

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

द्वितीय अपील संख्या / Second Appeal No.: **CIC/DELJB/A/2019/104620**

Om Prakash Gaud

.....अपीलकर्ता / Appellant

VERSUS/बनाम

PIO,

Nodal Officer-(Vigilance), Delhi Jal Board
(Government of NCT of Delhi), Vigilance
Department, Varunalaya Building, Phase-II,
Karol Bagh, New Delhi-110005.

2. Nodal Public Information Officer-HQ,
Director-(Enforcement)-(RTI), Delhi Jal Board
(Government of NCT of Delhi), Room No.-315-B,
RTI Cell, Varunalaya Building, Phase-2, Karol Bagh,
New Delhi-110005.

...प्रतिवादीगण / Respondent

Relevant facts emerging from appeal:

RTI application filed on	:	27-09-2018
CPIO replied on	:	26-10-2018
First appeal filed on	:	12-10-2018
First Appellate Authority order	:	16-01-2019
Second Appeal received at CIC	:	30-01-2019
Date of Interim Hearing	:	22-03-2021
Date of Interim Decision	:	22-03-2021
Date of Final Decision	:	13-07-2021

सूचना आयुक्त : **श्री हीरालाल सामरिया**
Information Commissioner : **Shri Heeralal Samariya**

Information sought:

The Appellant sought following 02 points information regarding of Department proceedings in the case of Charge-Memo no. DJB/Vig./Major/CS-(B)-106/(11)/2013/9685 dated 04.09.2013 against him wherein the major penalty is

dismissal from service and another charge memo dated 25.02.2014 wherein he had finally dismissed from services:

1. kindly allow the inspection of case file of both the above cases and provide the certified copies of the selected documents.
2. Provide the certified copy of order of appointment of IO/PO (undersigned copy provided during proceedings by competent authority has been lost) and the noting sheet of case file of charge memo dated 04.09.2013 containing the decision recorded by Sh. Hozer Lollen, then Member (A) in the year 2013 after considering the written defence statement of the CO to this charge sheet.

Having not received any response from the PIO, the Appellant filed a First Appeal dated 12.10.2018. The FAA, vide order dated 16.01.2019, directed the PIO to provide the information to the appellant if it is not covered under any other exemption clauses of the Act within stipulated time period. The order is as under:

The appellant stated that he has not received reply to his RTI application dated 27.09.2018. During the course of hearing, the reply sent by the PIO (Vig.) was shown to the appellant. The copy of the same may also be provided. The appellant also stated that the exemption clause 8(1)h has wrongly been applied and wants information about the final stage of the matter as the investigation and the inquiry proceedings reportedly are over. PIO(Vig) is directed to provide the information to the appellant if it is not covered under any other exemption clauses of the Act within the period of 15 days to the applicant.

The appellant has refused to sign on attendance sheet during the hearing.

In the light of above the appeal is accordingly disposed off.

Grounds for Second Appeal:

The PIO has not provided correct information to the Appellant.

Relevant Facts emerging during Hearing:

The following were present: -

Appellant: Present in person

Respondent: Mr. N.K. Sharma, PIO (Vigilance), Delhi Jal Board, GNCTD

Appellant stated that relevant information sought has been wrongly denied under the garb of Section 8(1)(h) of the RTI Act, 2005.

PIO submitted that the averred Disciplinary proceedings has not been concluded yet and thus, relevant information was not provided.

Appellant interjected to state that PIO has still not justified how disclosure of information would impede the process of investigation.

Interim Decision:

Commission on the basis of proceedings during hearing, directs the PIO to file a written submission justifying his denial of information under Section 8(1)(h) and how disclosure of the same would impede the process of investigation. The written submission of PIO justifying the denial of information under Section 8(1)(h) of RTI Act as directed above shall reach the Commission within 7 days from the date of receipt of this order with a copy duly endorsed to the Appellant. Further, if the Appellant desires to counter the submission of PIO, he may submit the same to the Commission within 7 days of receipt of the CPIO's submission.



ADJUNCT DECISION PROCEEDINGS

In furtherance of the interim decision wherein PIO was directed to justify the invocation of Section 8(1)(h) of the RTI Act, 2005. Commission is in receipt of the written submission of PIO dated 13.04.2021 and counter submission of Appellant dated 20.04.2021.

