

# CENTRAL INFORMATION COMMISSION

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

**File No.CIC/SA/A/2014/000254**

**Appellant** : **Mr. R.K.Jain**

**Respondent** : **Department of Legal Affairs  
Government of India**

**Date of hearing** : **21-10-2014**

**Date of decision** : **12-11-2014**

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

**Referred Sections** : **Sections 3, 4, 7(9), 19(3)of the  
RTI Act**

**Result** : **Appeal allowed/  
Disposed of**

## **Summary:**

1. **Passing orders in first appeal without hearing or sending hearing notice is illegal and will render the order invalid. The Commission sets aside the order of First Appellate Authority for violating RTI Act and breach of natural justice by denying the appellant a chance of presenting his case and by raising entirely a new defence which was never claimed. Commission finds it deserves action though the concerned officer retired from service and recommends Public Authority to initiate disciplinary action against the concerned FAO for acting totally against the RTI Act in this case.**
2. **When huge information/record sought pertains to a larger period such as ten or more years, which does not attract Section 8 or 9, the best way of realization of right to information is to facilitate inspection. It will help the appellant to select the**

relevant documents and seek copy of only those documents found relevant instead of copying huge number of files unnecessarily involving huge expenditure and time for both parties. The public authority should create a specific and convenient place for facilitating inspection taking enough care for security of records. If someone wants copy of entire record of the office, it may not be possible or reasonable besides attracting the restriction under Section 7(9). If the records pertaining to areas exempted from disclosure are separated and the public records are kept accessible to citizens, it would serve the purpose. During the inspection the appellant should be facilitated to sit and take notes from the files and if he seeks copies of any documents which are permissible, they shall be given then and there at prescribed cost.

3. The Commission appreciates the DoPT for making it an obligation of every public authority to pro-actively disclose RTI applications and appeals received by them and their responses on the websites and directs the Department of Legal Affairs, including First Appellate Authority to comply with the DoPT directions dated 21.10.2014 with immediate effect.
4. The Commission directs the respondent authority to furnish certified copies of information sought by appellant in response to his RTI application dt.19-10-2013 within 21 days from the date of receipt of this order.
5. The Commission makes following recommendations:
  - a) the appellant to have inspection and seek copies of papers, if he thinks necessary, if not furnished earlier.
  - b) the appellant not to consider it as suppression of records, which the officers were fearing about,
  - c) with regard to his earlier RTI applications also the Commission would like the appellant to rationalize and minimize requirement of copies of documents strictly relevant to the aspect of public interest so that the officers would not worry about the stress and time needed to collect huge amount of information
  - d) the respondents consider possibility of facilitating inspection before invoking Section 7(9) of RTI Act.
  - e) both the respondents and appellant to have a coordinated approach in securing reasonable and only information required in public interest.

The appellant is present. The Public Authority is represented by Mr. K. Ginkhan Thang, Deputy Secretary and CPIO and Ms. Asha Sota, CAPIO, Department of Legal Affairs, Ministry of Law & Justice, Government of India, Delhi.

**FACTS:**

2. The appellant filed RTI application dated 19.10.2013 through speed post seeking notings with respect to his several earlier RTI applications, name and designation of the CPIO dealt with it and inspection of all files, copies of related noting documents.
3. PIO vide letter 21.11.2013 denied the information under section 7(9). Being unsatisfied with the information provided, the appellant preferred First Appeal on 29.11.2013. FAA vide order dt. 26.12.2013 upheld the order of the CPIO. Claiming non-satisfaction over the information provided and not providing him an opportunity of being heard, the appellant preferred Second Appeal before the Commission.
4. The number of RTI applications about which the RTI application was filed was 14, each with several points. The CPIO might have thought it would be a big task and difficult to provide the information which has to be collected from different sections. In fact the appellant was asking for copies of 14 RTI applications, file notings and responses to them, etc which would not be more than 14 files, which cannot divert substantial resources of the public authority. From the representations and contentions of officers of Public Authority the Commission noted a kind of confusion and stress among them as they felt difficult to find appropriate answers to the 14 applications each of which

5. The appellant being a leading lawyer and an expert RTI activist, with many appeals, RTI applications, appeals and judgments to his credit, his RTI applications sought information about staff given to Attorney General of India, file opening registers of all the administrative sections and cash sections of the department of legal affairs, implementation of pro active disclosures about foreign and domestic tours of ministers and officers of the rank of joint secretary and above and head of the departments, notings about seven letters written by him, notings of 13 RTI Applications filed by him earlier, list of computers and other equipments installed at the office of Attorney General of India, details of laptops provided to him, payments made for AMC etc, action taken on his letters referred etc, details about appointment of an advocate as representative of Union in a particular case, first page of his appeal referred, detail of implementation of some guidelines of DoPT, RTI applications received by various CPIOs and CAPIOS of department of Legal Affairs till now, etc. The officers from Respondent Authority represented that it was just impossible or difficult to provide the responses to the RTI questions, which would be quite voluminous, as files sought pertain to several years, running into hundreds or thousands of pages. They said they were tense and very apprehensive of consequences for any of their responses and thought inspection would serve the purpose and whatever papers he wanted could be given copies thereof. Whereas the appellant sought copies first and then he would like to have inspection with the copies in his hand.

