

Central Information Commission
Baba Gang Nath Marg,
Munirka, New Delhi-110067.

CIC/AA/A/2018/292
CICOM/A/2018/60174
CICOM/R/2018/50305

Name of the appellant : Shri Jasbir Singh Arora,
85, GF, Jeewan Nagar,
Bala Sahib Road,
New Delhi – 110 014.

1.	Date of online RTI application	01.05.2018
2.	Date of reply of the RTI application	11.05.2018
3.	CPIO(s) who furnished reply	DO to IC(DP)
4.	Online 1 st Appeal Date	17.11.2018
5.	Date of Hearing	26.11.2018

On the request of the appellant, he was heard over phone. Shri H.P. Sen, CPIO & DO to IC(DP) and Shri TBSJ Rajappa, CPIO, RTI Cell were present during the hearing.

Brief facts of the case:-

2. In the RTI application, appellant has sought copy of document in support of decision taken on his non-compliance petition dated 03.04.2017, diarized vide Dy.No.122161 dated 03.04.2017 in case F.No.CIC/YA/A/2016/000161.

3. Shri H.P. Sen, CPIO & DO to IC(DP) vide letter dated 11.05.2018 has replied that:-

"With reference to your above RTI application, it may be mentioned that no record is available in the file (No.CIC/YA/A/2016/000161) about the action taken on your petition dated 3.4.2017"

4. In the appeal, appellant has stated that:-

"..... CPIO has deliberately given wrong information, as the petition filed on 03.04.2017 is not available in the file, hence how CPIO can say that no document is available in file about the action taken on your petition dated 03.04.2017, whereas his reply should have been that since petition dated 03.04.2017 is not available in file, hence no document is expected to be available on action taken on this petition."

Accordingly following is justified in the reply of CPIO:

CPIO has deliberately given wrong information, as the petition filed on 03.04.2017 is not available in the file, hence how CPIO can say that no document is available in file about the action taken on your petition dated

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03.04.2017, (which clearly confirms that the petition dated 03.04.2017 is available). Whereas his reply should have been that since petition dated 03.04.2017 is not available in the file, or misplaced or destroyed, hence no action was expected to be taken and hence no document is expected to be available on action taken on this petition in his file.

Thus actual reply should have been as enumerated below:

"Since petition dated 03.04.2017 is not available in the file, or misplaced or destroyed, hence no action was expected to be taken and hence no document is expected to be available on action taken on this petition."

There are several orders of the Commission and judgments of High Court of Delhi, which confirm that even in case of denying information in terms of any of the subsections of Section 8 of RTI Act 2005; CPIO is required to give reasons for denying the information instead of just mentioning the sub section of Section 8 in his reply. Similarly, as per one decision of Commission this list given is exhaustive and no further item can be included in addition to 10 such items.

Hence, CPIO has not only denied the supply of information, on a premise included in subsections of Section 8 of RTI Act 2005, but has deliberately given wrong information/reply.

Moreover as per the decision of full bench of Commission, dated 15.11.2010 in F.No. CIC/AT/D/2010/000111 on implementation of Section 4 of the RTI Act 2005, on directions to public authorities u/s 19 (8) (a) of RTI Act 2005, were detailed. The decision further required vide Para 11 of the decision that each Ministry and Department shall forwarded the directives to Public Authorities under their jurisdiction exercisable under Section 25 (2) of RTI Act 2005. Accordingly, Commission vide its communication dated 18.11.2010 had written to all Secretaries to GOI, the decision as well as format for uploading Section 4 information and as per directive on cataloguing records and indexing them for easy dissemination and disclosure, it was ordered that all public authorities including Commission, will complete this task within 6 months time from the receipt of the order dated 15.11.2010 of full bench of the Commission.

The appellant is appalled that in spite of clear cut order directing the Commission also to complete cataloging and indexing of all live files, it has been noted that not only duly diarized petition dated 03.04.2017 is missing from the concerned file, but even the notices issued on 08.03.2016 and connected documents/records are missing from the file.

Can the Commission of FAA afford to allow such state of affairs in the Commission?

Appellant is sure that keeping in mind the above details FAA will include serious mentioning in his order dealing above issue.

Attention of FAA is also invited for High Court of Delhi judgment/decision dated 13.09.2013 in WP (C) 3660/2012 & CM 7664/2012, vide Para 11, Union of India i.e. Ministry of Tourism (MoT) was directed to circulate a copy of this order to all the CPIOs/PIOs of the Government of India and other Public Authorities within four weeks time, (which was immediately done by MoT) for information and guidance.

Accordingly FAA is requested to include in his order the suitable directive to concerned CPIO to get the enquiry completed in terms of The Public Records Act 1993 and The Public Records Rules 1997, by an officer of the Commission, not below the rank of Joint Secretary, as also direction with regard to order of full bench of Commission in addition to communicating/ confirming following:

"Since petition dated 03.04.2017 is not available in the file, or misplaced or destroyed, hence no action was expected to be taken and hence no document is expected to be available on action taken on this petition."

Further due to any reasons, if the appellant is not able to be physically present on 26.11.2018, it must be ensured that complete contents of this written submission may be included in order as also teleconference hearing may be held, after the CPIO is prepared with the complete file i.e. F.No. No.CIC/YA/A/2016/000161."

