VPC - non disclosure to third party.

CENTRAL INFORMATION COMMISSION
CLUB BUILDING (NEAR POST OFFICE)
OLD JNU CAMPUS, NEW DELHI-110 067
TEL: 011-26179548

Decision No.CIC/VS/A/2012/001469/04824
Appeal No.CIC/VS/A/2012/001469
Dated: 19.09.2013

Appellant: Shri Amit Choudhary,
R/o Chamber No.122, Collectorate,
Behind Post Office, Meerut-250 001.

Respondent: Public Information Officer,
State Bank of Bikaner & Jaipur,
Head Office, Tilak Marg, Post Box No.154,
Jaipur-302 005.

Date of Hearing: 19.09.2013

ORDER

RTI application:

1. The appellant filed an RTI application on 12.12.2011 seeking information pertaining to particulars and other details of officers called for interview from scale 3 to scale 4 in a certain format.

2. The PIO responded on 19.12.2011 and denied information to the appellant under section 8(1)(e) of the RTI Act. The appellant filed a first appeal on 10.01.2012 with the first appellate authority (FAA). The FAA response is not on record. The appellant filed a second appeal on 27.09.2012 with the Commission.

Hearing:

3. The respondent participated in the hearing through video conferencing.

4. The respondent explained that the appellant had sought information about the promotions during 2011 from scale- 3 to scale-4 in context of which there was an interview. The respondent explained that the appellant had sought information through his RTI application of 1

12.12.2011 seeking the particulars of the various candidates and the marks obtained.

5. The respondent explained that the CPIO had replied to the appellant on 19.12.2011 in which it was stated that this was third party information and also confidential in nature, hence the information was denied under the exemption from disclosure clauses of the RTI Act.

6. The respondent explained that there was an appeal lodged by the appellant on 10.01.2012 in which the first appellate authority on 27.01.2012 upheld the CPIO's response.

7. The appellant did not participate in the hearing.

8. The approach taken by the respondent is in conformity with the RTI Act.

Decision:

9. The orders of the respondent are upheld.

The appeal is disposed of. Copy of decision be given free of cost to the parties.

(Vijai Sharma)
Information Commissioner

Authenticated true copy

(V.K. Sharma)
Designated Officer

DPC - non-disc...

Central Information Commission

Room No.306, II Floor, B Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066
Tele:011-26180512 & 011-26717355 Fax : 01126106145 website-cic.gov.in

Appeal: No. CIC/DS/A/2012/002325

Appellant /Complainant : Shri Harish Chandra Yadav, Bhopal

Public Authority : Life Insurance Corporation of India, Bhopal

(Sh.Sudhir Modi-CPIO through videoconferencing)

Date of Hearing : 24 September 2013
Date of Decision : 24 September 2013

Facts:-

Appellant submitted RTI application dated 23 May 2012 before the CPIO, LIC of India, Bhopal seeking information relating to Smt. K. Suneeta T. Sanjeev posted as Administrative Officer in LIC regarding her Joining Order, promotion order, educational qualifications/movable-immovable properties, caste certificates, department's permission letter for purchasing of four-wheeler vehicle and L.T.C. taken by her from the year 2001 to 2011 through multiple points.

2. Vide CPIO Order dated 18 June 2012, PIO denied information on the ground of exemption given under Section 8(1)(j) of the RTI Act,2005 as the third party had not permitted the CPIO to furnish information related to her.

3. Not satisfied by the PIO's reply, the Appellant preferred First Appeal to the First Appellate Authority dated 22 June 2012.

4. Vide FAA Order dated 14 July 2012, the FAA upheld the decision of the CPIO.

5. Being aggrieved and not satisfied by the above response of the Public Authority, the Appellant preferred Second Appeal before the Commission.

6. Matter was heard today via videoconferencing from Bhopal. Respondent as above was present and made submissions. Appellant did not appear.

Decision notice

7. After hearing the averments of the respondent and on perusing the facts on record, Commission upholds the order of

the CPIO and the first appellate authority. Appellant had not established any larger public interest the disclosure of information that is personal to the third-party. **Accordingly appeal is dismissed.**

(Smt. Deepak Sandhu)
Chief Information Commissioner

Authenticated true copy:

(T. K. Mohapatra)
Dy. Secretary & Dy. Registrar
Tel. No. 011-26105027

Copy to:-

1. Shri Harish Chandra Yadav
House No, 9/6
MANIT Complex, **Bhopal-462011 (MP)**

2. The CPIO
Manager (CRM)
LIC of India, Divisional Office
Jeevan Prakash,
60-A, Arera Hills
Bhopal-462011 (MP)

3. The Appellate Authority
Sr. Divisional Manager
LIC of India, Divisional Office
Jeevan Prakash,
60-A, Arera Hills
Bhopal-462011 (MP)

CENTRAL INFORMATION COMMISSION

Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

File No.CIC/BS/C/2012/000240
File No.CIC/BS/C/2012/000384
File No.CIC/BS/C/2012/000428
File No.CIC/BS/C/2013/000074
File No.CIC/BS/C/2013/000075
File No.CIC/BS/C/2013/000091
File No.CIC/BS/A/2012/000641
File No.CIC/BS/A/2013/001421
File No.CIC/BS/A/2013/001459
File No.CIC/BS/A/2013/000077
File No.CIC/BS/C/2012/000470
File No.CIC/BS/C/2012/000533
File No:CIC/BS/C/2013/000067
File No.CIC/BS/C/2013/000099
File No.CIC/BS/A/2012/000597

Complainant	Shri H.K. Bansal
Public Authority	BSNL
Dates of hearing	15.07.2013
Date of decision	15.07.2013

Facts :-

The above cited 15 appeals have been filed by the appellant herein. These are being disposed of through a common order that follows. The appellant is not present in today's hearing. BSNL is being represented by the following :-

1. Shri S.K. Bhardwaj, Superintending Engineer(CPIO);
2. Shri H.S. Bisht, S.E., Rohtak;
3. Shri R.K. Verma, Executive Engineer, Ambala;
4. Shri D.K. Jha, DO(Vig.); and
5. Shri P.K. Bhatla, ASC.

