

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

द्वितीय अपील संख्या/ Second Appeal No. CIC/NTSTH/A/2021/605901

In the matter of:

Goutam Saren

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO,
National Test House (ER), CP
Block, Sector V, Salt Lake,
Kolkata -700091

...प्रतिवादीगण /Respondent

Relevant dates emerging from the appeal:

RTI Application filed on	:	07.09.2020
CPIO replied on	:	10.11.2020
First Appeal filed on	:	16.10.2020
First Appellate Authority order	:	Not on Record
Second Appeal received on	:	20.02.2021
Date of Hearing	:	15.09.2022

The following were present:

Appellant: Absent (despite being served the hearing notice)

Respondent: Shri Anil Kumar Pandey, Scientist-B, participated in the hearing through video conferencing from NIC Kolkata.

ORDER

Information sought:

The Appellant filed an online RTI Application dated 07.09.2020 seeking information as under:

Against each of these officers, disclose the date of their joining National Test House(ER).

1. Dr. Prasanta Kanjilal, Director, National Test House(ER)
2. Smt. Mita Bhattacharyya, Administrative Officer(Gr-II), National Test House(ER)
3. Dr. Sudipta Ghoshray, Vigilance Officer, National Test House(ER)
4. Shri Debashis Sarkar, Scientist-C(RPPT), National Test House(ER)
5. Shri Rajesh Kumar, Scientist-C(NDT), National Test House(ER)
6. Dr. S. N. Bandopadhyay, Scientist-C(Chemical), National Test House(ER)
7. Dr. Somit Neogi, Scientist-C(Civil)
8. Shri Vishwanath Gupta, Scientist-C(Electrical), National Test House(ER)
9. Shri B. R. Mandal, Scientist-C(Electrical), National Test House(ER)
10. Shri Pradip Kumar Bera, Scientist-C(Electrical), National Test House(ER)
11. Shri Ajeet Kumar, Scientific Officer(Civil), National Test House(ER)
12. Ms. Sudipta Mallik, Scientist-B(Chemical), National Test House(ER)
13. Smt. Parbati Mandi, Scientist-B(Chemical), National Test House(ER)
14. Dr. Sujoy Kumar Manna, Scientific Officer(Civil), National Test House(ER)
15. Shri Angad Verma, Scientist-B(Mechanical), National Test House(ER)
16. Shri M. V. Kishore, Scientist-B(Electrical), National Test House(ER)
17. Shri Sumit Majumder, Scientific Officer(Mechanical), National Test House(ER)
18. Dr. Anath Bandhu Mondal, Scientist-B(Chemical), National Test House(ER)
19. Shri Masrur Fayazi, Scientific Officer(Mechanical), National Test House(ER)
20. Shri Umesh Kumar, Scientific Officer(Mechanical), National Test House(ER)
21. Shri Atish Kumar, Scientist-B(Mechanical), National Test House(ER)
22. Shri Mrinmoy Biswas, Scientist-B(NDT), National Test House(ER)
23. Shri Sushanta Rath, Scientific Officer(Chemical), National Test House(ER)
24. Shri Umesh Kumar Parida, Scientific Officer(RPPT), National Test House(ER)
25. Shri Prajjwal Banerjee, Scientific Officer(Mechanical), National Test House(ER)
26. Dr. K. S. Pal, Scientific Officer(Electrical), National Test House(ER)
27. Anirban Guha, Scientific Officer(Electrical), National Test House(ER)
28. Shri Samriddha Gangopadhyay, Scientific Officer(Electrical), National Test House(ER)
29. Shri Sayantan Das, Scientific Officer(Electrical), National Test House(ER)
30. Shri Prabir Kumar Bera, Scientist-C(Electrical), National Test House(ER)
31. Shri S. Murali, Scientist-B(Civil), National Test House(ER)

The CPIO vide online reply dated 10.11.2020, denied information to the Appellant as under:

“Section 8(1)(j).”

Being dissatisfied, the appellant filed a **First Appeal** dated 16.10.2020, which has not been adjudicated by the First Appellate Authority as per available records.

Grounds for Second Appeal:

The Appellant filed a Second Appeal u/s 19 of the Act on the ground of unsatisfactory reply furnished by the Respondent. Appellant requested the Commission to direct the CPIO to provide complete information sought for and take appropriate legal action & disciplinary action against the Respondent. He also requested the bench to award Compensation.

Submissions made by Appellant and Respondent during Hearing:

The Appellant did not participate in the hearing despite being served the hearing notice and the same has been confirmed by Shri Rahul Das, Network Engineer, from NIC Howrah.

