



In the Tripura Information Commission
P. N. Complex, Gorkhabasti : Agartala

Appeal No TIC- 20 of 2008-09.

Sri Arun Kanti Das
Assistant Engineer, Rig Division
Kunjaban, Agartala
Cell Phone No- 9436181449.....Appellant

Vs.

1.Er. S. Bhattacharya, Superintending Engineer, Planning Circle, PWD,
Government of Tripura, Agartala (First Appellate Authority).
2.Sri B.P.Das, Executive Engineer, Office of the Chief Engineer, PWD (R&B),
Government of Tripura, Agartala (State Public Information Officer).
3.Sri Susanta Datta, Assistant Engineer, Office of the Executive Engineer,
Monitoring Cell, PWD(R&B), Government of Tripura, Agartala (State Assistant
Public Information Officer).....Respondents

In the matter of a second appeal under section 19(3)
of the Right to Information Act, 2005.

PRESENT:

1. Sri B.K.Chakraborty
State Chief Information Commissioner

2. Sri D.K.Daschaudhuri
State Information Commissioner

For the Appellant: The appellant Sri Arun Kanti Das himself.

For the Respondent No.1: Er. S. Bhattacharya, Superintending Engineer,
Planning Circle, PWD, Government of Tripura,
Agartala (First Appellate Authority).

For the Respondent No.2: Sri B.P.Das, Executive Engineer, Office of the Chief
Engineer, PWD (R&B), Government of Tripura, Agartala
(State Public Information Officer).

For the Respondent No.3: Susanta Datta, Assistant Engineer, Office of the
Executive Engineer, Monitoring Cell, PWD(R&B),
Government of Tripura, Agartala (State Assistant Public
Information Officer).

Date of lodging second appeal : 18.08.2008

Date of hearing of second appeal: 22.09.2008

Date of pronouncing judgment and order: 04.10.2008

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JUDGMENT & ORDER

Facts:

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 18.08.2008 of Sri Arun Kanti Das (here in after referred to as the appellant) received by this Commission on the same date. The facts leading to this second appeal are that the appellant submitted a written request on 09.06.2008 to Sri B.P.Das, Executive Engineer, office of the Chief Engineer (R&B), Government of Tripura, Agartala being the State Public Information Officer (SPIO) seeking copies of his Annual Confidential Reports(ACRs) for the years 2005-06, 2006-07 & 2007-08 depositing application fee of Rs. 10/-. In response to the above request, Sri Susanta Datta, Assistant Engineer, Office of the Executive Engineer, Monitoring Cell, PWD(R&B), Government of Tripura, Agartala being the State Assistant Public Information Officer (SAPIO) vide letter No.F.44(2)-NC/PWD/2008/3482 dated 18.06.2008 intimated the appellant that they were not in a position to supply the copy of the ACRs since the item was not covered as per the RTI Act. Being aggrieved with the said decision of the SAPIO, the appellant preferred a first appeal on 16.07.2008 to the Superintending Engineer, office of the Chief Engineer (R&B), Government of Tripura, Agartala being the First Appellate Authority (FAA) seeking access to the information sought for. Responding to the first appeal in issue, Er. S. Bhattacharya, Superintending Engineer, Planning Circle, PWD, Government of Tripura, Agartala being the FAA although noticed the appellant to appear on 07.08.2008 at 11 A.M, to present his case and accordingly the appellant appeared but, the FAA did not communicate his decision within the statutory period. Hence, the appellant preferred this second appeal before this Commission seeking direction for having access to the information sought for. Along with the memorandum of appeal, the appellant furnished copies of all the relevant papers.

2. On perusal of the memorandum of appeal with enclosures, it was found in form and within time and accordingly, was registered as second appeal under section 19(3) of the Act.

3. In response to the summons, the Respondent 1 Er. S. Bhattacharya, Superintending Engineer, Planning Circle, PWD, Government of Tripura, Agartala being the FAA, the Respondent 2 Sri B.P.Das, Executive Engineer, office of the Chief Engineer (R&B), Government of Tripura, Agartala being the SPIO and the Respondent 3 Sri Susanta Datta, Assistant Engineer, Office of the Executive Engineer, Monitoring Cell, PWD(R&B), Government of Tripura, Agartala being the SAPIO appeared and submitted their respective written representations defending their respective decisions. The Respondent 1 being the FAA submitted that he dismissed the first appeal in issue of the appellant by an order delivered on 25.08.2008 and it was duly communicated to the appellant.

4. The appellant submitted a written rejoinder to his memorandum of second appeal stating that after submission of the memorandum of second

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appeal, he received the order of the FAA on 25.08.2008 but, he was not satisfied with the decision of the FAA, and insisted to proceed with the present appeal.

Issue for decision:

5. The only issue for determination is whether or not the decisions of the Respondent 3 being the SPIO and the Respondent 1 being the FAA are maintainable and if the appellant is entitled to have access to the information sought for in the form of supply of the copies of his ACRs for the years 2005-06, 2006-07 & 2007-08.

