



TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti
Agartala – 799 006

Complaint No. TIC - 28 of 2009-10.

Smt Mira Saha
W/O Sri Sushil Ch. Saha
South Shibnagar (near Lotus Club)
P.O.- Agartala College : West Tripura

.....Complainant

Vs.

Sri R.P. Datta, Under Secretary to the Government of Tripura, GA(P&T)
Department, Agartala (State Public Information Officer).....Opposite Party

In the matter of the complaint under section 18(1)
of the Right to Information Act, 2005.

PRESENT:

Sri B.K.Chakraborty
State Chief Information Commissioner

For the complainant: None.

For the Opposite Party: Sri R.P. Datta, Under Secretary to the Government of
Tripura, GA(P&T) Department, Agartala (State Public
Information Officer).

Date of receipt of the complaint: 15.10.2009

Date of hearing: 11.11.2009

Date of pronouncing the judgment & order: 17.12.2009

JUDGMENT AND ORDER

1. This complaint arose out of a written application dated nil of Smt. Mira Saha (here in after referred to as the complainant) received by this Commission on 15.10.2009. It is alleged by the complainant that on 25.08.2009, she made a written request to the Under Secretary to the Government of Tripura, GA(P&T) Department, Agartala and the State Public Information Officer (SPIO) seeking certain items of information under the RTI Act, 2005 (for short the Act)

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accompanied by the requisite amount of application fee. In response, the SPIO provided some information to the complainant, which according to the latter were incorrect, incomplete and misleading. She further alleged that the concerned SPIO did not provide one item of information at all. The complainant, therefore, approached this Commission by way of this complaint seeking direction to have access to the complete and correct information and also to take penal action against the concerned SPIO under section 20(1) of the Act. The complainant furnished copies of the relevant papers along with the written complaint.

2. On perusal of the written complaint and its enclosures, I find adequate materials 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) Sri R.P. Datta, Under Secretary to the Government of Tripura, GA(P&T) Department, Agartala and the SPIO appeared and submitted a written representation. The complainant Smt. Mira Saha however, remained absent without any step despite summons issued to her in time.

4. Heard oral submission made by the OP. Also perused the written complaint of the complainant along with its enclosures, the written representation dated 10.11.2009 of the OP, the report submitted by the Director for Welfare of SCs & OBCs, Government of Tripura vide his letter No.F. 2(115)-SC & OBC/06(P) dated 03.12.2009 and the written rejoinder dated 14.12.2009 of the complainant.

5. The complainant vide her written request dated 25.08.2009 submitted to the OP being the SPIO had sought for the following items of information:-

"(i) Had Sri Sushil Chandra Saha, TCS Gr II been found eligible by the Departmental Promotion Committee for promotion to TCS Gr.I (Selection Grade)?

(a) If no, reason thereof.

(b) If yes, the reason for not promoting him to the Selection Grade.

(ii) whether 100 point roster was followed. If not reason thereof.

(iii) Authenticated copy of the report of the Departmental Promotion Committee may be provided.

(iv) Authenticated copy of the inspection report of the 100 point roster in Annexure-1 in Form No.2 under rule 9(1) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 supplied by the ST and SC Welfare Departments to the Departmental Promotion Committee may please be supplied with."

6. In response, the concerned SPIO vide his letter No.F.23(5)-GA(P&T)/08 dated 16.09.2009 furnished the following information to the complainant:-

"(i) the name of Shri Sushil Ch. Saha, TCS Gr-II was under the zone of consideration for promotion to TCS Gr-I but Departmental Promotion Committee did not recommend his name for promotion.

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- (ii) 100 point roster was followed by the DPC for promotion.
- (iii) Authenticated copy of the report of the DPC may not be supplied with due to imposition of banning order of the Hon'ble Guwahati High Court.
- (iv) Authenticated copy of the inspection report of the 100 point roster may be supplied with you at a cost of Rs. 6/- (Rupees six) only @ Rs. 2/- per page."

7. The complainant in her complaint submitted to this Commission has agitated as follows:-

- (i) That the information supplied against item -1 is incomplete and misleading for the reason that the reason for not recommending promotion of Sri Sushil Chandra Saha as sought under item -1 (b) of her written request has been withheld.
- (ii) That the information supplied by the SPIO against item -2 is incorrect, incomplete and misleading giving some reasons recorded therein.
- (iii) That the SPIO denied to supply the information against item -3 on the plea that the Hon'ble Gauhati High Court has imposed ban on the disclosure of the information. But, no copy of such order of the Hon'ble High Court has been provided. In fact, there was no such order to attract exemption clause (b) of sub-section (1) of section 8 of the Act.
- (iv) That the SPIO should be penalized under section 20(1) of the Act for furnishing incorrect, incomplete and misleading information malafidely.

