

केन्द्र
Central Information Commission

Baba Gangnath Marg, Munirka
ई ल , New Delhi – 110067

File No : CIC/DOP&T/A/2019/635550

Anjali Bhardwaj

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/Appellant

VERSUS

CPIO,

Ministry of Personnel, PG & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001

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/Respondent

Date of Hearing : 06/01/2021
Date of Interim Decision : 06/01/2021
Date of Final Decision : 28/01/2021

INFORMATION COMMISSIONER : Saroj Punhani

Relevant facts emerging from appeal:

RTI application filed on : 13/11/2018
CPIO replied on : 13/12/2018
First appeal filed on : N.A.
First Appellate Authority order : N.A.
2nd Appeal/Complaint received : 18/01/2019

Information sought:

The Appellant filed RTI application dated 13.11.2018 seeking the following information regarding Selection Committee constituted under the Lokpal and Lokayuktas Act, 2013 (1 of 2014)

"1. Provide the following information regarding the Selection Committee constituted under the Lokpal and Lokayuktas Act, 2013 (1 of 2014):

a. Number of meetings of the committee held since January 1, 2014

- b. Date of all the meetings held since January 1, 2014*
- c. Copy of minutes/discussions/proceedings/verbatim recordings etc. of the proceedings of all the meetings held since January 1, 2014*
- d. Name and designation of persons who attended each meeting since January 1, 2014*
- 2. Provide the following information regarding the Search Committee constituted under the Lokpal and Lokayuktas Act, 2013 (1 of 2014):*
- a. Number of meetings of the committee held since January 1, 2014*
- b. Date of all the meetings held since January 1, 2014*
- c. Copy of minutes/discussions/proceedings/verbatim recordings etc. of the proceedings of all the meetings held since January 1, 2014*
- d. Name and designation of persons who attended each meeting since January 1, 2014.”*

The CPIO, vide letter dated 13.12.2018, provided point wise information to the appellant. Being dissatisfied with the denial of the information sought for at point no.1(c) of the RTI Application, the appellant filed a First Appeal dated 26.12.2018. FAA, vide order dated 23.01.2019, upheld the reply of CPIO's letter dated 13.12.2018 and disposed of her appeal.

Grounds for the Appeal:

The Appellant is dissatisfied with the denial of the information sought for at point no.1 (c) of the RTI Application as neither the FAA nor the CPIO have invoked any permissible exemptions of Section 8 and/or 9 of the RTI Act for denying the information.

Relevant Facts emerging during Hearing on 06.01.2021:

The following were present:-

Appellant: Present with Amrita Johri through intra-video conference.

Respondent: Not present.

At the outset, the Commission apprised the Appellant that Kundan Nath, Under Secretary & CPIO has sent a request for adjournment of hearing on 05.01.2021 stating that he received the notice of hearing only on 05.01.2021 and since the instant case pertains to old records of 2018, he may not be able to trace the relevant records on a short notice given the staggered and reduced attendance of staff in the wake of COVID-19 guidelines.

The Appellant stated that she has already waited for about 2 years for getting the desired information and further adjourning the matter will only add to the delay, however, agreed to the adjournment, if the Commission deems it fit.

The Appellant further stated that she is aggrieved with the denial of the information sought for at point no.1 (c) of the RTI Applications the CPIO & the FAA did not rely on any grounds specified in Sections 8 or 9 of the RTI Act to deny the information. She further submitted that even if for the sake of argument, it is accepted that the information sought for is treated as secret/confidential for the reasons that it was supplied by a third party, then it was incumbent upon the CPIO to have sought for the consent of the third parties as per Section 11 of the RTI Act or to have transferred the RTI Application under Section 6(3) of the RTI Act to the concerned authorities. She further asserted that there is no provision in the RTI Act, whatsoever, for denying the information merely because the authorship of the documents does not vest in the public authority or because some document is shared as secret.

Interim Decision on 06.01.2021

The Commission based on a perusal of the facts on record concedes with the contention of the Appellant that no exemption clause has been invoked by the CPIO for the denial of the information and his claim that the authorship of the documents does not vest in the public authority is not a permissible ground for denial under the RTI Act.

Having observed as above and considering the contentions of the Appellant, the Commission is of the considered opinion that for effective dispensation of justice in the matter, it is imperative to hear the arguments of the CPIO. Accordingly, the case is adjourned as per the request of the CPIO.

Now, therefore the CPIO is directed to appear before the bench in person on 28.01.2021 at 11.00 am alongwith his written submissions relevant to the contentions made by the Appellant during the hearing.

The Appellant may present her case in person or through her duly authorized representative.

In addition to the aforesaid, if either of the parties desire to be heard through audio mode, a request to this effect may be duly intimated to the registry

attached with this bench at least 7 days prior to the date of hearing alongwith the necessary contact details.

The Appeal is reserved for final order.

Proceedings of Final Decision

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Present with Amrita Johri through intra-video conference.

Respondent: Kundan Nath, Under Secretary & CPIO alongwith Mahesh Kumar, Section Officer present through intra-video conference.

The Appellant stated that she stands by her earlier submissions of 06.01.2021 and reiterated that the denial of the information was not in conformity with the provisions of the RTI Act. She further stated that if the CPIO believes that the information was supplied by a third party in confidentiality then he should have transferred the RTI Application to the Selection Committee, since it is a statutory body by virtue of which it is amenable to the jurisdiction of the RTI Act. She further insisted that the CPIO could have sought for the consent of the third parties as per Section 11 of the RTI Act.

