

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present : Shri Sunil Kumar Misra,
State Chief Information Commissioner**

Date 9th July, 2018

Second Appeal No.2328/2015

Biswajit Mohanty,
Shantikunj, Link Road,
District-Cuttack.....Appellant

-Vrs-

1. Public Information Officer,
Office of the D.G. of Police,
State Police Headquarter, Buxi Bazar,
Cuttack.
2. First Appellate Authority,
Office of the D.G. of Police,
State Police Headquarter, Buxi Bazar,
Cuttack.Respondents

Decision

1. Appellant, Biswajit Mohanty, is present. Rabi Narayan Behera, PIO-cum-AIG of Police (Headquarters), State Police Headquarters, Odisha, Cuttack is also present. Earlier, the PIO had sent a written submission dated 13.06.2018. The appellant had also submitted certain additional documents vide letter dated 14.06.2018. These are on record.

2. Vide an application in form-A dated 19.05.2015 filed with the PIO, Home Department, Government of Odisha, Bhubaneswar, the appellant had requested the PIO to provide him photocopies of all the letters received from MLAs, MPs, Ministers of the State and the Central Government and office-bearers of political parties recommending transfer / posting of police officers or recommending cancellation of their transfer and posting orders. The application

was transferred by the PIO of the Home Department to the PIO, Office of the Director General of Police, Odisha. The transferee PIO issued to the appellant a Form-C dated 05.06.2015 intimating that the information sought by him came under the exempted category of Section 8(1)(c) of the Act and, therefore, could not be provided.

3. Aggrieved, the appellant filed first appeal before the First Appellate Authority-cum-Inspector General of Police (Modernization), State Police Headquarters vide an appeal memo in form-D dated 08.06.2015. The appellant contended in the first appeal that Section 8(1)(c) was not applicable to the case as the letters of recommendation etc. sought by him were not the subject of any enquiry or proceedings pending before the Legislature. The First Appellate Authority disposed of the appeal vide an order dated 23.06.2015 stating that he was in agreement with the decision taken by the PIO.

4. Aggrieved with the order of the First Appellate Authority, the appellant filed the subject second appeal vide an appeal memo in form-E dated 21.09.2015. In the second appeal, apart from reiterating the grounds earlier raised in the appeal memo in form-D, the appellant also contended that the information sought by him was of immense public interest as disclosure thereof would reveal the accountability of the public authority. Unless the desired information was provided, the principles of accountability, transparency and prevention of corruption as enshrined in the preamble to the RTI Act, 2005 would not be achieved. The appellant further urged that the respondents be penalized under Section 20(1) for illegal rejection of his request which led to avoidable delay.

5. This case was earlier heard on 8 occasions. During the said earlier hearings, the PIO and the First Appellate Authority defended the stand taken by

them. The Commission however did not find apparent merit in their contentions since Section 8(1)(c) which had been invoked by the PIO for not providing the required information to the appellant was found, prima facie, to be not applicable. There was nothing in the information sought by the appellant which would give an indication that disclosure of the same would constitute breach of privilege of the Legislative Assembly. Hence the PIO and the First Appellate Authority were directed to submit their written memoranda in the matter.

5.1 In compliance of the direction thus issued, the PIO in his further submission referred to Section 8(1)(g) as well. It was contended by him that if the information sought by the appellant were to be provided, the same would reveal the identity of the persons from whom feedbacks had been received regarding the functioning of the Police Stations. The opinions given by others including political functionaries, Members of the Legislative Bodies etc. regarding suitability or otherwise of particular persons would get divulged and the same would cause unnecessary acrimony and enmity between the persons giving such information and the persons affected by such information.

5.2 The appellant on the other hand argued that the respondents should not be permitted to take a new ground. If such ground were to be taken, then the matter should be go back to the First Appellate Authority.

5.3 At this, the First Appellate Authority submitted that as he had already taken a categorical stand in the matter, remanding the appeal to him would not serve any purpose. Rather, in the interest of expeditious disposal of the case, the appeal be disposed of by the Commission after entertaining and considering the new ground. The First Appellate Authority also advanced a few more arguments in the matter. It was submitted by him that transfers and postings were always made by the Police Transfer Board in pursuance of the order of the

Hon'ble Apex Court of India. Therefore, it could not be presumed that transfers and cancellations were being effected only because of the recommendations made by others. It was also submitted by him that when a recommendation was made for transfer or cancellation thereof, malafide could not be routinely presumed. It was further contended that when certain recommendations were made, the same were given with the trust that the recommendations would not be divulged to others. Moreover, once these information were to be disclosed to the appellant, the same could not be denied to anyone else.

