

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/2018/169397-BJ

Dr. C. K. Bhat  
(E – Mail: ckbhat35@gmail.com)

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO & Chief Administrative Officer (A)  
Bhabha Atomic Research Centre  
Central Complex, 3rd Floor  
Trombay, Mumbai – 400085

...प्रतिवादीगण /Respondent

Date of Hearing : 14.07.2020  
Date of Decision : 15.07.2020

|  |            |
|--|------------|
| Date of RTI application                              | 27.06.2018 |
| CPIO's response                                      | 04.07.2018 |
| Date of the First Appeal                             | Nil        |
| First Appellate Authority's response                 | 27.08.2018 |
| Date of diarised receipt of Appeal by the Commission | 27.11.2018 |

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information on 03 points regarding the certified copies of his APAR's for the period from 2010-11 to 2016-17; dossier including the front and back page for the above stated time period along with the copy of letter, documents and notes, etc., in his dossier and other issues related thereto.

The CPIO, vide its letter dated 04.07.2018 stated that it is the policy decision of the Department of not providing copies ACRs/APARs to retired Scientific and Technical Officers, as it may contain sensitive scientific information of the Department and could have strategic implications. Hence, the requested information could not be provided u/s 8 (1) (a) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA, vide its order dated 27.08.2018, upheld the response of the CPIO.

## **HEARING:**

### **Facts emerging during the hearing:**

The following were present:

**Appellant:** Absent;

**Respondent:** Dr. R. Murugaiah, Chief AO (A) &PIO through VC;

The Appellant remained absent during the hearing. Mr. Sohail, Network Engineer NIC studio at Mumbai confirmed the absence of the Appellant. The mobile number of the Appellant remained unreachable despite repeated attempts. Due to COVID-19 circumstances prevailing in the country, there was no other way of communicating with him. In its reply, the Respondent reiterated the replies of the CPIO/FAA and stated that as per the policy decision of the Department, they do not provide the copies of ACRs/APARs to the retired Scientific and Technical Officers, as it contains sensitive scientific information of the Department that could have strategic implications. The Respondent however, agreed to furnish the copies of APARs for the desired period after following the procedure laid down under Section 10 of the RTI Act, 2005 redacting and masking the sensitive and critical information.

The Commission was in receipt of a written submission from the Respondent dated 8<sup>th</sup> July, 2020 wherein while reiterating the contents of the RTI application, reply/order of the CPIO/FAA, it was submitted that BARC is an R & D institution of Department of Atomic Energy contributing to different cutting edge technology in the frontiers of nuclear science and also multidisciplinary research program essential for the ambitious nuclear program of India. The disclosure of such information will prejudicially affect the strategic, scientific interest of the Country. Furthermore, Department of Energy has passed an order Ref No. 11/1(5)/2010-SCS/12095 dated 23.09.2014 with regard to providing ACR/APAR copies to retired officers of Central Civil Services/posts and has directed not to provide copies of ACR/APAR to retired officers as the ACRs/APARs may contain sensitive information of the Department. CPIO in adherence to the Departmental directions has not provided the copy of APAR to the Appellant as he is a retired Scientific Officer of the Research Centre. Therefore, it was requested to the Commission to dispose of the Appeal accordingly.

In the context of disclosure of entry in the employee's own ACR, the Hon'ble Supreme Court of India in the decision of Dev Dutt vs Union of India & Ors on 12 May, 2008, Civil Appeal No. 7631 OF 2002, had held as under

***“19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it***

***has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.***

*20. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”*

In judgment of the Ld. Single Judge of the Hon’ble High Court of Delhi in R.K. Jain v. Union of India, W.P. 6756 of 2010 dated 08.12.2011 which was affirmed by the Hon’ble Supreme Court of India vide its aforementioned decision it was held as under:

*“10. Therefore, except in cases involving overriding public interest, the ACR record of an officer cannot be disclosed to any person **other than the officer himself/herself.**”*

Furthermore, the Hon’ble High Court of Delhi in the matter of THDC India Ltd. vs. R.S. Raturi, W.P. (C) No. 903 dated 08.07.2014 wherein it had been held as under:

***12. However, this Court is of the view that the respondent is entitled to the contents of his own ACR after redaction of the names of the reviewing, reporting and accepting officers. In fact, another coordinate Bench of this Court in THDC India Ltd. v. T. Chandra Biswas 199 (2013) DLT 284 has held as under:-***

*9. While the learned counsel for the respondent has contended before me that the respondent ought to have been supplied with the ACRs for the period 2004 to 2007, the respondent has not assailed that part of the order of the CIC. In my view, while the contention of the respondent has merit, which is that she cannot be denied information with regard to her own ACRs and that information cannot fall in the realm of any of the exclusionary provisions cited before me by the learned counsel for the petitioner i.e. Section 8(1)(d), (e) and (j), there is a procedural impediment, in as much as, there is no petition filed to assail that part of the order passed by the CIC.*

***9.1. In my view, the right to obtain her own ACRs inheres in the respondent which cannot be denied to the respondent under the provisions of Section 8 (1)(d), (e) and (j) of the RTI Act. The ACRs are meant to inform an employee as to the manner in which he has performed in the given period and the areas which require his attention, so that he may improve his performance qua his work.***

*9.2 That every entry in the ACR of an employee requires to be disclosed whether or not an executive instruction is issued in that behalf-is based on the premise that disclosure of the contents of ACR results in fairness in action and transparency in public administration. See Dev Dutt vs. Union of India 8 SCC 725 at page 732, paragraph 13; page 733, paragraph 17; and at page 737, paragraphs 36, 37 and 38.*

*9.3 Mr. Malhotra sought to argue that, in Dev Dutt's case, the emphasis was in providing information with regard to gradings and not the narrative. Thus a submission cannot be accepted for more than one reason.*

9.4 First, providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must. [See *State of U.P. Vs. Yamuna Shankar Misra and Anr.*, MANU/SC/0914/1997 : (1997) 4 SCC 7]. The narrative would fashion the decision of the employee as to whether he ought to challenge the grading set out in the ACR.

9.5 Second, the fact that provision of ACRs is a necessary concomitant of a transparent, fair and efficient administration is now recognized by the DOPT in its OM dated 14.05.2009. The fact that the OM is prospective would not, in my view, impinge upon the underlying principle the OM seeks to establish. The only caveat one would have to enter, is that, while providing the contents of the ACR the names of the Reviewing, Reporting and the Accepting Officer will have to be redacted.

13. Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information.

**9.9 On the other aspect with which the petitioner is aggrieved, I am not persuaded by the argument of the petitioner that the information with regard to the DPC proceedings would fall within the exception provided under Section 8(1)(d) of the RTI Act. In my view, information with regard to DPC proceedings cannot come within the ambit and scope of any of three exclusions i.e. commercial confidence, trade secret and intellectual property rights. Though, I am conscious of the fact that the information referred to in Section 8(1)(d) of the RTI Act is not confined to the three types of information referred to above – no amount of liberality adopted in that behalf would bring ACRs within its ambit. Section 8(1)(d) would, in my view, include such information which takes colour from the expression commercial confidence, trade secrets and intellectual property.”**

A reference can also be made to a recent decision of the Hon'ble High Court of Delhi in the matter of Mukesh Kumar vs. Chief Information Commission, CIC, W.P. (C) 10691/ 2016 dated 19.09.2017 wherein while allowing redaction of the names of interview panel members, a direction was given to disclose the break-up of interview marks awarded by them. A reference was also made in this matter to the earlier decision in the matter of THDC India Ltd. vs. R.S. Raturi, W.P. (C) No. 903 dated 08.07.2014. The relevant extracts of the decision are as under:

*“10. In view of the above, the controversy essentially remained with regard to the viva voce marks awarded by the Interview Committee to other candidates. In this context, the CIC relying on the decision of this Court in THDC India Limited v. R.K. Raturi: W.P.(C) 903/2013, held that third party information could not be disclosed.*

*11. This Court is of the view that the decision in the case of THDC India Ltd. (supra) is not applicable to the information sought by the petitioner. In that case the question was regarding ACR gradings /ratings considered in DPC proceedings. It is in that context that this Court had held that ACR gradings and the marks awarded in DPC proceeding could only be disclosed to the concerned employee and not to any other employee as*

