



IN THE TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti : Agartala

Appeal No TIC- 40 of 2008-09.

Sri Bhajan Ch. Debnath
S/O Late Benimadhab Debnath
Dhaleswar Road No-11 (near bundh)
P.O.- Dhaleswar- 799007
West Tripura.....

Appellant

Vs.

1.Sri C.M.Deb Barma, Chief Conservator of Forests, HQ, office of the PCCF, Government of Tripura, Agartala (First Appellate Authority).
2.Sri C.K.Das, Deputy Conservator of Forests (W/L), office of the PCCF, Government of Tripura, Agartala(State Public Information Officer)

Respondents

In the matter of a second appeal under section 19(3)
of the Right to Information Act, 2005.

PRESENT:

1. Sri B.K.Chakraborty
State Chief Information Commissioner

2. Sri D.K.Daschaudhuri
State Information Commissioner

For the Appellant: The appellant Sri Bhajan Ch. Debnath himself.

For the Respondent No.1: Sri C.M.Deb Barma, Chief Conservator of Forests, HQ, office of the PCCF, Government of Tripura, Agartala (First Appellate Authority).

For the Respondent No.2: Sri C.K.Das, Deputy Conservator of Forests (W/L), office of the PCCF, Government of Tripura, Agartala (State Public Information Officer)

Date of lodging second appeal : 24.01.2009

Date of hearing of second appeal: 07.02.2009

Date of pronouncing judgment and order: 04.03.2009

JUDGMENT & ORDER

Facts:

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 24.01.2009 of Sri Bhajan Ch.



Debnath (here in after referred to as the appellant) received by this Commission on the same date. Facts leading to this second appeal are that the appellant submitted on 11.08.2008 a written request to the State Public Information Officer (SPIO) in the office of the PCCF, Government of Tripura, Agartala seeking certain items of information under the Act depositing requisite application fee. In response, the concerned SPIO did not provide the information to the appellant, for which the latter preferred a first appeal on 18.09.2008 to the First Appellate Authority (FAA) in the office of the PCCF, Government of Tripura, Agartala. Since, the FAA did not decide the first appeal in issue within the statutory period, the appellant preferred a second appeal before this Commission on 27.11.2008. Before this Commission, it was revealed from the memorandum of second appeal datd 27.11.2008 of the appellant that the concerned FAA fixed up a date on 22.12.2008 for hearing. Considering the circumstances, this Commission by an order dated 27.11.2008 directed the concerned FAA to dispose of the first appeal in issue by the date fixed instead of admitting the second appeal. Thereafter, the concerned FAA advanced the date of hearing of the first appeal of the appellant in issue on 08.12.2008 and delivered a judgment and order on the same date, which was however, not communicated to the appellant forthwith. Consequently, having no response from the concerned FAA, the appellant preferred this second appeal on 24.01.2009 before this Commission alleging that he did not receive any information whatsoever form the SPIO even as per direction of the concerned FAA. Hence, the appellant sought for direction to have access to the information as described in his written request dated 11.08.2008 and also to take appropriate action against the concerned SPIO and the FAA for violation of the provisions of the Act by not disposing of the written request and the first appeal in issue within the statutory period. Along with the memorandum of second appeal, the appellant furnished photocopies of all the relevant papers.

3. On perusal of the memorandum of appeal with enclosures, it was found in form and within time and, therefore, was registered as a second appeal under section 19(3) of the Act.

4. In response to the summons, the Respondent 1 Sri C.M.Deb Barma, CCF, HQ, office of the PCCF, Government of Tripura and the FAA and the Respondent 2 Sri C.K.Das, Deputy Conservator of Forests (W/L), office of the PCCF, Government of Tripura and the SPIO appeared and submitted their respective written representations. The Respondent 2 also submitted an additional written representation.

5. Heard oral submissions made by the appellant and the Respondents 1 and 2.

Issues for decision:

6. Considering the facts and the circumstances of the case, the issues require decision are as follows:-





- (i) Is the decision of the Respondent 1 being the FAA maintainable?
- (ii) Is the appellant entitled to have access to the information sought for?
- (iii) Are the Respondents liable to penalty for contravention of any provision of the Act?