6. It appears that CPIO and other officers were confused with his earlier RTI applications and present RTI application asking details of responses about earlier RTI applications. The officers were apprehensive of quantum of record that they have to provide for inspection and copies thereof for all points in earlier 14 RTI applications some of which refer to his earlier RTI applications, letters, representations, file notes about them etc. One of earlier RTI application demands RTI applications filed in various offices of PIOs of Department of Legal Affairs till now, which would certainly amount to huge record. Hence the Commission concludes that

there was no malafide denial of information. One can understand that it is herculean task for every PIO to compile answers to the RTI applications from an expert lawyer and expert RTI activist like in this case. The officers expressed fear that any lapse somewhere would be projected as suppression or misleading or misrepresentation or denial.

7. The officers were ready to facilitate inspection of whole office and records, and claimed that appellant was invited and informed about it many a time. In fact one of the reasons for this complaint is that after denying the information and getting that confirmed in first appeal, the office was inviting him to inspection, which appellant termed as wrongful intention. The Commission is of the opinion that offer of inspection by Public Information Office reflect positive response to provide access rather than malafide intention to deny the information.

8. The complainant wanted all files with notings about 14 of his RTI applications but the PIO thought he was asking copies of several documents he sought in earlier 14 RTI applications through this RTI application. The PIO has to understand that, they have to confine at present to this RTI application alone. This means only 14 files for which Section 7(9) cannot be invoked.

### **Issues before the Commission**

9. There are two issues, one: Whether First Appellate Authority's order is legal? Two: Whether appellant is entitled to information he sought, under RTI Act?

10. Both parties made their submissions. The appellant submitted that he was denied information by the respondent authority saying it would disproportionately divert resources of the public authority under Section 7(9) of the RTI Act. He also claimed that the PIO did not

refer to second part of Section 7(9) which dealt with 'safety or preservation of the record in question'. He complained that personal hearing was not given by the First Appellate Authority in spite of his request. Without sending any hearing notice to him, the FAA has heard and concluded the first appeal, upholding the decision of the CPIO under the above section. In this connection, he quoted para-4 of the CIC order CIC/SM/A/2013/000312 dated 18-7-2012, which is as under:-

4. During the hearing, among other submissions, the Appellant specifically wanted us to take note of the fact that the Appellate Authority had not given him any opportunity of hearing even after he expressly requested for that. He also, with the help of some information he had obtained through RTI from the CVC, submitted that the Appellate Authority in the CVC had not given any personal hearing to anyone except in three cases since the Right to Information Act came into being. Although the Right to Information (RTI) Act or the rules made thereunder do not prescribe in detail the procedure to be followed by the Appellate Authority in dealing with first appeals, by convention, the Appellate Authority should give an opportunity of hearing to any Appellant if the Appellant expressly wants to be heard. Therefore, we would like the Appellate Authority to bear this in mind and, wherever any such request is made, to afford an opportunity of hearing to that Appellant.

Subsequently this ruling was followed in another second appeal CIC/SM/A/2013/001324-RM dt. 30-7-2014 wherein it was mentioned that:

We remand the case to the FAA with directions that the appellant be provided an opportunity for hearing and thereafter to dispose of the case as per provisions of the RTI Act

Hon'ble Supreme Court in its Civil Appeal No.9095/2012 Manohar Vs. State of Maharashtra, stated in para 23 as under:-

Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.

11. The appellant has submitted that the case merits remand to the First Appellate Authority for giving an opportunity of hearing to the appellant. But as the concerned FAA Dr. Gita Rawat had already retired, he was not interested in remanding appeal to the present FAA. Making

point by point analysis of the FAA order, the appellant submitted that it was not proper for the FAA to raise the issue of safety of the record which was not claimed by the CPIO. The appellant took serious objection to para 6 of the FAA order wherein the FAA has stated that:-

“Appellant may kindly note that if in future any information coming under Section 7(9) is sought by him, his request will be rejected, ab initio. Hence the appeal is rejected.”

