CENTRAL INFORMATION COMMISSION
Appeal No. CIC/WB/A/2010/000096 dated 22-3-2010
Right to Information Act 2005 - Section 19

Appellant: Shri V. B. Tiwari
Respondent: Central Vigilance Commission (CVC)

Decision announced 14.5.’10

FACTS

By an application of 14-10-2009 Shri V.B. Tiwari of Fort, Mumbai
applied to the CPIO, CVC seeking the following information:

a. How many complaints you have received against Dr. T. C. Kaushik, earlier working as Addl. Government Advocate/ Counsel, now promoted as SR. Government Advocate in the Cadre of Indian Legal Service, posted in Branch Secretariat, Ministry of Law and Justice, Department of Legal Affairs, Aaykar Bhavan, New Marine Lines, Mumbai-400020 in respect of allotment/assignment of cases to the various panel counsel?

b. How many complaints, you have received against Dr. T. C. Kaushik, earlier working as Addl. Government Advocate/ Counsel, now promoted as SR. Government Advocate in the Cadre of Indian Legal Service, posted in Branch Secretariat, Ministry of Law and Justice, Department of Legal Affairs, Aaykar Bhavan, New Marine Lines, Mumbai-400020 in respect of allotment/assignment of cases to the various panel counsel?

c. What replies, you received from the Ministry of Law & Justice, Department of Legal Affairs, Shastri Bhavan, 4th floor, New Delhi in respect of those complaints, if any, against Dr. T. C. Kaushik?

d. Had Law Ministry in New Delhi made any enquiry in respect of those complaints against Dr. T. C. Kaushik?

e. Did Law Ministry send reports in respect of those enquiries and what stand you have taken on such reports?

f. In case the enquiry was closed, in that event, when did you send the closure report or any such report to the Hon'ble Law Secretary, Ministry of Law, New Delhi or any correspondence you have made with the Ministry of Law, New Delhi, with effect from January, 2006 to September, 2009, if any?

g. Is there any more complaint/s pending with you against Dr. T. C. Kaushik and what is the status of such complaint, if pending?
h. Kindly furnish the name/s of the complainant in each case along with the copy of complaint, if any to the undersigned.

e. You are further requested to kindly furnish me the record in respect of aforesaid queries and replies thereto.”

To this applicant Shri V. B. Tiwari received a response dated 27-10-09 as below:

“Reply to para 6 (a): The Commission received two copies of the same complaint dated 5.7.06 against Shri T. C. Kaushik, Sr. Govt. Counsel, from Democratic Lawyers Association regarding allotment/assignment of cases to various panel counsel.

Reply to para 6 (b): No other complaint against Shri T. C. Kaushik has been received in the Commission against Shri T. C. Kaushik.

Reply to para 6(c), (d), (e), (f) and (i): In respect of the above complaints, Ministry of Legal Affairs & Justice has forwarded a reply dated 15.11.2006, 5.1.2007, 19.2.2008 and 21.4.2009. Vide its reply dated 15.11.2006, it was informed that Shri Kaushik was placed under suspension w.e.f. 27.7.2006 and that based on an SLP filed in the Supreme Court by Shri Kaushik, Supreme Court has directed them not to proceed with departmental proceedings. Its letter dated 5.1.2007, it was informed that following Supreme Court order, suspension of Shri T.C. Kaushik was revoked. It was also clarified that no departmental proceedings were being initiated against Shri Kaushik. Vide its endorsement letter dated 28.2.2007, it was intimated that Shri R. M. Sharma, Addl. Secretary, Ministry of Legal Affairs was being entrusted with investigation into the complaint against Shri Kaushik. The report of Shri R. M. Sharma dated 2.11.2007 was forwarded to the Commission on 11.12.2007. On examination, the Commission advised that the matter may be re-investigated. Vide its letter dated 19.2.2008, Department of Legal Affairs approached the Commission to make available an officer to re-investigate the allegations. However, the proposal was found to be not acceptable and the Commission advised the CVO of Dept. Of Legal Affairs to re-investigate the matter. The Dept. Of Legal Affairs vide its reference dated 21.4.2009 forwarded the report of the CVO to the Commission, views on which have to be taken by the Commission. Since the issue is still under investigation, further information on the subject is denied under section 8 (1) (h) of the RTI Act, 2005 as the disclosure of the information may impede the investigations.

