

CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2007/00435 dated 23-3-2007

Right to Information Act 2005 – Section 19

**Appellant:** Brig. Deepak Grover

**Respondent:** Ministry of Defence (MoD)

**FACTS**

By an application of 7-11-06 Brig. Deepak Grover of Hq. South Western Command addressed to ADG (PI) and CPIO, Integrated Hq. of MOD (Army) sought the following information:

- “(a) The ACR profile of all officers of the 1972 batch of Engineer officers who were considered in the Selection Board No. 1 held in Sep 05.
- (b) The weightage, if any, given over and above the ACR grading to each of the officers considered in the Selection Board referred to at Para 3 (a) above.
- (c) The final comparative graded merit of all the Engineer Officers of the 1972 batch placed before the Selection Board referred to at Para 3 (a) above.
- (d) The recommendations of the Selection Board referred to at Para 3 (a) above with respect to all the Engineer officers of the 1972 batch considered by the Board.
- (e) The No. of Engineer Officers considered vis-à-vis those approved for promotion by the Selection Board No. 1 for the 1968, 1969, 1970, 1971, 1972 and 1973 batches.”

Disclosure of this information was refused by Brig. S.C. Nair, DDG (PI) in his letter of 8-1-07 u/s 8 (1) (e) on the following grounds:

“As the information requested is held by the MD Branch in their fiduciary capacity and larger public interest does not warrant the disclosure of such information.”

In the meantime, Brig. Grover had moved his first appeal on 21-12-‘06 before the DG (DC&W) Integrated Hq. of MOD (Army), because till that time he had received no reply. This was followed by a further appeal dated 14-1-07,

after receiving the reply, expressing appellant's dissatisfaction with the reasons given for refusing information, and claiming reimbursement of the bank draft of Rs. 30/- both because of refusal of information and delay in response. In response Lt. General I.J. Koshy, 1<sup>st</sup> Appellate Authority having examined the request and the response given, gave a reasoned decision as follows:

- “4. AND NOW THEREFORE, having considered the appeal in its entirety, I find that the information sought vide the said application is not liable to be furnished vide Section 8 (1) (e) & (j) of the Right to Information Act, 2005 due to the following reasons:-
- (a) As far as the issue of providing confidential CR data and related information under RTI Act is concerned, after taking legal advice, the MoD is of the opinion that CR data info being persona in nature & not serving any public interest may not be given.
  - (b) CR data and information asked for in the instant case does not promote any public interest or efficiency of administration of the organization. It serves only individual or private interest of the officer seeking information.
  - (c) The information requested is held by MD B Branch in their fiduciary capacity and larger public interest does not warrant the disclosure of such information.
5. The appeal, therefore, rejected being bereft of merit.
6. As far as the issue of non-adherence to time limit of 30 days stipulated in the RTI Act for supplying information is concerned, it is uncontestable that there has been a delay by the PIO in giving reply to the appellant's application. The PIO however, has attributed the delay to the rather complex nature of the information request which necessitated elaborate internal consultation and reflection. I find the explanation reasonable. However, the PIO is advised to be alert about timely transmission of information to an applicant in future.”

Appellant Brig. Grover's prayer before us is as below:

- “(a) ***It is humbly requested that the Additional Director General Public Information, the PIO of Army HW with office at B-30 South block, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi- 110010 be directed to provide me the following information:-***

- (i) The Annual Confidential Report profile of all officers of the 1972 batch of Engineer officers who were considered in the Selection Board No. 1 held in September 05.**
- (ii) The weightage, if any, given over & above the Annual Confidential Report grading to each of the officers considered in the Selection Board referred to at Para 10 (a) (i) above.**
- (iii) The final comparative graded merit of all the Engineer Officers of the 1972 batch placed before the Selection Board referred to Para 10 (a) (i) above.**
- (iv) The recommendations of the Selection Board referred to at Para 10 (a) (i) above with respect to all the Engineer Officers of the 1972 batch considered by the Selection Board.**
- (v) The No of Engineer Officers considered vis-à-vis those approved for promotion by the Selection Board No. 1 for the 1968, 1969, 1970, 1971 and 1973 batches.**
- (b) It is humbly requested that appropriate penalties under Section 20 of RTI 2005 as deemed fit should be imposed against the PIO at Army headquarters for unjustified delay as well as denial of information. It is also requested that appropriate penalty under Section 20 of the RTI Act 2005 be imposed against the Appellate Authority at Army headquarters for denying the information as well as more or less condoning the unjustified delay by the PIO in responding to my request. It is submitted that the PIO responded to my request made on 07 Nov 2006 only on 08 Jan 2007 i.e. after 63 days and that too only to deny my request in toto and only after an appeal was made to the Appellate Authority on 21<sup>st</sup> Dec 2006 (Exhibit 'B')."**

The appeal was heard by videoconference on 6-6-08. The following are present:

**Appellant: (at NIC Studio Pune).**  
Brig. Deepak Grover.

**Respondent: (at NIC Studio Delhi).**  
Col V. Nangia, SM, Col MS Legal.

Col Rajinder Kumar, Col MS Legal.  
Lt. Col George, AMS Legal.  
Maj. M. Gahlot, GSO (Legal).

