

**CENTRAL INFORMATION COMMISSION**  
**Club Building (Near Post Office)**  
**Old JNU Campus, New Delhi - 110067**  
**Tel: +91-11-26161796**

**Decision No. CIC/SM/A/2011/000368/SG/13751Penalty**  
**Appeal No. CIC/SM/A/2011/000368/SG**

**Relevant Facts emerging from the Appeal:**

**Appellant:** : Mr. Mithilesh Kumar Gupta  
C/o Lovely Choice Centre,  
Sandila Road, Bangarmau, Unnao,  
Uttar Pradesh-241 501

**Respondent:** : Mr. Satya Prakash  
PIO & Under Secretary  
**DOPT, Government of India,**  
**Staff Selection Commission**  
Public Grievances & Pensions, Block No.12  
Kendriya Karyalay Parisar, Lodhi Road,  
New Delhi 110504

**RTI application:** 28/04/2010  
**PIO reply:** 12/05/2010  
**First appeal** 03/06/2010  
**FAA order** 10/06/2010  
**Second appeal** 31/08/2010

**Information sought:**

In reference to the above I would like to say that I have been qualified in CGL 2008 as an Inspector of Central Excise with rank SLD/320. In Paper IV of CGL (Main) Examination I have only 23 marks out of 100 which I don't believe. I have attached the printout of my marks available on website of SSC.

Therefore I kindly request you to please provide for me the Photo Copies of my Paper IVth answer sheets, or if not possible, I may be given a chance to see my answer sheets so that I may be sure about my marks.

**PIO's reply:**

I am directed to refer to your letter/application on the subject mentioned above and to say that all the papers are checked/verified twice before the declaration of the result. There is no discrepancy in your marks as appearing in the Website.

2. As per policy decision of the Commission there is no provision of providing/showing the copy of the evaluated answer booklet to the candidates/applicants.

**Grounds for First appeal:**

Information should be provided.

**FAA order:**

Your appeal dated 03 .06.2010 has been considered. However, it is seen that a reply to your initial application has already been sent to you by Shri Satya Prakash, CPIO, SSC vide letter No.15/1/2009-C-III (Vol.111) dated 12.05.2010 (copy enclosed). Hence, your appeal stands disposed off.,,

**Grounds for Second appeal:**

Unsatisfactory response

**Relevant Facts emerging during Hearing on 29 July 2011:**

“Both the parties were given an opportunity for hearing. However, neither party appeared. From a perusal of the papers it appears that the Appellant had sought photocopy of his answersheet of Paper-IV. The PIO has informed the Appellant that the papers are checked and verified twice and that there is no discrepancy in marks. The PIO has also stated that as per the policy of the Staff Selection Commission there is no provision of providing/showing the copy of the evaluated answer booklets to the candidates/applicants.

The PIO has claimed no exemption under any of the clauses of Section 8(1) of the RTI Act and has denied the information based on the Staff Selection Commission’s policy. When a citizen applies under the RTI Act information has to be provided to him unless it is exempted under one of the provisions of Section 8(1) of the RTI Act. The PIO has erred in refusing to provide the information without any justification being offered as per the RTI Act. As per Section 19(5) of the RTI Act the onus to prove that a denial of a request was justified is on the PIO. Since no justification has been offered it appears to be a denial of information without any reasonable cause.

**Besides the Central Information Commission in a full bench in Complaint No. CIC/WB/C2006/00223; Appeal Nos. CIC/WB/A/2006/00469; & 00394 on 23 April 2007 has decided:**

*“40. Insofar as examinations conducted by other public authorities, the main function of which is not of conducting examinations, but only for filling up of posts either by promotion or by recruitment, be it limited or public, the rationale of the judgments of the Supreme Court may not be applicable in their totality, as in arriving at their conclusions, the above judgments took into consideration various facts like the large number of candidates, the method and criteria of selection of examiners, existence of a fool-proof system with proper checks and balances etc. Therefore, in respect of these examinations, the disclosure of the answer sheets shall be the general rule but each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice. If that be so, the disclosure of the evaluated answer sheets could be denied but not otherwise. However, while doing so the concerned authority should ensure that the name and identity of the examiner, supervisor or any other person associated with the process of examination is in no way disclosed so as to endanger the life or physical safety of such person. If it is not possible to do so in such cases, the authority concerned may decline the disclosure of the evaluated answer sheets u/s 8 (1) (g).”*

Thus the denial of information of a photocopy of the answer sheet of the Appellant by the PIO is without any justification.”

