

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SG/A/2009/002597/5818/Adjunct-I
Appeal No. CIC/SG/A/2009/002597

Appellant : Mr. Vinod Bharti
Flat No. 308, Pocket -2, Sector 19, Dwarka,
New Delhi - 110075

Respondent : Mr. Pawan Kumar Bhatia
Public Information Officer & Manager
S.D. Hari Mandir Girls Sr. Sec. School
Des Raj Bhatia Marg, Nabi Karim,
New Delhi – 110055.

RTI application filed on : 01/08/2009
PIO replied : 16/09/2009
First appeal filed on : 05/09/2009
First Appellate Authority order : No Order.
Second Appeal received on : 14/10/2009
Date of Notice of Hearing : 29/10/2009
Hearing Held on : 10/12/2009

Information Sought:

1. No. of teachers that had availed special leave (abortion leave) from 01/04/1995 till date (31/07/2009).
2. Certified copies of the relevant papers on basis of which such medical leave was sanctioned by the school authorities to the teachers including medical prescription, ultra sounds & urine report and fitness certificate and any other relevant information/documents etc.
3. Period of special leave of the abovementioned teachers.

Reply of the PIO: *(after first appeal had been filed)*

The requested information was of a confidential nature and therefore they were not in a position to furnish the same and that the teachers had also refused to provide their personal details in this regard.

First Appeal:

No reply by the PIO.

Order of the FAA:

No Order.

Ground of the Second Appeal:

That the Appellant has still not been supplied with the proper information.

Relevant Facts emerging during Hearing on 10 December 2009:

“The following were present
Appellant : Mr. Vinod Bharti;
Respondent : Absent;

The PIO has refused the information without giving any exemption under Section 8(1) of the RTI Act. However the Appellant’s asking for certified photocopies of various medical records of the individual teachers was certainly inappropriate. The Commission directs that PIO to give information on query-1 & 3 to the Appellant and the list of documents which were submitted by the teachers to avail of the special/abortion leave.”

Commission’s Decision dated 10 December 2009:

“The Appeal is allowed.

The PIO is directed to provide the information as directed above to the Appellant before 26 December 2009.”

Facts leading to Showcause:

The PIO did not provide the information and the Appellant sent a letter on 15/01/2010 complaining about non compliance of the Commission’s order. The PIO sent a letter to the Commission on 04/02/2010 in which the Commission was informed that the School had decided to challenge the decision of the Commission in a writ petition. The Commission sent a showcause notice to the PIO on 15/02/2010 stating, “I am directed to inform you that as you have only moved a Writ Petition, but there is no stay order issued by a Court on the order of the Commission, the order of the Commission remains in force and has to be complied with. Section 19(7) of the RTI Act provides that the decision of the Commission “shall be binding”. Further the Supreme Court has held in *Ghaziabad Development Authority v. Balbir Singh* AIR 2004 SC 2141 that-

“...unless there is stay obtained from a higher forum, the mere fact of filing of an appeal/revision will not entitle the authority to not comply with the order of the Forum. Even though the authority may have filed an appeal/revision, if no stay is obtained or if stay is refused, the order must be complied with.”

Non-compliance of the Commission’s order which is still in force, may lead to initiation of penalty proceedings in accordance with the Right to Information Act, 2005. The Commission is hereby directing you to provide the complete information to the Appellant before 06/03/2010. A copy of the same information must be delivered to the undersigned before 12/03/2010 along with proof of dispatch of information to the Appellant. You are further directed to appear before the Commission at the above mentioned address on **12/03/2010 at 4.00 p.m.** along with written submission to show cause why penalty should not be imposed on you under Section 20 (1) and (2) of the RTI Act, 2005.”

Relevant Facts that emerged during Showcause Hearing 12/03/2010:

“Appellant: Mr. Vinod Bharti;
Respondent : Absent;

The PIO has not appeared before the Commission nor sent any submission or explanation for not being present before the Commission. However, in the interest of justice the Commission offers one more opportunity to the PIO to present himself before the Commission to show cause why penalty under Section 20(1) should not be levied on him as mentioned above. The PIO is directed to present himself before the Commission with his written expansion on **27 April 2010 at 10.00AM.**

If the PIO does not give reasons to the Commission on **27/04/2010** justifying the denial of information, the Commission will assume he has no reasons for disregarding the orders of the Information Commission and a penalty will be imposed as per the Provisions of Section 20(1) of the RTI Act ex-parte.”

