

F. No. 14039/45/2013-UTS.I
Government of India
Ministry of Home Affairs

North Block, New Delhi-110001

Dated the 30th September, 2013

ORDER

Sh. Deepak Mishra has preferred an appeal dated 10.09.2013 stating that he has not been supplied the requisite information to his two RTI applications dated Nil.

2. Sh. Deepak Mishra in his applications had sought information which are exempted and not relevant to disclose in terms of section 8 (1) (g) and (h) of the RTI Act, 2005 and Para 10 and 11 of CIC's Decision No.CIC/AT/A/2007/00333 dated 17.08.2007, the CPIO vide this ministry's letter dated 14th August, 2013 had provided the relevant reply to the applicant informing that "the information sought cannot be shared at this stage in terms of section 8(1) (g) & 8(1) (h) of the RTI Act 2005 and Para 10 and 11 of CIC's Decision No.CIC/AT/A/2007/00333 dated 17.08.2007.

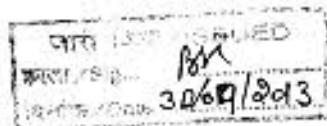
3. The appeal filed by Sh. Deepak Mishra has been carefully considered and it is found that the aforesaid reply/decision of the CPIO with reference to his two RTI applications is in conformity with the Right to Information Act, 2005

4. The appeal is accordingly disposed of.

(Iqbal Singh Chahal)
Joint Secretary (UT) &
Appellate Authority
Tel:23092630

To

Sh. Deepak Mishra,IPS
Special Commissioner of Police,
Law & Order, Delhi



No 2815/PA/SPL/LD/Lan/L/Adm
dated 10-09-2013

CR-163025/243
11/9

To

The First Appellate Authority
Joint Secretary (UT)
MHA, North Block,
New Delhi.

Sub: Appeal under RTI Act 2005.


Off. Director (Service-MHA)
File No. 2410 R51
Date 11/9
UFS-4 Desk/MHA
Dy. No. 141-RTI
Date 16/9/13

Sir,

It is stated that undersigned submitted two different applications to the Central Public Information Officer, Ministry of Home Affairs, New Delhi for obtaining certified copies of the following documents under RTI Act 2005 and two Indian Postal Order Nos. 11F 122727 and 11F 122728 worth Rs. 10/- each were attached towards the prescribed fee for RTI application.

JS (UT)
11/9/13
11/9
12/07

1. Certified copies of Note Sheets containing notings from dealing hand onwards to the Competent Authority and all correspondences and pertaining to commissioning of Veena Kumari Meena Committee & Justice Usha Mehra Committee and subsequent the enquiry reports of Veena Kumari Meena Committee and Ms. Usha Mehra Committee on the basis of which Memorandum No. F.1 4046/109/2012-UTS-I, GOI, MHA dt. 14.3.2013 containing Statement of Article of Charges etc. was issued and served upon me.
2. Certified copies of Note Sheets containing notings from dealing hand onwards to the Competent Authority and all correspondences regarding examining my comments vide No. 886/SO(AC-III)/Spl. C.P./L&O, dt. 13.03.2013, which is forwarded by the C.P. Delhi vide his office DO No. 705/ P.Sec./C.P., Delhi dt. 14.03.2013 in pursuance of communication from MHA through C.P. vide No. 675/P.Sec./C.P., dt. 11.03.2013.
3. Certified copies of Note Sheets containing notings from lower functionary to the Competent Authority and all correspondences regarding examining my reply vide No. 1044/SO(AC-III) Spl. C.P./L&O, dt. 30.03.2013, which is forwarded by C.P., Delhi vide his office letter No. 19861/CB-I/PHQ, dt. 02.04.2013 in pursuance of memorandum No. F. 14046/109/2012-UTS-I, GOI, MHA, dt. 21.05.2013 appointing enquiry officers and presenting officers has purportedly been issued (copies attached).



But unfortunately, CPIO, MHA, vide his letter No. 14039/45/2013-UTS-I, G.O.I., MHA dt. 14th August 2013 has denied to provide the information on the blanket ground that the information sought cannot be shared at this stage in terms of section 8(1) (g) & 8(1) (h) of the RTI Act 2005 and Para 10 and 11 of CIC's Decision No. CIC/AT/A/2007/00333 dt. 17.08.2007.

