

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi - 110067

Tel: +91-11-26161796

Decision No. CIC/AG/A/2011/001395/SG/14508Penalty

Appeal No. CIC/AG/A/2011/001395/SG

Relevant facts emerging from the Appeal:

Appellant : Mr. Santosh Yadav,
Plot No. C 54 A, Flat No B- 805,
Royal towers, Sector – 61,
Noida.

Respondent : Ms. Aparna Sharma,
the then CPIO (presently, Director & FAA)
Nursing Division
Ministry of health & family welfare,
Nirman Bhawan, New Delhi

RTI application filed on : 17/03/2011
PIO replied on : 13/04/2011
First Appeal filed on : 25/04/2011
First Appellate Authority order on : 12/05/2011
Second Appeal received on : 31/05/2011

Q.No	Query	Reply of PIO
1.	Please provide me the copy of review committee's report over extension of my suspension by 90 days beyond 15/03/2011.	Concerned PIO replied that the information cannot be provided as it is exempted under section 8(1) (h) of the RTI Act, 2005.

Grounds for the First Appeal:

Reply of the PIO was dissatisfactory as he had refused to provide the information.

Order of the First Appellate Authority (FAA):

According to the order of FAA the reply of PIO was upheld.

Ground of the Second Appeal:

Information furnished by the PIO & the FAA's order was not satisfactory.

Relevant Facts emerging during Hearing held on September 9, 2011:

The following were present:

Appellant: Absent;

Respondent: Mr. S. N. Sharma, CPIO & Under Secretary;

“The then PIO Mrs. Aparna Sharma, Director refused to give the information claiming exemption under Section 8(1)(h) of the RTI Act without explaining how Section 8(1)(h) would apply. Consequently no information was provided. The FAA has also upheld the order of the PIO without assigning any reasons. The Right to Information is a fundamental right of citizens and if a PIO claims exemption from disclosure of information some justification has to be given as to how exemption applies, failing which the penal provisions of Section 20(1) would be applied. No justification has been offered by the respondent for the denial of information during the hearing.”

Decision dated September 9, 2011:

The Appeal was allowed.

“The PIO Mr. S. N. Sharma is directed to facilitate an inspection of the relevant files by the Appellant on 27/09/2011 from 10.30AM onwards. The PIO will give attested

photocopies of records which the Appellant wants free of cost upto 100 pages related to the application.

The issue before the Commission is of not supplying the complete, required information by the then PIO Mrs. Aparna Sharma, Director within 30 days as required by the law.

From the facts before the Commission it is apparent that the then 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 show cause notice is being issued to her, and she is directed give her reasons to the Commission to show cause why penalty should not be levied on her.

The then PIO Mrs. Aparna Sharma, Director will present herself before the Commission at the above address on **05 October 2011 at 12.00noon** alongwith her written submissions showing cause why penalty should not be imposed on her as mandated under Section 20 (1). She will also submit proof of having given the information to the appellant."

Relevant facts emerging at the show cause hearing held on October 5, 2011:

The following were present:

Appellant: Ms. Santosh Yadav;

Respondent: Ms. Aparna Sharma, the then CPIO (presently, Director & FAA) and Mr. S. N. Sharma, CPIO & Under Secretary;

Both parties submitted their written submissions to the Commission. The Appellant stated that she reached Mr. S. N. Sharma, CPIO's office on 27/09/2011 at 2:00 pm. However, he was not available in his office at that time. She contacted Mr. S. N. Sharma through his P. A. Mr. S. N. Sharma informed her that he waited for her till 1:30 pm and since he was busy at 2:00 pm, he could not get the relevant documents inspected. He asked the Appellant to visit his office again on 30/09/2011.

On 30/09/2011, the Appellant received an unattested copy of the minutes of the meeting of the review committee vide Mr. S. N. Sharma's letter dated 27/09/2011. Since the information provided was incomplete, she visited Mr. S. N. Sharma's office again on 30/09/2011. However, he informed her that the relevant files were not available with him. He also informed her that he will not allow her inspection of the files without his senior's permission. Moreover, he did not offer her any further date for inspection of the relevant file.

The Commission therefore directs that the PIO will facilitate relevant records by the Appellant on 10 October 2011 from 02.00PM onwards. The PIO will give attested photocopies of records which the Appellant wants free of cost upto 100 pages related to the original application.

Ms. Aparna Sharma, the then CPIO stated that information was denied to the Appellant initially as it was exempted under Section 8(1)(h) of the RTI Act. She submitted in writing- "*The information has been denied under Rule 8 (1) (h) of the RTI Act, 2005 as enquiry proceedings were being contemplated against the officer at that time and it was apprehended that showing the Review Committee's recommendation/ proceedings regarding extension of her suspension being the part of the enquiry process would impede/ adversely effect the process of further investigation*". The CPIO states before the Commission that, "*that the charge sheet was being finalized for initiating enquiry against the Appellant with approval of the disciplinary authority.*"

Justice Ravindra Bhat has held in Bhagatsingh vs. CIC WP (c) no. 3114/2007-

"13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons

should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma v. Sessa Reddy 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.”

As per Section 19(5) *“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.”*

Denial of a citizen’s fundamental right must be justified and the mere act of holding an investigation or contemplating one, cannot be used to deny a citizens’ fundamental right. No proper reasons have been given to justify how disclosing the information would impede the process of investigation. In view of this, the Commission does not accept the denial of information under Section 8(1)(h) of the RTI Act.

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 PIO has not been able to establish cogent reasons for denial of information under Section 8(1)(h). Since the Commission does not see any reasonable cause for denial of information, the Commission sees this as a fit case for levy of penalty under Section 20(1) of the RTI Act.

The RTI application had been made on 17/03/2011 and the complete information should have been provided to the Appellant before 17/04/2011. Instead the inspection is only going to be facilitated now. Since 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 the then CPIO Ms. Aparna Sharma, the then CPIO (presently, Director & FAA).

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 Ms. Aparna Sharma, the then CPIO (presently, Director & FAA). Since the delay in providing the information has been over 100 days, the Commission is passing an order penalizing Ms. Aparna Sharma ₹25000/ which is the maximum penalty under the Act.

The Joint Secretary (Administration), Ministry of health & family welfare is directed to recover the amount of ₹25000/- from the salary of Ms. Aparna Sharma 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, 2nd 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 Ms. Aparna Sharma and remitted by the 10th of every month starting from November 2011. The total amount of ₹25000 /- will be remitted by 10th of March, 2012.

Shailesh Gandhi
Information Commissioner
05 October 2011

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

Copies to:

- 1- The Joint Secretary
(Administration)
Ministry of health & family welfare,
Nirman Bhawan, New Delhi
2. Shri Pankaj K.P. Shreyaskar,
Joint Registrar and Deputy Secretary
Central Information Commission,
2nd Floor, August Kranti Bhawan,
New Delhi – 110066
- 3- Mr. S. N. Sharma
CPIO & Under Secretary
Nursing Division
Ministry of health & family welfare,
Nirman Bhawan, New Delhi