

No.41011/16/2019-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

North Block, New Delhi
Dated the 20th May, 2019


OFFICE MEMORANDUM

Subject: Voluntary disclosure of information relating to compassionate appointment by the concerned Ministries/ Departments on their website- regarding.

The undersigned is directed to refer to Hon'ble Central Information Commission's (CIC) decision dated 25.03.2019 (No. CIC/PMOIN/A/2017/172750/MH&FW-BJ (copy enclosed) according to which information relating to compassionate appointments have to be disclosed *suo motu* by the concerned Public Authorities on their website. Hon'ble CIC's decision interalia states as under:-

“Keeping in view the facts of the case and the submissions made by the Respondents present at the hearing, the Commission directs DoP&T to issue instructions/guidelines to all the Ministries and Departments to exercise due diligence in notifying the compliance of the guidelines of DoP&T in respect of compassionate appointments made by all the concerned organizations/departments covered by its circular...”.

2. All Ministries/Departments of the Govt. of India are requested to take necessary action for compliance of the directions of CIC.


20/5/19
(Pradeep Kumar)

Under Secretary to the Government of India
Tel. No. 23040339

Encl: As above

To

All Ministries/Departments of the Govt of India.

Copy to:

1. President's Secretariat/Vice-President's Secretariat/Prime Minister's Office/ Cabinet Secretariat/Rajya Sabha Secretariat/Lok Sabha Secretariat/UPSC/CVC/C&AG/SSC, New Delhi
2. The Registrar General, the Supreme Court of India, New Delhi
3. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi
4. Shri K.L.Das, Dy. Registrar, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi-110067 with reference to above mentioned decision.
5. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions
6. National Commission for Scheduled Castes/Scheduled Tribes, New Delhi
7. National Commission for Minorities, New Delhi
8. National Commission for OBCs, New Delhi

9. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi
10. All Officers and Sections in the Department of Personnel and Training
11. NIC (DOP&T) for placing this Office Memorandum on the Website of DOP&T
12. Hindi Section, DOPT for Hindi version.
13. RTI/IR Section, DOPT, North Block, New Delhi.
14. RTI Cell, DOPT, North Block, New Delhi.

Pradeep Kumar
20/5/19
(Pradeep Kumar)

Under Secretary to the Government of India
Tel. No. 23040339

CIC ORDER COMPLIANCE
URGENT
2/4

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8
2/4

1366322/2019/1400

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

Sh. Pradeep Kumar
VS (Estt#02)

द्वितीय अपील संख्या / Second Appeal No.:- CIC/PMOIN/A/2017/172750/MH&FW-BJ

Mr. Sandeep Patil
H No. 41/7A/3D, Ganga Vihar Colony
Dhandhupura Road, Tajganj
Agra - 282006

Copy to:-

1366322/2019/1400

① Ms. G. Jayanthi, JS(E-2)

② Sh. Sanjay Kumar, VS(R72)
अपीलकर्ता/Appellant

VERSUS
बनाम

1366376/2019/1400
2/4

1. CPIO
Under Secretary
Ministry of Personnel, Public and Pensions
Department of Personnel & Training
North Block, New Delhi - 110001

2. CPIO
Under Secretary
Ministry of Health & Family Welfare
Department of Health Research
2nd Floor, IRCS Building, Red Cross road
New Delhi - 110001

3. CPIO
The Director General
Indian Council of Medical Research
V. Ramalingaswami Bhawan
Ansari Nagar, Post Box 4911
New Delhi - 110029

4. CPIO (RTI Cell)
Ministry of Finance
Department of Expenditure, North Block
New Delhi - 110001

5. CPIO (RTI Cell)
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi - 110011

13 APR 2019

प्रतिवादीगण / Respondent

Date of Hearing : 25.03.2019
Date of Decision : 25.03.2019

Date of RTI application	10.04.2017
CPIO's response	21.04.2017 11.05.2017 07.06.2017
Date of the First Appeal	18.08.2017
First Appellate Authority's response	Not on Record
Date of diarised receipt of Appeal by the Commission	20.10.2017

ORDER

FACTS:

The Appellant vide his RTI application sought information on 07 points regarding number of matters relating to compassionate appointment which were in a waiting list of all the Ministries and autonomous institutions under the Government of India since the last 10 years in accordance with the rules relating to 5% reservation for such appointment; list of A, B, C & D posts remaining vacant in all Ministries and autonomous institutions in the Government of India in the current Financial Year, etc.