Reply to para 6 (g) & (h): No other complaint against Shri T. C. Kaushik is pending.”

However, before receipt of this response Shri V.B. Tiwari moved a follow up application of 31-10-09 with the following request:
“b. In continuation of my letter dated 14.10.2009 regarding seeking information against Dr. T. C. Kaushik, who was earlier working as Addl. Government Advocate Counsel, now promoted as Sr. Government Advocate in the Cadre of Indian Legal Service, posted in Branch Secretariat, Ministry of Law and Justice, Department of Legal Affairs, Aaykar Bhavan, New Marine Lines, Mumbai-100 020 in respect of allotment/ assignment of cases to the various panel counsel?

c. How much period the commission will take in disposing of the complaint if received by the commission? What is the period of limitation in disposing of any complaint against any officer?

d. Whether any complaint is pending against DR. T. C. Kaushik as per my letter dated 14.10.2009 seeking information under Right to Information Act or not? Kindly inform accordingly.’

In two responses of 16-11-09 CPIO, Shri P.S. Gupta, Adviser, CVC has informed Shri V.B. Tiwari as follows:

A  "Reply to 6 (a) & (b): No information sought.

Reply to para (c): A copy of Commission’s circular regarding the time limits in conducting investigations is enclosed. No period of limitation has however been prescribed for disposal of a complaint against any official by the Commission.

Reply to para (d): As has already been informed to you vide Commission’s letter no. CVC/RTI/09/858 (copy enclosed), a complaint against Shri T. C. Kaushik is still under investigation.”

“Reply to 6(iii) (a): No information sought.

B  Reply to para 6 (iii) (b) (i): The address particulars of Democratic Lawyers Association is Room No. 36, High Court, Appellate side, Mumbai. The information sought in second part of this para is in the form of query which cannot be construed as seeking of ‘information’ under the definition of information under section 2 (f) of the RTI Act.

Reply to para 6 (iii), (b) (ii):The complaint is signed on behalf of Democratic Lawyers Association without mentioning the name of signatory.

Reply to para 6 (iii) (b) (iii), (iv), (v0: It is seen that the information sought by you in these paras is in the form of queries. In this regard it is informed that the Central Information Commission, in its decision dated 21.4.2006 on the appeal of Dr. DV Rao, has held that the RTI Act does not cast on the public authority any obligation to answer queries in which a petitioner attempts to elicit answers to his questions and that the petitioner’s right
extends only to seeking information as defined in section 2 (f) either by pinpointing the file, documents paper or record etc or by mentioning the type of information as may be available with the specified public authority. The Central Information Commission, in its decision dated 2.5.2006 on the appeal of Shri Mahavir Singhvi, had directed the appellant to ask for copies of documents containing the information and not to seek opinions through a questionnaire.

Copy of report of Shri R. M. Sharma, Addl. Secretary, sought by you is denied under section 8 (1) (h) of the RTI Act, 2005 since the matter is still under investigation and this public authority is of the view that disclosure of information may adversely affect/impede the investigations.

Reply to para 6 (iii) (b) (vi): The copy of report of CVO is also denied to you under section 8 (1) (h) of the RTI Act, 2005 since the matter is still under investigation and this public authority is of the view that disclosure of information may adversely affect/impede the investigation.

Reply to para 6 (iii) (b) (vii) & (viii): A copy of Commission’s circular regarding the time limits in conducting investigations is enclosed. No period of limitation has however been prescribed for disposal by the Commission in giving opinion on report.”