Reasons for decision:

6. We have carefully gone through the memorandum of appeal with rejoinder thereto and the written representations of the Respondents and also considered the oral submissions made by both the parties. The appellant sought for the copies of his ACRs for the years 2005-06, 2006-07 & 2007-08. In response, the concerned SPIO intimated the appellant that they were not in a position to supply the copy of the ACRs since the item was not covered by the RTI Act, 2005. The SPIO enjoys no power under the Act to decide the merit of a written request seeking information under section 6(1) of the Act. It is explained by the Respondents 2 & 3 being the SPIO and SPIO respectively that in fact the decision was taken by the concerned SPIO in the file and being directed, it was only communicated by the SPIO. The explanations offered by the Respondents 2 & 3 are not inconsonance with the provisions of the Act and the Tripura Right to Information Rules, 2008. The Respondent 3 also did not use the prescribed format for intimating the decision of the SPIO to the appellant. In the circumstances, both the Respondents 2 & 3 are required to be very careful in future in handling with any written request seeking information under the Act.

7. As regards merit of the decision taken by the Respondent 2 to deny the disclosure of the information sought for is also not tenable. Although, the decision of the SPIO concerned as communicated to the appellant does not disclose any specific provisions of the Act, under which disclosure could not be made possible, but in his written representation, the Respondent 2 being the SPIO submitted that under section 8(1)(j) of the Act, the information sought for is exempted from disclosure. However, he has not elaborated as to how the above provisions of the Act are applicable in the present case. The Respondent 1 being the FAA in his decision dated 25.08.2008, also relied on the same provisions of the Act to deny the disclosure of the information sought for and upheld the decision of the SPIO.

8. In Appeal No-4 of 2006-07 between Sri B.K.Sahu - Appellant and Commissioner & Secretary to the Government of Tripura, GA(P&T) Department - Respondent, this Commission dealt with the matter of disclosure of ACRs-dossiers, which is considered to be useful to reiterate here. The relevant portions of the said judgment and order are quoted below:-



"7. The request of the Appellant for inspection contains two parts of records. Firstly, the ACRs for all the years since joining of the Appellant in service (1992) and secondly, the file containing the recommendations of the DPC where decision of promotion and non-promotion of IAS officer of 1992 batch was taken.

8. As regards inspection of ACRs - dossiers, the matter is regulated by the All India Services (Confidential Rolls) Rules, 1970. In the present context, it is useful to reproduce below the relevant provisions of Rules 5 and 8 of the said Rules:

" 5. Confidential reports.- (1) A confidential report assessing the performances, character, conduct and qualities of every member of the Service shall be written for each financial year, or calendar year, as may be specified by the Government ordinarily within two months of the close of the said year." * * * *

"8. Communication of adverse remarks:

1. Where the confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the confidential report.

2. Where the reporting authority or the receiving authority or the accepting authority records an adverse remark, he shall record a note to the effect that the remark is an adverse remark:

Provided that the question whether a particular remark recorded in the confidential report of a member of the service is an adverse remark or not shall be decided by the Government:


Provided further that in the event of any difference of opinion between the Central Government and the Government of a State whether a particular remark is to be deemed an adverse remark or not, the opinion of the Central Government shall prevail.

Explanation.- For the purpose of these rules, an adverse remarks means a remark which indicates the defects or deficiencies in the quality of work or performance or conduct of an officer, but does not include any word or words in the nature of counsel or advice to the officer".

9. The Department of Personnel & Training, Government of India vide communication No.34/7/70-AIS (III) dated 09.07.1971 has clarified that it would meet the requirements of the All India Services (Confidential Rolls) Rules, 1970 if the gist of the good points and the entire adverse remarks are communicated to the officer reported upon.

10. Since the Appellant is a member of the Indian Administrative Service, the aforesaid provisions are applicable in his case. The object of maintaining ACRs of an officer is to make a scientific assessment of his performance in order to improve the standard of efficiency, competence and the quality required for the

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Government service to which he belongs where no stigma or implication of misbehavior is intended. By communicating the adverse remark to the officer concerned, he is given the chance of explaining his points and improving himself to achieve the desired standard. In the aforesaid Rule 8, it has been categorically provided that when any adverse remark is there in the ACR it should be communicated to the officer concerned along with the substance of the entire confidential report. That means, in principle there is no bar to inform the officer concerned about the contents of the entire annual confidential report. So, we find no reason as to why the officer concerned will be debarred from knowing the contents of the ACR whether it is positive or adverse if he so desires.

11. Argument placed for the Respondent is that the records sought to be inspected are personal information and, therefore, the SPIO is under no obligation to disclose as per exemption clause provided in section 8(1)(j) of the Act. He has also relied upon the opinion given by the Ministry of Law & Justice, Government of India under letter No.F.11/8/2005/EO (PR) dated 20.02.2006 of the Deputy Secretary to the Government of India, Ministry of Personnel, PG and Pensions, Department of Personnel and Training (Office of the Establishment Officer) addressed to the Under Secretary, Government of Tripura, GA (P&T) Department. We have gone through the contents of the said letter. The opinion given in the said letter by the Ministry of Law & Justice (Department of Legal Affairs) is as thus- " Since the information relating to ACRs is personal information which amounts to cause unwarranted invasion of the privacy of the individual, it is protected by virtue of personal in nature unless the Central Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information". It is simply an opinion of the Ministry of Law & Justice and not an order of the Central Government issued under section 30(1) of the Act removing any difficulty in implementation of the provision of the Act. So, this Commission is not bound by the aforesaid opinion and is at liberty to take its own view in the matter.