The CPIO, PMO, South Block, New Delhi, vide its letter dated 21.04.2017 transferred the RTI application to the Secretary, DoP&T, New Delhi under Section 6(3) of the RTI Act, 2005 for further necessary action. Subsequently, the Section Officer, Department of Health & FW, RTI Cell, vide its letter dated 11.05.2017 transferred the RTI application to the CPIOs under Ministry of Health & FW with the direction to forward/transfer the application to the concerned CPIO, if not pertained to their Division. Subsequently, the CPIO & US to the Govt. of India, Department of Health Research, vide its letter dated 07.06.2017 provided a response pertaining to their Department. Dissatisfied due to non-receipt of any response from the concerned departments after several transfers of his application, the Appellant approached the FAA. The Order of the FAA, if any, is not on the record of the Commission.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Absent;

Respondent: Mr. Pradeep Kumar, US, DOPT (M: 9968267838), Mr. V. K. Jain, US, Dept. of Expenditure (M: 9968093914) and Mr. Devinder Kumar, US (M: 8076696905), Mr. Vinod Kumar, DS, Dept. of Health Research (M: 7042710050), and Mr. P. K. Singh, US, M/oH&FW (M: 9873915959);

The Appellant remained absent during the hearing. Mr. Yaduvir Singh, Network Engineer NIC studio at Agra confirmed the absence of the Appellant. The Respondents informed the Commission that as per DoP&T guidelines, a copy of the application had been endorsed to all Central Government Departments / Ministries to provide information in respect of compassionate appointment to the Appellant. On perusal of record, it was noted that as per DoP&T Memorandum dated 28.04.2017, vacancy and compassionate appointments in all Ministries was not centrally compiled but scattered across all the Ministries. The concerned Ministries had also transferred the RTI application to its

subordinate autonomous institutions. However, it was essential that the concerned Ministries / Departments and other institutions governed by them, should compile data pertaining to the compassionate appointments and post it on their website for perusal by all concerned. The Commission was in receipt of a written submission from the Respondent, Ministry of Health & Family Welfare, Department of Health & Family Welfare (RTI Cell), dated 20.03.2019 wherein it was submitted that the RTI Section of the Ministry of Health & Family Welfare, vide letter dated 11.05.2017 had transferred the application to the Department of Health Research and 12 concerned CPIOs in the Department of Health and Family Welfare, for providing information on point no. 03, 05 & 07. On examination of the enclosures as attached with the aforesaid notice, it is observed that on receiving the above said RTI application, Department of Health Research vide their letter dated 07.06.2017 had transferred the above said RTI application to the Director General, Indian Council of Medical Research. Furthermore, the Applicant had filed 1st Appeal vide letter dated 05.09.2017 and 18.08.2017 before the FAA in Indian Council of Medical Research (ICMR) on grounds of non receipt of information from NJIL & O. MD, Agra to whom the RTI application was transferred for providing information. Furthermore, the Applicant has filed the 2nd Appeal due to non-receipt of any response from the NJIL&O.MD, Agra, which is under administrative control of ICMR. Moreover, the CPIO, RTI, Ministry of Health & Family Welfare, who is Respondent No. 5 in this case had taken the actions due on his part. Furthermore, no relief has been sought against his actions in the 2nd Appeal.

