



Office of the Development Commissioner
MEPZ Special Economic Zone
Department of Commerce,
Ministry of Commerce & Industry
Government of India
Chennai 600 045

F.No. RTI/457/2020-21

1926

Dated: 30.07.2020

Sub: First Appeal under Section 19(1) of the Right to Information Act, 2005

Appellant: Mr. S. Ravi Sangar,
No. 23, Sadasivan Nagar Extn-I,
Madambakkam,
Guduvancherry, PIN 603202

Date of filing RTI application:	12.3.2020
Date of CPIO's Reply:	16.6.2020
Date of filing First Appeal:	6.7.2020

ORDER OF THE FIRST APPELLATE AUTHORITY

An application dated 12.3.2020 under the RTI Act 2005 seeking certain information was received by CPIO, Office of Development Commissioner, MEPZ SEZ, Chennai from Mr. S. Ravi Sangar, Resident of No. 23, Sadasivan Nagar Extn-I, Madambakkam, Guduvancherry, PIN 603202, hereinafter referred to as the "Appellant".

2. The CPIO vide Letter No. RTI/452/2020-2021 dated 16.6.2020 had sent a reply to the Appellant furnishing the information sought by the Appellant. However, not satisfied with the reply given the CPIO, the Appellant has now filed a First Appeal before me under Section 19(1) of the RTI Act, 2005, through email dated 6.07.2020, raising certain points.

3. I have gone through the contents of the Appeal in detail. The information sought by the Appellant from the CPIO, the information given by the CPIO, the contention of the Appellant in the appeal and my decision in the capacity of First Appellate Authority for each of the points raised by the Appellant in his Appeal, are detailed below.

Point No. 1

In his RTI Application, the Appellant had asked for Details of Court Proceedings pending against the candidates in force at the time of DPCs and inform the same whether it has been included/highlighted in the DPC proceeding/noting and also specify whether the rules permits in all aspects to consider for promotion to the next grade to the concerned candidates.

In response, the CPIO in her Reply dated 16.6.2020 had informed the Appellant that there were no Court proceedings having material effect on the promotion of the officials were available to be highlighted to the DPC.

Not satisfied with the information given by the CPIO, the Appellant has stated the following in this Appeal:

"The reply is wrong. In the Case of Trans world Garnet India P limited, Toticorin, The Mudurai Bench of Madras High Court has passed order stating that the respondent contemnors (Mr. N.Rajalingam Presently promoted as ADC) to undergo simple imprisonment for a period of two weeks. Further, this Court imposes a fine of Rs.5,000/- (Rupees Five Thousand only) to be paid within three weeks, failing which they shall further undergo imprisonment for two more weeks."

Decision of the FAA:

Though the CPIO has informed that no Court proceedings having material effect on the promotion of the officials were available to be highlighted to the DPC, the Appellant has quoted a case involving Mr N. Rajalingam, who was recently promoted as ADC. The CPIO may examine this and give a suitable reply to the Appellant as per the relevant provisions of the RTI Act.

Point No. 2

In his RTI Application, the Appellant had asked to specify the year and number of DPCs conducted and period of CRs placed in the DPCs.

In response, the CPIO in her Reply had informed the Appellant that the information regarding the year and DPC are provided in Sl. No. 5 of the Reply and that in the DPC, grading of CRs for a period of 5 years will be considered.

Not satisfied with the reply given by the CPIO, the Appellant has stated the following in his Appeal:

"Not acceptable one. I sought only the years of CRs and not total years."

Decision of the FAA:

As understood from his appeal, the appellant seems to have sought the details of the years for which the CRs were placed in the DPCs. The CPIO has stated in her reply that grading of CRs for a period of 5 years will be considered but she has not mentioned the exact years for which the CRs were placed in the DPCs. Therefore, as sought by the Appellant, she is required to specify the years (For eg., 2010-11, 2011-12, 2012-13, etc) in respect of which CRs were placed in the DPCs for the concerned officials.

Point No. 3

In his RTI Application, the Appellant had asked the CPIO to state whether the DOPT OM No. 22011/5/86-Estt (D) dated 10.4.1989 and the para 6.2.1 (c) have been taken into consideration for promotion to the post of Assistant in his case. If not taken into consideration of the above said DOPT's OM, he has asked to state the reason for the same. He has also asked to specify the reason for non-availability of CRs.

In response, the CPIO in her Reply has informed the Appellant that since the details about the referred OM of DOPT was not placed before the DPC, the promotion of the individual has been deferred.