The CPIO submitted that the primary premise of denial of the information is not justified as the then CPIO has provided the complete details of the Selection Committee to the Appellant including the gist of all the meetings held by the Committee. He further submitted that the copy of minutes was only denied to the Appellant as being supplied in confidence by the 3-5 high level dignitaries and he further emphasized on the fact that Section 11 of the RTI Act provides for seeking the consent of the third party only in cases where the CPIO intends to disclose the information supplied by a third party and in the instant case as observed in the FAA's order also, the then CPIO has treated the requested information as being held in confidence *vis-à-vis* the high level dignitaries (third party). He furthermore submitted that the Selection Committee does not have a Secretariat where the RTI Application could have been transferred under Section 6(3) of the RTI Act and certainly so, said provision of the Act does not provide for transferring the RTI Application to the august members of the selection Committee. He also submitted that the confidentiality of the said record can be gauged by the fact that the averred minutes of the Selection Committee were received in a sealed

cover by the DoPT and even in pursuance of related Court matters, the said record was presented before the Hon'ble Supreme Court in sealed cover only. In this context, the CPIO desired to bring the attention of the bench to an order of the Hon'ble Supreme Court dated 07.03.2019 in a Contempt Petition filed with respect to the constitution of the Lokpal [CONMT.PET.(C) No. 714/2018 in W.P.(C) No. 245/2014] wherein the Court rejected the plea of the petitioner to put out the names of the enlisted members in the public domain and left it to the Selection Committee to take a call. Lastly, he submitted that he believes that the reasons for denying the averred information falls within the scope of Section 8(1)(e) of the RTI Act as the documents authored by the third parties under reference is held in a fiduciary capacity by DoPT.

The Appellant objected to the invocation of Section 8(1)(e) of the RTI Act at this stage and stated that there are a catena of judgments of the superior Courts wherein the import of Section 8(1)(e) of the RTI Act has been explained and nowhere does it say that the notings/recommendations of public officials is fiduciary in nature. She further argued that the CPIO ought to have invoked a proper exemption clause of Section 8 and/or 9 in his reply itself to deny the information instead of arbitrarily deciding to withhold the information. She further pointed out that she has not asked for the gist or the outcome of the Selection Committee meetings but has sought to know the basis of these outcomes. She further exemplified the aspect of disclosure in the interest of the public as she asserted that the larger public has a right to know about the basis on which their Lokpal or Lokayukta was selected. She stated further in this regard that the enactment of the Lokpal Act is meant to augment transparency in the functioning of the public offices and if the information related to the selection of the Lokpal & Lokayukta is withheld as confidential information, then the same is antithetic to the letter and spirit of the RTI Act as well as that of Lokpal and Lokayukta Act. She also objected to the reliance placed by the CPIO on the Hon'ble Supreme Court order in the Contempt petition (supra) and stated that the same is irrelevant to the facts of the instant case. Instead, she relied on a judgment of the Hon'ble Supreme Court dated 15.02.2019 in the matter of *Anjali Bhardwaj & Ors. Vs. Union of India & Ors.* Wherein the Court had directed the Government to place details related to the appointment of Information Commissioners and that of the search committee in the public domain and apprised the bench that DoPT had, as a matter of fact placed such details in the public domain. Lastly, she stated that the involvement of larger public interest in the disclosure of this information may be duly considered by the bench before deciding the matter.

Final Decision

Having heard the contentions of both the parties in detail and after carefully considering the facts and circumstances of the case, the Commission observes that the CPIO had provided all the available information pertaining to the Selection Committee as sought for in the RTI Application in terms of the number of meetings held, dates of these meetings, details of the persons who attended the meetings and also a detailed report of the subject matter discussed in each of these meetings, and this fact has not been contested by the Appellant at any point in time. It is clear beyond reasonable doubt that the CPIO intended to disclose the information to the best of his understanding and the FAA had supplemented the CPIO's reply by according proper justification for the denial of the copy of the minutes of the Selection Committee meetings by stating that it was held as confidential by the concerned third parties.

Further, advertent to the reliance placed by the parties on an order and judgment of the Hon'ble Supreme Court respectively, the Commission observes that in the matter of *Common Cause A Registered Society vs. Ajay Mittal*[CONMT.PET.(C) No. 714/2018 in W.P.(C) No. 245/2014] relating to the constitution of the Lokpal, the Court observed as under:

*"....So far as the prayer of Mr. Bhushan, learned counsel, for putting the names recommended by the Search Committee in the public domain is concerned, we have considered the provisions of Section 4(4) of the Act and it is our considered view that no direction from the Court should be issued in this regard. Rather the matter should be left for a just determination by the Selection Committee as and when the meeting of the Committee is convened."***Emphasis Supplied.**

And, in the matter of *Anjali Bhardwaj &Ors. Vs. Union of India &Ors. [WRIT PETITION (CIVIL) NO. 436 OF 2018]*, the Hon'ble Supreme Court while commenting on the status report submitted by the Government with respect to the appointment of the Information Commissioner(s) held as under:

"35) Insofar as transparency of procedure is concerned, from the status report it becomes clear that the procedure is now adequately transparent. Insofar as transparency of procedure is concerned, from the status report it becomes clear that the procedure is now adequately transparent. The Department of Personnel and Training has put on website information in respect of names of the applicants for these posts, names of the members of Search Committee, agenda for the Search Committee, Minutes of the Search Committee etc.

Authenticated true copy

(प्र त प्र)

(C.A. Joseph)

Dy. Registrar

011-26179548/ ca.joseph@nic.in

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