The Commission was also in receipt of a written submission from the Respondent, Ministry of Personnel, Public Grievances & Pensions, DoP&T, dated 20.03.2019 wherein while reiterating the several transfers and the responses of the concerned CPIOs, it was submitted that the applicant was informed vide letter dated 28.04.2017 that data regarding compassionate appointments and vacancy in all ministries is not centrally compiled in DoP&T but this information is scattered across all public authorities which are cadre controlling authorities for various services/posts and as per instructions in the DoP&T O.M. No. 10/2/2008-IR dated 12.06.2008 (as upheld vide CIC decision no. CIC/OOCMD/A/2016/305357 dated 19.06.2017). The applicant was advised to obtain the information by applying before the concerned Ministries. However, information in respect of the posts administered in DoP&T was provided vide letter dated 16.05.2017. The Hearing Notice had also been forwarded to the CPIOs concerned in DoP&T, to attend the hearing. Moreover, the Appellant in his 2nd Appeal dated 16.10.2017 filed before the Commission acknowledged the replies to his RTI application from the transferee Ministries including DoP&T and no deficiency is pointed out in these replies by the Appellant and the 2nd Appeal is specifically against the lack of response from one of the Institutes functioning under the M/o Health & Family Welfare.

The Commission at the outset observed that that the information sought by the Appellant in his RTI Application ought to have been provided keeping in view the larger public interest involved in the matter. It was felt that several pertinent issues regarding discrepancy in matters of compassionate appointment were raised by the Appellant in his Second Appeal which demanded appropriate action by the Public Authority.

The Hon'ble Supreme Court in the matter of Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61 while explaining the term "Public Interest" held:

"22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is

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elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh [AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.).]"

The Hon'ble Supreme Court in the matter of Ashok Kumar Pandey vs The State of West Bengal (decided on 18 November, 2003 Writ Petition (crl.) 199 of 2003) had made reference to the following texts for defining the meaning of "public interest", which is stated as under:

*"Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:
"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."
In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows:
Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."*

In *Mardia Chemical Limited v. Union of India* (2004) 4 SCC 311, the Hon'ble Supreme Court of India while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, recognized the significance of Public Interest and had held as under :

".....Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country....."

Every action of a Public Authority is expected to be carried out in Public Interest. The Hon'ble Supreme Court of India in the matter of *Kumari Shrilckha Vidyarthi, etc vs. State of UP and Ors.*, 1990 SCR Supl. (1) 625 dated 20.09.1990 wherein it had been held as under:

"Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest."

Similarly, the Hon'ble Supreme Court of India in the matter of *LIC of India vs. Consumer Education and Research Centre*, AIR 1995 SC 1811 dated 10.05.1995 had held as under:

"Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge."

The Commission further observed that a voluntary disclosure of all information that ought to be displayed in the public domain should be the rule and members of public who *having to seek* information should be an exception. An open government, which is the cherished objective of the RTI Act, can be realised only if all public offices comply with proactive disclosure norms. Section 4(2) of the RTI Act mandates every public authority to provide as much information *suo-motu* to the public at regular intervals through various means of communications, including the Internet; so that the public need not resort to the use of RTI Act. The Commission felt that details on compassionate appointment which were in a waiting list of all the Ministries and autonomous institutions under the Government of India and policy/directives relating to compassionate appointment, etc. should be *suo motu* uploaded on their website to facilitate access to information and efficaciousness of the RTI Act.

The Commission also observes the Hon'ble Delhi High Court ruling in WP (C) 12714/2009 Delhi Development Authority v. Central Information Commission and Another (delivered on: 21.05.2010), wherein it was held as under:

"16. It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word disseminate has also been defined in the explanation to mean - making the information known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet. There is no denying that the petitioner is duty bound by virtue of the provisions of Section 4 of the RTI Act to publish the information indicated in Section 4(1)(b) and 4(1)(c) on its website so that the public have minimum resort to the use of the RTI Act to obtain the information."