In his appeal dated 23-11-09, however, Shri Tiwari has complained to Shri Alok Bhatnagar, Addl. Secretary, CVC as follows:

“These information’s sought do not relate to the material which cannot be disclosed or supplied to the appellant. The RTI Act, 2005 is very clear that information’s which can only be withheld are those information’s which cannot be placed before the Parliament. The information and copy of the reports sought by the appellant do not belong that category of information which cannot be withheld from the Parliament. I am enclosing a copy of Delhi High Court judgement in case of WP (C ) No. 3114/2007, decided on 3.12.2007 appellants: Bhagat Singh v/s Chief Information Commissioner & Ors. By Hon’ble Justice S. Ravindra Bhatt of Delhi High Court and a copy of the order passed by the Central Information Commission in case of Suresh Tripathi vs. Mr. Aditya Kumar Decision No. CIC/SG/A/2009/000505/3191 in appeal CIC/SG/A/2009/000505 and copy of the order passed by CPIO in case of Mr. Mahendra Singh v/s Shri Mahavir Singh in CIC/SG/A/2009/000513/3166 in appeal no. CIC/SG/A/2009/000513.”

Upon this Shri Bhatnagar has arrived at the following decision in his order of 23-12-09:
4. As regards para 3 (a) above (which is same as para (a) of the appellant's appeal dated 23.11.2009) I have gone through the relevant records and find that the appellant has sought a copy of complaint received in the Commission against Shri T. C. Kaushik, Sr. Govt., Counsel. I am of the 'opinion' that as the information is received by this Public Authority from the complainants with a view to ensure an objective investigation into the matter by maintaining confidentiality thereof, if it warrants so, the disclosure of the information, before the finalization of investigation may not only compromise the process of investigation but, expose the complainant to unforeseen risks, also. Hence, the information cannot be provided to the appellant, keeping in view the provisions contained in section 8 (1) (g) & 8 (1) (h) of the RTI Act. These views have been upheld by the Central Information Commission (CIC) also in case No. CIC/AT/A/2008/01500 in the case of Shri N. Saini vs. Life Insurance Corporation of India in which CIC held that 'in matters of complaints filed by members of the public against a public servant or an employee of the public authority, if the complainant's identity is disclosed, it can lead to endangering the life or physical safety of the complainant, besides leading to the identification of the public authority's source of information. In that case, it would attract the exemption under section 8 (1) (g) of the RTI Act as well. If the confidentiality of the communication from the general public to a public authority in regard to the functioning of that public authority's employee is allowed to be breached, it will dry up an important source of information which public authority receives from the general public about its employees. Its net impact will be promoting corruption and official apathy towards public grievances and concerns. RTI Act and its provisions cannot be interpreted to promote such a negative development as this. I therefore, uphold the decision of the CPIO.

5. As regards para 3 (b) above, (which is same as para (b) of the appellant's appeal dated 23.11.2009) I find that the issue raised by the appellant is a 'fresh issue', which was not part of the original application and is in the form of 'raising a query'. The appellant may 'note' that the process of appeal cannot be used to raise fresh issues before the appellate authority and can only be used to appeal against the CPIO’s decision taken on the basis of issues brought out by the appellant in the original application. This view has been upheld by the CIC in case no. CIC/WB/A/2008/00780 in respect of Shri Vijendra Rana vs. Ministry of Defence, in which CIC held that 'it is not open to the appellant to seek fresh information at the level of first appeal'. The appellant may also 'note' that raising queries do not constitute information as defined under 2(f) of the RTI Act. This view has been
upheld by the CIC in case no. CIC/AT/A/2006/00045 in respect of Dr.
D. V. Rao vs. Department of Legal Affairs in which CIC had held 'the
RTI Act does not cast on the Public Authority any obligation to answer
queries, as in this case, in which a petitioner attempts to elicit answers
to his questions with prefixes, such as, why what, when and whether.

