

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

CIC/SA/C/2013/000014

CIC/SA/A/2014/000555

**Complainant/
Appellant** : **R.K.Jain**

Respondent : **D/o Legal Affairs**

Date of hearing : **14.11.2014**

Date of decision : **25.11.2014**

Information Commissioner : **Prof. M. Sridhar Acharyulu**
(Madabhushi Sridhar)

Referred Sections : **Section 3, 18 & 19(3) of**
the RTI Act

Result : **Appeal allowed/
Disposed of**

Heard on 14.11.14. Appellant/Complainant present. Respondent is represented by Shri B.K.Prasad, Central Agency Section, Shri K.Ginkhan Thang, CPIO and Ms.Asha Sota, CAPIO, D/o Legal Affairs.

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2. The Paras 5, 6 and 7 of the CIC order No.CIC/SA/C/2013/000014 dt.14.10.14 is reproduced below:

5. The Commission after hearing the submissions made adjourns the hearing to **14th November, 2014 at 2.30 P.M.**

6. The Registry is directed to include the file No.CIC/SA/A/2014/000555 in the cause list for the hearing to be held on **14th November, 2014 at 2.30 P.M**

7. Ms.Asha Sote is directed to forward a copy of this order along with the earlier order dt.25.9.14 and the RTI application to Shri B.K.Prasad, CPIO, Central Agency Section; Shri Nirmal Singh, Former Director & CPIO, D/o Legal Affairs and Shri Ravinder Kumar, CPIO & Dy. Secretary with the direction to be present for the hearing to be held on **14th November, 2014 at 2.30 P.M**

3. During the hearing, Shri B.K.Prasad from Central Agency Section submitted that upon receipt of the RTI Application from D/o Legal Affairs, he had replied on 30.4.13 stating that as per CIC order No.CIC/SM/C/2011/001542, office of Attorney General is not a public authority and hence no information can be given. The Complainant on his part submitted that information sought by him is very much available with the D/o Legal Affairs and in turn they had wrongly transferred it to Central Agency Section and Shri Prasad vide his letter dt.11.6.13 changed his stand and illegally and malafidely transferred the RTI Application to Directorate of Revenue Intelligence, an exempted organization u/s 24 of the RTI Act. According to Prasad, the reason for transferring the RTI Application to DRI was informed to the Complainant vide letter dt.11.6.13.

4. Ms.Asha Sota, CPIO, D/o Legal Affairs submitted that the copy of the order was forwarded to Shri Nirmal Singh, former CPIO but there was no response from him. The Complainant on his part insisted on issuing show cause notice to Ms.Asha Sota for deliberately transferring the RTI Application to Central Agency

Section only to obstruct the flow of information. The Complainant vide para 3 of his written submissions dt.1.10.14 states as follows:

'That Ms.Asha Sota, CAPIO of DLA, during the hearing of the present complaint No.CIC/SA/C/2013/000014 on 23.9.14 submitted that the RTI Application in question was initially transferred to the Department of Revenue and subsequently present RTI Application was also transferred to CAS. The fact of transferring the present RTI Application to the Department of Revenue was never disclosed to the Complainant nor copy of any transfer letter has been endorsed to him, hence he is unable to implead the Department of Revenue as a party to the present proceedings and reserve his right to move appropriate application/petition at an appropriate time.'

5. Ms.Asha Sota in her written submissions received in this Commission on 10.10.14 stated that Complainant had filed two RTI Applications, one (No.4701) dt.7.1.13 and another(No.4903) dt.7.3.13. With regard to RTI application dt.7.1.13, the RTI Application was transferred to D/o Revenue and was returned back since no information was available with them. Accordingly, information was sought from concerned sections and Complainant was informed that information was not available. The Complainant was also informed that as per CIC decision, office of Attorney General is not a public authority and since Solicitor General has same functions, Solicitor General is also not a public authority and hence RTI application cannot be transferred to Solicitor General. She added that in response to the second appeal, Commission vide order dt.15.5.14 directed to keep the order in abeyance with the following comments:

'Since the decision of the Commission (declaring the Attorney General for India to be not a public authority under RTI Act), which the Respondent have relied upon here in support of their contention that the Solicitor General of India is also not public authority under the RTI Act is under the consideration of Delhi High Court and hereby direct that the present matter be kept in abeyance till the final decision of the Delhi High Court'

The Complainant's RTI Application dt.7.3.13 received from D/o Revenue was returned back to them vide letter dt.14.6.14 as the Department was not having

any information sought by the Complainant. She added that in view of the above, Complainant's instant RTI Application was transferred to Central Agency Section to provide him the information, if any available with them.

6. The Para 9 of the Complainant's submissions dt.11.10.14 is reproduced below:

'That Shri Nirmal Singh, Director & CPIO, Department of Legal Affairs and Shri Ravinder Kumar, CPIO & Dy. Secretary have deliberately and malafidely did not deal with the RTI application and to cause delay and denial of information permitted Ms.Asha Sota to illegally and unauthorisedly deal with the RTI Application so as to cause delay and deny information. They have so far caused the delay of 371 days by wrongly transferring the RTI Application to central Agency Section. Therefore, the order of the CPIO is incorrect and illegal and liable to be set aside and the CPIO be directed to provide the information in time bound frame and he is also liable for penalty under section 20(1) of the RTI Act and recommendation for disciplinary action under section 20(2) of the RTI Act, for delaying and obstructing the information in question without any reasonable cause.'

