

RTI APPLICATION UNDER THE RTI ACT 2005

To,

Dated: 11-09-2017

✓ The Public Information Officer,
Government of India,
Ministry of Water Resources, River Development and Ganga Rejuvenation,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
Pin No - 110001.

Name of applicant: Aabi Binju

Address : Aabi Binju,
Second Floor, Flat No 339, Block-B, Pocket-05,
Vivekanand Apartments, Sector-08,
Rohini, New Delhi
Pin - 110085.

Payment - Rs 10/-

Information requested under RTI Act:

Ref: Hon'ble High Court, Delhi, directions in WP (C) 6072/2014,
Dated 22-11-2016 (Annexure A-01), dated 31-01-2017
(Annexure A-02) & dated 31-05-2017 (Annexure A-03).

It is requested to provide attested photocopies of complete file/s,
regarding matters related to WP (C) 6072/2014, wherein the Hon'ble High
Court of Delhi has issued directions dated 22-11-2016 (Annexure A-01),
dated 31-01-2017 (Annexure A-02) & dated 31-05-2017 (Annexure A-03).

Undersigned shall pay Rs 2/- per page for obtaining readable and
clear attested photocopies of the documents as requested under the RTI Act
2005.

Yours faithfully,

Encl : As above

Total pages enclosed - 11 Nos
(Eleven nos)


Aabi Binju

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Arun Araj

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S-8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6072/2014

UNION OF INDIA & ANR Petitioners

Through: Mr. Arun Bhardwaj, CGSC for UOI.

versus

D.N. BERA THROUGH HIS LR & ORS Respondents

Through: Mr. S.K. Gupta, Advocate.

Mr. Girish Pande & Mr. Ravinder Agarwal,
Advocates for UPSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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22.11.2016

C.M. Nos.14777/2014 & 14778/2014 (for exemption)

Allowed, subject to all just exceptions.

W.P. (C) No.6072/2014 & C.M. No.14776/2014 (for stay)

1. D.N. Bera had filed O.A. No.1076/2007 for direction to hold review Departmental Promotion Committee/Board of Assessment for promotion to the grade of Chief Research Officer after preparing year-wise panel of eligible officers. He had also prayed for quashing of order dated 11.10.2006 by which respondent Nos.4 to 12 therein had been promoted to the said post under the Flexible Complementing Scheme.

2. During the pendency of the said O.A., D.N. Bera expired and his legal representatives were brought on record.

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3. The O.A. No.1076/2007 was disposed of vide order dated 11.10.2011 directing as under:-

"19. Having given our careful and thoughtful considerations to the facts and circumstances of the case and in view of our above discussions and conclusions on three issues, we are of the considered view that the applicants have established their case. Thus, the OA succeeds. The respondents are directed to convene Screening Committee and Assessment Board for in situ promotion under FCS for each year from 1997 to 2005. If the applicants are found fit for any of those years for promotion, they should be granted in situ promotion under FCS. Resultantly, they will be entitled to all consequential benefits including seniority, and arrears of pay and allowances.

20. In the result, OA is allowed in terms of our above orders, directions and observations. here is no order as to costs."

4. The petitioner, Union of India has preferred Writ Petition (C) No.2726/2012 against this order of the Tribunal which has been admitted. However, the application for interim stay has been dismissed observing that admittedly in the absence of interim stay, the petitioners herein had decided to implement the order, subject to the final orders that should be passed in the writ petition.

5. In spite of the petitioners accepting that they would implement the order, it appears that there was confusion as different versions/interpretations were set up by the petitioner/Union Public Service Commission on the question of grant of promotion as per year-wise panel. The reason was that D.N. Bera had expired and could not be interviewed and, therefore, as per the petitioner/UPSC

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could not have been declared fit or unfit for promotion.

6. The legal heirs of Late D.N. Bera thereafter filed M.A. No.1071/2013 for execution of the order dated 11.10.2011. One of the contentions and issues which arose for consideration was whether Late D.N. Bera could have been granted promotion even if he had not appeared before the interview panel as is mandated by the recruitment rules. By order dated 24.3.2014, the Tribunal has decided the said issue against the petitioners and in favour of the legal heirs of Late D.N. Bera. Further, vide order dated 2nd July, 2014, the Tribunal had given the petitioners another opportunity to grant all benefits due to Late D.N. Bera within a period of four weeks.

