

CENTRAL INFORMATION COMMISSION

Club building, Opposite Ber Sarai Market, Old JNU Campus, New Delhi- 110067.

Tel: 011 - 26182593/26182594

Email: registrycab@gmail.com

File No : CIC/CC/C/2015/000111-AB

In the matter of:

Sh. Subhash Chandra Agrawal
1775 Kucha Lattushah, Dariba
Chandni Chowk, Delhi-11000.

...Complainant

Vs.

Central Public Information Officer
M/o IHQ(Navy)
Director of Personal Service & IHQ
(Navy) New Delhi-110011

&

Central Public Information Officer
M/o Defence
Captain-At-Arms
Integrated HQ, Union
Defence Ministry (Navy)
New Delhi-110011.

...Respondents

Dates

RTI application	:	19.05.2010
Complaint	:	19.07.2010
Date of hearing	:	22.11.2016, 25.01.2017

Information sought:

The complainant had sought information relating to a news clipping ie the names of the woman TV reporter and of the TV channel, action taken against the said TV reporter responsible for such TV coverage, name of the army officer (colonel), responsible for such incident, names of the soldiers killed in the reported incident as referred to in the enclosed news clipping, details relating to enquiry, copy of the report of the enquiry committee and any other related information.

Grounds for Complaint

The CPIO did not provide the desired information.

Order

Complainant : Present
Respondent : Rep. of CPIO Shri Anoop Kumar

The representative of the respondent CPIO requested for adjournment.

The FAA is directed to conduct an enquiry and file complete report with necessary explanation of the then CPIO, explaining why no reply was provided to the complainant in respect of his RTI application dated 19.05.2010. The written submission should be submitted on or before 16.12.2016 to the Commission.

The registry shall fix next date of hearing after receipt of the abovestated written submission.

Interim Order: 25.01.2017

Complainant : Present
Respondent : Present, Cdr I N Awasthi

At the outset the CPIO submitted that, the notice was not sent to IHQ MoD (Army) who was a necessary party in this case as the notice was sent to IHQ MoD (Navy).

However, the FAA Navy had not submitted any enquiry report in compliance with the Commission's interim order dated 22.11.2016.

During the hearing the complainant submitted that he wanted his complaint u/s 18 of the RTI Act to be converted into second appeal u/s 19 of the RTI Act as he is in need of the information. He further submitted that the PIO MoD and PIO Army might be called during the next hearing.

The PIO Navy submitted that the initial RTI application was filed with PIO Navy, but as the information was related to the Army, they transferred the said RTI application u/s 6(3) of the RTI Act to CPIO, IHQ MoD Army.

He further submitted that the initial RTI application was filed on 04.02.10 in which similar information was sought which was already decided upon.

The appellant submitted that after the news report in the daily newspaper Hindu came out, for further information he filed a new RTI on 19.05.2010, which is related to the present case. He also submitted that the matter involves larger public interest and it is related to both Navy and Army.

As there was no first appeal available in the record, the Commission asked the appellant the ground on which the complaint could be converted into 2nd appeal. To substantiate his argument, the complainant relied on the interim order of another bench of the Commission dated 11th Jan 2017 (File No. CIC/BS/C/2016/000021) in which the Commission had earlier held as follows:

“The applicant stated that he needs information, and the matter should be decided as an appeal u/s 19 of the RTI Act.”

On perusal of the order, the Commission found that the above paragraph was only mentioned as an averment of the appellant to which the Commission had not made any comment nor did the Commission arrive at any final conclusion in the abovestated decision of the Commission.

Sec 19 of the RTI Act is as below:

19. Appeal.—

(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause

(a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority: Provided that such officer may admit the appeal after the

expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

A plain reading of the above provision makes it clear that the intention of the legislature behind the provisions of first appeal u/s 19(1), was to make the applicants exhaust the chance given to the appellants by way of first appeal before the competent authority (First Appellate Authority-FAA) before second appeal u/s 19(3) of the RTI Act can be filed before the Central Information Commission/State Information Commission. In the present case since the procedure of filing 1st appeal before the competent authority was not followed, the next stage of filing 2nd appeal u/s 19(3) of the RTI Act before the Central Information Commission is not legally tenable under the Act.

In the present case admittedly as the CPIO MoD and CPIO MoD, IHQ (Army) are the necessary parties to the said complaint case under the RTI Act, they are directed to submit their comments/ explanation in writing in respect of the RTI application dated 19.05.2010 including the reason for not replying to the abovementioned RTI application till date. The said explanations are to reach the Commission within a period of 15 days from the receipt of this order.

The Registry attached to this bench of the Commission is directed to send copies of the said complaint to the CPIO MoD and CPIO IHQ MoD (Army) along with this order for compliance as stated above.

**[Amitava Bhattacharyya]
Information Commissioner**

Authenticated true copy

(A.K.Talapatra)
Dy. Registrar

Copy to:

1. **CPIO, RTI Cell, ADG AE, G-6,
D-1 Wing Sena Bhawan, Gate No-4,
IHQ of MoD (Army), New Delhi-110011.**
2. **CPIO, MoD**

