



TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti
Agartala – 799 006

Complaint No. TIC - 07 of 2009-10.

Sri Susil Chandra Som
S/O Late K.N. Som
Joynagar Road No-6
Agartala – 799001

Complainant

Vs.

1. Sri T.K.Bhowmik, Deputy Secretary, office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala (State Public Information Officer).
2. Sri S. Bhowmik, Chief Engineer, PWD (R&B), Government of Tripura, Agartala (Head of the Public Authority).
3. Sri B.P. Das, Superintending Engineer, 4th Circle, PWD(R&B), PWD Complex, Netaji Choumohni, Agartala (Former State Public Information Officer in the office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala).

Opposite Parties

In the matter of the complaint under section 18(1)
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 Complainant: The complainant Sri Susil Chandra Som himself.

For the Opposite Party: 1 Sri T.K.Bhowmik, Deputy Secretary, office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala (State Public Information Officer).

For the Opposite Party: 2 Sri S. Bhowmik, Chief Engineer, PWD (R&B), Government of Tripura, Agartala (Head of the Public Authority).

For the Opposite Party: 3 Sri B.P. Das, Superintending Engineer, 4th Circle, PWD(R&B), PWD Complex, Netaji Choumohni, Agartala (Former State Public Information Officer in the office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala).

Date of lodging the complaint: 20.05.2009
 Dates of hearing: 05.06.2009, 02.07.2009 & 18.07.2009
 Date of pronouncing the judgment: 07.08.2009

JUDGMENT AND ORDER

Facts:

1. This complaint arises out of a written application dated 20.05.2009 of Sri Susil Chandra Som (here in after referred to as the complainant) received by this Commission on the same date. In his complaint, the complainant alleged firstly that in compliance with the direction given by this Commission on 17.02.2009 in Appeal No. TIC-35 of 2008-09, Sri T.K.Bhowmik, Deputy Secretary and the State Public Information Officer (SPIO) in the office of the Chief Engineer, PWD (R&B), Government of Tripura provided the information on 28.04.2009, which was contrary to the information provided by his predecessor Sri B.P. Das, Superintending Engineer (SE), 4th Circle, PWD(R&B), Government of Tripura and the former SPIO in the office of the Chief Engineer, PWD (R&B), Government of Tripura. According to the complainant, the former SPIO Sri B.P. Das now SE, 4th Circle, PWD(R&B), Government of Tripura provided him the incorrect information knowingly, for which he is liable to be penalized under section 20(1) of the RTI Act, 2005 (for short the Act). The second allegation was that Sri S. Bhattacharjee, SE, Planning Circle, PWD(R&B), Government of Tripura being the designated First Appellate Authority (FAA) did not dispose of his first appeal following the principle of natural justice and thereby caused harassment to him without giving any decision on the first appeal in issue. The third allegation was that the head of the public authority of the PWD(R&B), Government of Tripura did not update the notice board displaying the names and other particulars of the appellate authority, SPIO and SAPIO in his office, which misled the public including the complainant. The complainant by way of this complaint sought for the following reliefs before this Commission:-

- (i) To penalize Sri B.P. Das, former SPIO in the office of the Chief Engineer, PWD (R&B), Government of Tripura, now SE, 4th Circle, PWD(R&B), Government of Tripura for providing incorrect information under section 20(1) of the Act.
- (ii) To pay compensation for non disposal of the first appeal of the complainant by the FAA in the office of the Chief Engineer, PWD (R&B), Government of Tripura.
- (iii) To take appropriate steps for failure of the head of the public authority of the PWD(R&B), Government of Tripura to update the notice board displaying the names and other particulars of the stakeholders.

Along with this complaint, the complainant furnished photocopies of all the relevant papers.

2. On perusal of the complaint with enclosures, adequate materials were found to take cognizance of a complaint under section 18(1) of the Act and accordingly, it was registered.



3. In response to the summons, the Opposite Party (OP) 1 Sri T.K.Bhowmik, Deputy Secretary in the office of the Chief Engineer, PWD (R&B), Government of Tripura and the SPIO appeared and submitted his written representation defending his decision of providing negative information. In the meantime, the complainant submitted a written rejoinder on 27.05.2009 requesting this Commission to review the judgment and order dated 17.02.2009 of this Commission passed in Appeal No.TIC-35 of 2008-09.