2. The Department of Telecommunications is represented by Shri N.K. Singh, Director.

3. The case-wise position is as follows :-

File No.CIC/BS/C/2012/000240 :-

4. The background of the matter is that the appellant, a retired Superintending Engineer of BSNL, in the RTI application dated 7.6.2010, had sought huge personal information relating to one Shyam Lal, TO(A). The response, if any, given by the CPIO is not available in the Commission's file. I have carefully gone through the RTI application and find that the appellant has sought personal information about third party. It is pertinent to mention that the Supreme Court of India in its judgment dated 3.10.2012 in Girish Ramchandra

Deshpande had held that personal information is not liable to be disclosed unless the appellant establishes a larger public interest. Paras 12 & 13 of the order are extracted here-in-below :-

> "12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.
>
> 13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."

5. As noted above, the appellant is not present before the Commission to convass his case. Nor do I find any material on record to establish larger public interest. In the light of Supreme Court ruling extracted above, personal information regarding third party cannot be disclosed to the appellant. The appeal is, therefore, dismissed.

File No.CIC/BS/C/2012/000428 :-

6. In the RTI application dated 10.10.2011, the appellant had sought information regarding charge sheet purported to have been issued to one Tikam Singh, SE(Civil), BSNL, Rohtak. This appeal is also liable to be dismissed for the reasons cited in the preceding case.

File No.CIC/BS/C/2012/000384
File No.CIC/BS/C/2013/000074 :-

7. In the RTI application dated 6.4.2012, the appellant had mentioned that all the dak meant for SE(C), Rohtak, was being received by Ms. Durgesh and had sought a copy of the appointment order of Ms. Durgeshd along with her attested specimen signatures. Besides, he had also sought to have a copy of the work distribution order authorizing Ms Durgesh to

receive the dak etc. During the hearing, Shri Bisht submits that vide letter dated 21.9.2011, the appellant was informed that the office of Additional CE(Civil), Rohtak, had not appointed any Ms. Durgesh to receive the dak. Besides, the appellant was also informed that no specific order had been issued for work distribution among the staff etc. It is, thus, Shri Bisht's contention that the requisite information has been supplied to the appellant.

8. I am broadly satisfied with the response of the CPIO. The matter, therefore, is being closed. This disposes of both the matters.

File No.CIC/BS/C/2013/000075 :-

9. In the RTI application dated 2.10.2011, the appellant had sought certain informations regarding the Show Cause Notice issued to him "for causing wrongful and abnormal delay in settlement of arbitration cases". Shri Bhardwaj submits that parawise information was provided vide letter dated 3.12.2011. He also submits that the appellant has been given inspection of the entire records on 25.6.2012. As noted above, the appellant is not present before the Commission to contest this fact. In the premises, the matter is being closed.

File No.CIC/BS/C/2013/000091 :-

10. In the RTI application dated 8.8.2012, the appellant had sought copies of the minutes of the DPC proceedings concerning Shri P.K. Panigrahi and Ramanandan K.P. and the matters related there-with. This was responded to by Shri N.K. Singh, Director, vide letter dated 12.12.2012. During the hearing, Shri Singh submits that the appellant has sought third party information which cannot be disclosed under section 8(1)(j) of the RTI Act. He also relies on the Supreme Court judgment in Girish Ramachandra Deshpande case.

11. I accept Shri Singh's contention. The appellant cannot be given copy of the DPC proceedings regarding third party. The appeal is misconceived. Dismissed.

File No.CIC/BS/A/2012/000641:-

12. It is noticed that in the RTI application dated 9.11.2011, the appellant had sought information on multiple issues. This was duly responded to by Shri N.K. Singh, Director, vide letter dated 13.12.2011. During the hearing, Shri Singh submits that the appellant had also been given inspection of the relevant records. In view of the above, I am broadly satisfied that the requirement of the law has been satisfied by the CPIO. The matter is, therefore, being closed.

File No.CIC/BS/A/2013/001421:-

13. In the RTI application dated 6.3.2013, the appellant had sought copy of the file notings regarding the disposal of communications sent by him. Shri Singh submits that the appellant was given requisite information. Besides, he was also given inspection of the relevant records. In view of this, the matter is being closed.

File No.CIC/BS/A/2013/001459
File No.CIC/BS/A/2013/000077
File No.CIC/BS/C/2012/000470
File No.CIC/BS/C/2012/000533
File No.CIC/BS/C/2013/000067
File No.CIC/BS/C/2013/000099
File No.CIC/BS/A/2012/000597:-

14. On a careful perusal of the RTI applications in the above mentioned appeals, it is noticed that the appellant has raised essentially and substantially the same issues as have been dealt with in the preceding matters. His non-appearance before the Commission to buttress his case demonstrates his apparent disinterest in these matters. I am, therefore, constrained to dismiss these appeals.

Sd/-
(M.L. Sharma)
Information Commissioner

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.

(K.L. Das)
Deputy Registrar

Address of parties :-

1. The Supdt. Engineer(Civil) & CPIO, BSNL,
BSNL Civil Circle, Main T.E. Building,
Rohtak-124001.

2. The CPIO, BSNL, CGMT Haryana Office,
107, The Mall, Ambala Cantt-133001.

3. The CPIO, Min. of Communications & IT,
Deptt. of Telecommunications, 1110, Sanchar Bhawan,
Ashoka Road, New Delhi-110001.