Written Submission of PIO dated 13.04.2021:

Sub.: Written submission in compliance with order dated 22.03.2021 in Appeal No. CIC/DELJB/A/2019/104620.

Sir,

Kind reference is invited to Commission's interim decision dated 22.03.2021 on the above cited subject. The Hon'ble Commission vide the said order has passed the following decision:

"Commission on the basis of proceedings during hearing, directs the PIO to file a written submission justifying his denial of information under Section 8(1)(h) and how disclosure of the same would impede the process of investigation. The written submission of PIO justifying the denial of information under 8(1)(h) of RTI Act as directed above shall reach the Commission within 7 days from the date of receipt of this order with a copy duly endorsed to the Appellant. Further, if the Appellant desires to counter the submission of PIO, he may submit the same to the Commission within 7 days of receipt of the CPIO's submission."

Submission

- (i) The Appellant had requested to provide certified copies of the documents related to the charge sheet dated 04.09.2013 issued to him by the competent Disciplinary Authority. The same was denied being covered under Section 8(1)(h) of the RTI Act, 2005 vide this office letter no. 9429 dated 26.10.2018(copy enclosed as Annexure-I).
- (ii) Not satisfied with the information provided, the applicant filed an appeal before FAA. During the course of hearing, the Appellant stated that the exemption clause had wrongly been applied and wanted information about the final stage of the matter, as the investigation and the enquiry proceedings

were over. The FAA vide his orders dated 16.01.2019 (copy enclosed as Annexure-II) directed the PIO(Vig.) to provide the information to the appellant if it was not covered under any other exemption clauses of the Act.

In view of the above, the Appellant was informed vide letter dated 01.02.2019 that-

"Regarding final stage of the matter i.e. charge-sheet dated 04.09.2013, it is to inform that after completion of Inquiry proceedings in the matter, a report was submitted to the Disciplinary Authority by the Inquiry Officer, wherein he held the charges as 'Proved' against Sh. O.P. Gaud, AE(C). The findings of the Inquiry Officer were placed before the Disciplinary Authority, who accepted the inquiry report. Accordingly, the same was served to Sh. O.P. Gaud for his comments, if he so desired.

"Meanwhile, in another departmental case against Sh. O.P. Gaud, the competent authority imposed the penalty of 'Dismissal from service which shall ordinarily be a disqualification for future employment under the Government'. As such, on account of his dismissal from the services of DJB, in the instant case i.e. charge sheet dated 04.09.2013, the competent authority has taken a view to keep the disciplinary proceedings suspended and may be revived, if and when the Appellate Authority or Court of law amend, the said penalty (of dismissal from service) at later stage."

It is to submit before Hon'ble CIC that the requested information about the grounds on which final decision of the competent Disciplinary Authority to keep the disciplinary proceedings suspended and may be revived, if and when the Appellate Authority or Court of law amend, the said penalty (of dismissal from service) at later stage, were duly communicated to the Appellant vide this office letter dated 01.02.2019 (Annexure-III), though the documents related to the case were denied since the matter had not attained the finality and, therefore, the same were not provided under Section 8(1)(h) of the RTI Act, 2005 as per which "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - information which would impede the process of investigation or apprehension or prosecution of offenders."

In this regard, kind reference is invited to Hon'ble Commission's Orders dated 13.01.2017 which was taken into consideration since as per the said order-

"Hon'ble Commission observes that a full bench of this Commission in its order dated 28/11/2014 in File No.CIC/SM/A/2012/001020 – A K Agrawal V/S SEBI and RIL, had held as under: -

14. This Commission in its decision dated 10.07.2007 in Appeal No. CIC/AT/A/2007/0007, 10 & 11 (Shankar Sharma & Others Vs. DGIT) observed that the term 'investigation' used in section 8(1)(h) of the Act should be interpreted broadly and liberally and that no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that decision is taken. This Commission in CIC/AT/A/2007/007/00234 – K.S. Prasad vs SEBI, observed that "...as soon as an investigation or an enquiry by a subordinate Enquiry Officer in Civil and Administrative matters comes to an end and, the investigation report is submitted to a higher authority, it cannot be said to be the end of investigation. ... which can be truly said to be concluded only with the decision by the competent authority." This Commission in CIC/DS/A/2013/000138/MP – Narender Bansal vs Oriental Insurance Co. Ltd., has held that the investigation in the matter was complete but further action was under process, and hence it attracted section 8(1)(h) of the Act" (copy enclosed as Annexure-IV for kind reference).