8. The complainant vide item -1 of her written request in issue wanted to know whether Sri Sushil Chandra Saha, TCS Gr-II was found eligible by the Departmental Promotion Committee (DPC) for promotion to TCS Gr-I (Selection Grade). If no, reason thereof. If yes, the reason for not promoting him to the selection grade. In reply, the OP being the SPIO vide his letter dated 16.09.2009 had informed the complainant that the name of Sri Sushil Chandra Saha, TCS Gr-II was under the zone of consideration for promotion to TCS Gr-I, but the DPC did not recommend his name for promotion. He however, did not mention the reason for such non – recommendation by the DPC. In his written representation dated 10.11.2009, the OP has submitted that the reason for not recommending the name of Sri Sushil Chandra Saha for promotion could not be communicated to the complainant as the DPC did not record the same in its minutes. This fact that the DPC did not record any reason for not recommending the name of Sri Sushil Chandra Saha for promotion is now required to be communicated to the complainant by the OP 1 being the SPIO.

9. The complainant under item – 2 of her written request in issue wanted to know whether 100 point roster was followed and if not, the reasons thereof. In reply, the OP being the SPIO vide his letter dated 16.09.2009 addressed to the complainant had informed that 100 point roster was followed by the DPC for promotion. The complainant has agitated in her complaint preferred before this Commission that 100 point roster was not followed and, therefore, the information supplied by the SPIO against item – 2 is incorrect and misleading. In order to resolve this dispute and to arrive at a correct decision, this Commission felt it necessary to call for written clarification in this regard from the Director for

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- (ii) 100 point roster was followed by the DPC for promotion.
- (iii) Authenticated copy of the report of the DPC may not be supplied with due to imposition of banning order of the Hon'ble Guwahati High Court.
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- (ii) That the information supplied by the SPIO against item -2 is incorrect, incomplete and misleading giving some reasons recorded therein.
- (iii) That the SPIO denied to supply the information against item - 3 on the plea that the Hon'ble Gauhati High Court has imposed ban on the disclosure of the information. But, no copy of such order of the Hon'ble High Court has been provided. In fact, there was no such order to attract exemption clause (b) of sub-section (1) of section 8 of the Act.
- (iv) That the SPIO should be penalized under section 20(1) of the Act for furnishing incorrect, incomplete and misleading information malafidely.

8. The complainant vide item -1 of her written request in issue wanted to know whether Sri Sushil Chandra Saha, TCS Gr-II was found eligible by the Departmental Promotion Committee (DPC) for promotion to TCS Gr-I (Selection Grade). If no, reason thereof. If yes, the reason for not promoting him to the selection grade. In reply, the OP being the SPIO vide his letter dated 16.09.2009 had informed the complainant that the name of Sri Sushil Chandra Saha, TCS Gr-II was under the zone of consideration for promotion to TCS Gr-I, but the DPC did not recommend his name for promotion. He however, did not mention the reason for such non - recommendation by the DPC. In his written representation dated 10.11.2009, the OP has submitted that the reason for not recommending the name of Sri Sushil Chandra Saha for promotion could not be communicated to the complainant as the DPC did not record the same in its minutes. This fact that the DPC did not record any reason for not recommending the name of Sri Sushil Chandra Saha for promotion is now required to be communicated to the complainant by the OP 1 being the SPIO.

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Welfare of SCs & OBCs, Government of Tripura and he was directed accordingly. The report of the Director for Welfare of SCs & OBCs, Government of Tripura submitted to this Commission vide his letter No.F.2(115)-SC & OBC/06(P) dated 03.12.2009 is re-produced below:-

"To
The Secretary,
Tripura Information Commission,
P.N. Complex, Gurkhabasti,
Agartala.

