

No. 27011/51/2014-R&W
Government of India
Ministry of Home Affairs
Police Division-II
[Resettlement and Welfare Directorate]

North Block, New Delhi-01
Dated, 28th July, 2014.

ORDER

30 JUL 2014

Subject: Appeal filed by Shri Virender Yadav, 7A/247, Vrindavan Yojna II, Rae Bareli Road, Lucknow, 226025 under Right to Information Act 2005-regarding.

Whereas an appeal has been filed under Right to Information Act, 2005 by Shri Virender Yadav before the Appellate Authority vide his letter dated 12/08/2013 received in Police-II Division on 23/08/2013 stating that CPIO has not provide the requisite information.

2. Whereas I have gone through the concerned file and found that the application of Shri Virender Yadav seeking information under RTI Act 2005 as under:-

"Vide letter No. Estt./2/251(43)/2012/5812-19 dated 13/09/2012 issued by office of the Inspector General Frontier HQ BSF Jalandhar (Punjab) which comes under your Ministry. A photocopy of the letter is enclosed for ready reference and marked as E-1. With respect to E-1 kindly provide the following information:-

1. Kindly provide the certified copy of the GOI, MHA OM No. 28015/2/80-Estt (C) dt 22 July 1980.
2. Kindly provide the certified copy of said FR-13(2) in the above mentioned letter (E-1, para 2 & 3).
3. How many times the facility of CCS Pension Rules and other related Circulars, memorandum of Central Government can be availed while resigning and joining of Central Government job from one Ministry to other Ministry? Kindly provide the certified copy of the Circulars & Memorandum related?"

3. On examination of the matter, inspection of the documents and discussion with Dir(Pers) and then DS(Pers-I) I find that the RTI application and the appeal were transferred by DS (Pers-I) to DIR (Pers). But the same got misplaced while shifting of the office from one place to another. Therefore, the reply could not be furnished at the appropriate time.

4. I have advised both the Directors to attach utmost importance to the handling of the RTI matters so that the RTI Act is implemented in letter and spirit.

Contd....

5. As regards the information sought at point 1 & 2 of your RTI application dated 24.06.2013, a copy of OM No. 28015/2/80-Estt(c) dtd 22.07.1980 and a copy of FR-13(2) is enclosed herewith.

6. As regards to the information sought at point 3 of the RTI application. It is informed that the same is available on the Website of DoP&T. The link is as follows:-

([http://ccis.nic.in/CP_Circular_Report.asp?MinCode=2&DepCode=2&DivCode=0&SecCode=\(0\)&CNCode=1&MctCode=3&SctCode=254&ArchCode=2](http://ccis.nic.in/CP_Circular_Report.asp?MinCode=2&DepCode=2&DivCode=0&SecCode=(0)&CNCode=1&MctCode=3&SctCode=254&ArchCode=2)).

7. The First Appeal is disposed of accordingly.

Encl :- as stated



(Dr. Nirmaljeet Singh Kalsi)
Joint Secretary to the Govt. of India
The First Appellate Authority

To,

Shri Virender Yadav,
7A/247, Vrindavan Yojna II,
Rae Bareli Road,
Lucknow, 226025.

Copy to:

1. PS to (JS P-II)
2. PS to Dir (Pers)
3. PS to Dir (Pers.I)
- ✓4. SO (IT) for uploading in the MHA website

O.M.No. 28015/2/60-Estt(C)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibhag).

New Delhi-110001 dt 2 July, 1960

OFFICE MEMORANDUM

Subject:- Forwarding of applications of Government servants working in a Department/Office of the Central Govt. Question regarding the retention of Lien in the parent Department -

The undersigned is directed to refer to the Ministry of Home Affairs Office Memorandum No.60/37/63-Estt(A) dated the 14th July, 1967 on the subject mentioned above and to say that a question has been raised as to whether in the case of temporary Government servant who apply for post occurring in the same Department/Office which is to be filled on the basis of direct recruitment an undertaking to the effect that in the event of his selection to the post he will resign from the post held by him, is to be obtained or not. It is further clarified that the instructions contained in the Ministry of Home Affairs Office Memorandum under reference will apply in all such cases i.e. if a permanent Government servant applies for a post, occurring whether in other dept. or the same Department recruitment to which is made on direct recruitment basis he will be allowed to come back to his post held by him earlier within a period of 2 years provided the post exists. In the case of temporary Government servant, he should invariably be asked to resign from the post held by him at the time of release from that post in the event of his selection and appointment to the post applied for. An undertaking to this effect may be taken from him at the time of forwarding his application.

(B.S. NIM)

Deputy Secretary to the Government of India

To All Ministries/Departments etc. of the Government of India.

Copy to Hindi Section (Department of Personnel and A.R.)
for record.

incorporated or not, which is wholly or substantially owned or controlled by the Government.