12. The service records of a public servant are maintained for his services rendered for the public administration in public interest and, therefore, cannot be termed to be in personal interest. The Supreme Court in a judgment passed in the case of Babu Ram Verma Vs. State of Uttar Pradesh (1971) 2 Serv. L.R. 659 has interpreted that the expression "public interest" in common parlance means an act beneficial to the general public and an action taken for public purpose. Though the word 'personal' has not been defined in the Act, but according to the Concise Oxford Dictionary (10th edition), the word 'personal' means affecting or belonging to a particular person, involving the presence or action of a particular individual or concerning a person's private rather than professional life. Writing and maintenance of ACRs is a part of normal functioning of the Government. These records are created by the Government to be used for promotion, gradation, deputation, premature retirement etc. of Government servants, which are done always in public interest only. Therefore, the records of service including the ACRs must be regarded as falling within the scope of the expression of public interest. So, we are unable to accept the contention of the Respondent that for the larger public interest, the documents cannot be allowed

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to be inspected by the Appellant. On the contrary, we are of the view that the records pertaining to maintenance of ACRs are not personal in nature as viewed by the Respondent. So, the Appellant has the right to inspect his ACRs-dossiers."

9. In the above appeal, the appellant sought for inspection of his ACRs-dossiers only and, therefore, this Commission restricted its decision for disclosure of the ACRs in the form of inspection.

10. The decisions taken and the principles laid down by this Commission being a quasi-judicial authority are binding for all the subordinate authorities within the State of Tripura. It appears from the oral submissions made by the Respondents that having fully aware of the above decision of this Commission, they did not take it into consideration under a misconception.

11. In a recent judgment delivered in Civil Appeal No. 7631 of 2002 between Dev Dutt- Appellant vs. Union of India & others- Respondents, the Hon'ble Supreme Court of India laid down specific principles for disclosure of ACRs, the relevant portions of which are reproduced below:-

"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.Shepard'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. Mukherjee 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 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. 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 the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

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. We also hold that the representation must be decided by an authority higher than the one

who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible."

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

12. Relying upon the above principles as laid down by the Hon'ble Supreme Court, we have no hesitation to hold that the appellant is entitled to have access to the information sought for i.e. the copies of his ACRs for the years 2005-2006, 2006-2007 & 2007-2008. Therefore, the decision dated 18.06.2008 of the Respondent 2 being the SPIO as communicated by the Respondent 3 being the SAPIO and the decision dated 25.08.2008 of the Respondent 1 being the FAA are not maintainable and liable to be set aside.

Decision

13. In fine, this second appeal is allowed on contest with the following orders:-
- (i) The decision dated 18.06.2008 of the Respondent 2 being the SPIO as communicated by the Respondent 3 being the SAPIO and the decision dated 25.08.2008 of the Respondent 1 being the FAA are hereby set aside.
 - (ii) The appellant is entitled to have access to his ACRs for the years 2005-2006, 2006-2007 & 2007-2008 in the form of supply of the copies and the Respondent 2 being the SPIO shall provide the same to the appellant within a period of 30 days from the date of pronouncing the judgment and order free of cost as the SPIO could not provide the information to the appellant within the statutory period. A report of compliance of the order shall be furnished to this Commission by the Respondent 2.
 - (iii) The Chief Engineer, PWD(R&B), Government of Tripura being the head of the Public Authority shall make the records pertaining to the information sought for by the appellant available to the Respondent 2(SPIO) within reasonable time to enable the latter to comply with the order at (ii) above.






14. Let copy of this judgment and order be sent to the appellant, the Respondents and the Chief Engineer, PWD(R&B), Government of Tripura being the head of the Public Authority.

15. Pronounced.

Sd/-
(D.K.Daschadhuri)
State Information Commissioner

Sd/-
(B.K.Chakraborty)
(State Chief Information Commissioner)

Authenticated


(S.C.Saha)
Secretary
Tripura Information Commission

Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Appeal No TIC- 20 of 2008-09 / 1225-29

Dated, 04.10.2008

Copy to:-

- 1.Sri Arun Kanti Das, Assistant Engineer, Rig Division, Kunjaban, Agartala (Appellant).
- 2.Er. S. Bhattacharya, Superintending Engineer, Planning Circle, PWD, Government of Tripura, Agartala (First Appellate Authority).
- 3.Sri B.P.Das, Executive Engineer, Office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala (State Public Information Officer).
- 4.Sri Susanta Datta, Assistant Engineer, Office of the Executive Engineer, Monitoring Cell, PWD(R&B), Government of Tripura, Agartala (State Assistant Public Information Officer).
5. The Chief Engineer, PWD(R&B), Government of Tripura, Agartala (Head of the Public Authority).


(S.C.Saha)
Secretary
Tripura Information Commission