

Central Information Commission

**Appeal No. 72 /IC(A)/2006
F.No.CIC/MA/A/2006/00027**

Dated, the 26th June, 2006

Name of the Appellant : Shri I.K. Bhalla, 3G-III, Lajpat Nagar-III, New Delhi.

Name of the Public Authority : Department of Personnel & Training, Ministry of Pensions, Personnel & Training, North Block, New Delhi.

DECISION

Facts of the Case:

The appellant superannuated on 31st December, 1991 as Superintending Engineer, from the Ministry of Shipping, Road Transport and Highways. It was less than three months when he was to retire that the Ministry recommended his name for promotion and appointment to the post of Chief Engineer (Roads) and sought the approval of the competent authority i.e. ACC. The Ministry's recommendation was not in accordance with the DOPT's guidelines of at least three months minimum service before superannuation for processing of such requests. His case was forwarded on 23.10.1991 and the decision of the Government was communicated on 21.1.1992, after his retirement. The appellant contends that the file was in DOPT for 88 days and he was thus denied promotion prior to his retirement. As a result of this, he is losing his pension by about Rs. 2000/- per month.

In February, 2006, he filed a petition to Hon'ble Prime Minister of India for redressal of his grievances, a copy of which was endorsed to the Cabinet Secretary to Government of India. In this appeal he has *inter alia* urged to provide him 'the copy of entire file' under RTI Act, 2005. The appellant has also mentioned that on his earlier representation of dated 4.1.2005, the Cabinet Secretary had given patient hearing in the months of January and July, 2005, but he was not informed about the fate of his review petition.

Instead, his application for information under RTI was processed and passed on from the office of the Prime Minister and the Cabinet Secretary to the DOPT. The CPIO informed him that “documents requested for by you from this office form part of the Cabinet papers and are exempted under section 8(1)(i) of the Act”. The appellate authority in his order passed on 21.6.2006, after three months of the 1st appeal, upheld the decision of the CPIO.

Since the appellate authority did not dispose of his appeal within stipulated time period of 30 days, it was deemed refusal of information. The appellant, therefore, filed his second appeal on April 28, 2006 to the Commission against denial of information sought from DOPT.

The case was heard on June 22, 2006. The appellant was present in person. The CPIO of DOPT, Shri Alok Kumar was also present.

The appellant mentioned that inspite of favourable recommendation by his Ministry, he was denied of promotion to the post of Chief Engineer. As a result of which he was loosing a monthly pension of Rs. 2000/-. He stated that timely and fast action was not taken on the proposal submitted by his Ministry to the DOPT for obtaining approval of the ACC. He said that there were instances of granting ex-post facto promotion and of giving extension of service on the last day of superannuation.

The CPIO of DOPT refuted the allegation of delay in processing the proposal received from the Ministry. He mentioned that the main ground on the basis on which his promotion could not approved was the adherence to DOPT norm of at least 3 months of service before superannuation. Through DOPT’s circular of April 11, 1989, all the Ministries have been directed as under:

“The Appointments Committee of the Cabinet have directed that in respect of appointments which fall within its purview, no officer should be promoted to a higher post in his own line of promotion unless he would have a minimum service of three months before retirement.

This may kindly be kept in view in making proposals to the Appointments Committee of the Cabinet for appointment of officers on promotion”.

The CPIO mentioned that a large number of proposals received from the Ministries, including the one relating to the appellant, have not been entertained on the above ground.

Commission's Decision:

The appellant had written to the Prime Minister and the Cabinet Secretary for redressal of his grievances arising from his non-promotion and subsequent loss of his pension benefits. Since he had also desired to know how and what action was taken by the DOPT and ACC on the proposal submitted by the Ministry, his application was conveniently converted into an RTI application for information on the action taken by the Cabinet.

His main concern has however been the redressal of his grievances, which is to be examined on the basis of his original application of February, 2006. The Cabinet Secretary had granted him personal hearing twice but no formal communication was sent to him or whatever was communicated to the appellant, was not acceptable to him.

As regards the disclosure of relevant notings, observations and final decision on the proposal submitted by the Ministry, the response of the CPIO is contradictory. On the one hand has sought exemption from disclosure of information u/s 8(1)(i), implying thereby the fact that the Cabinet papers are available but cannot be disclosed as the process of action taken is incomplete. On the other, the CPIO informed that the relevant file was misplaced or not available for us to see. Since the relevant record does not exist, question of its disclosure does not arise.

The CPIO is therefore directed to appraise the Commission about the factual position about existence of the concerned file. If the relevant records and papers are available and the matter was dealt with by the Cabinet in 1991-92, it ought to be treated as the decision has been taken and the matter is complete, in which case all the relevant papers should be disclosed. Thus, the exemption u/s 8(1) (i) would not be applicable. The CPIO however showed us a brief note prepared by the Secretary, ACC in 1992, in response to the representations made by the appellant, which revealed that the proposal for promotion of the appellant was rejected on the ground of less than 3 months of remaining service before superannuation.

The disclosure of these papers which were also approved by the then Prime Minister was discussed with the CPIO and the appellant. But, the appellant asserted that his main concern was redressal of grievances. The disclosure of such papers to him would hardly serve any purpose, as he does not propose to take the matter to the CAT or any other authority. He therefore categorically mentioned that he does not need any information or document from the DOPT. He was however interested in disposal of his grievances relating to ex-post facto promotion and pension benefits. The fact that the CPIO has applied section 8(1) (i) for withholding information, it has raised expectation that the final decision is yet to be taken by the Government on his application for ex-post facto promotion.

He also pleaded that the requirement of three months service before superannuation for promotion should be condoned by the DOPT so as to enable him to avail of the expected benefits.

As agreed, the CPIO, Shri Alok kumar, who is also responsible for processing of such matters in the DOPT, was accordingly advised to objectively examine his petition and communicate the decision of the Government to the appellant.

The appeal is accordingly disposed of.

Sd/-
(Padma Balasubramanian)
Information Commissioner

Sd/-
(Prof. M.M. Ansari)
Information Commissioner

Authenticated true copy :

(L.C. Singhi)
Joint Registrar

Cc:

1. Shri I.K. Bhalla, 3G-III, Lajpat Nagar-III, New Delhi.
2. Shri Alok Kumar, Director & CPIO, Department of Personnel & Training, Ministry of Pensions, Personnel & Training, North Block, New Delhi.
3. The Secretary, Department of Personnel & Training, Ministry of Pensions, Personnel & Training, North Block, New Delhi.