

**CENTRAL INFORMATION COMMISSION**

August Kranti Bhawan, Bhikaji Cama Place,  
New Delhi-110066

F. No. **CIC/YA/C/2016/000034**  
**CIC/YA/C/2016/000143**  
**CIC/YA/C/2016/000199**

Date of Hearing : **15.11.2016**

Date of Decision : **15.11.2016**

Appellant/Complainant : **Shri Sanjeev Kapoor,  
Faridabad(Haryana)**

Respondent : CPIO, N T P C Limited, Delhi

Through:  
Shri Sandeep Sah, Sr, Mgr (CP)  
Shri Dharam Pal Giri, Sr,.Mgr. (HR)

**Information Commissioner : Shri Yashovardhan Azad**

**Since common parties are involved in the present appeals, they are being clubbed together for hearing and disposal to avoid multiplicity of the proceedings.**

**Relevant facts emerging from appeal:**

Case No.	RTI filed on	CPIO reply	First appeal filed	FAA order	2 <sup>nd</sup> appeal filed on
0034	20.10.2015	No reply	Did not file FA	No order passed	08.01.2016
0143	28.01.2016	11.03.2016	Did not file FA	No order passed	12.05.2016
0199	26.10.2015	02.12.2015	Did not file FA	No order passed	17.03.2016

**CIC/YA/C/2016/000034**

**Information sought and background of the case:**

The complainant vide RTI application dated 20.10.2015 sought rules of House Rent Allowance & House Rent recovery rules and others applied to employees name Shri S.K.Kothiwal (Ex.Head of Finance, Faridabad) CPIO did not respond to the RTI application. Feeling aggrieved the complainant approached the Commission.

**Relevant facts emerging during hearing:**

Both parties are present and heard. The appellant states that Shri S.K. Kothiwal was provided company accommodation and was also paid House Rent Allowance despite his bachelor marital status. He also states that he wanted to know the specific rule/clause under which HRA was released to Shri Kothiwal. The respondent states that HRA was paid to Shri Kothiwal as per "special facility for payment for HRA" policy. He also states that Bachelor Accommodation is allotted to employee as per the entitlement and availability. The respondent further states that policy of allotment is available on intranet.

**Decision:**

After hearing parties and perusal of record, the Commission finds it appropriate to convert the complaint into an appeal for its proper adjudication. The Commission directs the public authority to provide certified copy of rules pertaining to Special Facility of payment of HRA to appellant within two weeks of receipt of this order.

The appeal is disposed of accordingly.

**CIC/YA/C/2016/000143**

**Information sought and background of the case:**

The complainant vide RTI application dated 28.01.2016 sought information under 3 points regarding certified copies of Annual Assessment Reports of applicant for the year 2014-15 written by Sh. Rakesh Sharma, AGM-(P&S) NCR/DBF. CPIO vide letter dated 11.03.2016 forwarded RTI application to the concerned APIO. Feeling aggrieved the complainant approached the Commission.

**Relevant facts emerging during hearing:**

Both parties are present and heard. The complainant states that information sought has not been provided to him till date. The respondent states copies of ACRs have already been provided to the appellant and the delay was on account of information not being available at NTPC Faridabad project and there was no mala-fide intention in delaying the information. He further states that copy of DPC-2015 was denied u/s 8(1)(h), as the disciplinary proceedings are pending against the appellant and the information being sought is part of the disciplinary proceedings.

**Decision:**

After hearing parties and perusal of record, the Commission finds it appropriate to convert the Complaint into an appeal for its proper adjudication. The Commission disagrees with the plea of respondent and directs to provide certified copy of DPC proceeding and copies of ACRs of the appellant. The appellant being a candidate before the DPC is entitled to know the proceedings thereof.

The appeal is disposed of accordingly.

**CIC/YA/C/2016/000199**

**Information sought and background of the case:**

The complainant vide RTI application dated 26.10.2015 sought multifaceted information under 21 points regarding Guidelines/Disciplinary Procedure of Company. CPIO vide letter dated 02.12.2015 denied information u/s 8(1)(h) of RTI Act, 2005. Feeling aggrieved the complainant approached the Commission.

**Relevant facts emerging during hearing:**

Both parties are present and heard. The appellant states that he has been charge sheet on account of filing RTI application for seeking information and has been continuously victimised and harassed by the NTPC management. He also states that he had been continuously seeking certified copies of 21 different documents basically relating to guidelines/disciplinary procedure of the company on the basis of which the chargesheet was issued but vital documents are not provided. He also states that even the Inquiry Officer himself asked him to get these documents through filing RTI application. Upon a query from the Commission, the CPIO confirms that the disciplinary proceedings are under-way. The respondent states that appellant had filed an appeal against the Inquiry Officer's report and challenged the punishment awarded. The appellant disputed the claim and said that the Inquiry Officer was biased because the documents supporting the chargesheet was not provided to the him and requested material defence documents which were not furnished to him. The respondent states that as regards documents asked for in RTI application, some of them have been given to the appellant during the Inquiry proceedings. Since the departmental proceedings are not over rest of the documents cannot be given. The CPIO further states that few queries have been duly answered which did not concern the ongoing disciplinary proceedings.

