CENTRAL INFORMATION COMMISSION

Right to Information Act 2005 – Section 19

Appellant: Shri Ketan Modi;
Respondent: Central Information Commission, (CIC).

Decision announced 23.2.'10

FACTS

By an application of 2-8-08 Shri Ketan Modi of Mumbai applied to the CPIO, CIC seeking the following information:

a) Information/ opinion of the Hon’ble Central Information Commission on legality/ validity/ binding obligation on Public Information Officer invoking circulars issued by Department of Personal and Training that are inconsistent with the provisions of RTI Act, 2005 and/ or any other Act in vogue.

b) Information/ opinion of the Hon’ble Central Information Commission on legality/ validity/ binding obligation on Public Information Officer invoking circulars issued by Department of Personal and Training directing Central Public Information Officer/s not to transfer any application u/s 6 (1) to more than one Public Authority u/s 6 (3) although the same is not inconsistent with the provisions of RTI Act.

c) Information/ opinion of the Hon’ble Central Information Commission on the obligation of the Public Information Officer to whom application has been furnished through e-mail to transfer the same u/s 6 (3) in case if more than one Public Information Officers are holding the information/s sought.

d) Information/ opinion of the Hon’ble Central Information Commission permissibility of an applicant’s right to seek information u/s 6 (1) through e-mail besides the obligation on the Public Information Officer/s to be compelled to respond through e-mail if the applicant has desired so.

e) Information/ Opinion of the Hon’ble Central Information Commission on legality/ binding obligation on Public Information Officer invoking circulars issued by Department of Personal and Training directing Central Public Information Officer/s not to share ‘File notings’ in response to any application u/s 6 (1) as the same does not constitute ‘Information’ although the same is not inconsistent with the provisions of RTI Act, 2005.

f) Information/ opinion of the Hon’ble Central Information Commission on the Department of Personal and Training powers to issue circulars which hare not inconsistent with the provisions of RTI Act, 2005.
g) In case the Department of Personnel and Training does not enjoy such powers information opinion about invoking penal provision u/s 20 against the concerned authorities responsible for issuing such illegal circulars and defeating the fundamental purpose of the RTI Act, 2005.

h) Information/ Opinion of the Hon’ble Central Information Commission on Public Information Officers/ appellate Authorities on not furnishing written responses to applications u/s 6 (1) although the same is not inconsistent with the provisions of RTI Act, 2005.

i) Information/ opinion of the Hon’ble Central Information Commission on the existence of mandatory obligation, if any, for compelling Public Information Officers/ Appellate Authorities to furnish a written response to any application u/s 6 (1) and such response amounts to generation of fresh information and fees for the same can be changed.

j) Information/ opinion of the Hon’ble Central Information Commission on disclosure of large scale corrupt practices/ illegalities in the office of the Public Authority through provisions of the RTI Act, 2005 and the mandatory obligation, if any, on such Public Authority mandatory initiation of action/s for curbing such corrupt practice/ illegalities and in case of failure on the part of the Public Authority in initiation of such corrupt practices/ illegalities, the penal action and Acts/ provisions for the same that can be initiated and its procedure/s.

k) In case if the Hon’ble Central Information Commission has passed/ settled any or all the information/ opinion/s sought details of such orders and date may please be furnished.”

To this Shri Ketan Modi received a response dated 18-8-08 from CPIO, Shri Tarun Kumar, JS, CIC informing him as follows:

“Under the RTI Act, 2005 the power to make rules is given to appropriate Government. As far as the Central Government is concerned, the rules are made by Department of Personnel and Training. The information that you have sought in your RTI application involves certain legal issues regarding transfer of application, file notings. Power of Department of Personnel and Training to issue circulars etc. In case any information regarding Rules is required, you may apply to CPIO, RTI Cell, Department of Personnel & Training, North Block, New Delhi.