F.R. 12. ¹ [Deleted]

F.R. 12-A. ² [Unless in any case it is otherwise provided in these rules, a Government servant on acquiring a lien on a post will cease to hold the lien previously acquired on any other post.]

F.R. 13. ² [A Government servant who has acquired lien on a post retains the lien on that post;

- (a) while performing the duties of that post;
- (b) while on foreign service, or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post, unless he is transferred along with his title to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the earlier post;
- (d) while on leave; and
- (e) while under suspension.

Provided that no lien of a Government servant shall be retained:

- (i) Where a Government servant has proceeded on immediate absorption basis to a post or service outside his service/cadre/post in the Government from the date of absorption; and
- (ii) On foreign service/deputation beyond the maximum limit admissible under the orders of the Government issued from time to time.]

GOVERNMENT OF INDIA'S ORDERS

(1) Retention of lien in civil post when called to Army service.— All officers of the Army in India Reserve of Officers who are employed under the Central Government shall when called to Army service, retain a lien on their civil posts during the period for which they are called to Army service.

[G.I., F.D., Endorsement No. F. 1-R. 1/29, dated the 19th March, 1929.]

(2) Retention of lien in parent department in the case of Government servants getting employed in other departments.—The question as to what procedure should be followed in respect of Government servants working in a particular Department/Office who apply in response to advertisements or circulars inviting applications for posts in other Central Government Departments/Offices has been under consideration for some time past. It has been decided that the following procedure should be followed in respect of such Government servants:—

- 1. Deleted
- 2. Substituted

by G.I., Dept. of Per. & Trg., Notification No. 28020/1/96-Estt. (C), dated the 9th February, 1998, published as GSR 44 in the Gazette of India, dated the 28th February, 1998.

- (1) The applications may be forwarded in accordance with the instructions contained in this Office Memoranda irrespective of whether the post applied for in the other Department/Office is permanent or temporary.
- (2) In the case of permanent Government servants, their lien may be retained in the parent Department/Office for a period of two years. They should either revert to the parent Department/Office within that period or resign from the parent Department/Office at the end of that period. An undertaking to abide by these conditions may be taken from them at the time of forwarding the applications to other Departments/Offices.
- (3) In the case of quasi-permanent Government servants who wish to revert to the parent Department/Office within a period of two years, they may be taken back in the parent Department/Office, provided the posts held by them prior to their joining the new Department/Office continue to exist. In any case, at the end of two years from the date of release from the parent Department/Office, they will have to resign from the parent Department/Office, if reversion does not take place. An undertaking to abide by those conditions may be taken from them at the time of forwarding the applications.
- (4) As for temporary employees, they should as a matter of rule be asked to resign from the parent Department/Office at the time of release from the parent Department/Office. An undertaking to the effect that they will resign from the parent Department/Office in the event of their selection and appointment to the post applied for may be taken from them at the time of forwarding the applications.
- (5) In exceptional cases where it would take some time for the other Department/Office to confirm such Government servants due to some other administrative reasons, the permanent Government servants may be permitted to retain their lien in the parent Department/Office for one more year. While granting such permission, a fresh undertaking similar to the one indicated in sub-para. (2) above may be taken from the permanent Government servants by the parent Department/Office. A similar treatment may be accorded to the quasi-permanent employees on their giving an undertaking similar to the one indicated in sub-para. (3) above.
- (6) During the period of two years referred to in Clauses (2) and (3) above, the pay of the officer in the ex-cadre post will be subject to the limits prescribed in M.F., O. M. No. F. 10 (24)-E. III/60, dated the 9th March, 1964 in case where the minimum of the scale of pay of the new post is substantially in excess of his grade pay in the parent Department and such other orders as may be issued from time to time. No deputation allowance will be admissible in any case.

2. These instructions are applicable to the employees in all the Departments/Offices of the Government of India (excluding the Ministry of Railways and Civilians in Defence Services). The members of the Central Secretariat Service/Central Secretariat Stenographers' Service/Central Secretariat Clerical Service will also be governed by these instructions in supersession of the practice hitherto followed in respect of them.

[G.I., M.H.A., O.M. No. 60/37/63-Estis. (A), dated the 14th July, 1967.]

Clarification.—The instructions contained above apply in all cases, i.e., if a quasi-permanent Government servant applies for a post, occurring whether in other department or the same department, recruitment to which is made on direct recruitment basis, he will be allowed to come back to his post held by him earlier within a period of two years, provided the post exists. In the case of temporary Government servant, he should invariably be asked to resign from the post held by him at the time of release from that post in the event of his selection and appointment to the post applied for. An undertaking to this effect may be taken from him at the time of forwarding his application.