4. The CPIO, Min. of Communications & IT,
Deptt. of Posts, Dak Bhawan, Sansad Marg,
New Delhi-110116.

5. Shri H.K. Bansal,
Kanta Niwas, 1011/24, Jagdish Colony,
Rohtak-124001.

AAR non disclosure to third party.

Central Information Commission
Room No. 305, 2nd Floor, 'B' Wing, August Kranti Bhavan,
Bhikaji Cama Place, New Delhi-110066
Web: www.cic.gov.in Tel No: 26167931

Case No. CIC/SS/A/2012/002488
September 19, 2013

Appellant	:	Shri Rednam Deepak
Respondents	:	Visakhapatnam Port Trust (VPT)
Date of Hearing	:	19.09.2013

ORDER

The present appeal, filed by Shri Rednam Deepak against Visakhapatnam Port Trust, was taken up for hearing on 19.09.2013 when the Respondents were present through Shri B.V.S. Satish, M.E. (Viglance), VPT. The Appellant was, however, not present.

2. The Appellant filed his RTI application dated 02.02.2012 with the CPIO, Visakhapatnam Port Trust, Visakhapatnam seeking certain information *(like, certified copy of OM dated 21.09.2011; certified copy of note file in relation to the same; certified copy of action taken report by the CVO, VPT on said OM; certified copy of cancellation order for the post of Law Officer Gr.-I; certified copy of termination order*

w.e.f. 21.9.2011 for the post of Law officer Gr. I sent to the CVC by CVO, VPT and so on) with reference to an Office Memorandum dated 21.09.2011 issued by CVC, copy of which was also marked to the CVC, VPT.

3. The Chief Vigilance Officer vide his letter dated 02.03.2012 declined the disclosure of information to the Appellant citing exemption under section 8(1)(h) of the RTI Act.

4. Aggrieved by the reply of the CPIO, the Appellant filed an appeal before the Appellate Authority on 14.03.2012 which the Appellate Authority decided vide his order dated 02.05.2012 upholding the CPIO's reply.

5. The Appellant then filed the present appeal before the Commission challenging the denial of information by the Respondents.

6. During the hearing, the information sought by the Appellant in his RTI application (containing 23 points) was discussed as given below:

Point No. 1:

7. The Appellant wanted to obtain certified copy of CVC OM dated 21.09.2011. The Respondents, present during the hearing, agreed to provide this information to the Appellant.

8. The CPIO/CVO is accordingly directed to provide this information to the Appellant.

Point Nos. 2 & 3:

9. In these points, the Appellant wanted to obtain certified copies of the office notes processed, and action taken report by the CVO, VPT on the CVC OM dated 21.09.2011. The Respondents stated that the present is related to the enquiry conducted on the Appellant's complaint regarding alleged irregularities in the recruitment process of Law Officer in Vishakhapatnam Port Trust and that at present the matter is under examination/investigation of the Ministry of Shipping. No final decision has been taken in the instant matter so far. According to them, any disclosure at this stage would impede the process of said ongoing examination/investigation and may adversely affect the decision making process. They, therefore, cited exemption u/s 8(1)(h) of the RTI Act.

10. The Commission, while agreeing with the Respondents' submission above that disclosure of information attracts exemption u/s 8(1)(h) of the RTI Act, also notes that the information sought by the Appellant here relates to some departmental enquiry/action against a third party. Such information falls under the exemption category of section 8(1)(j) of the RTI Act.

11. The Supreme Court in *Girish Ramchandra Deshpande v. Central Information Commission and Ors., SLP (C) No. 27734 of 2012, dated 03.10.2012*, while dealing with such nature of information, had observed as follows:

"13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in

clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On theother hand, the disclosure of which would cause unwarranted invasion of privacy of that individual..."

12. In view of the above, the Commission is not in position to allow the disclosure of present information to the Appellant.

Point Nos. 4 & 5:

13. The Appellant in these points requested for certified copies of action taken report, and decision taken report of the CVO, VPT, on the CVC OM dated 21.09.2011. The Respondents stated that no such document exists in their record. However, they have the enquiry/investigation report prepared by CVO, VPT in the instant matter which they cannot provide at this stage in view of section 8(1)(h) of the RTI Act.

14. The observation and decision made in respect of information sought in point Nos. 2 & 3 above shall apply in these points as well.

Point Nos. 6, 7, 8 & 9:

15. The CPIO/CVO is directed to give replies to the Appellant on these points.

Point Nos. 10, 11, 12, 14, 15, 16, 17:

16. The queries of the Appellant in these points are interrogatory in nature and do not identify any material information as defined in section 2 (f) of the RTI Act. No disclosure can, therefore, be authorised with regard to them.

Point Nos. 13, 21 & 22:

17. The CPIO/CVO is directed to furnish an appropriate reply to the Appellant on these points.

Point Nos. 18, 19, 20:

18. The Appellant's queries in these points are futuristic in nature for which no information is available in the records of the Respondents. As such, no disclosure can be authorised with regard to these points.

Point No. 23:

19. The Appellant's query here is vague and generic in nature and does not pin point any particular information. No disclosure can, therefore, be allowed to be made with regard to this point.

20. Appeal is disposed of accordingly.

(Sushma Singh)
Information Commissioner

Authenticated by

(D.C. Singh)

Deputy Registrar

Address to the Parties:

1. Shri Rednam Deepak
   Vijay Rama Residency
   Flat No. 302, Narasimha Nagar
   Vishakhapatnam 530024

2. The Central Public Information Officer (RTI)
   Secretary
   Visakhapatnam Port Trust
   General Administration Department
   (Personnel Division)
   Vishakhapatnam 530035
   Andhra Pradesh

3. The Appellate Authority (RTI)
   Chairman
   Visakhapatnam Port Trust
   General Administration Department
   (Personnel Division)
   Vishakhapatnam 530035
   Andhra Pradesh

RTI lets babus check out ACR of colleagues

By Tanu Sharma | ENS - NEW DELHI | Published: 09th October 2012 09:11 AM
Last Updated: 09th October 2012 09:11 AM

In a departure from its stated position, the Central Information Commission (CIC) has made it possible for bureaucrats to access relative grading of the Annual Confidential Reports (ACRs) of other officers, under the RTI.