GROUND OF APPEAL:

(A) The plain reading of Section 8(1) h of RTI Act 2005 suggests that it pertains to the exemption from supplying information which would impede the **process of investigation or the prosecution** of the offenders. It is not applicable to the cases where enquiry/investigation has already been concluded. In the present application the undersigned simply requested the PIO to supply the certified copies of the Note sheets (as mentioned at serial no. 1, 2 & 3 above) in respect of the commissioning and subsequent enquiry reports of Veena Kumari Meena Committee & Justice Usha Mehra Committee. The contention is that since the enquiries conducted by both the committees have already been concluded and submitted to MHA, section 8(1)h of RTI Act cannot be invoked to deny my fundamental right to information. **The Delhi High Court while deciding WP(c) No. 3114/2007 dt. 03.12.2007** had also clearly enunciated the principle *that unless it can be shown that the process of investigation would be impeded the information cannot be denied under RTI Act claiming exemption under Sec. 8(1)h*. Also CIC, New Delhi in an Appeal No. 522/ICPB/2007 dt. 28.05.2007 has decided that *provisions of Sec. 8(1)h can be applied only if the matter is under investigation or the disclosure of information would impede the process of investigation*. In the present case also, the information sought cannot be denied merely invoking the sec. 8(1)h of RTI Act because the enquiries conducted by both the committees have already been concluded.

- (i) The information sought by the undersigned has been denied simply by invoking section 8(1) (g) & 8(1) (h) of the RTI Act 2005 and quoting Para 10 and 11 of CIC's Decision No. CIC/AT/A/2007/00333 dt. 17.08.2007. No satisfactory reason or justification has been rendered as to why the information sought has been denied. **While deciding the W.P. I No. 3114/2007 dt. 03.12.2007 in Bhagat Sing Vs. CIC, Delhi High Court** has commented that *"Access to information, under Sec. 3 of the RTI Act, is the rule and exemptions under sec. 8, the exception. Sec. 8*

being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the right itself. Under Sec.8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, section 8(1)h and other such provisions would become the haven for dodging demands for information.

- (ii) **The Supreme Court of India in a three Judge Bench decision in Director of Education Vs. Pushpendra Kumar & others has held that “an exception cannot subsume the main provision to which it an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision”.**

Denial of the information by invoking sec. 8(1)h and without explaining any cogent reason is prima facie an infringement of fundamental right. If the Parliament wanted to exempt all information relating to investigation or prosecution, it would not have imposed the condition that disclosure should ‘impede’ the investigation or prosecution. It is clear from the various rulings as referred above that **the PIO, who is denying information u/s 8(1)h of the RTI Act, must show satisfactory reasons as to why disclosure of such information would impede the process of investigation or prosecution of offenders.** These reasons must be relevant and the opinion of the PIO that by disclosing the information, prosecution of offenders shall be impeded should be reasonable. The opinion of the PIO must be based on some material and cannot be mere apprehension not supported by any evidence.

In the present matter, it is clear that learned PIO has failed to explain how such disclosure would actually be an impediment to the process of investigation or prosecution. The denial, therefore, appears to be a mere blanket statement not supported by any cogent reason on the basis of which it can be clearly stated that such disclosure would in fact attract the exemption u/s 8(1)h of RTI Act. And since sec.

8 (1) h is not attracted in the present case claim of exemption u/s 8(1) g of RTI Act has no force.

It is reiterated that the undersigned simply requested the PIO to supply the certified copies of the Note sheets (as mentioned at serial no. 1, 2 & 3 above) in respect of the commissioning and subsequent enquiry reports of Veena Kumari Meena Committee & Justice Usha Mehra Committee which have already been concluded.

In view of above case law rulings, since the provision of section 8(1)h and 8(1) g of RTI 2005 Act cannot be invoked in the present case, PIO may please be directed to supply the requisite information, under reference, as requested under RTI Act 2005, by the undersigned.

Submitted please.



(Deepak Mishra)
Spl. Commissioner of Police,
Law & Order, PHQ, Delhi.