Not satisfied with the reply given by the CPIO, the Appellant has stated the following in his Appeal:

"Contradict and vague information. I sought only the reason for not taken into account of DOP&T OM. No answer for specify reasons for the non-availability of CRs"

Decision of the FAA:

To the question whether the DOPT OM No. 22011/5/86-Estt (D) dated 10.4.1989 and the para 6.2.1 (c) have been taken into consideration for promotion to the post of Assistant in his case, the CPIO in her Reply has informed the Appellant that the details about the referred OM of DOPT was not placed before the DPC. This would also mean that the referred OM was not taken into consideration for promotion to the post of Assistant in his case. Therefore the first part of the Appellant's question has been answered.

In the second part of the question, the Appellant had sought the reasons as to why the said OM was not taken into consideration and the reasons for non-availability of his CRs. As regards this part of the question asked by the Appellant, it is pertinent to refer to the following decisions of the Hon'ble Courts and Hon'ble CIC.

- (a) The Hon'ble High Court of Bombay in Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) vs The Goa State Information on 3 April, 2008 (2008 (110) Bom L R 1238) has held as under:

"Section 2(f) -Information means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; The definition cannot include within its fold answers to the question "why" which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

- (b) The Hon'ble Central Information Commission in its Order dated 3.3.2017 in Appeal No. CIC/SB/A/2016/001025/CBECE-BJ (Mr. Subrata Guha Ray Vs CPIO) has stated the following:

"At the outset the Commission observed that under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions. Similarly, redressal of grievance, reasons for non-compliance of rules/contesting the actions of the respondent public authority are outside the purview of the Act."

From the above Case Laws, it is evident that definition of "Information" under Section 2(f) of the RTI Act, 2005 cannot include within its fold answers to the question "why" which would be the same thing as asking the reasons for a justification for a particular thing. Similarly, the PIO is not supposed to create information that is not part of the record.

Therefore the information sought by the Appellant in the present case does not fall within the purview of Section 2(f) of the RTI Act, 2005. However, the CPIO has not categorically stated this in her reply.

Nevertheless, as stated by the Hon'ble CIC in Appeal No. CIC/SG/A/2008/00347 + 00277 in its Order dated 9.2.2009 (T.B. Dhorajiwala Vs PIO, IIT Mumbai), the CPIO may see whether the information sought by the Appellant is a matter of record and if so, furnish the information to the Appellant. However, if the information sought is not available on record, then the CPIO may state it categorically in her reply to the Appellant, in view of the aforementioned Case Laws.

Point No. 4

In his RTI Application, the Appellant had asked the CPIO to furnish copy of the CRs forwarding letter for the year 2013-14 & 2014-15 pertaining to him which was sent during June 2016 to Smt F.D. Initha, the then DDC for review of the same.

In response, the CPIO in her Reply has informed the Appellant that as per the available records in this office no such correspondence has been found.

Not satisfied with the reply given by the CPIO, the Appellant has stated the following in his Appeal:

"This is wrong reply. My CRs for the years 2014-15 to the reporting officer has been forwarded to the then DDC (Smt.F.D Initha) during November 2015 for review of the same. Since the reporting officer did not review the same , The Admn, Section again sent on 29.06.2016 to her for review of the CRs for the year 2013-14 & 2014-15. If the information / documents are not available with this office , it is the duty of the CPIO to collect from any other department as per Act."

Decision of the FAA:

Though the CPIO has stated that as per the available records in this office no such correspondence has been found, the Appellant, in his appeal, has not agreed to this. He has even specified a date on which this office had sent his CRs for the year 2013-14 and 2014-15 to Smt. F.D. Initha, the then DDC, for review.

Since the Appellant is quite categorical about the fact that his CRs for the year 2013-14 and 2014-15 were sent to the Reviewing Officer by this Office on 29.6.2016, in the interest of transparency and in the spirit of disclosing information under the RTI Act, the CPIO may make one more attempt to see whether any such correspondence had indeed taken place as pointed out by the Appellant. If the information sought by the Appellant is a matter of record the CPIO shall furnish the information to the Appellant. However, if the information sought is not available on record, then the CPIO may state it categorically in her reply to the Appellant.

Further, since this Office is the custodian of the CRs of its officials, information sought by the Appellant in respect of his CRs, if available, should be available with this office only. Therefore the question of collecting this information from any other Department would not arise, as demanded by the Appellant.

