

F.No. A-15011/05/2019-Ad.VII
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Room No. 10, 5th Floor, Jeevan Vihar Building,
Parliament Street, New Delhi
Dated the, 07th June, 2019

To,

All Pr. Chief Commissioners of Income Tax,

Subject: Chief Information Commission decisions - regarding

Sir/Madam,

I am directed to forward herewith copy of Chief Information Commission, New Delhi's decision on Second Appeal No.(s) CIC/DGITH/A/2018/610466-BJ+CIC/DGITH/A/2018/627282-BJ dated 29th April, 2019 for necessary compliance. In the said decision Chief Information Commission has made some important observations wherein second appeal was filed by Mr. Sanjeeb Kumar, Dehradun (Uttarakhand) Versus CPIO, DGIT (HRD).

2. It is pertinent to mention here that in the said decision CIC has noted that while the issues raised by the Appellant had been addressed belatedly, the Respondent Public Authority required to revisit its RTI Portal and ensure that the technical glitches in the receipt of RTI application get resolved within a period of 15 days from the date of receipt of order.

The Commission has instructed the Respondent Public Authority to convene period conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provision of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

Encl : As above

Yours faithfully,

(Jati Singh Meena)

Under Secretary to the Govt. of India
Telefax: -011-23741824

Copy to : - for similar action please.

1. The Principal Director General, Directorate General of Income Tax (HRD), 2nd Floor, Jawaharlal Nehru Stadium, New Delhi - 110003.

2. The Pr. DGIT (Systems), Directorate General of Income Tax, Ground Floor, ARA Centre, E-2, Jhandewalan Extension, New Delhi - 110055 is requested to upload the above letter on the website of Income Tax Department.

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

Mr. Sanjeeb Kumar Karna
C/o Shri Madan Singh Antiwan
Siddhartha Vihar, Tarli Kandoli
Near Gyaneshwar Shiv Mandir,
Dehradun – 248001, Uttarakhand
(M: 09690743034)

VERSUS
बनाम

1. CPIO
Directorate of Income Tax
Human Resource Development
Central Board of Direct Taxes
2nd Floor, Jawahar Lal Nehru Stadium
New Delhi – 110003
2. CPIO
ITO, CMD-2
Human Resource Development
Central Board of Direct Taxes
2nd Floor, Jawahar Lal Nehru Stadium
New Delhi – 110003

Date of Hearing : 24.04.2019
Date of Decision : 29.04.2019

ORDER

RTI – I File No. CIC/DGITH/A/2018/610466-BJ

Date of RTI application	02.11.2017
CPIO's response	Not on Record
Date of the First Appeal	07.12.2017
First Appellate Authority's response	Not on Record
Date of diarised receipt of Appeal by the Commission	Nil

Dy. No. 15/ETC/Ad.VII
Date 30/05/2019

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~~Dr Aditya~~
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...प्रतिवादीगण /Respondent

24/5
VS (H-VII)

circular
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date.

	02.11.2017
	Not on Record
	07.12.2017
	Not on Record
	Nil

Page 1 of 5

Dr JS
6/11/19

FACTS:

The Appellant vide his RTI application sought information on 03 points regarding the attested and stamped copies of office note through which the O/o the HRD, CBDT, New Delhi arrived at the decision of seeking the clarification from SSC (HQ) on the applicability of DOPT OM dated 14th August, 2014 on RTI applicant and others, etc.

Dissatisfied due to non-receipt of any response from the CPIO, the Appellant approached the FAA. The reply of the CPIO/ FAA, if any, is not on the record of the Commission.

RTI – II File No. CIC/DGITH/A/2018/627282-BJ

Date of RTI application	27.03.2018
CPIO's response	Not on Record
Date of the First Appeal	09.05.2018
First Appellate Authority's response	Not on Record
Date of diarised receipt of Appeal by the Commission	Nil

FACTS:

The Appellant vide his RTI application sought information on 02 points in respect to 17 candidates who had been nominated for IT Inspector and Tax Assistant by SSC Eastern and Western Region under SSC CGLE, 2013, the name of the Zone of the CBDT to which the name of the each individual was nominated along with the date of nomination by Director General Income Tax, HRD against each individual; attested and stamped copies of letters through which all the 17 candidates were allocated to various zones of CBDT by DGIT, HRD, etc.

