

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



Appeal No 10 of 2007-08.

Sri Ram Singh Chauhan
Railmandi, P.O- Jaswantnagar,
District- Etawah, Uttarpradesh.....Appellant

Vs.

1.Sri Sailohnuna, Additional Director of School Education, Government of Tripura, Agartala (FAA).
2.Sri A.C. Das, Senior Research Officer in the Directorate of School Education, Government of Tripura, Agartala(SPIO).....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: Sri Ram Singh Chauhan, the appellant himself.

For the Respondents: 1. Sri S. Sailohununa, Additional Director of School, Education, Government of Tripura, Agartala (FAA).
2. Sri A.C. Das, Senior Research Officer in the Directorate of School Education, Government of Tripura, Agartala (SPIO).

Date of lodging appeal : 28.08.2007

Dates of hearing argument: 24.09.2007 & 08.10.2007

Date of pronouncing judgment: 31.10.2007

JUDGMENT & ORDER

Facts:

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arises out of a memorandum of appeal dated 28.08.2007 of Sri Ram Singh Chauhan (here in after referred to as the appellant) sent by post as received by this Commission on 28.08.2007.

2. Facts leading to this second appeal are that the appellant made a written request on 27.05.2006 to the Director of School Education, Government of



Tripura seeking information under the Act. Since the said written request was not accompanied by application fee of Rs. 10/- in cash, the Director of School Education, Government of Tripura vide letter No.F.13(3-43)SE/GL-1/2005 dated 28.07.2006 requested the appellant to deposit the application fee of Rs.10/- to Sri A.C. Das, State Assistant Public Information Officer (SAPIO) in the Directorate of School Education, Government of Tripura. In response to the said letter, the appellant deposited the application fee by money order, which was received by the SAPIO in the Directorate of School Education, Government of Tripura on 20.09.2006. Thereafter, Sri A.C. Das, State Public Information Officer (SPIO) in the Directorate of School Education, Government of Tripura vide his letter No.F.13(3-43)/SE/GL-1/2005/Vol-II dated 25.09.2006 provided the information sought for by the applicant. Being aggrieved with the information provided by the SPIO, the appellant preferred a first appeal (registered as Appeal No-2 of 2006-07) on 22.11.2006 with the First Appellate Authority (FAA) in the Directorate of School Education, Government of Tripura, which was decided by Sri K.D. Choudhury, Additional Director of School Education, Government of Tripura the then FAA. Making elaborate discussion, the FAA disposed of the appeal on 20.01.2007 passing the order that the SPIO should provide all the available documents to Sri Ram Singh Chauhan at free of cost as the same were not supplied/ responded in time. However, on scrutiny as it appeared that no further information was lying pending in the Directorate of School Education, Government of Tripura in addition to the information already furnished to the appellant on 25.09.2006, the SPIO did not provide any further information in compliance with the order dated 20.01.2007 of the FAA.

3. Since the appellant did not furnish copies of the written request for information, memorandum of first appeal, order passed by the FAA and as there was no mention in the memorandum of appeal about the relief sought for and the reason for long delay in preferring the second appeal, the appellant was asked by this Commission to remove the above irregularities on or before 24.09.2007. Accordingly, the appellant appeared before this Commission on the said date and furnished copies of all the required papers and documents. Thereafter, the memorandum of appeal was found in order. As regards the delay caused in filling the second appeal, the appellant made a prayer for condonation of delay showing reasons, which were found to be satisfactory by this Commission, and, therefore, the second appeal was admitted under section 19(3) of the Act for adjudication after condoning the delay.

4. In response to the summons, the Respondent 1, Sri Sailohununa, Additional Director of School Education, Government of Tripura (present FAA) and the Respondent 2, Sri A.C. Das, Senior Research Officer in the Directorate of School Education, Government of Tripura (SPIO) appeared and submitted their respective written representations.

Issues for determination:

5. In consideration of the memorandum of appeal including the copies of the papers and documents submitted by the appellant and the written representations of the Respondents along with the papers submitted therewith, the following issues are required to be determined: -

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- (i) Has the appellant been provided with adequate information in terms of his written request dated 27.05.2006 and if any further information are left to be provided to him by the concerned SPIO?
- (ii) Are the decisions of the SPIO and the FAA maintainable?
- (iii) To what relief the appellant is entitled?
- (iv) Did the SPIO commit any contravention of the provisions of the Act?

Points for decision:

6. We have carefully gone through the written request dated 27.05.2006 seeking information, the copy of letter No.F.13(3-43)SE/GL-1/ 2005 Vol-II dated 25.09.2006 with enclosures, order dated 20.01.2007 passed by the FAA in Appeal No-2 of 2006-07 in his file, the memorandum of second appeal dated 20.08.2007 of the appellant with rejoinder thereto and the written representations of the Respondents with enclosures.