5.4 The Commission considered the submissions thus made and observed that the same were theoretical in nature. Nothing concrete had been let in by the respondents to show that disclosure of the information sought by the appellant would in any manner jeopardize the information-givers. The Commission further observed that the respondents had not confirmed, as a matter of fact, the availability or otherwise of the recommendations made by the various categories of persons referred to in the application in Form A, particularly by the Office Bearers of Political Parties. Further, since the appellant submitted before the Commission that he had received copies of similar recommendations from other Departments, the Commission directed the PIO to show cause as to why the recommendations received by the Department could not be divulged. At the same time, the Commission directed the appellant to submit copies of the recommendations which he had received from the other Departments.

6. Complying with the direction, the PIO has made a further submission categorically stating that no recommendation letter regarding transfer and posting of Police Officers has been received in the State Police Headquarters from the Office-bearers of Political Parties. In this connection, the PIO has enclosed copies of confirmations to the above effect given by the Section Officer

of the Personnel-II Section as well as the Officer on Special Duty in-charge of the O.P. Section.

6.1 The appellant has also submitted copies of certain recommendations which had been provided to him by the PIO of the Home Department.

7. The submissions thus made have been considered whereupon the subject appeal is decided on merits as under:

7.1 Firstly, Section 8(1)(c) which had been invoked by the respondents is not applicable to the fact of the case in as much as the appellant had not sought any information relating to proceedings or deliberations etc. made inside the Assembly. Now the alternative contention raised by the respondents, i.e. by relying upon Section 8(1)(g) remains. The Commission cannot appreciate as to how disclosure of recommendations given by an M.P. or MLA or a Minister would endanger his life or physical safety. It can not also be gainsaid that a recommendation given by a public functionary in the matter of posting and transfer is not in the nature of information or assistance given in confidence for law enforcement or security purposes. Therefore, even Section 8(1)(g) can not be routinely applied. The Commission also observes that the persons whose recommendation have been sought, viz. MPs, MLAs, Ministers and People's representative, are public functionaries and the recommendations also relate to officers who are public authorities or parts of public authorities. The recommendations are also for postings and transfers which are integrally connected with discharge of public functions. Therefore, starting from the recommendations till the transfer of the personnel, the entire gamut only relates to public interest or public activity. Hence the Commission in principle agrees with the appellant that the information sought by him are required to be disclosed.

7.2 Having observed as above, the Commission nonetheless deems it appropriate to consider that some of the recommendations might have been given with a specific direction or request that the same be kept confidential. The recommending persons are also third parties within the meaning of Section 11(1) of the Act. Although Section 11(1) has not been used by the respondents at any point of time earlier, however the said Section automatically sets in because of the in-principle decision taken hereinabove. Needless to say, where Section 11(1) applies, the concerned third party has to be given an opportunity to express his view and a decision will have to be taken only after considering such view. In the circumstances, the Commission holds that if any of the recommendations is found to be in the nature of third party information as per Section 11(1), i.e. "which relates to or has been supplied by a third party and has been treated as confidential by the third party", then the PIO shall follow the procedure laid down in Section 11, i.e. of providing opportunity to the third party to give his / her views.

7.3 In the light of the above, the Commission hereby directs the PIO that where the concerned recommending authority / person has not requested that the recommendation be kept confidential, the PIO shall provide copies of such recommendations to the appellant. Where such recommendations come within the scope of Section 11(1), the PIO shall follow the procedure laid down in the said Section before deciding on the disclosure of such recommendation. As regards recommendations stated not to have been received from any Office-bearers of Political Parties, the PIO shall give a categorical reply to the appellant. Information not covered under Section 11(1) and information relating to the Office-bearers of Political Parties shall be furnished to the appellant within 15 days from the date of receipt of this order.

7.4 Having directed as above, the Commission nonetheless finds that furnishing of information to the appellant got inordinately delayed (in fact, no information has been provided till date) mainly because of the unsubstantiated stand taken by the respondents that disclosure of the required information was exempt under Section 8(1)(c). As it is turned out, the said Section is not at all applicable. Hence the concerned PIO and the First Appellate Authority who disposed of the appeal shall show cause as to why actions under Sections 19 & 20 of the RTI Act, 2005 shall not be taken against them for the above apparent lapses on their part.

8. With the above directions, the subject second appeal in so far as it relates to furnishing of information stands disposed of. Proceedings under Sections 19 & 20 of the RTI Act, 2005 in the cases of the Ex-First Appellate Authority and the Ex-PIO respectively shall continue.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 9th July, 2018.

State Chief Information Commissioner
09.07.2018