7. Learned counsel for the petitioners would examine the said aspects and argue.

8. Relist on 31st January, 2017. File of Writ Petition (C) No.2726/2012 will also be sent to the court.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 22, 2016
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S-15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6072/2014 & CM No.14776/2014

UNION OF INDIA & ANR Petitioners

Through: Mr. Arun Bhardwaj, CGSC with Mr.
Mimansak Bhardwaj & Mr.A. Sriram,
Advocates

versus

D.N. BERA THROUGH HIS LR & ORS Respondents

Through: Mr. S.K.Gupta, Advocates for
respondent Nos.1 to 4
Mr. Ravinder Aggarwal, Advocate for
respondent No.6

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **31.01.2017**

On 22.11.2016, the following order was passed:-

"C.M. Nos.14777/2014 & 14778/2014 (for exemption)

Allowed, subject to all just exceptions.

W.P. (C) No.6072/2014 & C.M. No.14776/2014 (for stay)

1. D.N. Bera had filed O.A. No.1076/2007 for direction to hold review Departmental Promotion Committee/Board of Assessment for promotion to the grade of Chief Research Officer after preparing year-wise panel of eligible officers. He had also prayed for quashing of order dated 11.10.2006 by which respondent Nos.4 to 12 therein had been promoted to the said post under the Flexible Complementing Scheme.

2. During the pendency of the said O.A., D.N. Bera expired and

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his legal representatives were brought on record.

3. The O.A. No.1076/2007 was disposed of vide order dated 11.10.2011 directing as under:-

"19. Having given our careful and thoughtful considerations to the facts and circumstances of the case and in view of our above discussions and conclusions on three issues, we are of the considered view that the applicants have established their case. Thus, the OA succeeds. The respondents are directed to convene Screening Committee and Assessment Board for in situ promotion under FCS for each year from 1997 to 2005. If the applicants are found fit for any of those years for promotion, they should be granted in situ promotion under FCS. Resultantly, they will be entitled to all consequential benefits including seniority, and arrears of pay and allowances.

20. In the result, OA is allowed in terms of our above orders, directions and observations. here is no order as to costs."

4. The petitioner, Union of India has preferred Writ Petition (C) No.2726/2012 against this order of the Tribunal which has been admitted. However, the application for interim stay has been dismissed observing that admittedly in the absence of interim stay, the petitioners herein had decided to implement the order, subject to the final orders that should be passed in the writ petition.

5. In spite of the petitioners accepting that they would implement the order, it appears that there was confusion as different versions/interpretations were set up by the petitioner/Union Public Service Commission on the question of grant of promotion

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as per year-wise panel. The reason was that D.N. Bera had expired and could not be interviewed and, therefore, as per the petitioner/UPSC could not have been declared fit or unfit for promotion.

6. The legal heirs of Late D.N. Bera thereafter filed M.A. No.1071/2013 for execution of the order dated 11.10.2011. One of the contentions and issues which arose for consideration was whether Late D.N. Bera could have been granted promotion even if he had not appeared before the interview panel as is mandated by the recruitment rules. By order dated 24.3.2014, the Tribunal has decided the said issue against the petitioners and in favour of the legal heirs of Late D.N. Bera. Further, vide order dated 2nd July, 2014, the Tribunal had given the petitioners another opportunity to grant all benefits due to Late D.N. Bera within a period of four weeks.

7. Learned counsel for the petitioners would examine the said aspects and argue.

8. Relist on 31st January, 2017. File of Writ Petition (C) No.2726/2012 will also be sent to the court."

Learned counsel for the petitioners, on instructions, contends that as Mr. D.N. Bera has expired, the Board of Assessment cannot interview him and assess whether he should be promoted to the grade of Chief Research Officer (Scientist 'D'). We do not think that this argument should be accepted and is tenable in the present factual matrix. The present situation is

not envisaged in the Flexible Complementing Scheme and, therefore, a and suitable and reasonable resolution is required. Once it is accepted that Late Mr. D.N. Bera was entitled to be considered for promotion to the grade of Scientist 'D' for the year when he was alive and eligible as per the decision in OA No.1076/2007 decided on 11.10.2011, the authorities would have to carry out necessary exercise with required and necessary modification in the procedure, in view of the peculiar facts. To hold otherwise would be unjust and unfair to Late Mr. D.N. Bera, who had earlier filed and was a party to OA No.1076/2007 and had expired during its pendency. The promotion, if accepted, would be from the back date, and not in future or prospective. The promotion under the Flexible Complementing Scheme is change in designation, without change in post requirements, obligations, responsibilities or duties. The retirement benefits etc. and family pension payable would depend and apparently increase in case Late Mr. D.N. Bera had been promoted earlier as stands opined in the order dated 11.10.2011 passed in OA No.1076/2007. It would be, therefore, just and fair that the authorities undertake the exercise as per Flexible Complementing Scheme without insisting and requiring Late Mr. D.N. Bera to appear for interview.