In a decision that may usher in transparency in promotions in the bureaucracy, Chief Information Commissioner Satyananda Mishra said relative grading of ACRs may be disclosed "as it forms the basis for recommending a certain official for promotion." Mishra underscored that "...in any examination of evaluation process, certain details about the successful or recommended candidates must be disclosed in order to ensure transparency in the selection process," allowing disclosure of relative grading of ACRs.

Although the relative grading of ACRs was allowed to be made public, the head of the transparency panel reiterated that ACRs of an official are classified as "personal information" and can be disclosed only to him and no one else. The decision came on an appeal filed by Dr Madhu Khare, who had asked for copies of the chart of select list of candidates from MP cadre to IAS for two years from 2001.

Putting relative grading of ACRs on a different footing from ACRs, the CIC in a recent ruling said, "Relative grading of the ACRs is an important input in the final decision of the Departmental Promotion Committee in recommending some officers and not others." Based on it, the CIC ordered the UPSC to disclose the complete grading chart of ACRs of the select list of 2001 and 2002 officers who were assessed and recommended for promotion from the MP Administrative Service to the IAS.

"Since the relative grading of the ACRs is the basis for recommending an officer for promotion, this needs to be disclosed just as the caste certificate of a public servant needs to be disclosed since that serves as the basis for his appointment for government service," said Mishra.

Contesting the application, the UPSC had objected to the request saying that the chart contained the grading based on the ACRs and to that extent, the disclosure of the information would amount to the revealing of personal information of other officers, which is exempted under the Act. The ACRs can't be made public as they are exempted under Sec 8(1)(j) of the RTI Act.

CENTRAL INFORMATION COMMISSION
Appeal No. CIC/WB/A/2009/000420, 582 & 602
Right to Information Act 2005 - Section 19

Appellant - Mr. Babban Singh

Respondent - Union Public Service Commission (UPSC)

Decision announced: 14.5.2010

Facts:

In our decision in appeal No. **CIC/WB/A/2009/000081** announced on 26.2.2010, appellant has, as noted in our order, "*submitted that the only plea he now had remaining was to obtain a copy of the relative assessment listed against each name which had been deleted exercising the principle of severability under sub sec. (1) of Sec. 10 of the RTI. Since there was no copy of this letter on file, the same has been obtained by Email from the NIC Centre, Jharkhand*".

The original application of 18.3.08 of Shri Babban Singh of Jharkhand to Secretary, UPSC had asked for the following information:

> "Vide my application dated 18.12.07 I had requested Shri P. K. Sharma, Dy. Secretary, Government of Jharkhand, Home Department to provide me a copy of the proceedings of Selection Committee meeting regarding promotion in Indian Police Service, which was forwarded to your Commission for providing me the same, but I have not received the same so far.
>
> It is, therefore, prayed that the same may be collected and provided to me alongwith other information sought by me in the above application."

Finally, Shri Babban Singh received a letter dated 24.9.08 from CPIO Ms. Richa Sharma, Dy. Secretary, informing him that "*since the recommendations of the Selection Committee had been approved by the UPSC and the approval conveyed to the Govt. of India, a copy of the minutes of the Selection Commission, after applying severability clause in terms of Rule 10 of RTI Act 2005 is forwarded.*" This has led to his submission quoted above from our

decision during the consideration of his second appeal. This left for consideration the following:

"File no. **CIC/WB/A/2009/000420:**

Request of 15.1.08 - "My name exists in consideration zone for promotion from Jharkhand Police Service to Indian Police Service. I am interested in knowing the effect of Departmental Enquiry being conducted against me, in considering my case by the Selection Committee, for promotion from Jharkhand Police Service to Indian Police Service."

File No. **CIC/WB/A/2009/000582:**

Request of 19.11.08 – in which the gist of the request is that the minutes of the SCM may be sent without applying the severability clause.

File no. **CIC/WB/A/2009/000602**

In this case the request is similar to that in appeal in File No. **CIC/WB/A/2009/000582.**

Since in all these cases the basic issue amounted to the application of the severability clause in the answers provided to appellant Shri Babban Singh and since that was not the issue in appeal no. **CIC/WB/A/2009/000081**, we directed in deciding that appeal that the three remaining appeals will be brought together for a hearing on 11/3/2010 at 4.00 p.m. by videoconference when all parties were directed to be present.

Accordingly, the three appeals were heard together on 11.3.2010 by videoconference. The following are present:

Appellant at NIC Studio Hazaribagh.
Shri Babban Singh
Respondents at CIC Chamber, New Delhi
Shri Naresh Kaushik, Advocate
Ms. Amita Kalkal Chaudhary, Advocate
Ms. Richa Misra, Dy. Secretary & CPIO, UPSC
Shri Sunil Kumar, Appellate Authority, UPSC

Ms. Richa Mishra, Dy. Secretary, UPSC submitted a reply statement of 11-3-2010 of which a copy has also been endorsed to appellant Shri Babban

Singh. However, learned counsel for respondents Shri Naresh Kaushik conceded that this would not have reached Shri Babban Singh thus far and therefore, he would have no objection to an adjournment to allow appellant to study the defense of the respondent and prepare his response accordingly. This offer was placed before the appellant who after some discussion agreed that he would prefer to go through the points raised by respondents and appear once more for a final hearing.