Col. Rajinder Kumar, Col. MS Legal submitted written arguments contesting the appeal in which in addition to the plea for exemption already sought in the order on 1<sup>st</sup> appeal u/s 8 (1) (e) and (j), he has also submitted as follows:

“Notwithstanding the above, it is also submitted that the information sought, if provided, will reveal the Organization of Battle (strength of the Army) i.e. the number of Major Generals in the Corps of engineers of batches from 1968 to 1973, which if disclosed, will be detrimental to the security and interest of the nation and may be barred from disclosure under u/s/ 8 (1) (a) of the RTI Act, 2005.”

This purported to reiterate an argument submitted in response to our appeal notice by Maj. Manisha Gahlot, GSO-1, Legal through her letter of 3-6-07 as follows:

“As the matter related to Military Secretary’s Branch, the application was processed with the Branch who denied the information under Sec 8 (1) (j) read along with Sec 1 (a) of the RTI Act 2005 (photocopy enclosed).”

### **DECISION NOTICE**

The submission of respondents that information sought at para-1 pertaining to disclosure of ACRs of officers of 1972 batch of Core of Engineers (Army) who were selected in December 2005 in the exam held in September 2005 is consistent with our Decisions. The Commission has indeed consistently taken the stand that such disclosure would not only fall within the mischief of Section 11 (1) relating to third party information but also be exempted from disclosure u/s 8 (1) (j) read with Section 8 (2) of the RTI Act.

In the meantime, our attention has been drawn to decision of the Hon'ble Supreme Court in **Civil Appeal No. 7631/2002 in Devdutt vs. UPI & Ors**, decided on 12-5-2008 in which the apex court has held as follows:

- “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<sup>1</sup>** so that he can make a representation for its up gradation. This in our opinion is the correct legal position even though there may be no Rule / GO requiring communication of the entry or even if there is a Rule/ GO 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 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.
41. **We, however, make it clear that the above directions will not apply to military officers<sup>2</sup>** because the position for them is different as clarified by this court in Union of India vs. Major Bahadur Singh 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).
42. In Canara Band vs. V. K. Awasthy 2005 (6) SCC 321, this Court held that the concept of natural justice has undergone a great deal of change in recent years. As observed in Para 8 of the said judgment:  
“Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles

---

<sup>1</sup> Emphasis ours

<sup>2</sup> Emphasis ours

ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values”.

43. In Para 12 of the said judgment it was observed: “What is meant by the terms” principles of natural justice” is not easy to determine. Lord Sumner (then Hamilton, L.J.) in R. V. Local Govt. Board (1914) 1 KB 160:83 LJKB 86 described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of UK v. Spackman (1943) AC 627: (1943) 2 All ER 337, Lord Wright observed that it was not desirable to attempt “to force it into any Procrustean bed”.
44. In State of Maharashtra vs. Public Concern for Governance Trust & Ors. 2007 (3) SCC 587, it was observed (vide Para 39):  
“In our opinion, when an authority takes a decision which may have civil consequences and affects the rights person, the principles of natural justice would at once come into play”.
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.”

The present case, however, is not a request for information regarding ACRs of the applicant but that of third parties. Therefore, the principle enunciated by Hon’ble Markandey Katju J. in the above ruling will not be applicable in the present case. Moreover, that ruling in any case will not apply to the Military. The refusal of information by PIO, with regard to question No.1 is therefore upheld.

In the remaining questions, however, as we have held in case **No. CIC/AT/A/2006/00069 of 13.7.’06 Shri Gopal Kumar vs. Ministry of Defence** information regarding DPCs, inasmuch as it does not amount to disclosure of the

contents of ACRs, is not exempt from disclosure u/s 8 (1) (j) of the RTI Act by applying the principle of severability u/s 10 (1) of the RTI Act.

In his submission before us Col. Rajinder Kumar, MS Legal has also sought to plead exemption u/s 8 (1) (a) as in his view disclosure would amount to compromising national security for the reasons described above. However, this plea was not taken either by the PIO or by the 1<sup>st</sup> Appellate Authority Lt. General Koshy. During the arguments Lt. Col. George submitted that this indeed was a plea taken in the response to the appeal notice submitted by Ms. Gahlot, GSO-1 (Legal). We have quoted from this response above in which it is stated that the information was denied u/s 8 (1) (j) read with 8 (1) (a), which is incorrect since as mentioned by us above recourse to Section 8 (1) (a) has not been taken hitherto by either the CPIO or the 1<sup>st</sup> Appellate Authority. We can, therefore, only conclude that the mention of Section 8 (1) (a) in the letter of Maj. Gahlot is simply an oversight, nor has such a plea been substantiated by a firm ground of reasoning. At this late stage to take the plea that it would reveal the organization of battle appears more an afterthought to evade an answer than substantive ground for concluding any detriment to national security.

We, therefore, hold that the information sought in questions (b) to (e) in the application of Brig. Grover of 7-11-06 will be provided to him within 15 working days from the date of receipt of this decision notice to the extent that such information is held by Hqrs. of Ministry of Defence (Army). However, this will be subject to the principle of severability u/s 10 (1) so that all such information which would have the effect of disclosing contents of the ACRs will be deleted in disclosure.

**The appeal is hence partly allowed.** The decision regarding items (b) to (e) were announced in the hearing, whereas the decision with regard to item No. (a) announced in the open chamber on this 6<sup>th</sup> day of June, 2008, after examination the above mentioned apex Court Judgment.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)  
Chief Information Commissioner  
6-6-2008

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  
6-6-2008