However, the CPIO of the Commissioner is not competent to interpret these issues or give his opinion. He can only provide the information, which already exists in Material Form within the meaning of section 2 (f) of the RTI Act, 2005. In so far as the Central Information Commission is concerned, it’s views and opinions are expressed through the various decisions in different appeals and complaints under section 18 & 198 of the RTI Act,
2005 which decides most of the decisions of the Commission are available on our website i.e. www.cic.gov.in. You may access to them by using search option and type key word in it and locate case related to the issues, which you have raised.

In this connection, if you wish to see any particular file to appraise yourself of the proceedings of any particular case, you may please identify the file and contact the undersigned for inspection of the said file at mutually convenient date and time.”

Aggrieved, however, Shri Ketan Modi moved an appeal dated 25-8-2008 before the 1st Appellate Authority and Secretary, CIC Shri Mohammed Haleem Khan quoting from our decision in Pyare Lal Vs. Ministry of Railways in file No. IC/OK/A/2006/00154 dated 2-1-2007 and concluding with repeating the questions asked in the initial application.

By his order of 14-11-08 Shri Mohammed Haleem Khan, 1st Appellate Authority and Secretary, CIC, after several adjournments resulting from the failure of appellant Shri Ketan Modi to appear, finally announced his decision as follows:

“6. In view of the above it is concluded that enough opportunity has been provided to the appellant. In the eventuality of his not responding it was also decided to dispose of this appeal on the basis of records.

7. While perusing the RTI Application it was noted that in Para 3 of his application he has enlisted the information requirement. Out of 11 points on which information has been sought 9 start with ‘Information/ Opinion of the Hon’ble Central Information Commission’ I have also perused the reply of the CPIO and come to conclusion that CPIO has rightly refrained from giving opinion on various issues raised by the information seeker. No instructions, therefore, need be issued to the CPIO in this regard.

8. Regarding the information asked in Para 3 (g) the query starts with ‘In case the Department of Personal and Training doe not enjoy such powers’. It is asking for the response of the CPIO on a hypothetical formulation. CPIO was right in this is not the information within the meaning of the section 2 (F) of the RTI Act. Here also I agree with CPIO and accordingly do not find any occasion to intervene.

9. Information asked at Para 3 (k) also starts with ‘In case…’ CPIO has rightly pointed out that the decisions of the Hon’ble Commissioner are available on the website of the Commission and the appellant may make use of the
legally firmed up position available in those decisions. The CPIO cannot be expected to cull out the opinion from various decisions for the use of the appellant. Therefore, I concluded that CPIO has adequately discharged responsibilities as required of him under the Act.”

In his prayer before us in second appeal appellant Shri Ketan Modi has simply repeated questions at (a) to (k) of his initial application.

The case was heard with arrangement for videoconferencing on 23-2-2010. Only respondents are present at CIC Chambers in New Delhi:

**Respondents**

Shri Tarun Kumar, JS & CPIO  
Ms. Anita Gupta, AS & AA.

On his not appearing at the NIC Centre Mumbai, Shri Ketan Modi was contacted on the telephone by Registry, upon which Shri Modi informed the Registry that Commission might proceed to decide the case on merit.

The application of Shri Ketan Modi stems from DOPT’s O.M. No. 10/2/2008-IR of 12-6-2008 in which the DOPT has held as follows:

“Section 6 (1) of the RTI Act, 2005 provides that a person who desires to obtain any information shall make a request to the public information officer (PIO) of the concerned public authority. Section 6 (3) provides that where an application is made to a public authority requesting for any information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority to which such application is made shall transfer the application to that other public authority. A careful reading of the provisions of sub-section (1) sub-section (3) of Section 6, suggests that the Act requires an information seeker to address the application to the PIO of the concerned public authority. However, there may be cases in which a person of ordinary prudence may believe that the piece of information sought by him/ her would be available with the public authority to which he/ she has addressed the application, but is actually held by some another public authority. In such cases, the applicant makes a bonafide mistake of addressing the application to the PIO of a wrong a public authority. On the other hand where an applicant addresses the application to the PIO of a public authority, which to a person of ordinary prudence, would not appear to be the concern of that public authority the applicant does not fulfil his responsibility of addressing the application to the concerned public authority.”
It is appellant Shri Ketan Modi’s contention that this O.M. is contrary to the law.