The argument submitted by learned counsel Shri Naresh Kaushik during the hearing was that the case law that has developed around the disclosure of information with regard to ACRs is to individual concerned, but directs no disclosure of such information to individuals concerned none of these directs disclosure of such information with regard to a third party. In this context Shri Kaushik submitted that case law deals specifically with disclosure to avoid adverse consequences of ACRs on the individuals seeking the disclosure. Hence, these decisions cannot be extended to the disclosure of information concerning a third party. He also submitted that as per the judgment of the Apex court DPCs are not required to record reasons for arriving at their conclusion.

Appellant on the other hand has submitted that Right to Information stems from Article 14 and 19 (1) (a) of the Constitution of India. In this context he cited the ruling of Justice Mathew in State of UP Vs. Raj Narain (91975) 4 SCC 428. He, therefore, submitted that overall assessment made in the minutes of the sub Committee with regard to each individual also concern the other individuals since it is on this basis the decision is taken. Hence, non-disclosure of this information to appellant Shri Babban Singh will amount to violation of his constitutional rights.

The written response of Ms. Richa Misra also deals with the question of delay mentioned in our decision of 26-2-2010 in the related appeal no. **CIC/WB/A/2009/00081** Shri Babban Singh vs. UPSC in which we have held as follows:

"There is, however, the question of delay in response, with the request of 18.3.2008 albeit considered a 'reminder', being responded to only on 27.6.2008, although a reply had become due on 17.4.2008. CPIO Ms. Richa Misra will explain the reasons for this delay when we consider the remaining appeals on the subject on 11.3.2010.'

Ms. Richa Misra submitted that the application of 18-3-2008 carried no fee and is not described as an RTI application. So it was not treated as such because at the same time the original application was received from the Government of Jharkhand on 13-3-08. The Government of Jharkhand has forwarded the original request for information on 15-3-08, which was replied on 18-3-08 within 5 days, which is the date of direct submission of appellant Shri Babban Singh, which was, therefore, treated as a reminder. After some discussion it transpired that contrary to the orders of the 1st Appellate Authority in the first appeal discussed in file no. **CIC/WB/A/2009/00081** in which Appellate Authority Shri Tangirala had advised that *"I feel it would be appropriate to direct the CPIO to inform the appellant of the fact their attaining finality within fifteen days of the approval of the Select List by the Commission under the Promotion Regulations, so that the appellant may seek any further information that he desires"*, the detailed information was only provided to appellant on 24-9-08 which would, in the view of appellant, amount both to violation of the orders of Appellate Authority Shri Tangirala and can be deemed a refusal of information.

On this point however, in many of the decisions of this Commission we have repeated the stand that compliance with the orders of the Appellate Authority in that Department is the responsibility of that Appellate Authority in that Department. So far as we are concerned CPIO Ms. Richa Mishra has provided us convincing reasons why letter of 18-3-08 was not treated either as an initial application or first appeal and, therefore, the response to it had been delayed. UPSC is nevertheless cautioned to be more careful in processing the RTI applications received by it.

The hearing on the substantive issue in these cases i.e. on the question of disclosure of that part of the information which was withheld under the Severability Clause was directed to be held on 7th May, 2010 at 4.00 p.m. through videoconferencing. CPIO UPSC was asked to bring with her the original copies of the SCM in case these require to be inspected by us.

On 7.5.2010 the three appeals were once more heard together by videoconference. The following are present:

Appellant at NIC Studio, Hazaribagh, Jharkhand
Shri Babban Singh

Respondents
Mr. Naresh Kaushik, Adv.
Ms. Amita Kalkal, Adv.
Mr. Sunil Kumar, AA & Jt. Secy., UPSC
Mr. Manjit Kumar, U.S. UPSC & CPIO

In the meantime, we have received a reply statement of respondents dated 11.3.2010 in which respondents have replied to the contention of appellant, as follows:

"IV)(i) As per the policy of the Commission in matters of sharing information under the RTI Act 2005, copies of the minutes of the Selection Committee Meetings where asked for, are provided after applying severability clause to the portion dealing with "overall relative assessment" of the officers, on the rationale that assessments are based on the ACRs of the officers which is 'personal' information. While the position has undergone some change in the wake of the Dev Dutt judgment of the Hon'ble Supreme Court whereby an individual can have access to his own ACRs the position regarding access to another officers ACRs remains unchanged.

ii) The issue has been considered at length by the CIC in their judgment dated 13.7.06 (F. No. CIC/AT/A/2006/00069) in the case of Gopal Kumar wherein the CIC have observed that –

"In regard to the annual confidential report of any officer, it is our view that what it is contained therein is undoubtedly 'personal information' about that employee . .

We, therefore, are of the view that apart from being personal information, ACRs of officers and employees need not be disclosed because they do not contribute to

any public interest. It is also possible that many officers may not like their assessment by their superiors to go into the hands of all and sundry. If the reports are good these may attract envy and if these are bad ridicule and derision. Either way it affects the employee as well as the organization he works for. On balance therefore, confidentiality of this information serves a larger purpose, which far outstrips the argument for its disclosure."

(iii) Further, based on the above judgment, the CIC in their decision dated 19.2.07 in the case of Jyoti Legha vs. UPSC (Appeal No. CIC/WB/A/2007/00185 dated 19.2.2007 have observed as under :

"In that case, therefore, we have decided that while 'complete proceedings may not be disclosed, proceedings of DPCs are to be disclosed with the principle of severability u/s 10(1) being applied in relation to ACRs."

(iv) Even in their decision dated 19.12.2008 in Appeal No. CIC/WB/A/2008/00615, Ram Kishan vs. Ministry of Urban Development, the CIC after taking due notice of the Dev Dutt Judgment of the Hon'ble Supreme Court while deciding that copies of the ACRs of the applicant should be furnished to the applicant, have upheld the application of severability clause to the portion dealing with evaluation of ACRs.

