

CENTRAL INFORMATION COMMISSION

Appeal No.CIC/WB/A/2006/00959 & 1078 both dated 9.12.2006

Right to Information Act 2005 – Section 19

Appellant - Ms. Sharda P. Meshram
Respondent - Dep't. of Personnel & Training

Facts:

Ms. Sharda P. Meshram of West Kidwai Nagar, New Delhi moved two applications before CPIO, DoPT. The first application dated 25.9.06 sought the following information:

“1) The norms and selection criteria for Central Establishment Board (CEB) for making selection of CSS Officers for appointment to the post of Director in Ministries/Department:

If the norms and selection criteria have been prescribed, please give the details thereof and state the executive instructions and office orders issued therefore, separately and if not prescribed, please give the specific reasons therefore and state how the uniformity and transparency is maintained in assessment and fair selection is made, specially in cases of the officers belonging to SC/ST category.

2. The exact number of years and specific period of which the ACRs of the CSS officers are considered by the CEB for making their selection for appointment to the post of Director in Ministries/Department, while the eligibility criteria for the post of Director, is five years of service in the Selection Grade of CSS i.e. Deputy Secretary level is hold the post of Director:

If the number and period have been prescribed, please give the details thereof and state the executive instructions and office orders issued therefore and if not prescribed, please give the specific reasons therefore and state the number and period the ACRs which are considered by CEB to maintain uniformity in fair assessment made by the Chairman and Members and Member Secretary of CEB.

3. The Benchmark on the basis of which the CEB assess the CSS Officers and include their names in the suitability list for appointment to the post of Director in Ministries/Depts.

If the benchmark has been prescribed, please give the details thereof and state the executive instructions and office orders issued therefore and if not, state the grounds and parameters on the basis of which the CEB assess and make fair selection maintaining the transparency therein.

4. The 'concessions' available to the SC/ST officers in promotion by selection to the posts within Group A (Class-I) which carry the ultimate pay of Rs. 18,300/- or less per month, as per DoPT's instructions contained in para 6.3.2(i) of guidelines issued vide OM No. 22011/5/86-Estt(D), dated 10.4.1989.

If concessions are provided to SC/ST Officers by the CEB while assessing them and making their selection for appointment to the post of Director, which carry the basic pay of Rs. 14,300/- per month, please give details thereof and if not provided, state the reasons therefore and the system as how the said instructions with regard to concessions, is honoured and the claim and interest of SC/ST officers in this regard, is protected by the Government.

5. The scheduled period and time limit for making assessment of CSS officers and completing their suitability list/ panel for appointment to the post of Director in Ministries/Department:

If prescribed, please give the details of the executive instructions and office orders issued in this regard and state whether the same have been adhered to in completion of the suitability list /panel of Directors of CSS officers for the year 1999 and if not, please state the reasons therefore and indicate by what time the suitability list for Directors for the year 1999 will be completed.

6. Consideration of CSS officers empanelled in the same year of Select List together as one 'Group' for preparation of suitability list (panel) of Directors as per extant rule:

Whether all the CSS officers included in Select Grade Select List for 1994 have been taken up as one 'Group' and considered together for Suitability List of Directors for the 1999. If yes, please state why some SC/ST Officers of Selection Grade Select List for the year 1994 have not been considered and included therein, so far and if not, please give the reasons therefore and state whether the same is not against the settled law and the interest of the SC/ST officers.

7. Justification in making assessment and ensuring transparency in fair selection of the CSS officers for inclusion of their names in the suitability list (panel) of Directors for the year 1999:

- a) Please provide list of Director Panels in the last three years.
- b) Minutes of CEB meetings held on 9.6.2006 and 27.7.2006 finalising the panels of 1999, 2000 and 2001.
- c) Indicate the 'benchmark' decided for the selections and provide the ACR grading of all the officers included in the CSS Director panels of 1999, 2000 and 2001.