*that would constitute third party information. This Court had further held that such information could be disclosed only if the CIC found that a larger public interest was involved and further after following the procedure prescribed under Section 11(1) and 19(4) of the Act.*

*15. Insofar as handwritten marks awarded by interview panel is concerned, those obviously from a part of the working papers of the interview panel and cannot be disclosed; disclosure of such handwritten record would also inevitably disclose the identity of the members of the interview panel, which as stated above cannot be disclosed to the petitioner.”*

It was also observed that as per Section 10 of the RTI Act, 2005 all such details relating to the names of the reviewing, reporting and accepting officers/ scientific/ strategic / confidential information, etc., could be severed from APARs to provide the remaining information. In this context, a reference was made to the decision of the Hon’ble High Court of Delhi in its decision dated 7/10/2013 [W.P. (C) 4079/2013 Union Public Service Commission vs. G S Sandhu] wherein while observing that denial of notings altogether was not justified directed to block the name, designation or any other indication which disclose or tend to disclose the identity of author, it was held as under:

*“11. In my view, the apprehension of the petitioner that if the identity of the author of the file notings is revealed by his name, designation or in any other manner, there is a possibility of such an employee being targeted, harassed and even intimidated by the persons against whom an adverse noting is recorded by him on the file of UPSC, is fully justified. Though, ultimately it is for the members of the UPSC who are to accept or reject such notings, this can hardly be disputed that the notings do play a vital role in the advice which UPSC ultimately renders to the concerned department. Therefore, the person against whom an adverse advice is given may hold the employee of UPSC recording a note adverse to him on the file, responsible for an adverse advice given by UPSC against him and may, therefore, harass and sometime even harm such an employee/officer of UPSC, directly or indirectly. To this extent, the officers of UPSC need to be protected. **However, the purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting. Denying the notings altogether would not be justified when the intended objective can be fully achieved by adopting such safeguards.”***

*Furthermore, the Hon’ble High Court of Delhi in the decision of KVS v. CIC and Anr. W.P.(C) 6892/2009 dated 15.09.2009 while upholding the decision of the Commission had held as under:*

*“The only objection raised by the petitioner against the supply of statement of witnesses was under Section 8(1)(g) of the Right to Information Act, 2005. **The said provision stipulates that information disclosure of which would endanger life and physical safety of any person or identity, the source of information or assistance given in confidence for law enforcement and security purposes need not be supplied. The Information Commissioner keeping in mind Section 8(1)(g) of the Right to Information Act, 2005 has directed that the name of the witnesses need not be disclosed to the respondent No.2.***

*In fact the order passed by the Information Commissioner seeks to rely upon section 10, which permits withholding of certain portions of information by applying severability*

*principle. The order of the Information Commissioner takes care of the apprehension of the petitioner.”*

The Commission also noted that it should be the endeavour of the CPIO to ensure that maximum assistance should be provided to the RTI applicants to ensure the flow of information. In this context, the Commission referred to the OM No.4/9/2008-IR dated 24.06.2008 issued by the DoP&T on the Subject “*Courteous behavior with the persons seeking information under the RTI Act, 2005*” wherein it was stated as under:

***“The undersigned is directed to say that the responsibility of a public authority and its public information officers (PIO) is not confined to furnish information but also to provide necessary help to the information seeker, wherever necessary.”***

## **DECISION:**

Keeping in view the facts of the case and the submissions made by the Respondent and in the light of the judgments of the Superior Courts cited above, the Commission directed the Respondent to furnish the information as sought by the Appellant in his own case following the procedure laid down under Section 10 of the RTI Act, 2005, within a period of 30 days from the date of receipt of this order depending upon the condition for containment of the Corona Virus Pandemic in the Country or through email, as agreed.

The Appeal stands disposed accordingly.

(The order will be posted on the website of the Commission)

**(Bimal Julka)** (बिमल जुल्का)  
**(Chief Information Commissioner)** (मुख्य सूचना आयुक्त)

Authenticated true copy  
(अभिप्रमाणित सत्यापित प्रति)

(K.L. Das) (के.एल.दास)  
(Dy. Registrar) (उप-पंजीयक)  
011-26186535/ [kl.das@nic.in](mailto:kl.das@nic.in)  
दिनांक / Date: 15.07.2020