Reasons for decision:

7. Issue No.(i): The Respondent 1 being the FAA delivered a judgment and order on 08.12.2008 on the first appeal preferred by the appellant and registered as Appeal No-18 of 2008-09, concluding portion of which is as follows:-

" 8. On going through the above and on perusal of the record the following is ordered:-

- (i) The application seeking certain information preferred by Sri Bhajan Ch. Debnath may be provided to the information seeker under RTI Act, 2005 by obtaining acknowledgment/confirmation of the receipt.
- (ii) The matters of information at this stage relating to the court case and the judgment may not be provided at this stage as the appeal petition in the courts are filed already till court judgment and decision are available."

8. Records reveals that the appellant sought for so many information under five heads, which include information pertaining to the implementation of the courts judgment and order, information pertaining to the steps taken by the PCCF, Government of Tripura on the written representations submitted by the appellant and also on the implementation of the courts judgment and order. The order of the Respondent 1 being the FAA is not specific so far as information to be provided and not to be provided are concerned. He laid down principles about providing the information by the concerned SPIO, which in our view, is not a complete and clear order as expected from the FAA. He left the matter of taking decision about merit of the information to be provided or not to be provided on the SPIO. Thus, the order delivered by the Respondent 1 being the FAA is rather vague and not in a position to be complied with by the concerned SPIO and, therefore, such order is liable to be set aside.

9. Issue No.(ii): The appellant described particulars of the information mostly in Bengali, English version, of which are narrated below:-

"(1) The verdict and order No-240/2003 dated 25.07.2003 of the Single Bench withholding two increments of Sri Bhajan Ch. Debnath was set aside by the Court by an order dated 05.08.2008 passed in WA No-14 of 2005.

- (i) By virtue of the said order, what was amount of arrear increment of Sri Bhajan Ch. Debnath and by which date the arrears would be paid.
- (ii) What was the amount of arrears and by which date it would be paid as would be accrued due to promotion of Sri Bhajan Ch. Debnath to the post of Accountant/Head Clerk w.e.from 27.11.1991 and to the post of Office Superintendent w.e.from 09.07.1998 in compliance with the verdict of the Single



Judge dated 13.03.2001 given in Rule No-394/1994 and verdict order dated 05.08.2008 given in writ appeal No-14/2005.

- (iii) The court in its order dated 05.08.2008 (para-27) passed in writ appeal No-14/2005 declared that Sri Bhajan Ch. Debnath was deprived of promotion and of the opportunity of raising objection to the enquiry report dated 25.07.2003. What was the name of the official responsible for the said deprivation?

(2) My representations dated 14.05.2008, 21.06.2008 and 01.07.2008 addressed to the PCCF, Tripura were forwarded to the addressee by the Working Plan Divn No-I vide his office No- F.2-35/WP-1/Estt/262 dated 17.05.2008, No F.2-35/WP-1/Estt/For-08/549 dated 23.06.2008 and No. F.2-35/WP-1/Estt/For-08/636 dated 07.07.2008 respectively through the CF, WRT.

- (i) On which dates and under which docket number the above representations were received in the office of the PCCF, Tripura.
- (ii) If my above representations were put up in time.
- (iii) On which dates my above representations were put up in file?
- (iv) What is the name of the employee who put up the above representations?
- (v) What were the orders passed on my above representations after putting up? Photocopies of the orders of the appropriate authorities be supplied.
- (vi) Photocopy of the note sheets under which the above representations were put up be provided.

(3) What steps were taken and orders were passed by the PCCF, Tripura on the judgment and order passed by the Court in case No- SA 21 /1998 as brought by the PCCF, Tripura. Photocopies of the note sheets of the relevant file, orders of the PCCF be provided.

(4) What were the reasons for not dismissing Sri Debaranjan Talapatra and others from services despite their appointment were declared illegal by the Court in its order dated 20.11.1992 in case No-SA 1998 and SA 21/1998.

(5) Whether or not the PCCF, Tripura was aware of the illegal appointment of the aforesaid employees. Disclosure of the information is sought for."

10. The Respondent 2 being the SPIO in his written representation and additional written representation categorically stated that some of the information sought for by the appellant were related to case matters in respect of which an SLP is lying pending for disposal in the Hon'ble Supreme Court. In his written representation and additional written representation, although the Respondent 2 did not clarify which of the information were related to the said SLP, but in his verbal submission, the Respondent 2 clarified that the information under item (1) in the matter of setting aside the punishment awarded to Sri Bhajan Ch. Debnath by the Division bench in WA No SA14 of 2005 has been challenged in the Supreme Court bringing an SLP, which has been registered as SLP (Civil) 2514 of 2009 between the State of Tripura and another v. Sri Bhajan Ch. Debnath & another. In support of his contention, the SPIO furnished copy of the information downloaded from internet, which is found to be correct. Since, the