### **Commission's Decision on 29 July 2011:**

The Appeal was allowed.

“The PIO is directed to provide an attested photocopy of the answersheet of the Appellant to him before 25 August 2011.

**The issue before the Commission is of not supplying the complete, required information by the PIO within 30 days as required by the law.** From the facts before the Commission it appears that the PIO is guilty of not furnishing information within the time specified under sub-section (1) of Section 7 by not replying within 30 days, as per the requirement of the RTI Act. It appears that the PIO's actions attract the penal provisions of Section 20 (1).

A showcause notice is being issued to him, and he is directed give his reasons to the Commission to show cause why penalty should not be levied on him. He will present himself before the Commission at the above address on **23 August 2011 at 4.30pm** alongwith his written submissions showing cause why penalty should not be imposed on him as mandated under Section 20 (1). ***He will also submit proof of having given the information to the appellant.***”

### **Relevant facts emerging during the showcause hearing on 23/08/2011:**

**Respondent:** Mr. Satya Prakash, PIO & Under Secretary and Mr. Ashok D., Section Officer;

“The present PIO Mr. Satya Prakash has given his written submissions in which he has stated that as per his interpretation the Commission's decision is not correct. He has stated that he is giving this letter with the approval of the Chairman, SSC. The Commission had ordered that attested photocopy of the answer sheet should be provided to the Appellant before 25/08/2011 and this order has not been complied with so far. The PIO has also stated that Mrs. Jyoti Gulati was the earlier PIO and has been transferred to another department and is presently in service.

The Commission wishes to pinpoint that it has issued a legally valid order and non compliance of this order would invite the penal provisions of Section 20(1) of the RTI Act. If the PIO states that any other officer's assistance is taken to provide the information and who is refusing to give the information such other officers will be the deemed PIO for the purposes of the provisions of Section 20(1) of the RTI Act. The Commission refers to its decision no. CIC/SM/C/2011/000783/SG/13313Penalty of 07/07/2011 in which it has given detailed reasons why defiance of statutory order without a legally valid stay obtained from the appropriate Court would invite the penal provisions of Section 20(1) of the RTI Act. The Commission is issuing a showcause notice to Mrs. Jyoti Gulati the then PIO to showcause to the Commission why penalty under Section 20(1) should not be levied on her for denying the information without any reasonable cause. She will present herself before the Commission on **14 September 2011 at 12.30PM** to showcause why penalty under Section 20(1) should not be levied on her for denying the information to the Appellant.”

### **Adjunct Decision dated 23 August 2011:**

“The Commission directs the present PIO Mr. Satya Prakash to send the information as per directions of the Commission given in this order on 29/07/2011 to the Appellant before 25 August 2011 and send a compliance report to the Commission.

The Commission also directs **Mrs. Jyoti Gulati the then PIO** to appear before the Commission on **14 September 2011 at 12.30PM** to showcause why penalty under Section 20(1) should not be levied on her.”

**Relevant facts emerging during the showcause hearing on 14/09/2011:**

**Respondent:** Ms. Jyoti Gulati the then PIO presently Under Secretary, SSC;

Ms. Jyoti Gulati has appeared before the Commission and has given written submission dated 02/09/2011 in which she has stated that as per an office order which she has attached she was appointed to be incharge of RTI Section and CPIO of the Staff Selection Commission only on 23/09/2010. She points out that the denial of information was of 12/05/2010 and hence she was not responsible, since she was had not been appointed the PIO at that time. The Commission also notes that the letter of 12/05/2010 refusing to give the information without mentioning any exemption clause under the RTI Act has been signed on behalf of Mr. Satya Prakash, PIO. Based on the statement of Ms. Jyoti Gulati it appears that Mr. Satya Prakash may have misled the Commission during the showcause hearing on 23/08/2011. The Commission therefore summons Mr. Satya Prakash and Ms. Jyoti Gulati to appear before the Commission to showcause why penalty under Section 20(1) should not be levied on them for wrongly denying the information without any reasonable cause.

**Adjunct Decision dated 14 September 2011:**

“The Commission summons **Mr. Satya Prakash and Ms. Jyoti Gulati** to appear before the Commission on **05 October 2011 from 04.00PM** alongwith their written explanations to showcause why penalty under Section 20(1) should not be levied on them.

The Commission will also consider recommending disciplinary action under Section 20(2) of the RTI Act for misleading the Commission.”