7. The Commission after hearing the submissions made and on going through earlier orders noted that no show cause notice was issued to any official. The Commission also noticed that Shri Nirmal Singh, former CPIO did not attend the hearing despite notice being issued to him according to Asha Sota. With regard to the complaint that Ms.Asha Sota had transferred his RTI Application to D/o Revenue and this fact was never informed to him, the Commission on perusal of the written submissions made by Ms.Asha Sota noted that the instant RTI Application was not transferred and she was referring to another RTI Application dt.7.1.13.

8. The Commission after hearing the parties is of the opinion that Ms.Asha Sota, being a subordinate to CPIO might have to act as per the instructions of

CPIO. The Commission therefore, directs the then CPIO, Shri Nirmal Singh who is responsible under RTI as Designated Officer to show cause as to

a) why he has not replied to RTI Application of the Complainant under his signature which amounts to abdicating his statutory responsibility.

b) why penalty u/s 20 should not be imposed upon him for not responding to the RTI Application of Complainant within the stipulated time period as prescribed under the Act and causing delay of 371 days; and

c) why disciplinary action should not be recommended against him.

9. He is to be present along with their written submissions with a copy endorsed to the Complainant on **17th December, 2014 at 2.30 PM**. Shri Ginkhan Thang, present CPIO is directed to forward a copy of this order to Shri Nirmal Singh, former CPIO for compliance of Para 6.

10. Penalty hearing against Shri Nirmal Singh is adjourned to **17th December, 2014 at 2.30 PM**.

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11. With regard to case No.CIC/SA/A/2014/000555, the Appellant submitted that the information sought is same as in CIC/SA/C/2013/000014 and that his RTI Application was transferred to Central Agency Section and in response to his first appeal, the Appellate Authority, CAS directed CPIO, CAS to transfer the RTI Application to D/o Legal Affairs. The Appellant submitted that he had served a copy of the order dt.29.11.13 of Appellate Authority, CAS to CPIO, D/o Legal Affairs

who vide letter dt.22.1.14 denied the information on the ground that the same is not available with them. Subsequently, CPIO sent another letter dt.7.2.14 stating that officer who was the FAA during 2009 has since retired and no records in respect of RTI Appeal is available in RTI Cell. The Appellant added that in response to his first appeal dt.24.3.14, FAA fixed hearing on 4.4.14 and since he was having two important cases before Hon'ble Delhi High Court, vide letter dt.3.4.14 requested FAA to decide the appeal on merits. He, however, received comments dt.2.4.14 of the CPIO in response to the first appeal on 5.4.14. He alleged that FAA without application of mind dismissed his appeal on 4.4.14 passing unwarranted strictures and the fact that comments of the CPIO was received after the hearing of the first appeal is itself an admission that principles of natural justice have been violated.

12. The main grievance of the Appellant appears to be against Ms.Gita Rawat, the First Appellate Authority for following grounds as stated.

The learned First Appellate Authority erred in as much as it has not considered the various grounds raised by the Appellant/Complainant nor gave finding thereof nor passed a reasoned order and just rejected the appeal of the Appellant/Complainant by confirming the order of the CPIO that information is not available with the Department of Legal Affairs. The learned First Appellate Authority being carrying quasi-judicial functions has not exhibited valid reasons for rejection of the Appeal.

That the learned First Appellate Authority has erred in holding that the aim of the Appellant/Complainant is to harass and misuse the precious time of the Authority and not to get correct information through RTI Application. There was no material or evidence before the First Appellate Authority to reach to such a decision.

That the Ms.Gita Rawat, First Appellate Authority has failed to appreciate that the Appellant/Complainant by his letter dt.3.4.14 has requested for deciding his appeal on merits, as he was not in a position to attend the hearing.

That Ms.Gita Rawat, First Appellate Authority failed to appreciate that the comments dt.2.4.14 sent by the CPIO on 4.4.14 were received by the Appellant/Complainant on 5.4.14. Therefore, there is a violation of Principle of Natural

Justice, in as much as the Appellant/Complainant was provided with the comments of the CPIO after the date of hearing.

13. In her order dt.4.4.14, Dr.Gita Rawat has observed 'He is at liberty to go anywhere or any place from where he may get information'. The Commission cautions the Appellate Authority from using such statements in their orders.

14. The Commission after hearing the submissions made sets aside the order of the Appellate Authority for apparent illegality caused by violation of principles of natural justice and for inappropriate tone and tenor of the language used in orders, where reasons for conclusions were not given, but certain 'observations' were recorded. The Commission directs the PIO, D/o Legal Affairs to furnish point wise information as sought by the Appellant in his RTI Application dt.25.3.13 within three weeks of receipt of this order and report compliance to the Commission.

15. The appeal is disposed with the above direction.

Sd/-

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Dy. Registrar

Address of the parties

1. The CPIO
Central Agency Section
Supreme Court Compound

New Delhi 110 001

2. The CPIO
Department of Legal Affairs
Ministry of Law and Justice
Shastri Bhawan
New Delhi

3. Shri R.K.Jain
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Wazir Nagar
New Delhi 110 003