4. In course of hearing on the complaint, it was felt expedient to obtain his submission about the correctness of the information provided by the OP 1 Sri T.K. Bhowmik, present SPIO and Sri B.P. Das, former SPIO and, therefore, Sri S. Bhowmik, Chief Engineer (CE), PWD(R&B), Government of Tripura and head of the public authority was impleaded as OP 2 and was requested to appear and submit his written representation clarifying the controversy mentioned above. Accordingly, OP 2 Sri S. Bhowmik, CE, PWD(R&B), Government of Tripura appeared and submitted his written representation stating, inter-alia, that under the prevailing situation, the information provided by both the OP 1 and Sri B.P. Das were correct, which were based on records and verbal discussion.


5. Notwithstanding the submission placed by the OP 2 being the head of the public authority, this Commission, prima-facie, was of the view that Sri B.P. Das, former SPIO in the office of the OP 2, now SE, 4th Circle, PWD(R&B), Government of Tripura vide his letter No-3590 dated 07.05.2009 provided incorrect information to the complainant against item - 3, for which he was liable to be penalized under section 20(1) of the Act as claimed by the complainant. He was, therefore, impleaded as OP 3 in this complaint. As required under the proviso to section 20(1) of the Act, Sri B.P. Das was given an opportunity of being heard and show cause as to why he should not be penalized by appearing in person and making a written representation before this Commission. Accordingly, Sri B.P. Das appeared before this Commission on 29.07.2009 and submitted a written representation denying contravention of the provisions of the Act to warrant penalty under section 20(1) of the Act.

6. Heard oral submissions placed by Sri Susil Chandra Som, the complainant and the OPs 1, 2 and 3.

7. At the very outset, it is observed that the complainant in his written complaint in issue jumbled more than one subject matter seeking redress before this Commission, which is not permissible under the law due to multifarious form. However, in the interest of natural justice, we admit the main allegation of providing contradictory information by the OP 1 being the SPIO in compliance with the direction given by this Commission in its order dated 17.02.2009 passed in Appeal No.TIC-35 of 2008-09. The allegation made by the complainant about the performances of Sri S. Bhattacharjee, SE, Planning Circle, PWD(R&B), Government of Tripura being the FAA has already been dealt with in deciding Appeal No.TIC-35 of 2008-09 by this Commission and, therefore, the said matter cannot be reopened in this complaint.







8. As regards updating the notice board displaying the names and other particulars of the different stakeholders in the office of the OP 2 as alleged by the complainant, in course of hearing, the OP 1 admitted that after transfer of the concerned stakeholders, the notice board was not updated. In this respect, we feel the necessity to make the OP 2 being the head of the public authority aware of the relevant legal provisions. As required under section 4(1)(b)(xvi) of the Act, every public authority is under obligation to publish suo-motu the names, designations and other particulars of the Public Information Officers. Again, under section 4(3) of the Act, for the purpose of section 4 (1) of the Act, every information shall be disseminated widely and in such form and manner which is easily accessible to the public. The explanation appended below section 4(4) of the Act clarifies the term 'dissemination' to mean making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority. Furthermore, while providing the information by the SPIO to an information seeker, the former is under obligation to intimate the latter the name and the particulars of the appellate authority as per provisions of section 7(8) of the Act. Keeping the above provisions of the Act in view, this Commission had directed all the public authorities during the review meetings that the names, designations and other particulars of the SPIOs, SAPIOs and the FAAs should be displayed in the notice boards and such information should be updated from time to time if necessary.

9. As admitted by the OP 1, immediately after transfer of Sri S. Bhattacharjee, the OP 2 being the head of the public authority did not replace the name and other details of Sri Bhattacharjee in the notice board by the name, designation and other particulars of the newly designated FAA. However, after lapse of a considerable time, the OP 1 confirmed that the notice board has been updated. We are constrained to direct the OP 2 being the head of the public authority to be more careful in future to carry out scrupulously his responsibilities vested on him by the Act and the Tripura Right to Information Rules, 2008.