**Relevant facts emerging during the showcause hearing on 05/10/2011:**

**Respondent:** Ms. Jyoti Gulati the then PIO presently Under Secretary, SSC; and Mr. Satya Prakash, present PIO & Under Secretary;

The PIO Mr. Satya Prakash states that in pursuance of the Commission’s order dated 23/08/2011 he has provided the information by sending a photocopy of the answersheet to the Appellant on 25/08/2011. Mr. Satya Prakash admits that the person responsible for not providing the information was not Ms. Gulati but he himself was responsible for this. The RTI application had been filed on 28/04/2010 and the information should have been provided to the Appellant before 28/05/2010. Instead, the information has been sent to the Appellant only on 25/08/2011. The PIO Mr. Satya Prakash had originally told the Commission on 23/08/2011 that the person responsible for not providing the information was Ms. Jyoti Gulati which was not true as admitted by him. The Commission asked the PIO Mr. Satya Prakash to justify the denial of information. He states that he has to seek the permission of the Chairman before disclosing the information. If any officer gives orders to a PIO not to disclose the information such official would be held responsible for obstructing the information, and would be subjected to the penal provisions of Section 20(1) of the RTI Act. The Commission asked Mr. Satya Prakash to show any evidence that the Chairman had instructed him not to provide the information. Mr. Satya Prakash has not been able to show evidence to back his claim that the Chairman had instructed him not to provide the information.

Section 20 (1) of the RTI Act states, “Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any

manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees;

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

A plain reading of Section 20 reveals that there are three circumstances where the Commission must impose penalty:

- 1) Refusal to receive an application for information.
- 2) Not furnishing information within the time specified under sub-section (1) of section 7 – 30 days.
- 3) Malafidely denying the request for information or knowingly giving incorrect, incomplete or misleading information or destroying information which was the subject of the request
- 4) Obstructing in any manner in furnishing the information.

All the above are prefaced by the infraction, ‘ without reasonable cause’.

Section 19 (5) of the RTI Act has also stated that “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.”

Thus if without reasonable cause, information is not furnished within the time specified under sub-section (1) of section 7, the Commission is dutybound to levy a penalty at the rate of rupees two hundred and fifty each day till the information is furnished. Once the Commission decides that there was no reasonable cause for delay, it has to impose the penalty at the rate specified in Section 20 (1) of the RTI Act and the law gives no discretion in the matter. The burden of proving that denial of information by the PIO was justified and reasonable is clearly on the PIO as per Section 19(5) of the RTI Act.

The RTI application had been filed on 28/04/2010 and the information should have been provided to the Appellant before 28/05/2010. Instead the information has been sent to the Appellant only on 25/08/2011. Since the PIO Mr. Satya Prakash has not been able to offer any reasonable cause for not providing the information in time and the delay in providing the information has been for over 100 days the Commission is imposing the maximum penalty of `25000/- under Section 20(1) of the RTI Act on him.

### **Decision:**

As per the provisions of Section 20 (1) of the RTI Act 2005, the Commission finds this a fit case for levying penalty on Mr. Satya Prakash, present PIO & Under Secretary. Since the delay in providing the information has been over 100 days, the Commission is passing an order penalizing Mr. Satya Prakash `25000/ which is the maximum penalty under the Act.

The Chairman, Staff Selection Commission is directed to recover the amount of ₹25000/- from the salary of Mr. Satya Prakash and remit the same by a demand draft or a Banker's Cheque in the name of the **Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2<sup>nd</sup> Floor, August Kranti Bhawan, New Delhi – 110066.** The amount may be deducted at the rate of ₹5000/ per month every month from the salary of Mr. Satya Prakash and remitted by the 10<sup>th</sup> of every month starting from November 2011. The total amount of ₹25000 /- will be remitted by 10<sup>th</sup> of March, 2012.

This decision is announced in open chamber.

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

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

**Shailesh Gandhi**  
**Information Commissioner**  
**05 October 2011**

*(In any correspondence on this decision, mention the complete decision number.)(SS)*

- 1- Chairman  
**DOPT, Government of India,**  
**Staff Selection Commission**  
Public Grievances & Pensions, Block No.12  
Kendriya Karyalay Parisar, Lodhi Road,  
New Delhi 110504
2. Shri Pankaj K.P. Shreyaskar,  
Joint Registrar and Deputy Secretary  
Central Information Commission,  
2nd Floor, August Kranti Bhawan,  
New Delhi – 110066
- 3- Ms. Jyoti Gulati  
Under Secretary  
**DOPT, Government of India,**  
**Staff Selection Commission**  
Public Grievances & Pensions, Block No.12  
Kendriya Karyalay Parisar, Lodhi Road,  
New Delhi 110504