

Central Information Commission

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Appeal: No. CIC/SM/A/2013/001361/DS

Appellant /Third Party : Smt. Tapati Bhattacharjee

**Public Authority : O/o. the Deputy Conservator of Forest, Port Blair
(Shri Vishwakanna, CPIO & Shri Suanzalang, FAA)**

Date of Hearing : 07 November 2013

Date of Decision : 07 November 2013

Facts:-

1. Shri K.J. Benedict submitted his RTI application dated 01/08/2013 before the CPIO, and sought complete information with respect to Service Book Entry, LIC /CEA /RTF/ Medical Reimbursement etc. of Mrs. Tapati K. Bhattacharya and other related information.
2. The CPIO vide his reply dated 30th August, 2013 reserved disclosure on grounds of it falling under purview of personal information and not serving larger public interest and liable to cause undue invasion of privacy of a Govt. Servant.
3. Not satisfied, the Appellant preferred first appeal to the first Appellate Authority dated 13th September, 2013 to which he received no reply.
4. Not satisfied, third party, Smt. Tapati Bhattacharjee approached Central Information Commission.
5. Matter was heard today. Respondents as above appeared in person at Port Blair and made submissions via videoconferencing. Appellant was not present. This appeal

has been preferred under Section 19(4) of the Act by the third party against the order of the first Appellate Authority directing disclosure of information pertaining to the third party by overruling the decision of the CPIO who had denied disclosure of information under the provisions of section 8(1) (j) of the Act. The First Appellate Authority had argued that disclosure was warranted on the grounds that "the information which cannot be denied to the Parliament or state legislature shall not be denied to any person." (Proviso to section 8(1) (j) of the Act).

6. It is observed that the first Appellate Authority has overruled of the order of the CPIO and has directed him to provide the requested information pertaining to the third-party with reference to the proviso which immediately follows section 8 (1) (j) of the Act and states "Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person." The Delhi High Court has ruled that a proviso cannot be torn apart from the main enactment nor can it be used to qualify or set at naught the object of the main enactment. The court has ruled that the proviso in the present case is a guiding factor and not a substantive provision which overrides sub section 8 (1) (j) of the RTI Act. It does not undo or rewrite section 8 (1) (j) of the Act and does not itself create any new right. **The purpose is only to clarify that while deciding the question of larger public interest, 'public interest in the form of right to privacy' and 'public interest in access to information' is to the balanced.**

7. Further, we can also look at the proviso in the context of the fact that Members of Parliament seek information through questions subject to rules of admissibility of questions as prescribed under the Rules of Procedure and Conduct of Business in Lok Sabha. There are 23 such conditions.
8. Therefore, the first Appellate Authority has gravely erred while interpreting the meaning and intent of the proviso in the Act.
9. The RTI Act is quite clear in its intent to protect third-party information and disclosure can be made only after taking action as per the provisions of section 11 of the Act and the only guiding factor in disclosure is the larger public interest. Therefore, Commission partly upholds the order of the CPIO and directs that the service book of the third-party is not required to be provided to the information seeker and in terms of LTC, CCA, RTF, medical reimbursement, only the total amounts paid out to the appellant for the past two years can be disclosed. Commission does not intend to divert scarce resources of the public authority by directing that 20 year old information in this regard be released to the Appellant i.e. from the time of her marriage.
10. The allotment letter of the quarters and change of quarter can for allotment/change of quarters be provided but any personal reasons provided by the appellant in her application are not required to be disclosed to the appellant.
11. CPIO will examine each of these matters carefully and then provide the information as per the general guidelines provided herein above.

12. Information to be provided within three weeks of receipt of the order.

(Smt. Deepak Sandhu)
Chief Information Commissioner

Authenticated true copy:

(Vijay Bhalla)
Deputy Registrar
Tel. No. 011-26183996

Copy to:-

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Near APWD Guest House, Haddo,
Port Blair, P.S. Chatam

Central Public Information Officer,
Deputy Conservator of Forests,
Haddo, Wildlife Division,
Port Blair – 744 102

First Appellate Authority
The Chief Conservator of Forests,
Van Sadan, Haddo,
Port Blair – 744 102