

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. **CIC/BARCM/A/2021/117845**
CIC/BARCM/A/2021/117858

Shri Donal Marshal Noronha

... अपीलकर्ता/Appellant

VERSUS/बनाम

PIO, Chief Administrative Officer (A)
BARC, Mumbai

...प्रतिवादीगण /Respondent

Through: Shri Ram and Shri B V Balaji - CAO

Date of Hearing : 06.10.2022

Date of Decision : 10.10.2022

Chief Information Commissioner : Shri Y. K. Sinha

Relevant facts emerging from appeal:

Since both the parties are same, the above mentioned cases are clubbed together for hearing and disposal.

Case No.	RTI Filed on	CPIO reply	First appeal	FAO	2 nd Appeal received on
117845	03.02.2021	05.03.2021	03.03.2021	16.04.2021	28.04.2021
117858	03.02.2021	04.03.2021	03.03.2021	16.04.2021	28.04.2021

Information sought and background of the case:

(1) CIC/BARCM/A/2021/117845

The Appellant filed an RTI application dated 03.02.2021 which was responded to by the PIO/Chief Administrative Officer(A), BARC vide letter dated 05.03.2021 replied as under:-

Date of receipt of Application fee	03.02.2021	Draft/Cash/IPO Receipt No:	IPO 56C 488163 & 488164
Sr No.	Information Sought	Information Given	
1.	Why was the rule of 60% score in theory papers relaxed in the case of N. Kumar?	PIO can provide information which exist in material form and not expected to give reply to interrogative questions. Answering questions like Why, Whether, What, When are not covered under the definition of 'Information' as per section 2(f) of the RTI Act, 2005. The photocopies of N. Kumar's promotion order & M.sc degree relates to personal information of the individual concerned, hence exempt from disclosure as per section 8(1)(j) of the RTI Act, 2005.	
2.	Why BARC is in a hurry to bestow double promotion to N. Kumar even though he was B.Sc? Please provide photocopies of N. Kumar's double promotion order & M.sc degree		

Dissatisfied with the response received from the CPIO, the Appellant filed a First Appeal dated 03.03.2021. The FAA/Actg. Controller, BARC vide order dated 16.04.2021 held as under:-

5. On perusal of the records it is observed that the information sought is in the nature of query/clarification and does not come under the ambit of section 2(f) of RTI Act, 2005. The RTI Act, 2005, provides Right to Information for citizens to secure access to information under the control of public authorities. The appellant has not sought for any specific information. RTI is not a forum to resolve the grievances raised by the applicant. The same is reiterated by the Central Information Commission (CIC) vide decision No. CIC/VS/A/2015/002101/SB dated 14.06.2016.

6. As regards photocopies of N. Kumar's promotion order & M.Sc. degree relates to personal information of the employee concerned. This is in line with CIC decision No CIC/ACCGII/A/2017/163946 dated 07.06.2018 wherein it is reiterated that "the information in relation to the personal details of individual employee such as the date of his/her joining designation, details of promotion, where he/she is posted etc., are personal in nature." Hence exempt under section 8(1)(j) of the RTI Act. 2005.

Aggrieved and dissatisfied, the Appellant approached the Commission with the instant Second Appeal.

A written submission dated 07.09.2022 has been received from the Respondent public authority-CAO/PIO reiterating the aforementioned facts and adding the following:

(iv) Further, it is submitted that the Department of Atomic Energy is following the 'Merit Promotion Scheme' for its Scientific & Technical personnel working in the Department. Hence, their promotion takes place purely on the basis of the merit and merit may differ from person to person and promotions earned by them are incomparable/independent of each other and purely as per their own merit/performance and as per the rules prevailing from time to time.

(2) CIC/BARCM/A/2021/117858

The Appellant filed an RTI application dated 03.02.2021 which was responded to by the CPIO/Chief Administrative Officer(A) vide letter dated 04.03.2021 replied as under:-

Date of receipt of Application fee		03.02.2021	Draft/Cash/IPO Receipt No:	IPO 56C 488165
Sr No.	Information Sought	Information Given		
1.	Why BARC allowed to do plagiarism for J.V Kamat and Jisha Pillai	PIO can provide information which exist in material form and not expected to give reply to interrogative questions. Answering questions like Why, Whether, What, When are not covered under the definition of 'Information' under section 2(f) of the RTI Act, 2005.		
2.	How was K.C Jagadeesan & S.R Nair and not me promoted to SO/F in spite of their less than 50% score in theory papers? Why was I made to retire at par with a diploma holder like S.M Pawar?			

Dissatisfied with the response received from the CPIO, the Appellant filed a First Appeal dated 03.03.2021. The FAA/Actg. Controller, BARC vide order dated 16.04.2021 replied as under:-

5. On perusal of the records it is observed that the information sought is in the nature of query/clarification and does not come under the ambit of section 2(f) of RTI Act, 2005. The RTI Act, 2005, provides Right to Information for citizens to secure access to information under the control of public authorities. The appellant has not sought for any specific information. RTI is not a forum to resolve the grievances raised by the applicant. The same is reiterated by the Central Information Commission (CIC) vide decision No. CIC/VS/A/2015/002101/SB dated 14.06.2016.

6. Therefore, I uphold the reply given by CPIO, BARC.

Aggrieved and dissatisfied, the Appellant approached the Commission with the instant Second Appeal.

Facts emerging in Course of Hearing:

A written submission dated 07.09.2022 has been received from the Respondent public authority reiterating the aforementioned facts and adding the following:

(iii) Further, it is submitted that claims of Shri Noronha primarily emanates from non-consideration of his Additional Qualification of M.Sc degree (with 41.5% marks in Theory papers) in the Department for Promotion purpose. As per the rules/decision of the department, the M.Sc degree acquired cannot be considered in the Department for promotion as he has acquired the M.Sc degree with less than 50% marks. The above fact was informed to the applicant vide this Centre's note no. TC/201/2(1)/2020/98880 dated 13.10.2020 (Annexure-VI). The said letter has been attached by the applicant himself along with the second Appeal.

Hearing was scheduled through virtual means after giving prior notice to both the parties. Both parties are heard through video conference and reiterated their respective contentions as narrated hereinabove.

Decision

Upon hearing the contentions of the parties and perusal of records of the case, the Commission finds it pertinent to refer to a decision dated 03.04.2018, passed by the Bombay High Court while deciding the case of Dr. Celsa Pinto vs. The Goa State Information Commission wherein it was held as under:

“ ..The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot be expected to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information...”

Emphasis supplied

Another instance when the Apex Court adjudicated this aspect was in the decision dated 09.08.2011 in the case titled: Central Board Of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors. wherein it was discussed as follows:

“...35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act...”

Emphasis supplied

The ratio propounded by the Apex Court in the aforementioned decisions is applicable to the facts of the appeals at hand. Therefore no legal infirmity is found in the responses furnished by the Respondent public authority. In so far as service related grievances of the Appellant are concerned, the same cannot be adjudicated under the ambit of the RTI Act and hence the Appellant is advised to seek appropriate legal remedy, outside the ambit of the RTI Act.

The appeals are disposed off accordingly.

Y. K. Sinha (वाई. के. सिन्हा)

Chief Information Commissioner (मुख्य सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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