Relevant Facts that emerged during Showcause Hearing 27/04/2010:

Appellant: Mr. Vinod Bharti;

Respondent : Absent;

“The Commission had asked the PIO to supply the information and also to showcause why penalty should not be levied on him under Section 20(1) of the RTI Act. The Commission telephonically spoke to Mr. Pawan Kumar Bhatia, Manager and PIO who stated that he was unable to come to the Commission without giving any reasons. The Appellant states that he has not received any information from the PIO. It is evident that the PIO is determined not to follow the law and the directions of a statutory authority. It appears that the PIO has no reasonable cause to offer for refusing to obey the directions of the Commission for providing the information.

The RTI application had been filed on 01/08/2009 and only on 16/09/2009 the PIO refused to give information stating that it was confidential information. The PIO had not referred to any of the exemption clauses of Section 8(1). The RTI Act is a codification of the fundamental right of the citizens and denial of information can only be based on the exemption clauses of Section 8(1) of the RTI Act. The Commission however decided to sever the information about the medical records of the teachers under Section 10 and directed the PIO to give the information by its order of 10/12/2009. The PIO was directed to provide the information before 26 December 2009. The PIO did not provide the information but sent a letter to the Commission on 04/02/2010 in which he stated that the school intended to challenge the decision of the Commission in a writ petition. The Commission again wrote to the PIO pointing out that he was defying statutory orders without having obtained a stay. He was also informed about the Supreme Court order as mentioned above. He was given one more chance to appear before the Commission on 12/03/2010 to showcause why penalty under Section 20(1) should not be imposed on him. The PIO did not appear before the Commission and the Commission decided to offer him one last chance to explain his reasons for not complying with the order of the Commission on 27/04/2010. It appears that the PIO does not wish to give any explanation for his defiance of a statutory order. He has not sent any written submission nor given any reasons for not appearing before the Commission.

The PIO is also directed to send the complete information as directed by the Commission before 15 May 2010. If the information is not supplied to the Appellant by 15 May 2010 the Commission will consider recommending to the Department of Education to take appropriate action.

The Commission therefore decides that Mr. Pawan Kumar Bhatia, Manager and PIO has no reasonable cause for refusing to give information. Since the delay has been for over 100 days the Commission imposes the maximum penalty of Rs. 25000/- leviable under Section 20(1) of the RTI Act.”

Penalty Decision announced on 27 April 2010:

“As per the provisions of Section 20 (1) of the RTI Act 2005, the Commission finds this a fit case for levying penalty on Mr. Pawan Kumar Bhatia, Manager and PIO. Since the delay in providing the correct information has been over 100 days, the Commission is passing an order penalizing Mr. Pawan Kumar Bhatia for Rs. 25000/ which is the maximum penalty under the Act.

The Chairman, S.D. Hari Mandir Girls Sr. Sec. School is directed to recover the amount of Rs.25000/- from the salary of Mr. Pawan Kumar Bhatia and remit the same by a demand draft or a Banker's Cheque in the name of the **Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2nd Floor, August Kranti Bhawan, New Delhi – 110066.** The amount may be deducted at the rate of Rs.5000/ per month every month from the salary of Mr. Pawan Kumar Bhatia and remitted by the 10th of every month starting from June 2010. The total amount of Rs.25000 /- will be remitted by 10th of October, 2010.”

Facts leading to summons hearing held on October 28, 2010:

In the matter aforementioned, the Commission passed an order on 10/12/2009 wherein the Appeal was allowed and the PIO was directed to provide information on queries 1 and 3 of the RTI application dated 01/08/2009 along with the list of documents that were submitted by the teachers to avail of special/abortion leave, to the Appellant before 26/12/2009. The Commission received a letter dated 15/01/2010 from the Appellant stating that the order of the Commission had not been complied with. Thereafter, the Commission received a letter dated 04/02/2010 from the PIO by which it was informed that the Respondent school had decided to challenge the Commission's order dated 10/12/2009 by way of a writ petition. However, by a show cause notice dated 15/02/2010, the Commission intimated the PIO that though the Respondent school had moved a writ petition against the Commission's order, there was no stay issued on the said order by the Court and consequently, the order of the Commission remained in force and was required to be complied with. In this regard, reliance was placed upon the decision of the Supreme Court of India in *Ghaziabad Development Authority v. Balbir Singh* AIR 2004 SC 2141. The PIO was directed to provide the complete information to the Appellant before 06/03/2010 along with a copy and a proof of dispatch to the Commission. The PIO was further directed to appear before the Commission on 12/03/2010 for a show cause hearing.

At the show cause hearing held on 12/03/2010, the PIO did not appear before the Commission. The Appellant submitted that no information was received from the PIO in furtherance to the order of the Commission dated 10/12/2009. The PIO was given another opportunity to appear before the Commission on 27/04/2010 for a show cause hearing and warned that if there was no justification for the denial of information, penalty shall be imposed on him as per Section 20(1) of the RTI Act, *ex-parte*.