Appellant Counter submission dated 20.04.2021 is taken on record:

Written Counter submission by Appellant in compliance with Interim order dated 22.03.2021 of the CIC.

The Appellant, above named, most respectfully begs to submit That -

The Honourable Sh. Hiralal Samariya, Information Commissioner (CIC) vide his above-mentioned Interim order dated 23.03.2021, has directed the respondent/PIO, DJB Vigilance that *"The written submission of PIO justifying his denial of information under Section 8(1)h and how disclosure of the same would impede the process of investigation as directed above shall reach the commission within 7 days from the date of receipt of this order with a copy duly endorsed to the Appellant. Further, if the Appellant desires to counter the submission of the PIO, he may submit the same to the commission within 7 days of receipt of the PIO's submission."* Subsequently the written submission of PIO dated 13.04.2021 has been received by Appellant by post on 16.04.2021 wherein PIO has completely failed to explain/justify how disclosure of the information would impede the process of investigation as directed by CIC, most probably because there is no any possible justification as the impediment of a paused/suspended proceeding is not possible just like that the impediment of the paused/stopped vehicle is not possible. The said proceedings/investigation was paused/suspended five years back in August-2016 by Disciplinary Authority himself which has also been explained by the PIO/Respondent in his letter dated 01.02.2019 and written submission dated 13.04.2021 and as such the proceeding/investigation is already laying completely stopped for last five years (Copy of PIO's letter dated 01.02.2019 and submission dated 13.04.2021 are annexed as **Annexure-1** colly).

cut

~ -

In this regard it is pertinent to mention here that the law under S 8 (1)h has already been clarified by Honourable CIC in case of Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors) in Civil Appeal NO. 7571 of 2011- dated 02/09/2011 and held that "Moreover, the Commission observed that as per the provisions of Section 19 (5) of the RTI Act, 2005, in an Appeal proceeding, the onus to prove that a denial of a request was justified shall be on the CPIO. While observing that in order to deny information under any of the exemption mentioned under Section 8 (1) of the RTI Act, 2005, the Respondent is required to provide justification or establish the reason why such exemption was claimed.

Similarly, in Director of Income Tax (Investigation) and Anr. v. Bhagat Singh & Anr., 17 December, 2007, a Division Bench of Delhi High Court had observed as under: -

"8. Information Assessing officer. Under Section 8(1) (h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason." (Copy of said Court order dated 17.12.2007 is annexed as **Annexure-2**)

Moreover, the PIO, in his RTI reply and during the proceeding before FAA had got failed to prove how the proceeding would impede if the information is provided to appellant and consequently FAA has issued an order dated 16.01.2019 which reads as follows-

"PIO (Vig.) is directed to provide the information to appellant if it is not covered under any other exemption clauses of the Act within the period of 15 days to the applicant."
(Copy of FAA's order dated 16.01.2019 is annexed as **Annexure-3**)

In spite of that no sought information was provided by the PIO till date from the date of receipt of the FAA's order except a letter dated 01.02.2019 and from the perusal of this letter, it is clearly appearing that PIO neither claimed any exemption under any section [including 8(1)(h)] of RTI Act-2005 as no such section/clause of RTI is mentioned to that effect, nor he filed a second Appeal to challenge the order of FAA and therefore the order of FAA reached to its finality. Non providing of information in such circumstances without any reasonable cause caused injury to Appellant (mental, reputational and financial), the DJB (financial and reputational) and also Appellant could not be able to approach to the CAT or honourable Delhi High Court for implementation of order of

exoneration recorded by Disciplinary Authority in 2013 in the case File of Charge memo dated 04.09.2013, the case due to which Appellant's promotion from the post of AE to EE contained in sealed cover since 2012 has not been implemented by DJB authority, in absence of such sought information and as such the act of non-providing of information of Sh. Vineet Kumar, PIO(Vig.), DJB with an intention to cause injury to Appellant & malafidely avoiding his statutory duty under RTI Act makes him liable to be punished under provision of section 20 (1) & (2) of the RTI Act.

