

CENTRAL INFORMATION COMMISSION
Appeal No.CIC/WB/A/2008/01566 & 1572 BOTH dated 15.7.2008
Right to Information Act 2005 – Section 19

Appellant - Dr. Sanat Kaul
Respondent 1. Deptt. of Personnel & Training &
2. Cabinet Secretariat

Decision announced : 17.8.2009

Facts:

These are two appeals moved by Dr. Sanat Kaul of Hailey Road, New Delhi of which the initial application is the same but the appeals are against responses received from DOPT on the one hand and Cabinet Secretariat on the other. The request of Dr. Sanat Kaul addressed to Shri Chanan Ram, CPIO & DS DOPT on 14.7.08 was as follows:

“Please supply me the following information:

1. All confidential reports pertaining to me with effect from 1st Aril, 1990 to date.
2. Copies of minutes of meeting of relevant committees in which my case was considered or discussed for empanelment as Addl. Secretaries or Secretaries to Govt. of India.
3. Special review relevant to my case carried out during this period.
4. Rules & guidelines governing empanelment of IAS officers as Addl. Secretaries / Secretaries to Govt. of India.”

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In response to this request Dr. Sanat Kaul received the following response from Ms. Shanti Puri, SO(PR), DOPT :

“The information sought is of personal in nature and hence disclosure of such information attracts Section 8(1) (j) of the RTI Act, 2005.”

Not satisfied with this response Dr. Kaul moved his appeal again before Shri Chanan Ram, DS, who is the designated appellate authority in the office of Establishment Officer on the following grounds:

“Section 8(1)(j) of the RTI Act 2005 allows the withholding of “information which relates to personal information the disclosure of which has no relationship to any public authority or interest, or which would cause unwarranted invasion of privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be is satisfied that the larger public interest justifies to disclosure of such information.

My ACRs do not contain personal information to any one except possibly me. The information pertaining to me cannot be withheld from me on grounds that it is unwarranted invasion of my own privacy. I am, therefore, appealing against the decision mentioned above and request that the information sought may please be supplied at the earliest.”

Upon this Appellate Authority Shri Chanan Ram, in his order of 28.8.08 directed as follows:

“In this connection, it may be stated that ACRs are confidential documents and disclosure of any information, or part thereof, contained therein or making available the ACRs will compromise the confidentiality of such documents. Besides, Rule 8 (1) (j) of the RTI Act, 2005 also exempts disclosure of such information which has no relationship to any public activity or interest or which may cause unwarranted invasion of the privacy of the individual concerned.’

In this case appellant’s prayer before us in his second appeal is as follows:

- “1. ***I would request you to please instruct the Ministry of Personnel Department of Personnel and Training (Office of the Establishment Officer) to supply me all the Confidential Report pertaining to me with effect from 1st April 1990 to date.***
2. ***I would also request that appropriate deterrent penalty, in the form of a find, be imposed upon the PIO/CPIO who have illegitimately and in a malafide manner denied me the information asked for.”***

FILE NO. CIC/WB/A/2008/01572

In this case the application was transferred from DOPT to the Cabinet Secretariat on 16.7.08, to which Dr. Sanat Kaul received the following response from CPIO Shri Sunil Mishra, Director Cabinet Secretariat dated 29.7.08:

- “1. In terms of clause 22 (iv) of the Central Staffing Scheme the custody of the ACRs of IAS Officers is the function of the EO Office of DOPT. Accordingly your application is being transferred back to the EO Office of the Department of Personnel & Training under section 6 (3) of the RTI Act for taking appropriate action. You are, therefore, advised to address your future communication with the DOPT.
- 2&3 It has decided not to disclose the information as disclosure of the information would cause unwarranted invasion of the privacy of the individual and the CPIO is satisfied that no larger public interest justifies the disclosure of such information in terms of Section 8 (1) (j) of the RTI Act, 2005.
4. A copy of the Central Staffing Scheme is attached.”

Aggrieved by this Decision Dr. Kaul moved an appeal before Shri Rajiv Kumar, Jt. Secretary, Cabinet Secretariat on 6.8.08 on the following grounds:

“I am dissatisfied with the response of the PIO as under Sec. 10(1) of the RTI Act, there is an objection on part of the PIO to sever that part of the information that is exempt and provide the remainder.”