DECISION NOTICE

To answer the request of appellant Shri Ketan Modi, CPIO has provided such information as is accessible under the “Right to Information” defined in Section 2 (j) of the RTI Act. If an opinion is not held in recorded form by the Commission, the CPIO can in no way create such information. The decision of the Appellate Authority in this case is, therefore, upheld.

Nevertheless because appellant Shri Ketan Modi has raised questions regarding a specific O.M. of the DO PT we quote below our decision in Rajinder Singh Vs. CBI – Complaint No. CIC/WB/C/2007/00967 decided on 19-6-2009:

In our decision announced on 19.6.'09 in Rajinder Singh Vs. CBI – Complaint No. CIC/WB/C/2007/00967 we have decided as follows:

“The issue hinges around the application required to be made for obtaining information u/s 7 (1). Under this clause a CPIO, on receipt of ‘a request’ is expected to deal with it expeditiously when with accompanied with a fee. It is, therefore not open to the applicant under the RTI Act to bundle a series of requests into one application unless these requests are treated separately and paid for accordingly.

In our experience in disposing of appeals that in fact many such have been treated as one application even though they contain a multiplicity of requests. However, we concede that a request may be comprised of a question with several clarificatory or supporting questions stemming from the information sought. Such an application will indeed be treated as a single request and charged for accordingly.”

In addition another more exhaustive ruling on the subject has been given by the Commission in Appeal No. CIC/WB/A/2008/01256, Wasi Ul Haque vs. UPSC announced on 9.2.’10 in which we have while quoting from the above ruling, decided as follows:

“In the decision of this Commission, in the file quoted above, that as per section 6 (1) read with section 7 (1) of the Act a request means that the questions and the answers must share
an embryonic relationship, the *genus* of the application must be one and sub-questions can constitute different species of the same *genus*. Given that for reasons already intimated to appellant Shri Wasi Ul Haque by the CPIO, most of his questions do not constitute ‘information’ as defined in the law and because the remaining, even if they were to be so admitted, are without focus so establishing genus, it is not possible to treat this application despite the painstaking efforts demonstrably put into compiling it, to be a valid request admissible under the RTI Act."

With these observations addressing the immediate concern of appellant Shri Modi, this appeal is dismissed.

Announced in the hearing. Subsequent to this announcement we have received an e-mail at 12.44 am 23.2.'10 from appellant Shri Ketan Modi, in which he submits as follows:

“On returning to Mumbai, the postman had informed me yesterday, i.e. February 22, 2010 that all my mails would be delivered to me today, i.e. February 23, 2010 and accordingly I had received nearly 46 mails including normal, speed post, register, speed post a/d and register a/d. Among these was the summons which directed me to appear before you at 11.30 am which was not possible physically. The NIC Centre had asked me to come over, as the hearing was yet to begin. In the meantime I had received a call from Mr. Pankaj Shreyaskar who said that Your Honour had already been in the court and in my absence the matter would be decided on available material. I could only express my gratitude for his benevolent gesture of calling me and reminding me however I was in helpless situation and I express my deep regrets for causing Your Honour inconvenience by not remaining present at the NIC Centre at scheduled time. If the matter has not been decided yet, my request is that the matter may please be adjourned and a fresh date be given as I help out others on RTI matters free of cost and that has caused the lapse on my part. If Your Honour has already decided the matter, in the interest of the principles of natural justice, the same may please be reviewed as the information/s sought pertain to helping others like me who are suffering due to wrong interpretation of law causing sever injustice and the opinion of Hon’ble CIC could put these issue to rest and act as a guideline for not only applicants/appellants before the Hon’ble CIC but also before the State ICs”

The appeal having been heard as scheduled, with full opportunity provided to appellant Shri Ketan Modi to be heard personally, and decision
having been announced in the hearing, it is not possible for this Commission to reopen the hearing. It is hoped that the above decision already announced will serve as the guideline sought.

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

(Wajahat Habibullah)
Chief Information Commissioner
23-2-2010

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
23-2-2010