At the show cause hearing held on 27/04/2010, the PIO did not appear before the Commission. The Appellant submitted that no information was received from the PIO in furtherance to the order of the Commission dated 10/12/2009. The Commission telephonically spoke to Mr. Pawan Kumar Bhatia, PIO/Manager who stated that he was unable to appear before the Commission without giving any reasons. The Commission observed that the PIO did not provide any justification for the denial of information and had willfully defied the Commission's order. The PIO was directed to provide the complete information to the Appellant before 15/05/2010. The Commission further observed that in the instant case, there was a delay of more than 100 days in providing the complete and correct information sought by the Appellant and therefore, the maximum penalty of Rs. 25,000 under Section 20(1) of the RTI Act was imposed on the PIO.

Thereafter, the Commission received a letter dated 15/06/2010 from the Appellant stating that no information was received by him further to the Commission's order. By a show cause notice dated 25/06/2010, the PIO was once again directed to provide the complete information to the Appellant before 15/07/2010 along with a copy to the Commission. The PIO was further directed to appear before the Commission on 26/07/2010 for a show cause hearing. At the show cause hearing held on 26/07/2010, the PIO did not appear before the Commission. The Appellant submitted that no information had been provided by the PIO till date. Furthermore, the Commission received a letter dated 22/07/2010 from Ms. Abha Joshi, PIO/DDE, O/o Deputy Director of Education, District- Central/New Delhi, GNCTD stating that the Respondent school was unable to deduct the penalty sum from the salary of Mr. Pawan Kumar Bhatia, PIO/Manager as the post of 'Manager' was honorary and no salary/ allowance was being paid to the manager.

In view of the aforesaid, by summons dated 27/09/2010, the PIO/ Manager and the Chairman were summoned to appear in an inquiry to be held before the Commission to consider the issues arising in CIC/SG/A/2009/002597 on October 28, 2010 at 4:30 pm. Further, the Chairman, S.D. Hari Mandir Girls Senior Secondary School was directed to recover the penalty sum of Rs. 25,000 from Mr. Pawan Kumar Bhatia, PIO/Manager and remit the same by a demand draft or a Banker's Cheque in the name of the Pay & Accounts Officer, CAT, payable at New Delhi and bring the same before the Commission on

28/10/2010. Furthermore, the PIO & Manager was directed to bring to the Commission on 28/10/2010 copies of the information and all the relevant records sought by the Appellant, as directed by the Commission in its order dated 10/12/2009.

Relevant facts emerging at the show cause hearing held on October 28, 2010:

Appellant: Mr. Vinod Bharti;

Respondent: Mr. Pawan Kumar Bhatia, Manager(PIO); Ms. Anita Jain, Principal;
Mr. Khan Chand, Dy. Director of Education;

The Commission has summoned the Manager and the Chairman to appear before the Commission with the information and all the relevant records. The Chairman Mr. Prakash Arora had also been directed to bring a bankers cheque/draft of Rs.25000/- which had to be recovered from Mr. Pawan Kumar Bhatia. The Chairman has decided not to respond to the summon of the Commission. The Manager has come to the Commission and states that he did not consider it necessary to bring the information. The Commission asked the Principal to offer any explanation, she said she has no explanation to offer. The Manager only keeps repeating that he wants more time but does not specify what he wants the time for.

The Commission has noted that the Chairman and the Manager of S. D. Hari Mandir Girls Sr. Sec. School appear to be determined to flout instructions given by statutory authorities. The Commission gives one last opportunity to the Chairman and the Manager to come before the Commission with the information and a bankers cheque/draft of Rs.25000/- ***in the name of Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2nd Floor, August Kranti Bhawan, New Delhi – 110066*** as per the direction of the Commission. The Manager, Chairman and Mr. Khan Chand, DDE are directed to appear before the Commission on 04 November 2010 at 05.30PM.

Adjunct Decision:

The Manager, Chairman and Mr. Khan Chand, DDE are directed to appear before the Commission on **04 November 2010 at 05.30PM** alongwith the records and the requisite information alongwith a bankers cheque/draft of Rs.25000/- for the penalty.

This decision is announced in open chamber.

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

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
October 28, 2010

(In any correspondence on this decision, mention the complete decision number.)_(BK)

CC
To,

Chairman
S.D. Hari Mandir Girls Sr. Sec. School
Des Raj Bhatia Marg, Nabi Karim,
New Delhi – 110055.