

CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2006/00268
Right to Information Act 2005 – Section 19

Appellant: Shri P.S.Sawhney

Respondent: Law & Prosecution Dep't. UT of Chandigarh.

Facts: In an application of 14.10.05 to Shri Sunil Dutt, PIO and Law Officer of the Law & Prosecution Department of Chandigarh, Appellant Shri P.S.Sawhney asked for the following information:

“ Complaint No. PS/Ghai-A/2005 dated 31 Mar.,05, of the undersigned regarding the tampering of official record with ulterior motives, which was addressed to the Hon'ble Shri S.F.Rodriques, Administrator, U.T. Chandigarh. The requisite fee of Rs. 20/- (Rs. 10/- for application fee + Rs. 10/- for five sheets that may be required to contain the information) is being remitted vide Cheque No. 568628 dated 14 Oct., 05 of the Punjab & Sind Bank, Sector 26, Chandigarh.”

In response to this application, CPIO replied on 24.10.05 that the original complaint had not been received and the information could, therefore, not be supplied. However, on applicant Shri P.S.Sawhney submitting a copy of the complaint through a letter of 28.10.05, CPIO replied that the matter concerned the Home Department and Chandigarh Housing Board and the matter should, therefore, be taken up with CPIOs of the concerned Departments. To this, after further correspondence during which vide letter of 6.12.05 Shri Sawhney invited the attention of Law Officer Shri Sunil Dutt to sec. 6(3) of the RTI Act, the CPIO replied finally on 12.12.05 that applicant should pursue the matter with the CPIO of the concerned Dep't. **at his own level.** On not receiving the information sought, Shri P.S. Sawhney made his first appeal on 31.12.05 on which he was assigned an ID on 19.1.06. The Appellate Authority scheduled hearings on 20.1.06 and 30.1.06. This was despite the fact that appellant had written to the Appellate Authority, Legal Remembrancer & Director of Prosecution that he would be unable to be present at the hearing.

The appeal before us was heard on 15.9.06. Shri Sunil Dutt Law Officer of the Chandigarh Transport Undertaking UT Chandigarh is present. Ms. Paramvir

Nijjar, Appellate Authority applied for exemption on account of ill health, and authorized Shri Sunil Dutt Law Officer to appear on her behalf. In his appeal the appellant had already sought exemption from personal appearance unless obligatory.

We have examined the file. The single Para of this second appeal is that a maximum penalty of Rs. 25,000/- be imposed on the opposite party because *“no information has been provided by either by the CPIO or by the Appellate Authority the complainant is entitled to the maximum compensation which the Central Information Commission is empowered to impose as penalty on the opposite parties.”*

As may be seen from the details of the application quoted above, it is not clear from the application what information has been sought. It seems that the information sought was on action taken on the complaint of March 31, 2006 cited in the application. PIO Shri Sunil Dutt also agreed that this was his understanding. PIO also presented a copy of a decision by the Appellate Authority on the appeal filed by appellant Shri P.S.Sawhney dated 21.6.06, in which she had upheld the decision of the PIO.

In his argument before us Shri Sunil Dutt, PIO stated that his Department was not a public authority and was, therefore, within its rights to refuse the application on the grounds that this did not refer to that Department. However, given the definition of public authority in sec. 2 (h) of the Act and that the concerned Department is fully financed directly by Govt., the contention of PIO Shri Sunil Dutt is untenable.

DECISION NOTICE

The Law & Prosecution Dep't., UT of Chandigarh is in clear violation of sec. 6(3)(i) and (ii) which reads as follows :

“(3) Where an application is made to a public authority requesting for an information –

- (i) Which is held by another public authority; or
- (ii) The subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it, as may be appropriate to that other public authority and inform the applicant immediately about such transfer;

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

In this case the public authority has neither transferred the application nor even informed the applicant of the need for such a transfer within the time limit specified in proviso (2) of the above section.

On the other hand, the appellant seems to consider that any penalty imposed on the CPIO will amount to compensation to him on the ground that information has not been provided.

This is not a case of refusing an application but one of failure to transfer, as required under the Act. The application for information has in fact been responded to within the time limit specified u/s 7(1). No penalties will, therefore, lie. It is also clarified that compensation cannot be claimed from penalty imposed. That would require to be claimed separately u/s 19(8)(b) of the Act. However, the public authority in this case is cautioned that we have taken adverse note of the deliberate flouting of the law as described above despite this fact having been brought to their notice by the appellant.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)

Chief Information Commissioner

15.9.2006

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(L.C.Singhi)

Addl. Registrar

15.9.2006