

Central Information Commission
3rd Adjunct Appeal No. CIC/WB/A/2008/00956
[Right to Information Act, 2005 – Section 19]

Appellant: Shri Subhash Chandra Agrawal

Respondent: Department of Personnel & Training (DoPT)

Decision Notice

Shri S.C. Agrawal of Dariba Delhi submitted an application dated 24.04.2008 under the Right to Information Act, 2005 to Section Officer Dep't of Personnel, Public Grievances & Pensions seeking information about the procedure (in detail together with copy of documents) for selecting National, Gazetted and Restricted Holidays of the Government of India. Along with the details, the appellant also requested for copies of 'file noting'. Since the response of the CPIO was not found to be satisfactory, the appellant approached the First Appellate Authority under Section 19(1) of the RTI Act and filed an appeal on 02.05.2008.

2. The First Appellate Authority vide its decision dated 25.5.2008 communicated as follows: -

- "1. As per RTI Act, Section 8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, therefore, under the provisions of Act, no information can be provided to the first Para of your appeal.
2. It is a decision of the Government to declare closed holiday on Dr. B.R. Ambedkar's birthday since 1990, with the due approval of the competent authority. As per the guidelines prescribed on the website (<http://www.persmin.nic.in>) of Ministry of Personnel, Public Grievances and Pensions under RTI-FAQ, information does not include "file noting", hence no file noting can be provided."

3. The appellant filed an appeal against this order and prayed for the following directions: -

- “1. Details and rules under which Dr. B.R. Ambedkar’s birthday is being observed as a closed holiday since 1990 without being a listed holiday anywhere may be provided mentioning if such breaking of rules is possible to make birthday of some other leader also a closed holiday.
2. Copy of file notings on Dr. B.R. Ambedkar’s birthday having been made a closed holiday in 1990 may be provided together with copy of file notings on movement of my RTI petition followed by first appeal.
3. Since DOPT has not approached Courts on CIC decisions on ‘Information’ including file notings under RTI Act, penal action against those responsible at DoPT for not obeying CIC decisions on file notings may be initiated.
4. DoPT may be directed to immediately modify its website to mention file notings as part of ‘Information’ under RTI Act.”

4. The case was heard on 27.11.2008 and again on 11.12.2008. After hearing all concerned parties, the Commission came to the conclusion that this is a clear case of refusal of information but the CPIO has simply acted in accordance with a Circular issued by the DoPT and that has resulted from the fact that the “file noting” has been fallaciously shown to be exempted information on the website of DoPT. Referring to its earlier decision in Appeal No. **CIC/WB/A/2007/00657** where also similar directions were given to remove the clarification on “file noting” posted on the website, the Commission came to the conclusion that denial of information by the CPIO as a result of what appears on the website of DoPT is incorrect and misleading and, as such, the officer providing such information is in violation of RTI Act.

5. After carefully considering the matter and hearing Dr. S.K. Sarkar, Jt. Secretary (AT&T), DoPT and Ms. Anuradha S. Chagti, Deputy Secretary, DoPT, the Commission under Section 19(8)(a), sub-section (iii) and (iv) directed as follows in our Order of 18.12.'09: -

“The DoPT is now required to delete from its website in the definition of information that this does not include file noting. The present reading in the website www.persmin.nic.in under point 3 of the heading “About Right to Information” in the RTI Portal the following is the entry:

What does information mean?

Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, paper, 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 but doe not include “file notings”

To bring this in compliance with Sec. 2(f), which it misleadingly seeks to quote, this entry will be redrafted as follows, in full quotation from the relevant Section of the RTI Act, 2005, deleting specifically the portion underlined by us.

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6. The Commission further directed that -

“Dr. S.K.Sarkar, Jt. Secretary (AT&T), DOPT will comply with this order within a week of the date of issue of this Decision Notice under intimation to Shri Pankaj KP Shreyaskar, Jt. Registrar of this Commission.”

7. The above orders were, therefore, explicit and without ambiguity and the Commission expected that these would be complied with at the earliest, and that JS Dr. S.K. Sarkar who was directed to ensure compliance, would do what was necessary to ensure what he and the DoPT are legally obliged to do and would submit a compliance report.