## **Decision:**

The Commission is faced with the following issues:

- (i) Can a citizen insist on seeking information under the Right to Information even if the same can be accessed through some other alternate channel or mode?
- (ii) What is the extent of applicability of Section 8(1)(h) in the cases of ongoing disciplinary proceedings?

**Issue (i):** Principles of natural justice mandate that in a departmental action, the delinquent must be afforded reasonable opportunity to defend himself. It is settled position of law that such opportunity must not be superficial else the proceedings are vitiated *per se*. A person facing departmental action has a right to seek documents/ evidences from the disciplinary authority which, the delinquent deems fit for his effective defence. It is however, the discretion of the enquiry officer to classify as to what can be divulged and what not. The rules provide that the decision of enquiry officer can be appealed against. If the decision of enquiry officer denying requested defence documents is found arbitrary, the proceedings are vitiated for violation of principles of natural justice. Thus, an inherent mechanism is inbuilt to safeguard the interests of the delinquent. However, this Commission has held in various pronouncements that the right to seek information under the RTI Act 2005 does not get eclipsed due to availability of an alternate channel to seek defence documents. The issue of availability of alternate channels to access information has been dealt by Hon'ble Kerala High Court in **Kerala Public Service Commission & Ors. Vs. State Information Commission Kerala & Anr.** [MANU/KE/1070/2011]. Relevant extract is reproduced hereinafter:

20. ....**But, as the law now stands, there is no scope for any judicial recognition of such a plea and a favourable decision on that issue through a judicial order. This is because Section 22 of the RTI Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than that Act. Such statutory provision having been made by the legislature, within its competence, it cannot be watered down or modified except by recourse to legislative procedures. We therefore do not find way to accept the contention of the PSC in this regard.**

[Emphasis Added]

Thus, the decision of disclosure or non disclosure of information sought under RTI Act has to be dealt as per the provisions of the Act. Except for the reasons enumerated under Section 8 of the Act, no fetters can be imposed upon the Right to seek Information.

**Issue (ii):** The expression '**which would impede**' as occurring in clause (h) of Section 8(1) of RTI Act is the touchstone to decide whether a piece of information qualifies for exemption from disclosure or not. The legislature in its wisdom has deliberately chosen the word '**which would**', reflecting that the only eventuality flowing from such disclosure would necessarily result in impeding the process of investigation, apprehension or prosecution of offenders. Thus, the public authority must exhibit cogent material to support that disclosure would necessarily impede the process of investigation/apprehension or prosecution of offenders. Had the legislature intended to cast a blanket cover in all such cases, it would have used the expression 'which could impede'. Upon a plain reading of the statute, the Commission is left with no doubt that the onus to exhibit imminent & real threat of impeding process of investigation/ apprehension or prosecution of offenders is cast upon the respondents.

In the facts of the present case, the appellant has been denied documents desired by him in course of his defence in departmental proceedings. It is undisputed that the proceedings have culminated into infliction of punishment. It has been submitted by the CPIO that the appellant had filed a protest application on 16.08.2016 against the punishment order before the competent authority. It is the contention of CPIO that thus the enquiry proceedings cannot be deemed closed as on date and the exemption of Section 8(1)(h) applies. The Commission need not advert into the question of conclusion of proceedings. The moot question remains that whether disclosure of information sought would impede the process of enquiry or not. I am left with no doubt in my mind that the exemption enumerated under clause (h) of Section 8(1) does not come to rescue of respondents. Except averments, there is no cogent material adduced before the Commission to suggest that the revelation of information sought would impede the ongoing proceedings against the appellant. The competent authority has already passed a punishment order and including any further proceedings of review/ protest/ revision within the expression of 'investigation/apprehension/prosecution' for claiming exemption under clause (h) of Section 8(1) would be judicial overreach. Section 8 is a rider on a broad right to seek information and it must be strictly construed.

As a sequel to the ongoing discussion, the Commission directs the CPIO furnish information/ documents as relied upon by the presenting officer in the course of enquiry well as defence documents having proximity with cause of defence. Regarding the processing of the enquiry proceedings, the CPIO shall be at liberty to obliterate names of the officers concerned who had processed the file concerning disciplinary proceedings against the appellant. The information shall be furnished free of cost within 3 weeks of receipt of this order.

The appeal is allowed accordingly.

**(Yashovardhan Azad)**  
**Information Commissioner**

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.

**(R.P.Grover)**  
**Designated Officer**

Copy to:-

**Central Public Information Officer under RTI  
Nodal Officer – RTI Cell,  
N. T. P. C. Limited,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110003.**

**First Appellate Authority under RTI  
Competent Officer,  
N. T. P. C. Limited,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110003.**

**Public Information Officer under RTI  
Nodal Officer – RTI Cell,  
Faridabad Gas Power Station,  
Rashmipuram, Village – Mujadi,  
Post Office – Nimaka,  
District – Faridabad-121004 (Haryana).**

**Shri Sanjeev Kapoor  
ET Hostel, Room No.-5,  
NTPC – Faridabad  
Gram – Mujadi,  
Post Office – Nimaka,  
District – Faridabad-121004 (Haryana).**