Subject : Complaint No.TIC-28 of 1009-10

Ref. Order dated 11-11-09 and dated 28/11/09 of the Tripura
Information Commission

Sir,

Kindly refer to the orders of the State Information Commission communicated vide your No.1224-226 dated 11.11.09 and No.1283-285 dated 25.11.09 on the above noted subject, I am to inform you that the Opposite Officer(OP) Sri R. P. Datta, Under-Secretary to the Government of Tripura, G.A.(P&T) Department and the State Public Information Officer (SPIO) has supplied the required papers vide his letter No.F.23(10)-GA(P&T)/2009 dated 25th November,2009 and I have gone through the relevant papers and the provision of law which are quoted as under :-

I. Reservation for Scheduled Castes and Scheduled Tribes in any vacancy or vacancies in services or posts under the State to be filled up by promotion.(Section 4 (2) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991)

Sub Section (b) of Section 4(2) is as under :-

"The candidates belonging to the Scheduled Castes and the Scheduled Tribes who qualify for selection on merit shall be included in the general list and not against reserved quota".

II. Recruitment by promotion.(Rule-9 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992)

Para-1 of Sub-Rule-2 of Rule-9 is as under :-

(1) The Selection Committee/Selection Board/Departmental Promotion Committee will consider the suitability of the candidates, the details of whom are furnished by the appointing authority and recommend a combined list of all categories of candidates found suitable for promotion in order of their merit which shall be the determining factor about the inter seniority of the candidates after promotion.

[Provided that a Scheduled Caste or Scheduled Tribe candidate who occupies on merit or seniority or seniority-cum-fitness etc. an unreserved point

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of the 100 -point roster in the combined list, shall not be shown against any reserved point.]

[Provided further that at the time of recommending candidates for promotion to any post, the names against unreserved [vacant posts] shall first be recommended in order of their merit or seniority or seniority-cum-fitness etc., as the case may be, and then the names against reserved [vacant posts] shall be recommended.]


III. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi vide their Office Memorandum No.F.36028/17/2001-Estt(Res) dated July,11,2002 (copy enclosed) has clarified the position regarding adjustment of SC/ST candidate promoted on their own merit in the reservation roster. The clarification given by the DOPT is given as under :

- i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate can not be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.
- iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.
- iv) 50% limit on reservation will be computed by excluding such reserved category candidates who are appointed/promoted on their own merit.

It appears from the DPC agenda that there were 24 vacant posts in TCS Gr.-I break up of which was ST-8 SC-4,UR-12. It also appears that there were 44 eligible officers in the normal zone of consideration for promotion to the post of TCS Gr.I and completed 12 years service in TCS Gr.II.

On scrutiny of records, it appears that the DPC recommended 12 officers in order of merit, seniority or seniority-cum-fitness etc. from Sl. No1 to 13 against unreserved posts excluding one officer namely Shri Bishnu Charan Debbarma who did not qualify for promotion against UR post though his seniority position was 11. Shri Bishnu Charan Debbarma was recommended against ST quota due to his lower standard in merit. Candidates who qualify as per general standard and come within the normal zone of consideration without relaxation is entitled to get the promotion against unreserved vacant posts. Thereafter SC/ST candidates are considered against respective reserved vacant posts.

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In view of the above, my opinion is that the recommendation made by the DPC for promotion of 12 officers in order of merit, seniority or seniority-cum-fitness etc. against unreserved vacant posts and thereafter recommendation for promotion of 4 SC officers and 8 ST officers against respective reserved posts is in order and according to the provision contained in the Reservation Act and Rules and also in conformity with the general decision of the Government of India.

This may kindly be brought to the notice of the State Information Commission

Encl: As above.

Yours faithfully,
Sd/-
Director for Welfare
of SCs & OBCs
Government of Tripura."

10. It is now clearly established from the report of the Director for Welfare of SCs & OBCs, Government of Tripura that the recommendations made by the DPC for promotion of 24 TCS Gr-II officers to the post of TCS Gr-I (Selection grade), based on which 20 officers were appointed by the GA(P&T) Department, Government of Tripura vide notification No.F.2(18)-GA(P&T)/05 dated 07.10.2009 keeping the cases of 4 officers in sealed covers for different reasons are in order according to the provisions contained in the Reservation Act and the Rules and also in conformity with the general decisions of the Government of India. This apart, the SPIO is not the competent authority either to finalize the 100 point roster or to decide its compliance. The ST & SC Welfare Departments, Government of Tripura had verified and certified the 100 point roster which was accepted by the DPC and based on that, the DPC had recommended the cases of 24 officers for promotion. The SPIO is not the author of these documents/records. He was under the obligation to disclose the information based on the above documents/records available in his custody, which he has done. Therefore, the information furnished by the SPIO against item -2 that 100 point roster was followed by the DPC for promotion is found to be correct and adequate. The complainant is, therefore, not entitled to any further information in this regard.

