

CENTRAL INFORMATION COMMISSION

2nd Floor, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi-110066

Decision No. CIC/RK/C/2016/000052/DODFP, dated 21.11.2017

R. Sambamurthy vs. CPIO, Garden Reach Shipbuilders and Engineers Limited

Relevant dates emerging from the Complaint:

RTI: 11.03.2015	FA: 18.05.2015	Complaint: 28.12.2015
CPIO: 29.08.2015	FAAO: 24.09.2015	Hearing: 17.10.2017/ 15.11.2017

ORDER

1. A show cause notice was issued to the CPIO, Garden Reach Shipbuilders & Engineers Ltd., Kolkata, in compliance with the Commission's decision in Case No. CIC/RK/C/2016/000052/DODFP dated 05.09.2017, wherein, the Commission had observed that no information has been provided to the complainant by the respondent organization. The CPIO was directed to explain as to why action under section 20 (1) of the RTI Act should not be initiated against him.

Hearing on 17.10.2017:

2. The respondent Shri K. S. Verma, General Manager (Industrial Engineering and Process, Fire and Safety) and CPIO, Garden Reach Shipbuilders & Engineers Ltd., Kolkata was present in person.

3. The respondent submitted that vide the CPIO's reply dated 29.08.2015 complete information was furnished to the complainant. The respondent further submitted that the FAA vide its Order dated 24.09.2015 had upheld the reply of the CPIO. Hence, the desired information has been furnished to the complainant.

Interim Decision:

4. The hearing in the matter could not be concluded. The matter is adjourned and would be next listed for hearing on **15.11.2017 at 01:15 pm.**

Hearing on 15.11.2017:

5. The respondent Shri K.S. Verma, GM(IE& P), GRSEL, Kolkata was present in person.

6. The respondent submitted that the complainant had sought information regarding the action taken on a representation dated 05.11.2014 filed by a third party, Shri Sameer Kumar Dutta, with the Ministry of Defence (MOD). The MOD had transferred the RTI application to the OFB vide letter dated 26.03.2015, who transferred the RTI application to the CPIO, GRSEL on 31.03.2015. The respondent further submitted that a copy of the representation dated 05.11.2014 was forwarded to GRSEL by the MOD. In response, a detailed letter clarifying the position was submitted by the GRSEL to MOD on 13.06.2015. The matter was also taken up by the GRSEL with the Regional Provident Fund Commissioner (RPFC) on 20.07.2015 with a request to rectify Shri Dutta's pension amount and to release the arrears at the earliest. A copy of the letter dated 20.07.2015 was also sent to Shri Sameer Kumar Dutta indicating the status of his case. In view of the above, a response to the RTI application dated 11.03.2015 was delayed but it cannot be said that the respondent had deliberately delayed a reply to the RTI application. The respondent admitted that an interim reply could have been sent to the complainant. The respondent further submitted that Shri Sameer Kumar Dutta had sent a letter to the RPFC on 02.11.2015 stating that his pension amount has been increased by the EPFO.

7. The respondent further submitted that the complainant was seeking the status of the representation dated 05.11.2014 filed with the MOD. This information could be available with the MOD only and not with the GRSEL. However, since the RTI application was forwarded by the MOD to the OFB and by the OFB to GRSEL, a view was taken, erroneously, that the RTI

application could not be forwarded to the MOD. In view of this, the complainant was informed vide letter dated 29.08.2015 that the information sought does not come under definition of 'information' as per Section 2(f) of the RTI Act. The respondent admitted that this was an error of judgment, but there was no malafide intent to obstruct the furnishing of the information sought by the complainant. The respondent tendered his unconditional apology for this lapse and requested the Commission to condone the same.

Decision:

8. The Commission, after hearing the submissions of the respondent and perusing the records, observes that the complainant had filed the complaint on the ground that the reply to the RTI application dated 11.03.2015 was delayed and that the CPIO had denied the information sought by him. Accordingly, a Show Cause Notice was issued to the CPIO, GRSEL. The respondent in his submission has stated that the delay in furnishing a reply to the complainant was due to the time involved in pursuing Shri Dutta's case with the RPF. The Commission observes that though there was a lack of application of mind in handling the RTI application, it cannot be said that the respondent had deliberately delayed the furnishing of the information. The Commission also observes that denial of information to the complainant was due to an error of judgment on the part of the CPIO concerned. However, it cannot be said that the CPIO had acted consciously and deliberately with a malafide intention to withhold information from the complainant, *moreso*, when the respondent had pursued the matter relating to the pension case of Shri Sameer Kumar Dutta with the RPF. In view of the above, the Commission is of the view that there was no deliberate and malafide intent on part of the respondent to delay or deny the information sought by the complainant. The Commission also notes that in the matter of *Shri Umapathy S. v. State Bank of India, Bangalore*, CIC/AT/C/2010/ 001084 to 1129 dated 15.12.2010 has held that:

"9.....when CPIO or an Appellate Authority takes a reasoned position about why he chooses not to disclose an information to an applicant, it cannot be

described as obstruction of information or withholding it with malafide intentions. It is possible that the contentions of the CPIO and the Appellate Authority be overruled by the CIC, but that alone cannot be the reason to penalise the CPIO or the deemed CPIOs. The CIC has been constituted to correct the error of judgement of the lower officers. There is no provision to impose penalty for wrong judgement. It needs to be noted that sometimes even the orders of superior appellate courts are overturned by higher judicial bodies. The process of reasoning is integral to any judicial process. No one can be faulted for reasoning in one way and not differently”.

In view of the above, the Commission observes that in the absence of any malafide intention, it would not be appropriate to initiate any action for imposition of penalty on the CPIO, GRSEL. Hence, the Show Cause Notice issued against Shri K. S. Verma, General Manager (Industrial Engineering and Process, Fire and Safety) and CPIO, GRSEL, Kolkata is hereby dropped.

9. Copy of the decision be provided free of cost to the parties.

**(Sudhir Bhargava)
Information Commissioner**

Authenticated true copy

**(S.S. Rohilla)
Designated Officer**

Addresses of the parties:

1. The Central Public Information Officer,
Garden Reach Shipbuilders and Engineers Limited,
43/46, Garden Reach Road, Kolkata-700 024

2. Shri R. Sambamurthy,