In view of the above, it is submitted that there has been no denial of information.

V). Vide orders dated 26.2.2010 while disposing Appeal No. CIC/WB/A/000081, the CIC have directed the CPIO to explain the delay in responding to application dated 18.3.2008 from the applicant. In this regard the following position is brought to the notice of the CIC –

i) Vide their letter No. 8/M2-107/2009-631/c dated 11.2.2008 received in the Commission on 13.3.2008 the Government of Jharkhand forwarded a request for information dated 15.1.2008 from Shri Babban Singh seeking a copy of the proceedings of the Selection Committee Meeting held on 18.12.2007 for promotion to the IPS of Jharkhand cadre.

ii) The application of Shri Babban Singh was replied to vide letter dated 18.3.2008 by the CPIO.

iii) In his appeal dated 17.4.08, received in the Commission on 21.4.2008 appealed against the decision of the CPIO. The first appeal was disposed vide orders dated 7.5.08 of the then Appellate Authority Shri M. P. Tangirala.

iv) Meanwhile, vide letter dated 18.3.2008 addressed to Secretary, UPSC the applicant requested that a copy of the minutes of the Selection Committee Meeting requested by him may be furnished to him.

v) This letter of the applicant though received in the Commission on 24.3.08 reached the concerned branch on 13.5.08. In the meanwhile, the CPIO vide letter dated 18.3.2008 had already responded to the application received on 13.3.2008. Further, the first appeal against the decision of the CPIO had also been filed by the applicant and disposed by the Appellate Authority on 7.5.08. Nevertheless, vide letter dated 27.6.08 the applicant was informed that his application had been responded to vide letter dated 18.3.2008

vi) It is further submitted that since the letter dated 18.3.08 was addressed to the Secretary UPSC, not accompanied by the requisite fee as prescribed under Section 6(1) of the RTI Act, the letter was only a reminder and may not be construed as a fresh 'application' governed by Sec. 7(1) of the RTI Act, 2005.

vii) In view of the above, it is respectfully submitted that there has been no delay on the part of the CPIO in responding to the applicant under the RTI Act, 2005.

VI) i) It is further submitted that the CPIO & the Appellate Authority could not be present during the hearing scheduled on the 24.2.10 as the notices in this regard though received in the Commission on 15.2.10 were received by the CPIO and the Appellate Authority only at 5.10 p.m. on 24.2.10. The non-attendance is deeply regretted. However, the issue was brought to the notice of the competent authority.

ii) It is submitted that the delay in sorting Dak in the concerned Branch of the Commission occurred essentially because of huge last minute rush of applications for Civil Services (Pre) Examination that led to clogging of channels. This is an occurrence occasioned by peculiar circumstances including an increase in number of applications received for the Civil Services Examination by about 25% whereby almost 5.35 lakh applications have been received this year. Incidentally, only about 4.09 lakh candidates applied for CS(P) 2009. The last date of receipt this year was 1.2.2010 and 8.2.2010 for remote areas. Remedial action has since been taken and pendency has been attended to.

VII) In view of the submissions made above, it is submitted that there has been no denial of information under the RTI Act 2005 and hence the appeals may be dismissed as devoid of merit."

Appellant Shri Babban Singh submitted in response to this statement, a copy of which had been endorsed to him, that he has submitted his rejoinder of 7.4.2010 addressed to Jt. Secretary Shri Pankaj KP Shreyaskar. We had not

received this rejoinder. The Learned Counsel for respondents Shri Naresh Kaushik therefore, submitted a copy. In this rejoinder Shri Babban Singh has painstakingly sought to challenge all the arguments of respondent CPIO Ms. Richa Misra, Dy. Secretary attached to her letter of 11.3.2010.

In this petition he has submitted as follows:

> "Now all information which were sought by your honour's Appellant are related to the actions of UPSC taken in past and the select list has already been approved vis-à-vis notification has already been issued by the central government pursuant to aforesaid select list and further that the same are related to the officers who were compared and have been appointed on the basis of above comparison and hence there is no reason that they should not be disclosed and should be kept secret in view of above decision of Honourable Delhi High Court. The denial by UPSC is neither logical nor tenable.
>
> All the documents whose copy is demanded have already been presented and represented before many public authorities during course of entire selection proceedings and have moved from one public authority to another and after attaining finality it is placed before parliament and hence can not be withheld under any of the provisions of S/8 of R.T.I. Act 2005.
>
> **The previous decisions of C.I.C quoted in the reply of C.P.I.O., U.P.S.C. do not hold good in view of above decision of Honourable C.I.C., Delhi High Court and Apex Court.** [1]
>
> It is further submitted that entries of ACRs and relative assessment of the officers on those bases are two different facts (information). Relative assessment is similar to marks awarded by examiner on the basis of answers written by examinees in a competitive or academic examination and further that the marks awarded are made public and supplied to individuals even, hence also the disclosure of relative assessment can not be denied. Entries in ACRs also are similar to answers written by examinees in above examinations and further that the answers are scrutinized after evaluation on the demand of aggrieved individual or other competitors and so the entries in ACRs also which has already been held in Lakhi Ram Vs. State of Haryana, referred above hence also the documents including relative assessment can not be denied.

[1] Highlighted to emphasise a key component of the issue in the present cases.

The malafide, arbitrariness and action against principles of natural justice are also evident from following facts.