The appellant in his further written submission sent through email dated 24.11.18 for taking into consideration Para-9 of High Court of Delhi Order in WP(C) 10676/2016 & CM No.43417/2016, which states that:-

"9. It would be open for respondent no.2 to file substantive proceedings to claim his right, if any. Insofar as the non availability of records is concerned, if any records are missing and not traceable, the petitioner is duty bound to ensure that a complete inquiry is undertaken and responsibility is fixed on the concerned officer. It is expected that the petitioner would take the necessary action in this regard."

Decision with reasons:-

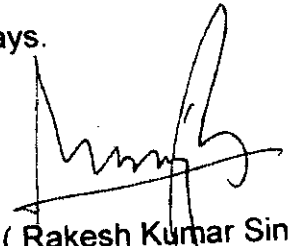
5. During the telephonic hearing, appellant has reiterated contents of the appeal and further written submissions submitted by him.
6. During the hearing, CPIO Shri H.P. Sen stated that non-compliance petition dated 03.04.2017 is not available in the concerned case file. If the said petition is not available in the concerned case file then the reply furnished by the CPIO that "...no record is available in the file about the action taken on your petition dated 3.4.2017" is incorrect and the CPIO has been advised to be careful, in future. **A copy of the**

petition dated 03.04.2017 as received from the appellant via email is forwarded to Shri H.P. Sen, CPIO & DO to IC(DP) with a direction to revisit the matter and inform the appellant accordingly within 15 days from the date of receipt of the order.

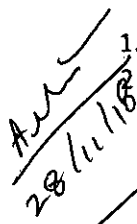

7. The appeal is, therefore, disposed off accordingly.

8. In case the appellant is aggrieved by the decision, he is free to file second appeal, if he so desires, before the Central Information Commission, Baba Gang Nath Marg, Munirka, New Delhi-110067 against this order within 90 days.

Dated the 27th November, 2018.


(Rakesh Kumar Singh)
Additional Secretary & First Appellate Authority
Tel: 26162290

Copy to:-

 1. Shri TBS Rajappa, CPIO, RTI Cell, CIC, New Delhi.
Shri H.P. Sen, CPIO & DO to IC(DP), CIC, New Delhi.


To,

Shri Sudhir Bhargava

Honorable Information Commissioner

Chief Information Commission

August Kranti Bhawan, Bhicaji ji Cama Palace

New Delhi-110066

By hand and Email

03.04.2017

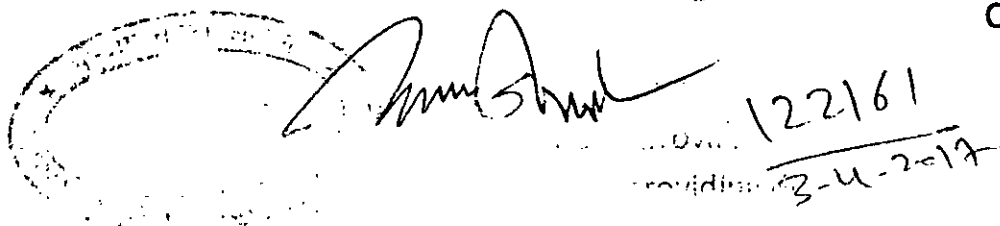
Through Shri V.K.Sharma Deputy Registrar

Sub: Correction in the decision dated 29.03.2017 in CIC F.No.
CIC/YA/C/2016/000161.

Dear Sir,

- 1.0 Please refer decision dated 29.03.2017 under reference
CIC/YA/A/2016/000161/SB received on 01.04.2017, informing that
respondent vide letter dated 05.08.2016 have complied with the directions of
the Commission. In view of this no case for non compliance is made out.
- 2.0 With due oppologies, I wish to inform that there is an error in this decision due
to the fault of CPIO of DVC by wrongly mentioning in its compliance letter
dated 05.08.2016 about the supply of both copy of Board resolution dated
21.03.2006 as well as follow up done by DVC management on getting the
Gazette issued on this Board approval, as against the actual request and
decision of the Commission in providing documents in proof of follow up done
with regard to DVC Board resolution of 21.03.2006, hence the Commission has
made out a case of compliance by respondent whereas the respondent has
actually provided unwanted details i.e. copy of DVC Board resolution as a
compliance instead of follow up done in getting the Gazette issued.
- 3.0 Thus CPIO of DVC has tried to dodge the Commission by providing wrong
information assuming that he will be able to misguide either the Commission
or the appellant as a compliance of this particular file.

Continued on Page-2



Handwritten signature and stamp. The stamp is circular and contains the text "CIC/2016/000161". Below the signature, the number "122161" is handwritten, followed by "3-4-2017".

4.0 As per the legal prudence, in such a situation the appellant must approach the same authority for correction of its decision, accordingly undersigned is approaching your majesty to kindly issue the corrected decision and treat it as non compliance by CPIO of DVC in this file i.e. F.No. CIC/YA/A/2016/000161.

5.0 The Commission is therefore requested to kindly issue corrected decision by treating as non compliance by the CPIO of DVC in this particular file i.e. F.No. CIC/YA/A/2016/000161.

Regards.

Jasbir Singh Arora

85, GF, Jeewan Nagar

New Delhi-110014, MO-8826449896

CC-To CPIO of DVC-for information through Email only.

03/04/2017