Point No. 5

In his RTI Application, the Appellant had asked the CPIO to furnish copies of all the DPC Notes and approved Minutes from 2007-08 till 2019-20

In response, the CPIO in her Reply has informed the Appellant that since there are third party information involved, as per the Orders of CIC in Appeal No. CIC/DITIN/A/2016/308083-BJ, after severing the information of other employees, the information sought by the Appellant has been furnished to him.

Not satisfied with the reply given by the CPIO, the Appellant has stated the following in his Appeal:

"Wrong information. Since this office officials are getting salary from the Govt. Of India only and not from out side . and there is no confidential involved . If so it will be presumed that this office had given wrong information in the Committee and promote such officials against the Rules. Provide correct information sought by me."

Decision of the FAA:

The Hon'ble CIC, in a number of cases involving disclosure of information of DPC Minutes, has decided that such information can be provided after severing the details of the other employees in the DPC Minutes. Some of such cases are referred below.

- (a) In Appeal No. CIC/DITIN/A/2016/308082-BJ (Mr. T. C. Gupta Vs CPIO & ITO (HQ) (Vig.)), in its Order dated 5.6.2017, the Hon'ble CIC has decided as follows:

"Keeping in view the facts of the case and submissions of both the parties, the Commission directs the Respondent to provide information regarding the DPC minutes to the Appellant after severing the details of the other employees in the DPC minutes after duly complying with the provisions of Section 10 of the RTI Act, 2005, within a period of 15 days from the date of receipt of this order."

- (b) In Appeal No. CIC/AT/A/2006/00069 of 13.7.2006 in Gopal Kumar vs. Army HQ, the Hon'ble CIC has decided as follows:

"The Departmental Promotion Committees (DPCs) prepare their minutes and make recommendations after examining ACRs of the employees due for promotion. Disclosure of the complete proceedings of the DPC and the grades given by various officers to their subordinates may lead to disclosure of the ACRs. As ACRs themselves, according to us, are barred from disclosure, we hold, that by inference the DPC proceedings should be similarly barred. However, in all such cases, the CPIO and the Appellate Authorities should apply the doctrine of severability and should provide him the information, which can be provided under sub-section (2) of Section 10 of the Right to Information Act, 2005."

- (c) In Appeal No. CIC/CCITJ/A/2017/608895-BJ dated 22.4.2019 in Mr Nand Lal Meena vs.CPIO & ITO (HQ), the Hon'ble CIC has referred to the decision of the Hon'ble High Court of Delhi in the matter of THDC India Ltd. vs. R.S. Raturi, W.P. (C) No. 903 dated 08.07.2014 wherein it had been held as under :

"Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information."

- (d) In Order dated 13.7.2006 in Appeal No. CIC/BS/A/2016/001038-BJ in Mr. Suraj Bhan Meena Vs CPIO and Under Secretary (ITA- II), Department of Revenue, CBDT, the Hon'ble CIC has decided as follows:

"Keeping in view the facts of the case and the submissions made by the parties, the Commission directs the Respondent to provide information relating to Appellant's own DPC Proceedings following the procedure as laid down under Section-10 of the RTI Act, 2005. The purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting."

All the above references show that under the RTI Act, information relating to Applicant's own DPC Proceedings can be furnished by the CPIO after severing the personal details of the other employees in the DPC minutes after duly complying with the provisions of Section 10 of the RTI Act, 2005.

In the present case, it is seen that as per the principles laid down and decisions taken in the aforementioned Orders of the Hon'ble CIC and Hon'ble High Court of Delhi, the CPIO has furnished the information relating to Applicant's own DPC proceedings after severing the personal details of the other employees in the DPC Minutes, complying with the provisions of Section 10 of the RTI Act, 2005. Therefore, there is no ground to issue any direction to the CPIO for furnishing any further information in this regard. .

Point No. 6

With reference to the copy of DPC Minutes furnished to the Appellant by the CPIO vide her reply dated 16.6.2020, the Appellant has stated the following in his Appeal:

"In the DPC minutes of the DPC held dated 18.12.20219, you have informed that total no of post is 6, and 4 post to be filled by promotion (i.e.71 %) and 3 posts to be filled by promotion (66.66%) whether the Chairperson of the DPC agreed this calculation ? the DPC is invalid and it is very well under stood that the committee did not perused and signed in the minutes and the Committee had already decided to defer my case."