Furthermore, High Court of Delhi in the decision of General Manager Finance Air India Ltd & Anr v. Virender Singh, LPA No. 205/2012, Decided On: 16.07.2012 had held as under:

"8. The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:

A. Publish inter alia:

- i) the procedure followed in the decision making process;*
- ii) the norms for the discharge of its functions;*
- iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;*
- iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;*
- v) the particulars of recipients of concessions, permits or authorizations granted. [see Section 4(1)(b), (iii), (iv), (v); (xii) & (xiii)].*

B. Suo moto provide to the public at regular intervals as much information as possible [see Section 4(2)]."

As observed by the Hon'ble Supreme Court of India in the decision of *R.B.I. and Ors. V. Jayantilal N. Mistry and Ors*, Transferred Case (Civil) No. 91 of 2015 (Arising out of Transfer Petition (Civil) No. 707 of 2012 decided on 16.12.2015

"The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."

The Commission felt that correct and timely response was the essence of the RTI mechanism enacted to ensure transparency and accountability in the working of Public Authorities. In this context, the Commission referred to the decision of the Hon'ble Delhi High Court in Mujibur Rehman vs Central Information Commission (W.P. (C) 3845/2007)(Dated 28 April, 2009) wherein it had been held as under:

"14.....The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

Furthermore, the Hon'ble Delhi High Court decision in J P Aggarwal v. Union of India (WP (C) no. 7232/2009) it has held that:

"The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure."

A reference was drawn to the decision of the Hon'ble Delhi High Court in the case of J.P Agrawal v. Union of India-2013(287) ELT25(Del.) wherein it was held as under:

7. "it is the PIO to whom the application is submitted and it is who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information. The PIO is expected to recommend a remedial action to be taken". The RTI Act makes the PIO the pivot for enforcing the implementation of the Act."

Furthermore, in OM No. 20/10/23/2007-IR dated 09.07.2009, while elaborating on the duties and responsibilities of the FAA, it was stated that:

"3. Deciding appeals under the RTI Act is a quasi judicial function. It is, therefore, necessary that the appellate authority should see that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at."

Furthermore, the Hon'ble High Court of Delhi in the matter of R.K. Jain vs Union of India, LPA No. 369/2018, dated 29.08.2018, held as under:

"9..... That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply

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the information and in case of default or dereliction on his part, the penal action is to be invoked against him only.


The Commission observed that in similar matters in Complaint/Appeal No.(s):- CIC/CECHZ/C/2017/173755-BJ dated 22.03.2019; CIC/AIIMS/A/2017/172746-BJ dated 11.02.2019, CIC/CCACH/A/2017/151149-BJ dated 11.10.2018, CIC/CCESR/A/2017/110143-BJ dated 16.04.2018, CIC/NIACL/A/2017/183947-BJ dated 02.01.2018, CIC/LICOI/A/2017/187082-BJ dated 02.01.2018, CIC/CBECE/A/2017/128158-BJ dated 09.08.2017, CIC/BHELD/A/2017/113532/BJ dated 08.08.2017, , CIC/RK/A/2016/000141/BJ dated 09.08.2016, etc disclosure of information relating to compassionate appointments was directed/ advised to be suo motu disclosed by the concerned Public Authorities on their website.

The Appellant was not present to contest the submissions of the Respondent or to substantiate his claims further.

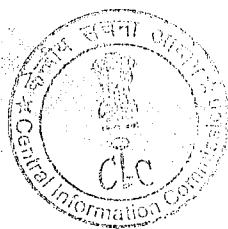
DECISION:


Keeping in view the facts of the case and the submissions made by the Respondents present at the hearing, the Commission directs DoP&T to issue instructions / guidelines to all the Ministries and Departments to exercise due diligence in notifying the compliance of the guidelines of DoP&T in respect of compassionate appointments made by all the concerned organizations / departments covered by its circular. Such information should be displayed on the website of each of the institutions governed by DoP&T for the benefit of employees and public at large. The compliance of the directives of the Commission should be done within a period of 30 days from the date of receipt of this order.

The Appeal stands disposed with the above direction.


Bimal Julka (बिमल जुल्का)
Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)




K.L. Das (के.एल. दास)
Dy. Registrar (उप-पंजीयक)
011-26182593/ kl.das@nic.in
दिनांक / Date: 25.03.2019