

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

Decision No. CIC/SG/A/2011/001340/13360
Appeal No. CIC/SG/A/2011/001340

Relevant Facts emerging from the Appeal

Appellant : Mr. Mahinder Singh
Assistant Director,
Finance and Accounts Branch III,
Employee's State Insurance Corporation,
Panchdeep Bhavan, CIG Road,
New Delhi- 110002.

Respondent : Public Information Officer
Employees State Insurance Corporation,
Regional Office, Nand Nagar,
Indore, Madhya Pradesh.

RTI application filed on : 30/11/2010
RTI application transferred on : 30/11/2010 (*to Regional Director, ESIC*)
PIO replied : 31/12/2010
First appeal filed on : 10/01/2011
First Appellate Authority order : 24/02/2011
Second Appeal received on : 20/05/2011

Information sought by the appellant:

Copies of the following statements mentioned below:

- 1) Report of Shri S. Mukharjee, Deputy Director and late K.D.Das, Asst. director dated 16.8.2005
- 2) Copy of observation communicated to the Branch office, Satna during inspection covering period of 4/2000 to 6/2005.
- 3) Copy of report of vigilance (West Zone) regarding inspection of Branch office, Satna, M.P. covering period of 4/2000 to 6/2005.
- 4) A copy of letters conveying views of Regional Office, Indore on Vigilance Inspection Report.
- 5) Copy of all pages of Notings portions of file containing information indicated at q. no 4 above.
- 6) Audit reports for quarter ending 12/2003, 3/2004, 6/2004, 9/2004, 12/2004, 3/2005, 6/2005.
- 7) Details of months of all audit periods of which full payment dockets were examined by the Audit Party for the audit-period 12/2003, 3/2004, 6/2004, 9/2004, 12/2004, 3/2005, 6/2005.
- 8) Copy of all pages of Noting Portion of File No. 18.C/12/15/1/197/05-Vig.

Reply of the PIO :

No information would be given as the same is protected by 8(1) (h).

Ground of the First Appeal:

The information sought has not been provided on the ground that the demanded information falls within section 8 of the RTI act and hence is exempted from its disclosure. Further, the revelation of the impugned information would serve the ends of justice rather than tempering with it.

Order of the FAA:

The FAA observes that the information has been sought by the appellate to defend him before the inquiry Officer of the Disciplinary Authority and prove his innocence. The CPIO deliberately denied the information to the appellant as it would have hampered/ impeded the process of investigation and or the disciplinary proceedings. As this is a case of departmental inquiry, no reason exists to modify the decision of the CPIO. The information is exempt under Section 8(1)(h) of the RTI Act. Appeal was dismissed.

Ground of the Second Appeal:

The ground taken in the first appeal re-iterated. The said information does not fall within the ambit of 8(1) (h) and hence it should be provided.

Relevant Facts emerging during Hearing:

The following were present

Appellant : Mr. Mahinder Singh;

Respondent : Absent;

The Appellant is seeking information relating to the period 2000 to 2005 only. A disciplinary action has been initiated against him subsequently and he is not seeking any information about the disciplinary proceedings not any information about the investigation against him. The PIO has refused to give the information claiming exemption under Section 8(1)(h) of the RTI Act.

The Respondent has not been able to establish that disclosing the information would impede the process of investigation. Section 8(1)(h) of the RTI Act exempts disclosure of “*information which would impede the process of investigation or apprehension or prosecution of offenders*”.

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 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. Sesha 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 continuing an investigation cannot be used to deny citizens' rights. The PIO has not given any explanation to show how providing the information to the Appellant would impede any investigation or proceedings. Infact it appears that no investigations are going on, and only disciplinary proceedings are continuing. In view of this, the Commission does not accept the denial of information under Section 8(1)(h) of the RTI Act.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information to the appellant before 05 August 2011.

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
11 July 2011

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