Issue No.(i):

7. The appellant under his written request dated 27.05.2006 sought for five items of information. Among them, the first and fifth items are identical which are summarized below: -

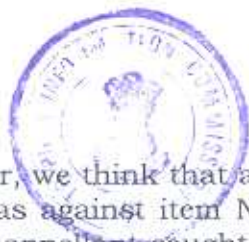
Item No.1- Certified copy of the order duly attested and signed by the competent authority/ disciplinary authority in respect of withholding periodical increment with cumulative effect from 06.11.71 to 19.12.74.

Item No.5- Was there existence of such order of withholding 4 periodical increment at the time of audit on 20.12.84 as conducted by the AG, Tripura.

8. Since the above two items of information are analogous to each other, discussion is made together for the sake of convenience. In response to the request against first and fifth items of information, the Respondent 2 stated that under section 14 of the CCS (CCA) Rules, 1965, Sri Ram Singh Chauhan was awarded punishment according to the delegated powers vide No. F. 5(1)ARD/72 dated 07.04.76 for withholding the increments. The Respondent 2 had also provided a photocopy of the said order to the appellant.

9. Sri K.D. Choudhury, former Additional Director of School Education and FAA in the Directorate of School Education, Government of Tripura in his order dated 20.01.2007 passed in Appeal No-2 of 2006-07 in his file also discussed the above two items of information together. It is revealed from the said order that there was no formal order of withholding increment for the period from 06.11.74 to 19.12.74 (the period of suspension) but the then Director of School Education being the head of the department and disciplinary authority passed the order awarding that " during the period of suspension, Sri Chauhan will only be allowed pay and allowances at the rates at which the subsistence allowances and other allowances were actually paid to him. The period for which Sri Ram Singh Chauhan remained under suspension will count towards pension". That means that withdrawal of 4 periodical increments for the period of suspension was a deemed implication of the order of punishment. A copy of the said order dated 21.04.78 awarding punishment has already been provided to the appellant, which is an admitted fact. In view of the explanation offered by

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the FAA in his order, we think that adequate information has been provided by the Respondent 2 as against item No. 1 and 5 of the information sought for. However, since the appellant sought for the information in the form of certified copy of the relevant order, the Respondent 2 should have provided authenticated copy of the order dated 21.04.1978 passed by the then Director of Education, Government of Tripura imposing punishment upon the appellant. So, the Respondent 2 being the SPIO is under obligation to provide a copy of the said order duly authenticated by him to the appellant.

10. Under second item of information, the appellant wanted to know "why the Director of School Education sanctioned 41 days extraordinary leave beyond the knowledge and consent of the appellant on 17.01.79 throwing all Rules to the wind." The Respondent 2 being the SPIO intimated the appellant on 25.09.2006 as against this item of information that in due course and time the intimation was given to Sri Ram Singh Chauhan and copy of the said intimation has also been provided to the appellant. It is revealed from the copy of the said memo No.F. 44(959)DE/71 dated 24.08.78 of the Director of Education, Government of Tripura that on his prayer, Sri Ram Singh Chauhan, Hindi Pracharak, U.K. Academy, Agartala was informed that his claim for pay and allowances for the period from 26.09.71 to 05.11.71 cannot be considered since he was absent from his duties unauthorizedly during the period in question. The entire period of absence of Sri Ram Singh Chauhan from 26.09.71 to 05.11.71 was, therefore, treated as extraordinary leave without pay but without break in service. The concerned FAA in his discussion in the first appeal narrated that since the appellant was absent from duties in an unauthorized manner during the period in question, the head of the department sanctioned extraordinary leave in exercise of his normal power. So, the query made by the appellant under this item of information has duly been answered both by the SPIO and the FAA. We are not required to adjudge the validity of such authority or power of the head of the department to regularize the period of unauthorized absence of its employees with extraordinary leave suo moto without having any formal application from the concerned employee.

11. Under third item of information, the appellant wanted to know why the suspension order No.F.7(1)HEO/71 dated 08.09.71 was not withdrawn/vacated as yet. The Respondent 2 being the SPIO replied that the suspension order was revoked in due course and time and a copy of the said order of revocation dated 09.12.74 has already been provided to the appellant. We have perused the said order in the form of photocopy, which is not clear on some portion, and the order number is also not legible. However, it is revealed that the Secretary to the Government of Tripura, Education Department vide order dated 09.12.74 revoked the order of the Director of Education placing Sri Ram Singh Chauhan, Hindi Pracharak, Khowai (then at Agartala) under suspension. In this respect, we have perused the copy of the memo No.F.7(1)DEO/71 dated 08.09.71 as furnished by the appellant along with the memorandum of appeal. Under the said memorandum dated 08.09.71, Sri Ram Singh Chauhan was ordered to join his new place of positing by 17.09.71 failing which he would be treated to be placed under suspension from that date. However, a formal order of suspension was issued by the Director of Education, Government of Tripura vide No. F.44(959)-DE/71 dated 29.10.71. In this respect, the FAA in his order dated

