

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/CC/A/2014/002234-SA

Neeraj Kumar v. PIO, Indian Institute of Technology

Important Dates and time taken:

RTI: 16.07.2014	FAO: 20.08.2014	SA: 14.11.2014
Show cause.	Hearing: 03.10.2016	Decided on: 03.10.2016

Parties Present:

1. Appellant: Absent.

Public authority: Ms. Nirmala Menon, PIO.

FACTS:

2. The appellant filed RTI Application seeking information regarding reasons for his removal from the post of Assistant Registrar, just a day before completion of his probation period. The CPIO stated that he was removed in terms of OM dated 16.6.2014, which was upheld by FAA. Appellant filed second appeal before this Commission.

Decision :

3. The CPIO, Ms. Nirmala Menon refused the information on the ground that application does not fall under life and liberty category. She did not give information within 30 days also. In the first appeal appellant asked for file notings that was also not given. Asking the appellant to file a fresh RTI application is also a violation of RTI Act.

4. During the hearing of second appeal the clerk and the PIO defended their rejection of information saying that an employee can be removed during probation without assigning any reason. However, the PIO stated that he was

not given extension because reporting officer rated his performance as not satisfactory. The Commission cannot approve the response of the PIO which is without application of mind. The PIO wanted applicant to file a fresh RTI application. The PIO is expected to furnish the certified copies of the performance report and the file notings to the appellant.

5. Whatever may be the contractual conditions, the appellant being an affected party, has a right to know the reason for non extension of his probation or non confirmation. Though the appellant agreed to the contract that he can be removed without assigning reasons during probation, to remove an employee without any reason reflects arbitrariness. The RTI Act has been made to prevent such arbitrary decisions. Under Section 4 (1) (d) the public authority has to provide reasons for administrative and quasi judicial decisions to the affected persons. Section 4 (1) (d) of RTI Act overrides the term of contract between the employer and the probationer authorizing the employer to remove without reasons, and mandates to provide the reasons to the affected person like appellant.

6. In fact the public authority has a reason for removing him and a report about his performance was given by his superior reporting officer, and the file contains a noting based on which his services was terminated. The public authority has every power to assess the performance and decide the future of an employee during probation, but refusing to give the information is illegal under RTI Act. Good governance demands decisions to be taken on reasons and sharing those reasons.

7. It was mandatory under Section 4 (1) (d). If it is not voluntarily disclosed, they should have disclosed in response to RTI application at least. The PIO has refused to give the same, even though public authority has held the information, without any reason and logic. The RTI Act gives the probationers a new right to information about reasons for his termination. Even the reporting officer is expected to give reasons for his opinion that the probationer's performance was not up to the mark. The public authority has a duty to share the opinion of the reporting officer about shortcomings in the performance with the probationer and probationer should get an opportunity to overcome the shortcomings. The public authority cannot hire and fire the persons according to its sweet will.

Hiding this information will give rise to suspicion that all is not well in the decision to fire.

8. The Commission directs Ms. Nirmala Menon, PIO to show-cause why maximum penalty should not be imposed against her for this kind of attitude and refusal, within 21 days from the date of receipt of this order.

9. The Commission directs respondent authority to provide the reasons and certified copies of documents related to non extension of probation of the appellant. The Commission also requires the public authority under Section 19 (8)(iv) to introduce necessary changes in their policy to provide information about reasons for removal of probationer.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
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2. Shri Neeraj Kumar,
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