8. Application of two separate rules and instructions in preparation of select list of grade-I officers of CSS, for the year 1994, against the settled law:

Whether earlier 40 officers were wrongly included in Selection Grade Select List for 1994, in accordance with instructions issued in 2002, and, thereafter 6 officers were included in the same select list, in accordance with instructions and guidelines prevalent in 1994. If yes, please give the reasons for application of two rules/instructions against the settled law and CAT's order dated 5.7.2004 in OA No.2098/2003 and state why the wrongly inclusion of 40 officers was not rectified.

9. Placement of the officers, maintaining their inter-se seniority in the feeder post and strictly up to the number of vacancies, in the Select List of Grade-1 officers of CSS, for the year 1994 issued vide DoPT OM No. 4/24/2004-CS/I dated 25.5.2005.

Whether the said panel was prepared in accordance with instructions contained in para 6.2.2 of the DPC guidelines issued vide DoPT OM No. 22011/5/86-Est. (D) dated 10.4.1989. If yes, please state whether the inter-se seniority of officers in the feeder post, was maintained and the officers were placed on the panel, i.e. Selection Grade Select List, for the year 1994 strictly upto the number of prescribed vacancies of 40 only, as per said rules and if not please give the reasons therefore and justification for placing the SC/ST officers in the said Select List below 40 junior officers against law.

- b) Periods for which the information is required: 1994 to date"

On 29.9.06 she moved her second application seeking the following information:

1. Recommendations of the Review Selection Committee on the basis of which the revised select list for the year 1994 for appointment to Selection Grade of CSS was prepared and issued vide Department of Personnel & Training Office Memo No. 4/24/2004-C.S.1(i) dated 25th May,2005.

2. Instructions, Criteria and Guidelines on the basis of which the inter-se seniority of the officers included in the revised Select List for the year 1994,for appointment to Selection Grade of CSS, issued vide OM No. 4/24/204-CS-I(i) dated 25th May,2005 as indicated in its Annexure, was determined and fixed.

3. Instructions, Criteria and Guidelines on the basis of which the inter se seniority of the officers found 'fit' and included at Serial No. 41 to 46 in the revised Select List for the year 1994, for appointment to the Selection Grade of CSS was determined and fixed, ignoring their inter-se seniority in the feeder post i.e. Under Secretary, in violation of instructions as contained in para 6.3.1(ii) of Guidelines on DPCs.

4. Instructions, Criteria and Guidelines on the basis of which the number of officers included in the select list for the year 1994,for appointment to Selection Grade of CSS, issued vide OM No. 4/24/204-CS.1(i) dated 25th May, 2005 was not restricted to 40 as per vacancies approved by Prime Minister and it was extended to 46 with vested interest to protect a member of officers who had been included in the earlier Select List issued on 12.12.2002 on the cost of the offices included later on at Serial No. 41 to 46 in aforesaid revised Select List issued on 25th May,2005.

5. Minutes of the DPC meeting held on 20.3.2005 in pursuance of CAT's order, dated 5.7.2004 passed in OA No. 2098/2003 on the basis of which the Select List for the year 1994, for appointment to Selection Grade of CSS, issued vide OM No. 4/24/204-CS.I(i) dated 25th May, 2005 as indicated in its Annexure, was determined and fixed.

6. Grading as recorded by the Reporting Officer and Reviewing Officers in my Annual Confidential Reports for the years 1994-95 to 2004-05

(d) Specific periods for which the information is required: 1994-95 to 2004-05

(e) Information is to be posted or will be collected: Required by Regd. Post.

On 6.11.06 she moved her first appeal in both the cases pleading denial of information. To the second application she received a response on 27.10.06 stating as follows:

“With reference to your application dated 29.9.06 on the above subject and in continuation to this Department’s earlier letter of even number dated 9.10.06, this is to inform you that UPSC have taken up the matter relating to disclosure of various information relating to DPC proceedings etc. with Govt. of India/CIC and have opined that pending decision of the Government of India/CIC, such sensitive information including various DPC proceedings and Assessment Sheets containing the grading may not be shared with the applicant(s)”

This was followed by another letter of 13.11.06 providing (1) copies of the Minutes of Review Selection Committee held on 16.3.2006 and (2) extract from the statutory CSS Rules and Regulations. This provided the answer to questions 1 to 5 in the original application. However, with regard to question 6, Shri R.K.Ojha Dy. Secy. And Appellate Authority stated that ACR grading recorded by reporting officer and reviewing officers cannot be disclosed.