Decision of the FAA:

It is seen that as per the provisions of the RTI Act, 2005, the CPIO has furnished the information relating to DPC Proceedings as sought by the Appellant following the principles laid down by the Hon'ble CIC in this regard. Now the Appellant has questioned the accuracy of the contents of the DPC Proceedings. He has also asked as to whether the Chairperson of the DPC

agreed to this calculation. He has further contended that the DPC is invalid and it is very well understood that the committee did not peruse and sign the Minutes and the Committee had already decided to defer his case.

I am of the view that offering opinion on the accuracy of the information contained in the DPC Proceedings is beyond the scope of the CPIO under the RTI Act. The CPIO is neither required to create information that is not part of the record nor interpret information under the RTI Act. Similarly, the CPIO is not required to furnish replies to hypothetical questions or observations made by the Appellant.

It is pertinent here to quote the following observations of the Hon'ble CIC in its Order dated 13.7.2006 in Appeal No. CIC/BS/A/2016/001038-BJ in Mr. Suraj Bhan Meena Vs CPIO and Under Secretary (ITA- II), Department of Revenue, CBDT:

"It was also observed that under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions. Similarly, redressal of grievance, reasons for non-compliance of rules/contesting the actions of the respondent public authority are outside the purview of the Act."

Further, in the aforementioned Order in Appeal No. CIC/BS/A/2016/001038-BJ, the Hon'ble Commission had observed that the Hon'ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. *"....Under the RTI Act "information" is defined under Section 2(f) which provides: "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force." This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed."*

7. *"....the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have*

had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him."

Furthermore, the Commission had pointed out the Order issued by Hon'ble High Court of Bombay in Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education) vs The Goa State Information Commission on 3 April, 2008 (2008 (110) Bom L R 1238) in which the Hon'ble Court had held as under:

"Section 2(f) -Information means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.

The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

In view of the reasons given above and case laws referred, there is no ground to issue any direction to the CPIO for furnishing any information in this regard.

4. In addition to the above points, the Appellant has asked me to direct the CPIO to supply the information free of cost, since the CPIO failed to supply information within 30 days. The CPIO has submitted the following reasons for not furnishing the information to the Appellant within 30 days from the date of Application:

"The regular functioning of this Office was severely affected due to the Lockdown imposed by the Government for controlling the spread of COVID-19 and the office has been functioning with minimal staff ever since the lock down was announced. Some of the Officials were working from home.

The information sought by the applicant required searching of many files and past records. Therefore an interim reply was also given to the RTI applicant vide this Office email dated 10.4.2020 stating that 'due to outbreak of Corona Virus, this office is under lockdown period from 24.3.2020 and the requisite details will be provided after the withdrawal of the lockdown period."

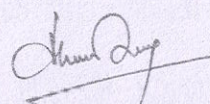
Despite these challenges, all efforts were made in furnishing the information sought by the applicant at the earliest possible time."

5. It is true that a complete lockdown was announced by the Government of India with effect from 24.3.2020 to control the spread of COVID-19 pandemic. During the initial lockdown period none of the officials could attend the office due to lack of public transport and also due to road blockades. Similarly officials whose residence fell under Containment Zones could not come to office. Most of the outsourced employees who had gone back to their hometowns have not returned to duty yet. Consequently, the regular functioning of the office was totally disrupted. The office has not been able to function with full strength of staff since then.
6. Therefore the reasons given by the CPIO for not having been able to furnish the information to the Appellant within the 30 days time limit are justifiable. Nevertheless, since the Appellant has stated that he has preferred an Appeal before the Hon'ble Chief Information Commission for the delay in furnishing information by the CPIO, it would be appropriate for the CIC to take an appropriate decision on this issue considering the reasons given by the CPIO which are beyond her control.
7. The CPIO is hereby directed that whatever information required to be furnished as per this Order shall be furnished to the Appellant, free of cost, within 15 days from the date of this Order.

Accordingly, the First Appeal filed by the Appellant is hereby disposed of.

If the Appellant is not satisfied with this Order, he may prefer an appeal with the 2nd Appellate Authority whose address is given below, within 90 days from the date of receipt of this Order:

Central Information Commission,
CIC Bhawan,
Baba Gangnath Marg
Munirka,
New Delhi - 110 067



(D. ANANDAN)

FIRST APPELLATE AUTHORITY &
JOINT DEVELOPMENT COMMISSIONER

Copy To

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PIN 603202
2. The Specified Officer/CPIO,
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MEPZ Special Economic Zone,
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