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The UPSC is right when it contends that the Rule of Assessment, i.e. Rule 5(4) of the Central Soil and Material Research Station, New Delhi Group 'A' Post RRS, 1983 is applicable but they should acknowledge and accept that the Rules did not envisage and can deal with all or peculiar situations. This being the position in the present case, the Rules have to be read in a practical and pragmatic manner to ensure justice to Late Mr. D.N. Bera. It would be wrong for the authorities to insist that Late Mr. D.N. Bera should be interviewed when this is not possible. The authorities, including the Board of Assessment, can rely upon ACRs and dossiers and other documents which are available with the parent department, i.e., petitioner No.1 for assessment. Accordingly, the UPSC should constitute and convene a meeting of Board of Assessment. In fact, UPSC in para 10 of its counter-affidavit, has stated that they have not convened the Assessment Board only for want of receipt of fresh dossiers from petitioner No.1. In para 13, the UPSC has further stated that in case they receive the proposal along with requisite documents, they would convene the Assessment Board at the earliest. We appreciate and accept the stand taken by the UPSC in paragraphs 10 and 13 of the counter affidavit, rather than the earlier paragraph.

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In view of the aforesaid reasons, we do not find any infirmity in the impugned order dated 23.3.2014 and 2.7.2014 in MA No.1701/2013 in OA No.1076/2007 passed by the Principal Bench of the Central Administrative Tribunal.

The petitioner No. 1 will send their proposal within four weeks from the date this order is received and the respondent UPSC would convene the Assessment Board within four weeks thereafter. The Assessment Board would hold its meeting within a period of three weeks from the date it is notified and will communicate the decision to the UPSC/respondent within three weeks from the date of the meeting.

Dependent on the result, benefits would be paid to the legal heirs/representatives of Late Mr. D.N. Bera. The legal heirs/representatives, however, will execute an undertaking to the authorities to the effect that in case WP(C) No.2726/2012 is allowed, they would refund the amount so paid in accordance with the directions given by the Court in the said writ petition.

The writ petition is disposed of. CM No.14776/2014 is also disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 31, 2017/tp

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S-8.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6072/2014

UNION OF INDIA & ANR

..... Petitioners

Through: Mr. Arun Bhardwaj, CGSC.

versus

D.N. BERA THROUGH HIS LR & ORS

..... Respondents

Through: Mr. Shoeb Shakeel, Advocate for respondents.
Mr. Ravinder Agarwal, Advocate for respondent No.6/ UPSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

31.05.2017

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C.M. No. 21384/2017

By this application, the petitioners seek extension to comply with the judgment dated 31.07.2017.

By the said judgment, the petitioner No.1 was directed to send their proposal within four weeks from the date of receipt of the said order and the respondent UPSC was to convene the Assessment Board within four weeks thereafter for grant of In-situ promotion to the respondents. The position as on date is that the Ministry of Water Resources, River Development &

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Ganga Rejuvenation had still not forwarded the proposal to the UPSC even though only one month was granted for the said purpose. Thus, there is already a delay of 3 months and even the first step has not been completed.

Mr. Bhardwaj submits that the Department has forwarded the proposal to the Ministry of Water Resources, River Development & Ganga Rejuvenation, and the said Ministry is now in the process of forwarding the proposal to the UPSC.

We are not satisfied with the actions taken to comply with the said judgment. However, in the interest of justice, we grant 15 days time to the petitioner No.1 to forward the proposal to the UPSC, and the UPSC shall thereafter convene the Assessment Board within four weeks thereafter, as directed by the order dated 31.01.2017. It is made clear that no further extension shall be granted in the matter, and non-compliance of the said decision shall invite stern action.

Dasti.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 31, 2017

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