In the meantime, through a letter of 9.10.06, DoPT sought the guidance of the UPSC on “*whether various information sought by the applicant pertaining to review DPC proceedings/ACR grading of the applicant etc. can be provided to her under RTI*”

The appeal was heard on 22.6.07. The following are present:-

1. Mrs. Sharda P. Meshram, Appellant
2. Mr. Deepak Israni, U.S.
3. Mr. K.B. Nair, S.O.
4. Mr. R.C. Joshi, Asstt.

Shri RK Ojha Deputy Secretary and appellate authority has in a letter of 21.6.'07, received after the hearing, sought exemption which is permitted.

Appellant Ms. Sharda Meshram agreed that much of the information she has sought had been supplied with only the following remaining:

1. Minutes of DPC proceeding.
2. Categorization of ACRs

She has further pressed the importance of her receiving this information to protect her service prospects in light of her having, in her view, been superceded in seniority on promotion to the grade of Dy. Secretary. Shri Deepak Israni, US & PIO on the other hand has argued that the DoPT has no objection to providing whatever information is mandated under the law and it is for this reason that the advice of UPSC had been sought in this matter.

DECISION NOTICE

This Commission has already taken a series of decisions in the case of disclosure of minutes of DPC meetings notably in Complaint No. **CIC/WB/C2006/00223**; Appeal Nos. **CIC/WB/A/2006/00469**; & **00394** ;Appeal Nos. **CIC/OK/A/2006/00266/00058/00066/00315** all heard together for a full Bench decision announced on 23.4.'07:

“Insofar as the departmental examinees are concerned or the proceedings of Departmental Promotion Committees are concerned, the Commission tends to take a different view. In such cases, the numbers of examinees are limited and it is necessary that neutrality and fairness are maintained to the best possible extent. Disclosure of proceedings or disclosure of the answer sheets not only of the examinees but also of the other candidates may bring in fairness and neutrality and will make the system more transparent and accountable. **The Commission, moreover finds that the proceedings of the Departmental Promotion Committees or its Minutes are not covered by any of the exemptions provided for under Section 8(1) and, therefore, such proceedings and minutes are to be disclosed.**¹ If a written examination is held for the purpose of selection or promotion, the

¹ Emphasis added

concerned candidate may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination.”²

This issue was first resolved in our Decision in Gopal Kumar vs Army HQ in appeal No. CIC/AT/A/2006/00069 dated 13.7.'06. In that decision it had also been decided that ACRs will be exempted from disclosure under section 8(2), by applicability of the severability clause u/s 10. Appellate Authority Shri Ojha in his written submission of 21.6.'07, has also quoted a similar restriction on disclosure as per another Decision of the Commission of 18.7.'06 in Appeal No CIC/MA/A/2006/00252 Shri SK Bamsal vs RBI In the present case however, appellant Ms Meshram has not sought disclosure of ACRs but only information limited to categorization in terms of DPC proceedings. Therefore, the only conceivable exemption could be u/s 8(1)(e) i.e. the fiduciary relationship of the department with the members of the DPC; or sec. 8(1)(j) i.e. invasion of privacy of the individuals whose names were considered by the DPC. The issue of fiduciary relationship is readily resolved however, by deletion of identity of the member making the categorization through application of the severability allowed u/s 10(1). Besides, because it is not the contents of the ACR but only the categorization in a public proceeding that is sought, we hold that 8(1)(j) will not apply. The information sought with the exclusion of identity of the author of the categorization shall be provided to appellant Ms Meshram within fifteen working days of the issue of this Decision Notice.

The Decision regarding DPCs announced in the hearing, the remainder on 25.6.'07. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
25.6.2007

² Para 42 of the Decision Order

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.

(PK Shreyaskar)
Dy. Registrar
25.6.2007