10. The complainant in his written rejoinder dated 25.07.2009 requested this Commission to consider review of the judgment and order dated 17.02.2009 of this Commission passed in Appeal No.TIC-35 of 2008-09 along with the hearing of this complaint. The form in which the request for review of the judgment and order dated 17.02.2009 has been made by the complainant is not maintainable for the reasons that an application for review of the judgment and order and hearing on a complaint cannot be clubbed together, that the application for review has been filed after lapse of about three months, which amounted to be time-barred and that there exists no provision in the Act for review of its own judgment and order by this Commission. Therefore, the aforesaid application of the complainant for review of the judgment and order dated 17.02.2009 of this Commission passed in Appeal No.TIC-35 of 2008-09 is not maintainable.





Points for decision:

11. In consideration of the facts and the circumstances of the case, the following points require decision.

- (i) Did the OP 1 being the present SPIO in the office of the Chief Engineer, PWD(R&B), Government of Tripura in compliance with the order dated 17.02.2009 passed in Appeal No.TIC-35 of 2008-09 and subsequent order dated 25.04.2009 passed in Complaint No.TIC-01 of 2009-10 by this Commission provide correct information to the complainant?
- (ii) Was the information provided by the OP 3 Sri B.P. Das, former SPIO in the office of the Chief Engineer, PWD (R&B), Government of Tripura, now SE, 4th Circle, PWD(R&B), Government of Tripura against the same information required under item - 5 of the written request dated 09.04.2008 of the complainant incorrect? If so, whether or not the OP 3 is liable to be penalized under section 20(1) of the Act?
- (iii) To what relief the complainant is entitled?

Reasons for decision:

12. Points No.(i) & (ii): For the sake of convenience, the first two points are taken together for discussion. We have carefully considered the written complaint with written rejoinders dated 25.07.2009, 05.06.2009 and 24.06.2009 of the complainant, the written representation and the additional written representation of the OP 1 and the written representations of the OPs 2 and 3. We have also taken into consideration the oral submissions placed by the complainant and the OPs 1, 2 and 3.

13. The controversy arose out of the information provided by OP 3 Sri B.P. Das, former SPIO in the office of the OP 2 on 05.05.2008 and the information provided by the OP 1 Sri T.K. Bhowmik, the present SPIO on 28.04.2009 in compliance with the direction given by this Commission in its order dated 17.02.2009 passed in Appeal No. TIC-35 of 2008-09 and subsequent order dated 25.04.2009 passed in Complaint No. TIC - 01 of 2009-10 against the same description of the information sought for by the complainant vide his written request dated 09.04.2008, which runs as follows:-

" Steps, if any taken so far by the department of the Government for making regular appointment as reflected in the letter of appointment vide No. F. ARCH/10/04-01 dated 02.07.2009 and even in the letter of extension in continuation vide No. F. 6(16)/PWD(E)/2002 dated 06.09.2006"

14. In response to the above request of the complainant, Sri B.P. Das, the then SPIO provided the following information:-

"PWD took efforts for filling up the posts of Asstt. Architect through TPSC and accordingly advertisement was made by the TPSC about 3 years back but selection was not completed. And now further necessary action is under process for filling up the vacancy posts of Asstt. Architect through TPSC."

Being dissatisfied with the above information provided by the OP 3 being the former SPIO, the complainant firstly preferred a first appeal to the FAA in the office of the Chief Engineer, PWD(R&B), Government of Tripura and receiving no response from the latter within the statutory period, he preferred a second appeal before this Commission on 26.12.2008, which was registered as Appeal No. TIC- 35 of 2008-09 and decided on 17.02.2009, inter-alia, with the following order:-

"Respondent 2 Sri B.P.Das, Deputy Secretary, Office of the Chief Engineer, PWD(R&B), Government of Tripura and the SPIO is directed to provide the specific information to the appellant against item -5 as mentioned in his written request dated 09.04.2008 in the light of the discussion made in paragraph -10 above within a period of 15 days from the date of passing of this judgment and order free of charge."