12. The appellant also took exception to the wording of para-7 of the FAA order, wherein the FAA said that “The appellant may kindly note that since the proceeding has been closed, no further hearing may be conducted in this matter.”, which implies that there was hearing in this case, but he was not heard. In this connection, the appellant referred to his complaint to CIC in file No. CIC/SA/C/2014/000019, which is being taken up after this appeal. He finally submitted that he does not want to inspect the files, but copies of the documents asked for may be supplied by the respondent authority.

13. The respondent authority, on the other hand, admitted that they had not sent the hearing notice in this case. The respondent officers also submitted that the information sought has to be collected from different Sections. Meanwhile, the RTI cell of the Department of Legal Affairs was shifted 3 times which caused dislocation of various files.

14. The Commission observes: Passing orders in first appeal without hearing or sending hearing notice is illegal and will render the order invalid. The Commission sets aside the order of First Appellate Authority for violating RTI Act and breach of natural justice by denying the appellant a chance of presenting his case and by raising entirely a new defence which was never claimed. Commission finds it deserves action though the concerned officer retired from service and recommends Public Authority to initiate disciplinary action against the concerned FAO for acting totally against the RTI Act in this case.

15. In a very positive step towards accountability and implementation of Right to Information Act, the DOPT, the nodal agency for RTI, notified its Office Memorandum No. 1/1/2013 dated 21.10.2014 directing the Public Authorities to proactively disclose RTI applications and appeals received by them along with responses on their websites. Relevant portion of the memorandum is:

*"1. ... Public Authorities have an obligation to pro-actively disclose RTI applications and appeals received by them and their responses on the websites.*

*2...a new feature has been added to the CPIO/FAA's module on the "RTI Online" portal on pilot basis for DoPT. This feature provides an option to the CPIO and FAA to upload the reply to RTI application and first appeal respectively on the website of the Department.*

*3This feature is now being extended to other Ministries/Departments of Government of India. For displaying the RTI applications received in the Ministry/Department and the reply furnishing thereof, by the use of the said feature, web services would be provided through a URL to each Ministry/Department by NIC/DoPT. The Concerned Ministry/Department needs to consume this web service (by writing a program) to display desired contents on its respective website. .... An immediate action is requested so that the facility to upload the reply to RTI application and first appeal respectively on the website of the respective Ministry/Departement may be started w.e.f 31.10.2014.*

*4. It may be noted that RTI applications and appeals received and their responses relating to the personal information of an individual may not be disclosed, if they do not serve any public interest"*

16. This order further strengthened the right to secure the information about his earlier RTI applications along with responses. The Commission appreciates the DoPT for making it an obligation of every public authority to pro-actively disclose RTI applications and appeals received by them and their responses on the websites and directs the Department of Legal Affairs, including First Appellate Authority to comply with the DoPT directions dated 21.10.2014 with immediate effect.



17. Section 2(j) explains right to information includes ***'inspection of work, documents, records; taking notes, extracts or certified copies of documents or records; taking certified samples of material...*** The Commission observes: When huge information/record sought pertains to a larger period such as ten or more years, which does not attract Section 8 or 9, the best way of realization of right to information is to facilitate inspection. It will help the appellant to select the relevant documents and seek copy of only those documents found relevant instead of copying huge number of files unnecessarily involving huge expenditure and time for both parties. The public authority should create a specific and convenient place for facilitating inspection taking enough care for security of records. If someone wants copy of entire record of the office, it may not be possible or reasonable besides attracting the restriction under Section 7(9). If the records pertaining to areas exempted from disclosure are separated and the public records are kept accessible to citizens, it would serve the purpose. During the inspection the appellant should be facilitated to sit and take notes from the files and if he seeks copies of any documents which are permissible, they shall be given then and there at prescribed cost.

18. Finally, in this appeal the Commission **directs** the respondent authority to furnish certified copies of information sought by appellant in response to his RTI application dt.19-10-2013 within 21 days from the date of receipt of this order.

19. The Commission makes following recommendations:

- a) the appellant to have inspection and seek copies of papers, if he thinks necessary, if not furnished earlier.
- b) the appellant not to consider it as suppression of records, which the officers were fearing about,
- c) with regard to his earlier RTI applications also the Commission would like the appellant to rationalize and minimize requirement of copies of documents strictly relevant to the aspect

of public interest so that the officers would not worry about the stress and time needed to collect huge amount of information

- d) the respondents consider possibility of facilitating inspection before invoking Section 7(9) of RTI Act.
- e) both the respondents and appellant to have a coordinated approach in securing reasonable and only information required in public interest.

Sd/-

(M. Sridhar Acharyulu)  
Information Commissioner

Authenticated true copy

(Babu Lal)  
Deputy Registrar

Address of the parties:

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