The Commission remarked the Respondent that the reply provided by the then CPIO vide letter dated 10.11.2020 is inadequate as no personal information has been sought in the instant RTI Application. The Respondent concurred with the remarks of the Commission. He further added that the requisite information sought in the instant RTI Application is available in their Headquarters.

The Commission interjected and quizzed the Respondent that whether the First Appeal has been adjudicated or not to which the Respondent replied in negative. The Commission further quizzed the Respondent that who was the then CPIO, the Respondent submitted that Shri Debashish Sarkar was the then CPIO.

A written submission has been received by the Commission from the appellant vide letter dated 11.09.2022, wherein the Commission has been apprised as under.

Following is the submission (Page Count =4) in connection with Second Appeal File No. CIC/NTSTH/A/2021/605901 dated 30-08-2022 in connection with RTI Request no. **NTSTH/R/E/20/00059** dated 07-09-2020 and First Appeal no. **NTSTH/A/E/20/00048** dated 16-10-2020.

No response from FAA till 11/09/2022. Instance is there that FAA rejected another appeal (FA no. NTSTH/A/E/20/00059) after 279 days of filing of the same.

Public Authorities should make their website more informative day by day with the purpose that right to information of citizens is protected without compelling them to file an RTI request, and to meet all obligations as per RTI Act. No authority has right to act in derogation of any mandate/provision/requirement of any Act/law.

RTI officials alongwith administration of any public authority must take steps in time-bound manner as stipulated in RTI Act to minimize the chances of litigation. Caseload on CIC depends on how the public authorities are treating the RTI applications and First Appeals. Causes of filing second appeal/complaint lies in mistreatment of RTI applications and First Appeals and non-availability of complete and updated information in the website of concerned public authority, which is again due to non-compliance of section 4(2) and section 4(4) of RTI Act. FAA cannot decline to take any action on the first appeals under the Right to Information Act on the ground that he has other duties to attend to

Applicants have every right to obtain as much information as they wish, and in case of non-availability of desired information from the websites they have right to go for RTI requests, and if not satisfied with the conduct and response/reply of RTI officials they have right to go for second appeal/complaint. It is the duty of every public authority to follow RTI Act in letter and spirit.

No excuse of FAA can justify his treatment to the appellant keeping him waiting for decision for as long as 127 days (as on date of second appeal) beyond stipulated time limit which is violation of section 19(6) of RTI Act. It is the duty of FAA to dispose of an appeal as per section 19(6) of RTI Act strictly following the stipulated time limit, and in the process of disposal, if no decision arrived at by FAA,

he must communicate the appellant and his (FAA) controller why he could not arrived at his decision; be the reason is 'busy with other official assignments'. In no way, FAA can keep the appellant in dark by keeping the appeal pending beyond time limit. This would have been courteous behaviour of concerned FAA towards appellant that whatever the situation/problem/difficulties he had been facing while discharging his duties related to RTI First Appeal, if he communicated the appellant in writing expressing his inability to dispose of an appeal. It is not known whether FAA communicated the authority about his situation/problem/difficulties. Had he communicated the NTH authority about his inability to discharge additional duty of FAA due to already assigned duties or any other reason then there would have been scope for NTH Authority to assign the duty of FAA to another official, thus relieving the RTI appellants from the pain of being waited for FAA's decision.

Sometimes RTI officials place their submission in such a way so as to restrain the endeavour of applicant from further filing of RTI applications, which is threat to the aim of achievement of avowed objectives of RTI Act and creation of informed citizenry and establishment of a practical regime of transparency in Government. They also raise irrelevant issue to divert appellant's focus from focusing towards his rights as RTI applicant/appellant laid down in RTI Act and to divert from the issue of respondents' non-compliance with the provisions and spirit of the RTI Act. Rejecting a request by CPIO after one month beyond stipulated time limit of 30 days and non-response of FAA even after 650 days beyond maximum time limit of 45 days are due to their strong reluctance to follow RTI Act and to deny information. The excuse the RTI officials flag often that 'other duties to attend to' and/or 'many RTI applications' and/or 'applicant wants to take revenge' are purposeful to deny information for as long as possible. Why the administration of the concerned public authority do not change RTI officials or make addition to the strength of RTI officials to cater to the need, even after consciously knowing that requests and first appeals are pending, is a matter of concern for all applicants/appellants. Some CPIO states that they already communicated the applicant writing 'inconvenience caused due to delay is regretted' but does not fairly state to the Commission whether such communication was actually received by the applicant.

