

CENTRAL INFORMATION COMMISSION
Appeal No. CIC/WB/A/2009/000140 dated 19-2-2009
Right to Information Act 2005 – Section 19

Appellant: Shri S. P. Ratnani,
Respondent: Central Information Commission (CIC)
Decision Announced on 12-3-2010

FACTS

By an application of 25.6.2008 Shri S. P. Ratnani of Raipur, Chhattisgarh applied to the Joint Secretary, Central Information Commission, seeking the following information:

- “1. The CIC is not charging fees for appeals made under RTI Act as neither there is such provision in the RTI Act nor hence Central Govt. has laid down such fees in the Rules framed for the same. Hence requested please give the information of legal opinion that whether (i) RTI Act 2005 is there a provision of payable/ charging fees for appeals 1st and/ or 2nd? Related argument is attached sheet, may please also be perused.
2. Whether the CIC/SIC has discretion powers to impose the penalty specified in section 20 of RTI Act, 2005 when evidently/ obviously the CPIO/ SPIO, without any reasonable cause, has not furnished the requested information or on other grounds, specified in section 20, within prescribed time limit of one month u/s 7 (i). When in view of the word /shall' (impose) has been used in section 20, and the penalty is fixed on day- Rate basis and in preface of RTI Act, the scope & object (i.e. intention of the legislation) is to provide Transparency & Accountability in the working of every Public Authority. In commonly very 'shall' connotes 'mandatory' having regards to object & scope of the Law. Since disobedience of statutory mandate, indicate mandatory impose penalty, when under law, rate basis is laid down. (Supported by AIR 1974 Mad 160(163): P. Sangili vs. Rama Krishnan//1991 (2) GLH 309: Jawant Sing Mathura Singh vs And Municipal Corp//UPAIR 1963 SC 1417: Banarasi Das vs. Central Commissioner.
SBI Cheque no. 930656 492002002 for Rs. 10/- only attached.
3. Whether CIC/SIC are free to give the decision/ direction other than 'cause of action of appeal' which generally ought

to be related for furnishing the requested information only in RTI. CIC/SIC has no concern that for what problem, the applicant/ appellant has sought the information i.e. CIC/SIC give the instruction to the CPIO/SPIO to solve that problem instead of ordering to furnish the requested information section 6 (2). Please confirm and/ or clearly (supported by AIR 1973 Raj (52)55: govt. cannot go beyond the terms of reference, out of jurisdiction so vested).

4. Under RTI Act, there is no provision to reject the appeal but only the application (means made u/s 6 (1) can be finally rejected by CIC/SIC on the basis of the section 19 (8) (b), which also ought to be read with section 7 (1) and section 8 & 9 of RTI Act. Please confirm and for clearly.'

To this, Shri S. P. Ratnani received a response dated 4.7.2008 from CPIO Shri Tarun Kumar, Jt. Secretary, CIC point wise as follows:

- “(1) The Central Information Commission is only the highest appellate authority under the RTI Act, 2005. It is not the executing agency of the RTI Act. The executing agency of the RTI Act is govt. of India. Further, information can be provided as defined under section 2 (f) of the RTI Act, 2005 and information that is available with the CPIO can be given. Moreover, the CPIO is not competent to interpret the RTI Act. He can only provide information that is available in his custody.
- (2) You are seeking a legal opinion for which the CPIO is not competent to provide any information as he cannot interpret the RTI Act, 2005.
- (3) The question is hypothetical and involves interpretation of the RTI Act, 2005. The CPIO, Central Information Commission is not competent to do the same.
- (4) The question raised seeking clarification and interpretation of the RTI Act, 2005 which the CPIO is not competent to do. The CPIO can give you information as defined under section 2 (f) of the RTI Act, 2005. HE cannot interpret or clarify legal issues relating to the RTI Act, 2005.

It is clarified that 'legal opinion' referred to point (iii) of this office letter dated 2.6.2008 means an opinion of any expert of law or RTI outside the Commission.

Since no information is being provided to you, your cheque is being returned in original to you.

Aggrieved Shri Ratnani moved an appeal before then Appellate Authority Shri Mohammed Haleem Khan on 30.7.08 pleading as follows:

“It is humbly prayed that the non-appellant may kindly be advised to provide the requested information free within 15 days.”

He has, in describing his grounds for this prayer contested the response given against each of the points by CPIO. Upon this, Secretary Shri Mohammed Haleem Khan, through his order of 25.9.08 directed as follows:

“CPIO is legally bound to provide information which is available in the Commission, however, to avoid further correspondence/ appeal in the matter, it is decided that CPIO will offer the applicant inspection of the records and files available in the Commission on the subject, if any, and also provide the copies of the documents/ files etc which appellant may choose to take copies of as per rules. The Act was framed by the Central Government and the records relating to the due diligence on various aspects of provisions of the Act should be with them. The appellant may, therefore, seek the information from the concerned public authority, that is, Ministry of Personnel, Public Grievances & Pension.”

Appellant Shri S. P. Ratnani has then moved a second appeal before us with the following prayer:-

- “1. Provide the sought information within 15days.**
- 2. Compensation of expenses Rs. 500/-.**
- 3. To penalise u/s 20 of RTI.”**

The appeal was heard through videoconference on 12-3-2010. The following are present.

Appellant at NIC Studio, Raipur, Chhattisgarh

Shri S. P. Ratnani.

Respondents at CIC, New Delhi

Ms. Anita Gupta, Appellate Authority

Shri Tarun Kumar, CPIO

CPIO Shri Tarun Kumar submitted that what appellant Shri Ratnani has sought is legal advice which cannot be provided by the CPIO. Appellant Shri S. P. Ratnani, on the other hand argued that what he has sought in each of his four questions is the legal opinion of the Commission on each of the four points that he has raised.

DECISION NOTICE

Section 2 (f) of the RTI Act reads as follows:-

2(f)'information' means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, 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;"

In other words information, to qualify as “information” under the RTI Act, 2005 must be held in material form, if it is to be provided to an applicant under section 2 (j) of the Act. In this context, during the hearing each of the questions asked by appellant in his initial application has a bearing on specific issues pertaining to the RTI Act on which the Commission has taken decisions, except question No. 1, to which the answer is clearly “No”. This and other answers can, therefore, be provided to appellant simply by providing to him a copy of a decision of this Commission, preferably in Full Bench which will constitute the legal opinion held by the Commission on this specific matter.

This is apparently what appellate authority has allowed in his order of 25.9.08, and an offer subsequently made by CPIO in compliance as reported by him in the hearing. However, this is an unnecessarily circuitous solution, since it will place on the appellant the impossible responsibility of tracing opinions from out of the decisions of this Commission, now myriad. It is the CPIO who is better equipped to do so. For this reason the decision of First Appellate Authority Shri Mohammed Haleem Khan is set aside. The appeal is allowed. CPIO Shri Tarun Kumar will now, in answer to question nos. 2, 3 & 4, send to appellant Shri S. P. Ratnani, a copy of the decision of the CIC in each of the questions asked, within 15 working days of the date of receipt of this decision notice. There will be no costs. In this context, since we have found that appellant Shri Ratnani had indeed asked for information, quite clearly the refund of fee by CPIO Shri Tarun Kumar was not

required. However, since the information was not supplied within the prescribed time, it will now be free as mandated u/s 7(6) of the Act

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

(Wajahat Habibullah)
Chief Information Commissioner
12-3-2010

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.

(Pankaj K.P. Shreyaskar)
Joint Registrar
12-3-2010