

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/MOHRD/A/2017/147399-BJ

Mr. Abhishek Mishra

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO

Dayalbagh Educational Institute (Deemed University)
Dayalbagh, Agra – 282005

...प्रतिवादीगण /Respondent

Date of Hearing : 17.12.2018
Date of Decision : 18.12.2018

Date of RTI application	28.04.2017
CPIO's response	22.05.2017
Date of the First Appeal	25.05.2017
First Appellate Authority's response	27.06.2017
Date of diarised receipt of Appeal by the Commission	11.07.2017

ORDER

FACTS:

The Appellant vide his RTI application dated 28.04.2017, sought information on 09 points regarding the DEI Advertisement No DEI/Teaching and Non-Teaching Posts- August 2016, dated 12th August, 2016, the posts that had been filled till date, the name of the candidates who were selected for the filled posts, how many candidates were already working or had worked in the DEI either permanently or on a temporary basis, etc.

The CPIO, vide its reply dated 22.05.2017, provided a point-wise response to the Appellant. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 27.06.2017, upheld the decision of the CPIO.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Absent;

Respondent: Mr. Hans Kumar Khanna, AO (Computers) and Dr. S D Bhatnagar, Liasion Officer in person;

The Appellant remained absent during the hearing. Mr. Ajeet Kumar, Network Engineer NIC studio at Allahabad confirmed the absence of the Appellant. In its reply, the Respondent while reiterating the response of the CPIO/FAA submitted that the Appellant could not qualify for the three positions that he had applied for and therefore he was filing series of RTI applications. The information sought by him had been furnished including the marks obtained by him. The Commission was in receipt of a written submission from the Appellant dated 10.12.2018 wherein it was stated that with regard to point no. 01, 02, 03 and 04, information regarding all the advertised posts was not provided and only status of 03 posts was served. Furthermore, experience certificate/ syllabus was not served by the CPIO for any of the above posts. With regard to point no. 05-09, it was stated that no information was provided. Further, the age limit criteria was not mentioned in the advertisement. Thus, it was requested to direct the CPIO to provide the same as well since filing a fresh RTI may take several months to get a reply.

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.”*

The Commission observed that the framework of the RTI Act, 2005 restricts the jurisdiction of the Commission to provide a ruling on the issues pertaining to access/ right to information and to venture into the merits of a case or redressal of grievance. The Commission in a plethora of decisions including *Shri Vikram Singh v. Delhi Police, North East District, CIC/SS/A/2011/001615* dated 17.02.2012 *Sh. Triveni Prasad Bahuguna vs. LIC of India, Lucknow CIC/DS/A/2012/000906* dated 06.09.2012, *Mr. H. K. Bansal vs. CPIO & GM (OP), MTNL CIC/LS/A/2011/000982/BS/1786* dated 29.01.2013 had held that RTI Act was not the proper law for redressal of grievances/disputes.

The Hon’ble Supreme Court of India in the matter of *Union of India v. Namit Sharma* in REVIEW PETITION [C] No.2309 OF 2012 IN Writ Petition [C] No.210 OF 2012 with State of Rajasthan and Anr. vs. *Namit Sharma* Review Petition [C] No.2675 OF 2012 In Writ Petition [C] No.210 OF 2012 had held as under:

“While deciding whether a citizen should or should not get a particular information “which is held by or under the control of any public authority”, the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.”

Furthermore, the High Court of Delhi in the matter of *Hansi Rawat and Anr. vs. Punjab National Bank and Ors.* LPA No.785/2012 dated 11.01.2013 held as under:

“6. The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant No.2 LPA No.785/2012 from the employment of the respondent Bank is admittedly pending consideration before the appropriate forum. The purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished.”

Moreover, in a recent decision in *Govt. of NCT vs. Rajendra Prasad* WP (C) 10676/2016 dated 30.11.2017, the Hon’ble High Court of Delhi had held as under:

6. The CIC has been constituted under Section 12 of the Act and the powers of CIC are delineated under the Act. The CIC being a statutory body has to act strictly within the confines of the Act and is neither required to nor has the jurisdiction to examine any other controversy or disputes.

7. In the present case, it is apparent that CIC had decided issues which were plainly outside the scope of the jurisdiction of CIC under the Act. The limited scope of examination by the CIC was: (i) whether the information sought for by the respondent was provided to him; (ii) if the same was denied, whether such denial was justified; (iii) whether any punitive action was required to be taken against the concerned PIO; and (iv) whether any directions under Section 19(8) were warranted. In addition, the CIC also exercises powers under Section 18 of the Act and also performs certain other functions as expressly provided under various provisions of the Act including Section 25 of the Act. It is plainly not within the jurisdiction of the CIC to examine the dispute as to whether respondent no.2 was entitled to and was allotted a plot of land under the 20-Point Programme.

A similar view delineating the scope of the Commission's jurisdiction was also taken by the Hon'ble High Court of Delhi in Sher Singh Rawat vs. Chief Information Commissioner and Ors., W.P. (C) 5220/2017 and CM No. 22184/2017 dated 29.08.2017 and in the matter of Shobha Vijender vs. Chief Information Commissioner W.P. (C) No. 8289/2016 and CM 34297/2016 dated 29.11.2017.

The Appellant was not present to contest the submissions of the Respondent or to establish the larger public interest in disclosure which outweighs the harm to the protected interests.

DECISION:

Keeping in view the facts of the case and the submissions made by the Respondent, no further intervention of the Commission is required in the matter. For redressal of his grievance, the Appellant is advised to approach an appropriate forum.

The Appeal stands disposed accordingly.

Bimal Julka (बिमल जुल्का)
Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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