6. As regards para 3 (c) & 3 (D) above (which are same as
para (c) & (d) of the Appellant's appeal dated 23.11.2009) on a perusal
of the relevant records I find that the case against Shri T. C. Kaushik,
Sr. Govt. Counsel is still 'under investigation' as the Commission has
referred the matter for conducting a discreet inquiry. I find that the
report of Shri R. M. Sharma, Addl. Secretary and CVO's report, as
sought by the appellant, contain many details about the case and the
investigation carried out so far, which, if disclosed at this stage, may
interfere with the process of investigation being carried out further and
hence, in my view, these documents are exempted from disclosure
under the provisions contained in section 8(1)(h) of the RTI Act.
Hence, keeping in view the above facts and the position as brought out
in para (4) above, I, uphold the decision of the CPIO.

7. As regard para 3 (e) & 3 (f) above, (which are same as
para (e) & (f) of the appellant's appeal dated 23.11.2009) I find that
there is no occasion to pass any other order or to take any action
against the CPIO concerned, that is Shri P. S. Gupta, Advisor as I have
found his decisions to be justifiable and appropriate."

Appellant's prayer before us in his second appeal is as below:

“a) That the Hon'ble Appellate Authority may be pleased
to allow the appeal and the lower authority be
directed to disclose the information as sought for.

b) Appropriate penalty may be imposed on the lower
authority for not supplying the information as sought
for.”

Subsequently, appellant Shri V.B. Tiwari a senior citizen has sought
out of turn hearing which was accepted. The appeal was heard through video
on 14-5-2010. The following are present.

Appellant
Shri V. B. Tiwari

Respondents
Ms. Shalini Darbari, CVC

Because of some confusion regarding the delivery of appeal notice,
respondent Ms. Shalini Darbari appeared for hearing scheduled at 10.30 am
at 12 noon. Both parties were, therefore, heard but separately.

Appellant Shri V.B. Tiwari rested his arguments on the following
grounds of appeal:
“a. The appellate authority in its order dated 23.12.2009 has not appreciated that the information's sought does not fall under any of the exemptions under section 8 (1) (g) & 8 (1) (h) of the RTI Act, 2005.
b. The appellate authority ought to have appreciated that the case of the applicant falls under section 8 (2) of the RTI Act, 2005 where public interest in disclosure outweighs the harm to the protected interests.
c. The appellate authority ought to have appreciated that the provisions contained in para 5 (1) and 5 (2) of the Vigilance Manual, Volume I, Chapter II which deals with complaints of anonymous and pseudonymous nature. In the instant case, assuming while denying that such a 'Democratic Lawyers Association' exists, the same being a Public Body, cannot resist the disclosure of information about the existence and identity of it office bearers.”

Respondent Ms. Shalini Darbari submitted that generally the CVC takes the stand that if a matter is still under investigation disclosure of identities and names and the contents of investigation could both impede the process of investigation and compromise witnesses. On this ground part of the information sought by appellant has been denied. However, as per her information the investigation is now complete and CVC will have no objection in providing a copy of the report to appellant Shri V.B. Tiwari.

**DECISION NOTICE**

On the above grounds the appeal is allowed. Copy of the investigation report will be provided to appellant within 10 working days of the date of receipt of this decision. Should the CPIO, CVC be convinced that the disclosure of certain identities would compromise witnesses such names may under the severability clause contained in Section 10 (1) be deleted, with specific reasons for exercising severability. The remaining information will be provided as directed.

However, because the decision not to disclose was in keeping with the UPSC policy, the CPIO has acted in good faith. There can, therefore, be no grounds for penalty. On the other hand the CVC will take note of the decision of the Delhi High Court in **Bhagat Singh Vs. Chief Information**
Commissioner” in W.P. No. 3114/2007 in which the process for claiming exemption u/s 8 (1) has been clearly laid down and might be adhered to by the CVC whenever information is sought to be refused on grounds of exemption from disclosure.

Announced after hearing respondent. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
14-5-2010

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.

(Pankaj K.P. Shreyaskar)
Joint Registrar
14-5-2010