It is also pertinent to reproduce below the relevant portion of the paragraph -10 of the aforesaid judgment and order for a just appraisal:-

"10. After careful appreciation of the information provided by the Respondent 2 being the SPIO against item - 5 , it is observed that the reply to the query was evasive to the extent that he did not mention what specific action/actions was/were taken by the public authority for filling up the vacant post of Assistant Architect. So, the Respondent 2 being the SPIO is under obligation to give specific reply to the query showing the specific steps taken by the public authority for filling up the vacant post of Assistant Architect."

15. When the matter of compliance of the above direction of this Commission came up, Sri B.P. Das was succeeded by Sri T.K. Bhowmik, Deputy Secretary and the SPIO in the office of the Chief Engineer, PWD(R&B), Government of Tripura and he on 13.03.2009 complied with the above direction of this Commission passed in Appeal No. TIC-35 of 2008-09 by supplying copies of some documents to the complainant, against which the latter preferred a complaint before this Commission on 03.04.2009 alleging that the information provided by the OP 1 were not appropriate. The said complaint was registered as Complaint No. TIC-01 of 2009-10 in this Commission and was decided on 25.04.2009 with the direction to the OP (Sri T.K. Bhowmik being the present SPIO) to provide specific information to the complainant within a period of seven days from the date of passing of the said direction in the light of the judgment and order dated 17.02.2009 passed by this Commission in Appeal No. TIC-35 of 2008-09. In accordance with the said order, the OP 1 provided on 28.04.2009 the information to the complainant as thus:-

" This is to inform you that no action has been taken by the PWD to fill up the post of Assistant Architect through TPSC since 02.07.2005"


C/S



OP1 in his oral submission made before this Commission has clarified that by the above information provided to the complainant, he meant that no requisition was sent to the TPSC since 02.07.2005 for filling up the post of Assistant Architect.

16. It is to be noted that the information provided by the OP 3 on 05.05.2008 was held by this Commission to be vague, for which in its order dated 17.02.2009 passed in Appeal No. TIC -35 of 2008-09, this Commission directed the OP 3 to furnish the specific information about the steps taken by the concerned authority for filling up the post of Assistant Architect as available in the records lying with the concerned public authority amounting the matter to be under process. The dictionary meaning of the word 'process' in the present context may be considered as a series of things or actions or events being in progress or being carried on in order to achieve a particular object, which in the present case is filling up the post of Assistant Architect. So, by directing the concerned SPIO to provide specific information, this Commission expected him to specify the actions taken to fill up the post of Assistant Architect as on 09.04.2008 i.e. the date of making the request for information by the complainant.

17. In deciding the Appeal No.TIC-35 of 2008-09, this Commission did not disbelieve the information provided by the OP 3 but, held the same to be vague for want of details of the actions taken by the concerned authority. OP 3 in his written representation submitted that only one vacant post of Assistant Architect reserved for ST was attempted to be selected by the TPSC but, it did find no suitable candidate as communicated on 11.03.2005. It is further contended that thereafter, 8 posts of Junior Architect were created on 20.06.2006 and after framing the Recruitment Rules, 3 posts of Junior Architect were filled up through TPSC. Thereafter, the Recruitment Rules of Assistant Architect were necessitated to be amended, which is still waiting for a report to be submitted by the Committee headed by Sri T. Lodh, SE (presently Chief Engineer). In the meantime, a post of Assistant Architect fell vacant due to promotion of one Assistant Architect to the post of Architect, which position was also due to be addressed in the vacancy position of Assistant Architect. So, the actions which were in progress may be considered to be in process of filling up the post of Assistant Architect, the OP 3 added. Thus, according to the OP 3, the information provided by him was perfectly in consonance with the situation prevalent on the date of providing the information.

18. OP 1 being the successor of the OP 3 should have taken into consideration the information already provided by his predecessor and the verdict of this Commission including the status of the records existed in the custody of the public authority pertaining to the matter, which he blatantly failed to do as evident from the fact of intimating the complainant that no action has been taken by the PW Department to fill up the post of Assistant Architect through TPSC since 02.07.2005. To mean the matter under process, it was not confined only to fill up the post of Assistant Architect through TPSC. The OP 1 is found to have not considered the other aspects of the process of filling up the post of Assistant Architect as contended by the OP 3.



