

TRIPURA INFORMATION COMMISSION  
P.N. COMPLEX: GORKHABASTI: AGARTALA

APPEAL NO. TIC- 09 OF 2009-10

Sri Nepal Chandra Das  
Tripura Gramin Bank  
Agartala Branch  
Agartala: West Tripura .....Appellant

Vs.

1.Sri Santosh Chandra Das, Senior Manager (P&A), Tripura Gramin Bank, Head Office- Abhoynagar, Agartala: West Tripura (First Appellate Authority).

2.Sri A.K. Datta, Senior Manager (Dev), Tripura Gramin Bank, Head Office- Abhoynagar, Agartala: West Tripura (State Public Information Officer).

.....:.....Respondents

**ORDER**

**Dated, 15.09.2009**

Appellant Sri Nepal Chandra Das appeared.

2. Respondent 1 Sri Santosh Chandra Das, Senior Manager (P&A), Tripura Gramin Bank (TGB), Agartala and the First Appellate Authority (FAA) and the Respondent 2 Sri A.K. Datta, Senior Manager (Dev), TGB, Agartala and the State Public Information Officer (SPIO) appeared and submitted their respective written representations.

3. Heard oral submissions placed by the appellant and the Respondents 1 and 2. Perused the memorandum of appeal with enclosures and the written representations of the Respondents 1 and 2. Also considered the oral submissions made by both the parties.

4. The appeal is disposed of with the following findings and orders:-

(i) The paramount issue for decision is whether the appellant is entitled to have copy of his Performance Appraisal Report (PAR) for five years, which were considered for promotion from officer scale I to officer scale II in pursuance of TGB Head office circular No-TGB/P&A/Promotion/F2(III)/Cir 37/3476/05 dated 25.11.2005 as requested by him under his written request dated 06.06.2009 submitted to the SPIO in the TGB, Head office - Abhoynagar, Agartala, which was denied by the Respondent 2 being the SPIO showing the



ground of exemption from disclosure under section 8(1)(g) and 8(1)(j) of the RTI Act, 2005 ( for short the Act).

(ii) It is submitted by the Respondent 2 that the PAR is confidential record in the nature of Annual Confidential Report and, therefore, it was exempted from disclosure to the appellant in the form of certified copy. However, the appellant was allowed inspection following the principle laid down by this Commission in other cases. Of late, the Hon'ble Supreme Court in a recent judgment delivered in Civil Appeal No- 7631 of 2002 between Debadatta vs. Union of India & others laid down specific principle for disclosure of ACRs, the relevant portion of which are re-produced below:-

"37. Originally there were said to be only two principles of natural justice:

(1) the rule against bias and (2) the right to be heard ( audi alteram partem).

However, subsequently, as noted in A.K.Kraipak's case (supra) and K.L.Shepard's case (supra), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide S.N. Mukherjee vs. Union of India AIR 1990 SC 1984. In Maneka Gandhi vs. Union of India (supra) (vide paragraphs 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily

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rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible."

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"45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

(iii) Relying upon the above principle laid down by the Hon'ble Supreme Court, we have no hesitation to hold that the appellant is entitled to have access to the copy of his PAR for five years, which were considered for promotion from officer scale I to officer scale II in pursuance of TGB Head office circular No-TGB/P&A/Promotion/F2(III)/Cir 37/3476/05 dated 25.11.2005 as requested by him under his written request dated 06.06.2009. So, the Respondent 2 being the SPIO is under obligation to provide the above information to the appellant in the form of certified copy.

(iv) It is also revealed from the records that the Respondent 1 being the FAA did not dispose of the first appeal dated 09.07.2009 preferred by the appellant against the decision of the Respondent 2 being the SPIO denying supply of copy of the PAR within the statutory period of 30 days. Rather, he compelled the appellant to deposit Rs. 10/- as fee for filing the appeal, which was absolutely without any sanction of law. It is admitted by the Respondent 1 being the FAA that due to ignorance, he charged Rs. 10/- for filing the first appeal and assured this Commission that in future he will not recur such mistake. He further explained that after receiving the fee from the appellant when he was going to take up the first appeal for disposal, the appellant approached this Commission with this second appeal and for this reason he did not dispose of the first appeal in issue. We are constrained to observe that the steps taken by the Respondent 1 being the FAA in dealing with the first appeal in issue were completely erroneous. No fee has been prescribed by the Act for filing the first appeal. Moreover, the first under section 19(1) of the Act is required to be disposed of within a period of 30 days and in exceptional



case within 45 days showing reasons to be recorded in writing. The Respondent 1 being the FAA is, therefore, directed to be more careful in future in dealing with the first appeal under section 19(1) of the Act strictly adhering to the relevant provisions of the Act and the Tripura Right to Information Rules, 2008.

(v). In fine, this second appeal is allowed on contest. The Respondent 2 Sri A.K. Datta, Senior Manager (Dev), TGB, Agartala and the SPIO is directed to provide to the appellant, the copies of his PAR for five years, which were considered for promotion from officer scale I to officer scale II in pursuance of TGB Head office circular No-TGB/P&A/Promotion/F2(III)/Cir 37/3476/05 dated 25.11.2005 as requested by the appellant under his written request dated 06.06.2009 in the form of certified copy within a period of 15 days from the date of passing of this order free of charge since the SPIO could not provide the information to the appellant within the statutory period as prescribed by the Act.

5. Let copy of this order be sent to the appellant and the Respondents 1 and 2. Also send a copy of this order to the Chairman, TGB being the head of the Public Authority.

6. Pronounced.

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

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

No. 968-71

Dated, 15.09.2009

Copy to:-

1. Sri Nepal Chandra Das, Tripura Gramin Bank, Agartala Branch, Agartala: West Tripura (Appellant).
2. Sri Santosh Chandra Das, Senior Manager (P&A), Tripura Gramin Bank, Head Office- Abhoynagar, Agartala: West Tripura (First Appellate Authority) - Respondent 1.
3. Sri A.K. Datta, Senior Manager (Dev), Tripura Gramin Bank, Head Office- Abhoynagar, Agartala: West Tripura (State Public Information Officer) - Respondent 2.
4. The Chairman, Tripura Gramin Bank, Agartala, Tripura (Head of the Public Authority).

(S.C.Saha)  
Secretary

Tripura Information Commission