Whereas, the information sought by the applicant are date of joining (not the initial date of joining) of some officers of National Test House(ER), which are within the meaning of information under section 2(f) of RTI Act, 2005, but CPIO, to deny information, invoked section 8(1)(j) of RTI Act, 2005 on 10/11/2020 (consuming 64 days) in cut and paste manner without explaining as to why the information sought such as date of joining come under section 8(1)(j) of RTI Act, 2005. CPIO did not explain why he can reject information which is under section 2(f) of RTI Act, 2005.

As per section 19(5) of RTI Act, 2005-

"In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request."

Already written in second appeal that CPIO of southern branch of same public authority (National Test House) has disclosed information against the similar (neither same nor identical) nature of RTI request (Registration No. NTSTH/R/E/20/00066 dated 11/09/2020) through Reply Document- **File No. MTH/E-2(5)/2020-2021 dated 18/11/2020** which is already attached with second appeal as supporting document, there was no reason for CPIO, National Test House(ER) to invoke Section 8(1)(j) in RTI Request NTSTH/R/E/20/00059 because Date of Joining is disclosable information.

The lack of answerability of CPIO and FAA in RTI-appropriate manner leads one to believe that they are refusing to give access to information - because that may open the doors to further questions.

And

As per section 19(6) of RTI Act, 2005-

"An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof,"

The Second Appeal (dated 20-02-2021) was filed within 90 days after expiry of 45 days of filing of First Appeal (dated 16-10-2020). That is, filing of a Second Appeal which shall lie within maximum 135 days (where there is no response from FAA) from the date filing of First Appeal, the concerned Second Appeal (dated 20-02-2021) was filed within 127 days of filing of First Appeal (No. NTSTH/A/E/20/00048 dated 16-10-2020) as against maximum 135 days, which is still not responded to by FAA, and so is not a time-barred Second Appeal.

(1) CPIO be directed to furnish information which he denied invoking section 8(1)(j) of RTI Act, 2005.

(2) CPIO be asked whether he made compliance to the sections 7(7), 11(1), 11(2), 11(3) and 11(4) of RTI Act, 2005 regarding disposal of request and Third Party

Information and be directed to submit relevant documents/proofs regarding compliance to the sections 7(7), 11(1), 11(2), 11(3) and 11(4) of RTI Act, 2005, and in case of non-compliance, the reason thereof.

(3) FAA be directed to submit cogent explanation for his non-response for 695 days (16-10-2020 to 11-09-2022).

(4) CIC is requested to kindly provide relevant documents/proofs regarding compliance to the sections 7(7), 11(1), 11(2), 11(3) and 11(4) of RTI Act, 2005 by respondent CPIO, in case of compliance made by respondent CPIO, and in case of non-compliance, the reason thereof as sought at point no. 2 above; and explanation of FAA as sought at point no. 3 above along with information as sought at point no. 1 above.

Decision:

Upon perusal of the facts on record as well as on the basis of the proceedings during the hearing, the Commission observes that the reply provided by the then CPIO Shri Debashish Sarkar qua the instant RTI Application vide letter dated 10.11.2020 is inappropriate and a blanket denial of information under the garb of Section 8 (1) (j) of the RTI Act is inadequate as no personal information of third party has been sought by the Appellant. The Commission admonishes the then CPIO Shri Debashish Sarkar for providing such mindless and incongruous replies. Hence, the Commission deems it fit to direct the present CPIO to provide revised and specific information qua the instant RTI Application to the Appellant, with a copy marked to the Commission, within 15 days from the date of receipt of this order.

In the event CPIO is required to seek further assistance from concerned office/department for compliance with the above directions, the same shall be sought under Section 5(4) of RTI Act

Be that as it may, the Commission further observes that First Appeal has not been adjudicated in the instant matter by the First Appellate Authority and accordingly the Commission counsels the First Appellate Authority to be careful in future and shall ensure a proper adjudication of the First Appeal in the matters related to RTI Act.

With the above observations, the instant Second Appeal is disposed of.

Copy of the decision be provided free of cost to the parties.

The Appeal, hereby, stands disposed of.

Amita Pandove (अमिता पांडव)

Information Commissioner (सूचना आयुक्त)

दिनांक / Date: 16.09.2022

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

B. S. Kasana (बी. एस. कसाना)

Dy. Registrar (उप-पंजीयक)

011-26105027

Addresses of the parties:

1. The First Appellate Authority (FAA)
National Test House, Block-CP,
Sector-V, Salt Lake,
Kolkata-700091
2. The Central Public Information Officer
National Test House (ER),
CP Block, Sector V, Salt Lake,
Kolkata -700091
3. Mr. Goutam Saren