[G.I., M.H.A. (Deptt. of Per. & A.R.), O.M. No. 28015/2/80-Estt. (C), dated the 22nd July, 1980.]

Para. 1 (6) above provides that during the period of retention of lien for two or three years in the parent Department, the pay of the officer in the ex-cadre post will be fixed in the pay scale of that post and will be subject to the limits prescribed in M.F., O.M. No. F. 10 (24)-E. III/60, dated the 9th March, 1964, in cases where the minimum of the scale of pay of the new post is substantially in excess of the grade pay drawn by the person concerned in the parent Department. The effect of the aforesaid O.M. is that, the pay of the officer in the new post has in most of the cases to be fixed at a figure below the minimum of the pay scale of the new post under FR 35 subject to the limits laid down in the O.M. referred to above. A question has been raised whether the restriction on pay imposed in terms of Para. 1 (6) should apply in a case where a permanent Central Government servant is appointed to an ex-cadre post on the basis of his selection in an open competition on the recommendations of the Union Public Service Commission.

2. After careful consideration of the case and having regard to the fact that restriction of pay of a Government servant *vis-a-vis* an outsider who is allowed to draw pay in the scale of pay of the post, gives rise to an anomalous position in that the persons selected in an open competition are treated differently, it has been decided that in such cases where Government servants are selected for appointment to ex-cadre posts on the basis of their own application in an open competition through the Union Public Service Commission, they will be allowed to draw pay in the scale of the post without applying the restriction laid down in the M.F., OM, dated the 9th March, 1964.

[G.I., C.S. (Department of Personnel), O.M. No. 8/10/72-Estt. (C), dated the 8th November, 1972.]

(3) Retention of lien while on deputation to developing countries on Government to Government basis.— Order No. (2) above lays down the

PLEASE ISSUE
R&I SECTION

On 27.8.13

No. A-43020/01/2013-RTI
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

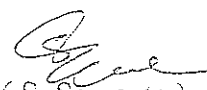
New Delhi, Dated the 21/8/2013, 2013.

Subject: First Appeal filed by Shri/Smt/Kum. Kirender Yadav.....
..... under Section 19 (1) of the Right
to Information Act, 2005.

The undersigned is directed to refer to first appeal dated
13/8/2013 under the RTI Act, 2005 filed by Shri/Smt/Kum. Kirender
Yadav..... (received in this
Ministry on 16/8/2013) in connection with the information sought through
his/her RTI application dated 24/6/2013.

2. Since the RTI application dated 24/6/2013 was earlier dealt with
by/transferred/forwarded to Police - II Division.....
....., the appeal is forwarded to the concerned
Appellate Authority(ies) for taking appropriate action in the matter.

Encl: As above.


(S. Samanta)

Under Secretary to the Govt. of India.

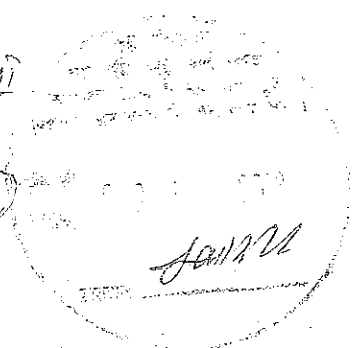
To

Joint Secretary (P-I)
M/o Home Affairs
North Block, New Delhi
28/8/13

Copy for information to:

Shri/Smt/Kum. Kirender Yadav
F.A/247, Krindavan Yojna-II
Rae Bareilly Road,
lucknow - 226025
(U.P.)

CC



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App' 219/RTI/2013
19.08.13

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The First Appellate Authority,
Under RTI Act)
Ministry of Home Affairs,
North Block,
New Delhi-110 001

16 AUG 2013
1436/81

Dated: 12 Aug 2013

Hon'ble Sir,

Reg: First Appeal Under RTI Act.2005

The following facts are submitted for your kind consideration:-

1. I had submitted a RTI application before PIO, MHA, North Block, New Delhi. A copy of the RTI Application dated 24 June 2013 is enclosed and marked as X-1.
2. A response was received from PIO vide letter No. A-43020/01/2013-RTI dt 29 June 2013 in which the RTI application was transfer to Deputy Secretary (Pers), MHA, North Block, New Delhi. A copy of response is enclosed and marked as X-2.
3. Regrettably, no information has been received even after a lapse of more than 30 days. As such the requested information stands refused, in terms of RTI Act. No exemption has been claimed for the refusal.

In the light of above submissions, it is humbly prayed:

- a) to kindly direct the PIO to provide complete, correct & true information at the earliest, free of cost.
- b) to kindly initiate measures as you deem fit to ensure that the citizens fundamental right to information is protected.



(Virendra Yadav)
Applicant
7A/241, Vrindavan Yojna II
Rac Bareilly Road,
Lucknow-226 025
UP

SS (8-11)

RTI