19. OP 2 being the head of the public authority in his written representation submitted that there was a discussion to fill up the Assistant Architect posts. In the meantime, the process for filling up the vacant posts of Junior Architect was made first after creation of the Junior Architect posts. Accordingly, on creation of the Junior Architect posts, new Recruitment Rules for the post of Assistant Architect has become inevitable as the same has not been done so far. Therefore, the reply given by the SPIO Sri B.P. Das was made according to the discussion. He further stated that the information provided by the present SPIO Sri T.K Bhowmik to the complainant on 28.04.2009 was also correct since the process for filling up the vacant posts of Assistant Architect has not taken so far. OP 2 in his additional written representation dated 29.07.2009 submitted that the discussion for filling up the post of Assistant Architects was made verbally and it was not reduced into writing to form a record. So, it may be presumed that the OP 1 being the successor of the OP 3 was not aware of the progress about the matter of filling up the posts of Assistant Architect.

20. After appreciating the submissions of the OPs 1, 2 & 3, we are of the view that the impugned information provided by the OP 3 as elaborately discussed in the judgment and order of this Commission passed in Appeal No. TIC-35 of 2008-09 was supported by the records available in the custody of the OP 2 being the head of the public authority and the verbal discussion held between the OPs 2 and 3. OP 1 did not take into account the spirit of the above records and the discussion made in the above judgment and order and provided the partial information that no action was taken for filling up the post of Assistant Architect through TPSC. It is commonly known that a series of actions are required to be taken before sending the requisition for selection of the candidates through the TPSC as indicated by the OP 3 in his written representation dated 29.07.2009. Thus, the total exercise done by the OP 1 in providing the information is no doubt reflected his lack of experience and legal conception. However, it does not show his malafide intention to suppress the facts pertaining to the information and also to disobey the direction given by this Commission.

21. Having regard to the discussion made here in above, we are to hold that the information provided by the OPs 1 and 3 in respect of the same query in issue made by the complainant are complimentary to one another and none of them had malafide intention to provide incorrect information to the complainant. Thus, we find no reasonable ground to take any penal action against the OP 3 and the OP 1. However, we are constrained to warn the OP 1 to be more circumspect in future in dealing with the RTI matters.

22. Point No.(iii): We have already arrived at the findings that the two sets of information provided by the OPs 1 and 3 in reply to the same query made by the complainant are complimentary to each other and not contradictory. That apart, in course of hearing of this complaint, the complainant has already been furnished with photocopies of all the written representations and the additional written representation submitted by the OPs 1, 2 and 3 along with the enclosures, which include the copies of the documents pertaining to the actions or steps taken by the office of the concerned public authority to fill up the post of

6/11



Assistant Architect, Thereby, the complainant is presumed to have been provided with the desired information as contemplated under the direction given by this Commission in its judgment and order dated 17.02.2009 passed in Appeal No.TIC-35 of 2008-09. So, no further information is required to be provided to the complainant.

Decision:

23. With the above findings and observations, this complaint stands disposed of.
24. Let copy of this judgment and order be sent to the complainant and the OPs.
25. Pronounced.

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

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

Authenticated


(S.C.Saha)
Secretary

Tripura Information Commission

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

Complaint No TIC - 07 of 2009-10	805-08	Dated, 07.08.2009
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Copy to:-

- 1.Sri Susil Chandra Som, S/O Late K.N. Som, Joynagar Road No-6, Agartala - 799001 (Complainant).
- 2.Sri T.K.Bhowmik, Deputy Secretary, office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala (State Public Information Officer) - OP 1.
3. Sri S. Bhowmik, Chief Engineer, PWD (R&B), Government of Tripura, Agartala (Head of the Public Authority) - OP 2.
4. Sri B.P. Das, Superintending Engineer, 4th Circle, PWD(R&B), PWD Complex, Netaji Choumohni, Agartala (Former State Public Information Officer in the office of the Chief Engineer, PWD (R&B), Government of Tripura, Agartala) - OP 3.


(S.C.Saha)
Secretary

Tripura Information Commission