(a) Annexure "D" to the reply of CPIO may kindly be perused. In Para 3 of the said annexure it is categorically mentioned that clarification sought from the state government regarding a criminal case pending against one of the officers are yet to be received,

(b) In reply statement on behalf of the respondent no.2 in an original application no. 101 of 2009 before the Honourable Central Administrative Tribunal Circuit Bench at Ranchi in Para (5.5) UPSC has submitted that Shri. Mohammed Nehal who has been included in the select list of 2005, the state government informed that a warning was issued to him. How ever they also clarified that warning could be treated as punishment when an order is given for its entry in ACR and in the case of Shri Nehal no such order ahs been given. Further there were certain allegation of pendency of criminal case against Shri Mrityunjai Kumar was exonerated vide order dated 07.06.2008. Thus admittedly the criminal case was pending against him on the date of the meeting of selection committee. Hence all the relevant facts were not considered.

Hence, also it is necessary in the interest of transparency, justice natural as well as factual to know as to which were the documents provided, produced and which were not. Unless the information sought are provided everything will remain mystery, which are against the spirit of R.T.I. Act.

The Xerox copy of the said reply statement on behalf of respondent no. 2 (i.e. UPSC) before the Honourable Central Administrative Tribunal Circuit Bench Ranchi in original Application No. 101/09 is Annexure-III.

Annexure-III to this rejoinder referred in just preceding Para i.e. Para 22 may kindly be considered complete in totality and further in its letter and spirit as well UPSC did not enclose any of the documents including minutes of the meeting of the selection committee in support and proof of its contentions. Averments only are not sufficient, but proof thereof is also necessary in the interest of natural justice, fair play and transparency, which are cardinal principles incorporated under Article 14 of the constitution. Hence non supply of all information demanded shall amount to defiance of Art 14 of the constitution and its corollary R.T.I Act 2005.

Therefore it is prayed that the Honourable C.I.C may kindly be pleased

i) to direct UPSC to supply all the information sought by the Appellant.

ii) to pass suitable order as to fine against respondents and cost in favour of the Appellant.

iii) to issue all other directions and pass all other orders which the Honourable CIC may deem fit and suitable in this manner.

The issue in this case is a simple one. Given that as conceded by the Learned Counsel for respondents, case law on disclosure of ACRs has developed considerably since the time of the decision of this Commission in the case of Gopal Kumar which has been relied upon by respondent Ms. Richa Misra in her letter of 11.3.10 with the decision of the Apex Court in the Dev Dutt case, we do indeed have a much more open policy with regard to the disclosure of the contents of ACRs, a matter which has been conceded also by the DOPT through its OMs. Nevertheless, although such disclosure is now almost mandatory in terms of the ACRs of the individual who they concern, as pointed out by learned Counsel for respondents Shri Kaushik, this is not so of ACRs of third parties. It must be borne in mind that ACRs continue to be classified as 'confidential documents ' and will, therefore, continue to come under the mischief of the Official Secrets Act, 1923, and require concurrence of third parties even were any disclosure proposed as per Se 11(1) of the RTI Act 2005.

On the other hand, in the present case, and as pointed out by appellant in his arguments quoted above, the request is not for information contained in the ACRs which has been sought by appellant Shri Babban Singh but only a copy of the relative assessment drawn from these ACRs and taken into account in assessing the different parties for promotion. Appellant Shri Babban Singh's argument is that since these relative assessments will have affected his promotion by comparison, he has a right to make such inspection. We have, accordingly, examined pages 117, 118 & 199 of the relevant assessments given in 2005, 2006 & 2008 contained in UPSC file No. 7/26/2007-AIS(Confidential). These simply categorise the contenders

DECISION NOTICE

Although we accept the fact that this is not a request for disclosure of ACRs-and it is correct that our previous rulings had arisen from our understanding of the deemed confidentiality of ACRs- the question that arises in the present case is whether the assessments upon which DPCs in UPSC base their decisions, thus undoubtedly affecting the competitive position of contenders, are to be deemed as exempted from disclosure u/s 8 (1) (d) and (e). This will ofcourse be so until a final decision on DPCs has been taken, but what of a situation where the action to be taken is complete?

In their judgment in Civil Appeal No. 76321 of 2002 Dev Dutt vs. OUI & Ors announced on 12.5.'08 Hon'ble Justices Markandey Katju and HK Sema have apart from disposing of the question of disclosure of entries in ACRs, examined the concept of natural justice in this context, which will have a bearing in the present case as below: .

> "26. What is natural justice? The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarized in one word : fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on the situation and the context.
> 27. Lord Esher M.R. in Voinet vs. Barrett (1885) 55 L.J. QB 39, 39 observed: "Natural justice is the natural sense of what is right and wrong."
> 28. In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the part of the respondent in not communicating the 'good' entry to the appellant since he was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of Superintending Engineer. One may not have the right to promotion, but one has the right to be considered for promotion, and this right of the appellant was violated in the present case.
> 29. A large number of decisions of this Court have discussed the principles of natural justice and it is not necessary for us to go into all of them here. However, we may consider a few.

30. Thus, in A. K. Kraipak & Ors. vs. Union of India & Ors. AIR 1970 SC 150, a Constitution Bench of this Court held : "The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet csse judex propria causa)*, and (2) no decision shall be given against a party without affording him a reasonable hearing *(audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice".(emphasis supplied)

31. The aforesaid decision was followed by this Court in K. I. Shephard & Ors. vs. Union of India & Ors. AIR 1988 SC 686 (vide paras 12-15). It was held in this decision that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held that natural justice has various facets and acting fairly is one of them. 16

32. In Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant AIR 2001 SC 24, this Court held (vide Para 2): The doctrine (natural justice) is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action". (emphasis supplied)

33. In the same decision it was also held following the decision of Tucker, LJ in Russell vs. Duke of Norfolk (1949) 1 All ER 109: "The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject- matter that is being dealt with, and so forth".