On not receiving a response Dr. Sanat Kaul moved second appeal before us with the following prayer:

“I would request you to please instruct the Cabinet Secretariat to supply me with

- ***Copies of minutes of the meeting of relevant committees in which my case was considered or discussed for empanelment as Additional Secretaries or Secretaries to Government of India.***
- ***Special reviews relevant to my case carried out during the period.’***

Both appeals were heard on 17.8.09. We have received, on the date of hearing, a representation from appellant Dr. Sanat Kaul seeking leave of absence but stating that *“all my papers as enclosures to the Appeal are in place and the appeal may be heard ex-parte”*.

Shri K. S. Achar, Director, Cabinet Secretariat submitted that the appeal of Dr. Sanat Kaul had in fact been allowed on July 1, 2009 with the following decision of Shri Rajiv Kumar, Jt. Secretary :

“After considering the grounds of the appeal dated 6.8.2008 and orders of the CPIO dated 29.7.2008 and keeping in view various decisions of the Central Information Commission i.e. in Appeal No. 3015&3016/ICPB/2008 T. Tanaradjou (Appellant) vs Department of Education (Public Authority), it has been held that when a person asks about his own case it cannot be denied information under section 8 (1) (j). Information can be severed under provisions of section 10 (1) of the RTI Act, 2005, if so warranted. Under these circumstances the matter is remanded to CPIO to consider the application afresh under the provisions of the RTI Act and provide information to the appellant.’

He placed before us an envelop marked to Dr. Sanat Kaul at his Satya Sadan, Chanakyapuri address, which has understandably been returned by the Post Office. Cabinet Secretariat has, however, been in touch with Dr. Sanat Kaul and obtained from him his new address, to which they are now dispatching the orders of the Appellate Authority.

DECISION NOTICE

FILE NO. CIC/WB/A/2008/01566

In this case Shri Chanan Ram, DS DoPT submitted that in light of the decision dated 12.5.2008 of Supreme Court in **Dev Dutt vs. Union of India** in Civil **Appeal No. 7631/2002**, the DOPT have taken a decision to disclose the ratings in the ACRs of any officer but only with prospective effect. However, the attention of the DOPT is invited to the Decision of Justices H.K. Sema and Markandey Katju in the above appeal, which declares the principle of withholding this information is contrary to the law as follows:

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service

(except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. **This in our opinion is the correct legal position¹** even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution Of India, 1950 in our opinion requires such communication. Article 14 will override all rules or government orders.”

Obviously the “legal position” cannot be applied only with prospective effect since what has been declared to be the law today was also the law yesterday. Under the circumstances, Shri Chanan Ram, DS, DOPT is directed to provide to appellant Dr. Sanat Kaul the information, which he has sought in accordance with the decision of the apex court in **2008 INDLAW SC 817** Dev Dutt vs. UOI & Ors, of 12 May 2008. The only liberty that he may exercise in this matter is not in the content of the information sought but in the form in which it is provided in accordance with sub sec. (9) of Sec. 7 of the RTI Act. **The appeal in this case is, therefore, allowed.** However, there will be no penalty since the CPIO and Appellate Authority have only exercised their judgment in accordance with the interpretation of the law current at the time in their public authority. Therefore, there will be no cost.

FILE NO. CIC/WB/A/2008/01572

In this case we note that the appeal of Dr. Kaul has been disposed of almost a year after its receipt in clear violation of sub sec. (6) of Sec. 19 of the RTI Act. However, we also note that Sh. Rajiv Kumar, Appellate Authority has in fact allowed the appeal with the matter now back with the CPIO but without placing any time limit. It is, therefore, directed that **CPIO will now provide answers to the request contained in Dr. Sanat Kaul’s application in accordance with the decision of Appellate Authority Shri Rajiv Kumar, Jt. Secretary within fifteen working days of the date of receipt of this Decision Notice.** This appeal is also disposed of accordingly.

¹ Emphasis ours

Announced in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
17.8.2009

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar)
Joint Registrar
17.8.2009