Dissatisfied due to non-receipt of any response from the CPIO, the Appellant approached the FAA. The reply of the CPIO/ FAA, if any, is not on the record of the Commission.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Absent;

Respondent: Mr. Suresh Kumar, ITO, CMD-2 (M: 9013851476), Mr. Akshit Singh, ITI (M: 9829774373) and Mr. Pankaj Kohli, ITO, CMD-1 (M: 9013852429);

The Appellant remained absent during the hearing. Mr. Nitesh, Network Engineer NIC studio at Dehradun confirmed the absence of the Appellant. The Respondent informed the Commission that the original RTI application was not traceable but subsequently on checking up with the RTI Portal, it was discovered and the same was transferred to ITO, CMD-2 for further necessary action. The Respondent, CMD-2 present at the hearing conveyed that on receipt of the RTI application, a reply was sent to the applicant along with the enclosures vide their letter dated 12 / 23.04.2019. During the hearing, certain technical challenges were explained in respect of the RTI Portal that need to be addressed forthwith. The Commission was also in receipt of a written submission from the Respondent dated 10.04.2019 wherein it was submitted that the RTI application of the Appellant dated 27.03.2018 and 02.11.2017 respectively, were never received by them in their office (documentary evidence obtained from RTI Portal was enclosed for the

reference of the Commission). However, on closure perusal of the RTI applications which were enclosed with the notice received from the Commission revealed that the information sought by the applicant did not pertain to the O/o the ITO & CPIO (CMD-1), New Delhi and the said applications pertained to ITO & CPIO (CMD-2), New Delhi. Hence, the RTI applications dated 02.11.2017 & 27.03.2018 were forwarded to the O/o the ITO & CPIO (CMD-2) for providing information directly to the applicant at the earliest.

The Commission referred to the definition of information u/s 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 felt that correct and timely response was the essence of the RTI mechanism enacted to ensure transparency and accountability in the working of Public Authorities. In this context, the Commission referred to the decision of the Hon'ble Delhi High Court in *Mujibur Rehman vs Central Information Commission* (W.P. (C) 3845/2007) (Dated 28 April, 2009) wherein it had been held as under:

"14.....The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

Furthermore, the Hon'ble Delhi High Court decision in *J P Aggarwal v. Union of India* (WP (C) no. 7232/2009) it has held that:

"The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure."

A reference was drawn to the decision of the Hon'ble Delhi High Court in the case of *J.P. Agrawal v. Union of India*-2013(287) ELT25(Del.) wherein it was held as under:

7. "it is the PIO to whom the application is submitted and it is who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information. The PIO is expected to recommend a remedial action to be taken". The RTI Act makes the PIO the pivot for enforcing the implementation of the Act."

Furthermore, in OM No. 20/10/23/2007-IR dated 09.07.2009, while elaborating on the duties and responsibilities of the FAA, it was stated that:

"3. Deciding appeals under the RTI Act is a quasi judicial function. It is, therefore, necessary that the appellate authority should see that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at."

Furthermore, the Hon'ble High Court of Delhi in the matter of R.K. Jain vs Union of India, LPA No. 369/2018, dated 29.08.2018, held as under:

"9..... That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information and in case of default or dereliction on his part, the penal action is to be invoked against him only.

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.

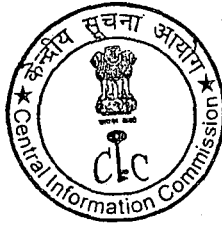
DECISION:

Keeping in view the facts of the case and the submissions made by the Respondent, it was noted that while the issues raised by the Appellant had been addressed belatedly, the Respondent Public Authority required to revisit its RTI Portal and ensure that the technical glitches in the receipt of RTI applications get resolved within a period of 15 days from the date of receipt of this order.

The Commission however instructs the Respondent Public Authority to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

The Appeals stand disposed accordingly.

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)



K.L. Das (के.एल.दास)
Dy. Registrar (उप-पंजीयक)
011-26182598/ kl.das@nic.in
दिनांक / Date: 29.04.2019

Copy to:-

1. The Chairman, CBDT, Department of Revenue, M/o Finance, North Block, New Delhi - 110001
2. Mrs. Smita jhingran, Pr. Director General of Income Tax, Human Resource Development Central Board of Direct Taxes, 2nd Floor, Jawahar Lal Nehru Stadium, Lodhi Road, New Delhi 110003

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