34. In Union of India etc. vs. Tulsiram Patel etc. AIR 1985 SC 1416 (vide Para 97) a Constitution Bench of this Court referred to with approval the following observations of Ormond, L.J. in Norwest Holst Ltd. vs. Secretary of State for Trade (1978) 1, Ch. 201 :

> "The House of Lords and this court have repeatedly emphasized that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case". (emphasis supplied)

Thus, it is well settled that the rules of natural justice are flexible. The question to be asked in every case to determine whether the rules of natural justice have been violated is: have the authorities acted fairly?

35. In Swadesh Cotton Mills etc. vs. Union of India etc. AIR 1981 SC 818, this Court following the decision in Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors. AIR 1978 SC 851 held that the soul of the rule (natural justice) is fair play in action.

36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

37. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (audi alteram partem). However, subsequently, as noted in A.K. Kraipak's case (supra) and K.L. Shephard's case (supra), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide S.N. Mukherji vs. Union of India AIR 1990 SC 1984. In Maneka Gandhi vs. Union of India (supra) (vide paragraphs 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, **we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation**[2]. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of 19the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders."

The Hon'ble apex court has gone further in also developing with this right the right to make a representation as below:

"40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period."

From the above, it will be clear that the implications of Dev Dutt's case go beyond the question of simply conveying the grading in the ACRs

[2] Emphasis ours

notwithstanding their being favorable or adverse. On the similar principle the objective of a DPC decision cannot be to recommend promotions in a clandestine manner or behind a veil. We agree that if such disclosure is made, at a time when the DPC is under process or even when its recommendations have not been finally accepted, such disclosure could conceivably affect the competitive position of third parties. On the other hand, the relative assessment being the key to the decision of the DPC in an activity in which the comparative merits of different candidates for promotion are made with full gravity and reflection, it will surely will be the right of every candidate to know as to how he stands assessed at the time of his consideration, with the understanding that this will enable him to represent on the basis of fact and not conjecture.

In light of the above, we must come to the conclusion that the relative assessment attached with the DPC cannot be held as exempt. This has become inevitable in consequence of the decision of the Supreme Court of India in **Dev Dutt vs. U.O.I. (SLP No. 3114 of 2007)** in light of which the earlier ruling of this Commission cited by CPIO cannot hold. Copies of the original relative assessment in the present case will, therefore, be provided to appellant Shri Babban Singh within fifteen working days of the date of receipt of this Decision Notice. However, because of the decisions of the CPIO have been taken in light of her understanding of the law at the time and of the rulings of the Central Information Commission, there is no question of penalty or indeed of costs.

Reserved in the hearing this decision, which will dispose of all three cases, is announced on this fourteenth day of May 2010. 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

Central Information Commission, New Delhi
File No.CIC/SM/A/2012/000033
Right to Information Act-2005-Under Section (19)

Date of hearing	:	5 October 2012
Date of decision	:	5 October 2012
Name of the Appellant	:	Dr. Madhu Khare, E-11/7, Char Imli, Bhopal, M.P.
Name of the Public Authority	:	CPIO, Union Public Service Commission, (Sangh Lok Seva Ayog), Dholpur House, Shahjahan Road, New Delhi – 110 069.

The Appellant was present in person.

On behalf of the Respondent, the following were present:-

(i) Smt. Rashmi Sinha, Deputy Secretary
(ii) Shri Shilendra Singh, JS (AIS)

Chief Information Commissioner : Shri Satyananda Mishra

2. The Appellant was present in the Indore studio of the NIC. The Respondents were present in our chamber. We heard their submissions.

3. In her RTI application, the Appellant had sought the copies of the

grading chart of select list of 2001 and 2002 for promotion from the MP State Administrative Service to the IAS. The CPIO had provided the copies of the minutes of the respective meetings containing, among various other details, a summary of relative assessment of the grading of the officers who had been considered. The Appellate Authority has found the response of the CPIO in order.

4. During the hearing, the Appellant submitted that she was not satisfied with the summary of the grading provided by the CPIO as a part of the minutes; she wanted the entire chart showing the grading of the Annual Confidential Rolls (ACRs) of all the officers as considered by the DPC. The Respondents argued that the chart contained the gradings based on the ACRs and, to that extent, the disclosure of this information would amount to the disclosure of personal information of other officers. They, therefore, argued that this could not be disclosed as exempted under the provisions of subsection 1(j) of section 8 of the Right to Information (RTI) Act.

5. We have carefully considered the submissions made by both the parties. The CIC has consistently held that the ACRs of an officer is in the nature of personal information and can be disclosed only to him and to none else. However, in the present case, the Appellant has not sought the copies of the ACRs. She has only wanted to know the manner in which the DPC evaluated and assessed the individual ACRs of the officers and arrived at the grading in each case. The disclosure of the final relative grading will not help; without the entire chart showing the complete assessment of every officer, it will not be clear how the officers have been assessed in a related matrix. It is without doubt that the relative grading of the ACRs is an important input in the final

decision of the DPC in recommending some officers and not recommending some others. As held by us in several similar cases in the past, in any examination or evaluation process, certain details about the successful or recommended candidates must be disclosed in order to ensure transparency in the selection process. Since the relative grading of the ACRs is the basis for recommending a certain officer for promotion, this needs to be disclosed just as the caste certificate of a public servant needs to be disclosed since that serves as the basis for his appointment to the government service. Therefore, this no longer remains personal information and should be disclosed as it forms the very basis for the promotion of an individual officer.

6. In the light of the above, we are of the view that the desired information, namely, the complete chart of the grading of the ACRs of the officers as assessed and evaluated by the DPC and recommended for promotion must be disclosed. We direct the CPIO to do so within 10 working days of receiving this order.

7. The appeal is disposed off accordingly.

8. Copies of this order be given free of cost to the parties.

(Satyananda Mishra)
Chief Information Commissioner

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.