Prayer/relief sought for:

The Appellant, therefore, prays that,

- (1) your honour be pleased to pass an order directing the PIO to provide the following information sought by the appellant vide RTI application dated 27.09.2019 at free of cost under section 7 (6) of RTI Act -
 - a. Kindly allow the inspection of case file of Charge memo 04.09.2013 and provide the certified copies of the selected documents.
 - b. Provide the certified copy of the noting sheet of case file of charge memo dated 04.09.2013 containing the decision recorded by Shri Hozer Lollen, then Member (A) in the year 2013 after considering the written defence statement of the CO to this charge sheet."
- (2) PIO may kindly be punished under Section 20 (1) & (2) of RTI Act 2005.

Final Decision:

The current milieu of the pandemic COVID-19 has necessitated the Commission to take some extraordinary steps in the disposal of cases to avoid further backlog and delays subverting the very purpose of RTI Act which includes *inter alia* disposing the referred case on the basis of the written submissions of the both the parties.

In doing so, Commission has gone through the written submissions of both the parties and observes from the perusal of facts on record that the PIO(Vigilance) has relied on the rationale that case has not reached its logical conclusion due to suspension of the averred disciplinary proceedings (DP) in respect of which appellant had sought information. Even if said argument of the respondent authority is conceded with, the question of its impeding the process of investigation is still not justified by the PIO(Vigilance). Further, PIO(Vigilance) in the written submission has admitted the fact that inquiry proceedings were completed, and a report was submitted to the Disciplinary Authority and since

then the said proceedings is kept in abeyance. Now, commission is aghast by the fact that Respondent Authority has kept the averred D.P in abeyance solely based on the conclusion of some other proceedings for such a long time, Nevertheless, Commission is not empowered to interfere in the administrative function of the Respondent Authority. However, the indefinite abeyance of the said proceedings despite attaining finality as averred by the PIO(Vigilance) in the Written submission dated 13.04.2021 cannot be considered as an impediment towards the process of investigation or the proceedings.

Further, Commission observes that the PIO has neither justified as to which aspect of Section 8(1)(h) of RTI Act is attracted in the facts of the instant case nor mentioned as to what part of investigation or proceedings will be impeded from the disclosure of said information. Moreover, FAA vide its order dated 16.01.2019 directed the PIO to provide the relevant information to the appellant. In the facts and circumstances of the case, Commission places reliance on certain judgments of superior courts, some of which have been cited by the Appellant also in the grounds of Second Appeal, wherein, Courts have stressed on the fact that mere claim of Section 8(1)(h) is not enough.

Here, reference shall be had of a judgment of Hon'ble Delhi High Court in the matter of *Bhagat Singh vs. CIC* dated 03.12.2007 wherein the following was observed:

“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...”

Similarly, the Hon'ble High Court of Delhi in the matter of *B.S. Mathur v. PIO, Delhi High Court* in W.P. (C) 295 of 2011 dated 03.06.2011 has held as under:

“19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8(1)(h) RTI Act" The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation...

22. ...The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge.”

(Emphasis Supplied)

Further, Hon’ble Delhi High Court in the matter of *Adesh Kumar vs. Union of India & Ors.* dated 16.12.2014 held as under:

*“6. A plain reading of the aforesaid provision indicates that information which would impede the process of investigation or apprehension, or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; **a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient.** In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused.”*

(Emphasis Supplied)

(...)

“10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.” (**Emphasis Supplied**)

Adverting to the aforesaid ratios, the denial of information under Section 8(1)(h) in the instant matter is rejected. Commission directs the PIO to provide relevant information to the appellant as sought in the instant RTI Application, free of cost via speed/registered post, within 30 days from the date of receipt of this order and accordingly compliance report to this effect be duly sent to the Commission by the PIO. However, PIO must not provide information which is exempted from disclosure under any other provisions of the RTI Act, 2005.

The appeal is disposed of accordingly.

Heeralal Samariya (हीरालाल सामरिया)

Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

Ram Parkash Grover (राम प्रकाश ग़ोवर)

Dy. Registrar (उप-पंजीयक)

011-26180514