ambit of section 8(1)(j). The complainant stated that the information sought by
him will expose the illicit connivance of vigilance officials with certain corrupt
officers to give undue benefit and protection to corrupt individuals and
practices, hence in this case the larger public interest of exposing corruption
justified disclosure of information. The complainant cited Commission’s order
No. CIC/WB/2009/000945, 992 and 993/SM dated 12.1.2011 wherein CIC
has reviewed its decision taken earlier and directed copy of the file notings
(even in a vigilance case) to be provided under the RTI Act, 2005.
11. The complainant stated that the vigilance department of Railway is
neither a law enforcement unit nor deals with the matters of security. Hence
section 8(1)(g) is not applicable to vigilance organisation, therefore, they cannot
deny the information.
12. The respondent stated that there are 15 complaints on the issue under
consideration and inquiry is still going on. The respondent stated that some
complaints are related to appellant and some complaints are related to others.
The respondent further stated that all ‘relied upon’ documents were already
provided to the complainant during major penalty proceedings initiated against
him. The respondent stated that complaints are confidential and sensitive in
nature. The respondent said that the complainant desires the whole ongoing
investigation papers which are no way connected to any public interest.
Disclosing them will tantamount to betrayal of the trust of complainants,
witnesses and investigating officials, who are helping Indian Railways in solving
this corruption case. The respondent stated that nature of working of Vigilance
department is investigation in which honest people of high integrity from all
departments come only for a tenure of 3-4 years. They are repatriated to their
parent cadre after tenure. There is always a possibility of revengeful action
against them in their parent departments. To prevent it, their actions in
capacity of vigilance officials need to be kept confidential. Same thing applies
to complainants and witnesses who help vigilance department in
investigations.
13. The respondent stated that the information/document sought by the
complainant is a third party information, disclosing the same will endanger the
life and liberty of an employee. The respondent said that no larger public interest is involved in providing the information/document.


15. The respondent stated that the information cannot be provided as per section 8(1)(j) of the RTI Act and also in view of Supreme Court judgment in SLP (Civil) No.27734 of 2012 dated 03.10.2012.

16. The complainant in his written statement referred to the directions of CIC and DoPT OM No. 10/23/2007-IR dated 9.7.2007 in which it is stated that “deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by appellate authority should be a speaking order giving justification for the decision arrived at.”

17. The complainant stated that information sought by him is regarding investigations which have been completed and disclosed and not about any ongoing investigation.

18. The complainant in his written statement stated that it is quiet apparent that the initial investigations were manipulated and clean chit was repeatedly given to the actual culprits by vigilance officials, in spite of verified complaint and sufficient evidence being available against them. Thus, this RTI case is not about protecting the bonafide action of vigilance officials but about exposing their wrongdoings and the probable nexus between the corrupt and certain vested interests within the corruption fighting machinery of the government.

19. The complainant in his written statement stated that all the decisions of CIC quoted by CPIO/WCR are based on DoPT’s OM No. 11/2/2013-IR(Pt.) dated 14.8.2016 and the decision of Hon’ble Supreme Court in SLP (C) No. 27734/2012. In the case before Supreme Court personal information like salary, assets/liabilities, investment details, gifts received, movable/immovable
property, TA/DA, memo/show cause notice/censure, charge-sheet etc. was sought by third party, which the Supreme Court held as personal information not related to any public activity or interest under section 8(1)(j). However, the court held that even such personal information could be disclosed if larger public interest justified disclosure of information. The complainant stated that it is important to understand difference between vigilance investigation and inquiry under disciplinary proceedings. Vigilance investigation is the initial investigation into any matter to find out if any wrongdoing has been committed. It is not supposed to be personal to anybody. Once the culprits are identified in the vigilance investigation, charge-sheet is issued and subsequently inquiry under disciplinary proceedings is held.

20. The complainant stated that decisions quoted by CPIO/WCR are not applicable to the present case and even in terms of the DoPT instructions and Supreme Court decision mentioned above, the desired information needs to be disclosed in the present case in view of the ostensible public interest involved.

**Discussion/Observations**

21. The complainant availed opportunity of first appeal hence, his complaint is converted into the appeal.

22. The Hon’ble Delhi High Court in order dated 29.09.2010 in W.P.(C) 120/2010 and CM Appl 233/2010 Union of India versus Balendra Kumar held that:

“20. This Court is satisfied that after a detailed examination of the report of the CVO and notings on the file, the CIC has come to the correct conclusion that the public interest in ordering disclosure outweighed any claim to the contrary with reference to Section 11 (1) read with Section 8 (1)(j) of the RTI Act. This Court notices that the CIC has also exercised a degree of caution in permitting the MEA to use Section 10 (1) of the RTI Act and if so required, severe those parts which might compromise the sources of the MEA. The procedure followed by the CIC with reference to Section 11 (1) of the RTI Act and its reasoning cannot be faulted. The
apprehension expressed before the CIC about the possible misuse of the information by the Respondent was also expressed before this Court. No authority can proceed on the assumption that information ordered to be disclosed will be misused. The mere expression of an apprehension of possible misuse of information cannot justify on-disclosure of information.”

23. During the hearing, the complainant clarified that he is seeking information regarding investigations which have been completed and closed and not about any ongoing investigations.
24. Hence, the sought for information with regard to vigilance investigation conducted against the complainant and has been completed can be provided to him using severance clause under section 10 of the RTI Act.

**Decision:**

25. The respondent is directed to provide information with regard to vigilance investigation conducted against the complainant and has been completed using severance clause under section 10 of the RTI Act and if so required, severe those parts which might compromise the sources of information and third party information, within 30 days of this order.

The appeal is disposed of. Copy of this order be given free of cost to the parties.

*(Radha Krishna Mathur)*
**Chief Information Commissioner**

**Authenticated true copy**

*(Subhash Chander Sharma)*
**Deputy Registrar**