11. Vide item No-3 of her written request in issue, the complainant had asked for an authenticated copy of the report of the DPC. In reply, the SPIO vide his letter dated 16.09.2009 had informed the complainant that the authenticated copy of the report of the DPC cannot be supplied as the Hon'ble Gauhati High Court has imposed ban order on its disclosure. In support of his decision, the SPIO has submitted a copy of the High Court order dated 20.08.2007 along with his written representation dated 10.11.2009. Section 8(1)(b) of the Act provides that the SPIO shall have no obligation to disclose an information, which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of Court. On perusal of the order dated 20.08.2007 of the Gauhati High Court passed in W.P. (C) 40 of 2007, it appears that the High Court has neither imposed any ban nor has forbidden disclosure of the DPC minutes recommending promotion of 24 TCS Gr-II officers to the post of TCS Gr-I (Selection grade) and appointed 20 officers by the GA



(P&T) Department, Government of Tripura vide notification No.F. 2 (18)-GA (P&T)/05 dated 07.08.2009, leaving the cases of 4 officers in sealed covers for different reasons. It is thus, very much clear that the DPC minutes in issue is not exempted under section 8(1) (b) of the Act. This apart, the DPC is constituted to consider and recommend promotion of the officials, which is done only in public interest. Therefore, the DPC minutes is a public document and should not be treated as confidential. The OP 1 being the SPIO is, therefore, under obligation to supply the certified copy of the said DPC minutes to the complainant.

12. The demand of the complainant that the SPIO should be penalized under section 20(1) of the Act for furnishing incorrect, incomplete and misleading information malafidely has been examined with reference to the available records and the facts and the circumstances of the case. The written request dated 25.08.2009 of the complainant was responded to by the concerned SPIO vide his letter dated 16.09.2009, which was within the time limit specified in section 7(1) of the Act. In regard to item -1, the OP being the SPIO has submitted in his written representation that the reason for not recommending the name of Sri Sushil Chandra Saha for promotion could not be communicated to the complainant as the DPC did not record the same in its minutes. The OP cannot be held responsible for non-disclosure of any information which does not exist. Therefore, the information provided by the SPIO against item -1 is neither incorrect nor misleading for the reason that the SPIO is not expected to create any information for disclosure. From the report of the Director for Welfare of SCs & OBCs, Government of Tripura, it has now been clearly established that the SPIO has furnished correct and adequate information to the complainant against item -2. In regard to the information against item -3, the SPIO has submitted both orally and in writing that he was under the impression according to his understanding that the Hon'ble Gauhati High Court vide its order dated 20.08.2007 passed in W.P.(C) 40 of 2007 had imposed ban in disclosure of the DPC minutes and, therefore, denied to supply the authenticated copy of the report of the DPC to the complainant. He also expressed that he is not against disclosure of the information to the citizens and supply of the copy of the report of the DPC to the complainant was not denied with any malafide intention. He further submitted that he is now ready to supply the authenticated copy of the DPC minutes in issue to the complainant subject to direction of the Commission. In view of these facts, the claim of the complainant that the SPIO furnished incorrect, incomplete and misleading information with malafide intention does not stand. I am, therefore, of the opinion that this is not a fit case for penalty to be imposed under section 20(1) of the Act.

13. In fine, the complaint stands disposed of with the order that within a period of 15 days from the date of passing of this judgment and order, the OP being the SPIO shall furnish the factual position against item -1 and the certified copy of the DPC minutes in issue against item -3 to the complainant free of charge in pursuance of the discussions made at paragraphs -8 and 11 above and shall send a compliance report to this Commission forthwith.

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14. Let copy of this judgment and order be sent to the complainant and the OP. Also send a copy of this judgment and order to the Principal Secretary to the Government of Tripura, GA (P&T) Department being the head of the Public Authority.

15. Pronounced.

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- 28 of 2009-10 /1349-57

Dated, 17.12.2009

Copy to:-

1. Smt. Mira Saha, W/O Sri Sushil Ch. Saha, South Shibnagar (near Lotus Club), P.O.- Agartala College : West Tripura (Complainant).
2. Sri R.P. Datta, Under Secretary to the Government of Tripura, GA(P&T) Department, Agartala (State Public Information Officer) – OP.
3. The Principal Secretary to the Government of Tripura, GA(P&T) Department, Agartala (Head of the Public Authority).

(S.C.Saha)
Secretary

Tripura Information Commission