8. Instead we have received an application from the appellant complaining to the Commission of non-compliance of its orders by the DoPT. The appellant in his complaint petition, submitted through email on December 28, 2008,

requested the Commission to initiate penal proceedings against the concerned persons in DoPT for willfully disobeying CIC verdicts, apart from taking all other measures which may compel DoPT to comply with CIC orders on the long pending matter of "file noting". He also contended that it gives the damaging impression that the nodal Government functionary (DoPT) handling the RTI Act does not itself honour CIC verdicts. Another application from the appellant which was received on 30.12.2008 stated that DoPT may be directed to provide him file notings, copy of rules and other relevant documents as requested in his RTI application.

9. Instead of receiving a report of compliance in response to our notice, the Commission received a curious communication on 02.01.2009 from Ms. Anuradha S. Chagti, Deputy Secretary, DoPT stating that the entire issue was placed before the Committee of Secretaries (COS) for its consideration and that the decision of the COS is still awaited. Ms. Chagti in her aforesaid letter also mentioned that the letter is being issued with the approval of Secretary, DoPT. Even though this appeared a case of defiance of orders of the Commission, giving DoPT the benefit of doubt, the Commission vide its letter dated 09.01.2009 asked for a compliance report from Dr. S.K. Sarkar, Joint Secretary (AT&T), who had been made responsible for ensuring compliance with our directions by our order of 18.12.'08, so as to reach this Commission on or before 27th January 2009. Dr. S.K. Sarkar did not submit any compliance report within the time frame fixed by the Commission. Instead a letter was again received from Ms. Anuradha S. Chagti, Deputy Secretary, DoPT reiterating what was stated by her earlier in letter dated 02.01.2009, the relevant portion of which is reproduced below: -

"Copies of file notings and compliance of the decision of the Commission – status in this regard has already been communicated to the CIC (copy of the letter enclosed)."

10. On perusal of this correspondence the Commission is constrained to conclude that Dr. S.K. Sarkar, Joint Secretary (AT&T) has obstructed, and Ms Anuradha Chagti and the DoPT as a public authority have knowingly violated and

disobeyed the orders passed by the Commission knowing that the directions given by this Commission under Section 19(8) read with Section 19(7) are binding under the law. By their conduct, they have therefore committed offences punishable under Sections 166, 187 and 188 of the Indian Penal Code.

11. Dr. S.K. Sarkar and Ms. Anuradha S. Chagti of the DoPT are, therefore, called upon to appear before us in person on **17th June, 2009** at **11.00 A.M.** and show cause as to why they be not prosecuted for the above offences. A written explanation from each of them must reach this Commission within 10 days from the date of receipt of this order. The Commission further directs issuance of summons for their appearance on the date and time first hereinbefore mentioned.

12. The facts of the case as aforesaid clearly reveal that the denial of information requested by the appellant is without any reasonable cause and that the Officers named above in the preceding paragraph have knowingly obstructed furnishing the information and that they have thereby rendered themselves liable for penalty under Section 20(1) of the Right to Information Act, 2005. The Commission, therefore, **directs each one of them to appear before this Commission on 17th June, 2009 at 11.00 A.M.** and to show cause as to why each one of them be not held liable for a penalty up to Rs.25, 000/- as provided for under Section 20(1) of the RTI Act. On receipt of their explanation, the Commission will also determine as to whether their conduct warrants any recommendation under Section 20(2) of the RTI Act.

13. Before concluding, we must observe that we find it appalling that a Ministry of the Government, which is moreover the Nodal Ministry under the Right to Information Act, 2005 has sought to emasculate the mandate enshrined under Section 19(7) of the RTI Act, 2005 which makes the decisions of the Commission legally binding. If the DoPT or its functionaries were in any way aggrieved with the order or directions of this Commission they could have challenged the same in accordance with the Constitution of India, a recourse that

they have indeed taken in other cases, or they could have sought time for implementing the Commission's directions. Instead of doing what a Public Authority is expected to do under the law, the DoPT has created an extraordinary situation which constitutes an assault on the Rule of Law, which is the cornerstone of our legal system.

14. A copy of this decision be served on the Secretary, DoPT for his information and to Dr. S.K. Sarkar, Joint Secretary (AT&T), DoPT and Ms. Anuradha Chagti, Deputy Secretary (RTI), DoPT along with summons for their personal appearance on the date and time mentioned herein above. A copy of this Decision shall also be served on the Cabinet Secretary, Shri Chandrashekhar by name, together with all the parties.

Dated this the 2nd day of June 2009.

(Wajahat Habibullah)
Chief Information Commissioner

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

(Pankaj K.P. Shreyaskar)
Joint Registrar