matter is still sub-judice, the question of giving affect to the order of the Hon'ble High Court passed in WA No-14 of 2005 does not arise and, therefore, the public authority concerned is not under obligation to furnish the said information to the appellant. Thus, the appellant is not entitled to the information sought for under item (1). As regards items (2), (3), (4) and (5), the Respondent 2 being the SPIO submitted that the concerned sections of the office of the PCCF, Tripura were directed to process the records for supply of the information and the matter was in active process. Such fact was also intimated to the appellant vide letter No.F.21(46)/RTI/For-2008/17597 dated 15.09.2008. But, the appellant in the meantime, filed an appeal before the FAA and subsequently to this Commission. Therefore, the Respondent 2 was waiting for the order of the Commission. Thus, the Respondent 2 being the SPIO raised no objection about disclosure of the information under items (2), (3), (4) and (5). Since, the SPIO raised no objection to the disclosure of the said information, we do not find any reason to stand in the way of disclosure if such information are available in the custody of the concerned public authority. Thus, the Respondent 2 being the SPIO is under obligation to provide the above information to the appellant within the time as may be specified by this Commission.

11. Issue No(iii): The appellant strenuously agitated that both the Respondents are in habit of not responding to his written requests seeking information and the first appeals within the statutory period. In the present case, the SPIO failed to provide the information to the appellant within the statutory period. Similarly, the Respondent 1 being the FAA took 125 days to deliver his judgment and order on the first appeal in issue. Without disputing the allegation of the appellant, it is found in record that the Respondent 1 being the FAA did not deliver his judgment and order on the first appeal in issue within 30 days of receipt of the appeal nor he assigned any reason whatsoever for his failure to follow the time frame prescribed by the Act. There exists no provision in the Act for imposing penalty upon the FAA for contravention of the provision of the Act. However, we are constrained to observe that the FAA should be very serious and circumspect in future in disposal of the first appeal under section 19(1) of the Act following scrupulously the time frame as prescribed by the Act.

12. As regards contravention of the provisions of the Act by the Respondent 2 being the SPIO as alleged by the appellant, it is found in record that the SPIO intimated the appellant vide letter No.F.21(46)/RTI/For-2008/17597 dated 15.09.2008 that the information to be provided to the appellant were under process. But, in the meantime, the appellant preferred a first appeal on 18.09.2008 before the FAA and the second appeal on 24.01.2009 before this Commission. Thus, he had no scope to provide the information without waiting for the decision of this Commission. The explanation offered by the Respondent 2 being the SPIO deserves consideration. We find no reasonable ground to penalize the Respondent 2 being the SPIO in the circumstances narrated above.

Decision:

13. In fine, this second appeal is partially allowed on contest with the following orders:-

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- (i) The order dated 08.12.2008 of the Respondent 2 being the FAA is hereby set aside.
- (ii) The Respondent 2 being the SPIO is directed to provide the information under items (2), (3), (4) and (5) as described in the written request dated 11.08.2008 of the appellant and in paragraph 9 above within a period of 15 days from the date of passing of this judgment and order free of charge since the SPIO could not provide the information to the appellant within the statutory period as prescribed by the Act.

14. Let copy of this judgment and order be sent to the appellant and the Respondents. Also send a copy of this judgment and order to the PCCF, Government of Tripura being the head of the Public Authority.

15. Pronounced.

Sd/-
(D.K.Daschauthuri)
State Information Commissioner

Sd/-
(B.K.Chakraborty)
State Chief Information Commissioner

Authenticated

4/3/08
(S.C.Saha)
Secretary
Tripura Information Commission

Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Appeal No. TIC- 40 of 2008-09 | *128-31*

Dated, 04.03.2009

Copy to:-

- 1.Sri Bhajan Ch. Debnath, S/O Late Benimadhab Debnath, Dhaleswar Road No-11 (near bundh), P.O.- Dhaleswar- 799007, West Tripura (Appellant).
- 2.Sri C.M.Deb Barma, Chief Conservator of Forests, HQ, office of the PCCF, Government of Tripura, Agartala (First Appellate Authority)- Respondent 1.
- 3.Sri C.K.Das, Deputy Conservator of Forests (W/L), office of the PCCF, Government of Tripura, Agartala(State Public Information Officer)- Respondent 2
4. The Principal Chief Conservator of Forests, Government of Tripura, Agartala (Head of the Public Authority).

4/3/08
(S.C.Saha)
Secretary
Tripura Information Commission