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20.01.2007 did not discuss any further details. However, from the aforesaid documents as discussed above, it could be presumed that there was only one order issued by the Director of Education, Government of Tripura vide his No.F.44(959)-DE/71 dated 29.10.71 placing Sri Ram Singh Chauhan under suspension and the said order of suspension was duly revoked by the Secretary to the Government of Tripura, Education Department vide order dated 09.12.74. Copies of these documents had been provided to the appellant by the Respondent 2 being the SPIO. So, it is evident that there existed no separate order revoking memo. No.F.7(1)HEO/71 dated 08.09.71 as this was not the actual but a contemplated suspension order. However, this fact should have been clarified clearly by the Respondent 2 being the SPIO to the appellant in reply to former's query made under third item of information sought for.

12. Under fourth item of information, the appellant wanted to know why the periodical increments and scale fixation benefits were released if there had been an order of withholding 4 increments and why the auditor of the AG, Tripura was not properly briefed on 20.12.84 at the time of audit. In reply, the SPIO intimated the appellant that in this regard earlier letter No. 2D(1-922)-DSE/2000 dated 23.09.2004 of the Director of School Education addressed to the appellant to be perused for further action. However, he enclosed a copy of the said letter along with a copy of the audit note of AG, Tripura. The concerned FAA discussed the above item of information in para-5 of his order dated 20.01.2007 and repeated that the copy of letter dated 23.09.2004 along with the report of the observation of the AG, Tripura have been provided by the SPIO to the appellant. However, he remained silent about the sufficiency of the information provided to the appellant by the SPIO. We have gone through the copy of letter No. 2D(1-922)/DSE/2000 dated 23.09.2004 of the Director of School Education, Government of Tripura addressed to the appellant and also the audit notes on the accounts of the Headmaster, U.K.Academy for the period from 01.04.81 to 31.07.84, copy of which has been provided to the appellant. It reveals from the aforesaid two documents that during fixation of pay, the appellant was wrongly allowed the benefit of periodical increments for the period from 06.11.71 to 19.12.74 ignoring the existence of the order of punishment imposed by the Director of Education as detected by the staff of AG, Tripura during the audit. So, the information sought for by the appellant in the form of query as to why the periodical increments and the scale fixation benefits were released were very much clear and available from this two documents. Apart from this, it also reveals from the audit notes that all the relevant papers were produced before the staff of AG, Tripura during the audit in question. So, the information provided by the SPIO as against this fourth item of information in our view are quite adequate.

13. Having regard to the discussion made here in above, we are to hold that the information sought for against second and fourth items are found to have been adequately provided by the concerned SPIO. However, the SPIO is under obligation to provide further information against first and fifth items combined and separately for third item in the light of the discussion made in paragraphs 9 and 11 above.



Issue No.(ii):

14. In view of the findings arrived at against issue No.(i), the decisions of the SPIO as against second and fourth items of information are found to be appropriate. However, his decisions as against first and fifth items combined and separately for third item of information sought for are found to be inadequate and his decisions in this respect are liable to be modified in the light of the discussion made in paragraphs 9 and 11 above. The Respondent 2 being the SPIO did not comply with the order dated 20.01.2007 passed by the concerned FAA in Appeal No-2 of 2006-07 by sending required communication to the appellant. However, he submitted in his written representation dated 08.10.2007 filed in this appeal that no further information was available to be provided to the appellant in compliance with the aforesaid order of the concerned FAA. The aforesaid order of the concerned FAA is also found to be defective in the sense that it was not specific but evasive and ambiguous making it incapable of compliance and, therefore, for non-compliance of such an order, the SPIO cannot be blamed.

15. As regards the decision of Sri K.D.Choudhury, former Additional Director of School Education and the FAA given vide his order dated 20.01.2007 in Appeal No-2 of 2006-07 arising out of the memorandum of first appeal of the appellant suffers from some irregularities. Although elaborate discussions about the merit of the decision of the concerned SPIO were made in the order, but no specific decision to be complied with by the SPIO was given. His concluding decision that "the SPIO should provide all the available documents discussed above to Sri Ram Singh Chauhan at free of cost" is found to be evasive, ambiguous and not categorical. Secondly, the concerned FAA received the memorandum of first appeal dated 05.10.2006 of the appellant on 27.10.2006 and the same was disposed of by him on 20.01.2007 i.e. after about 85 days. Although he was under obligation to dispose of the appeal within 30 days and in exceptional circumstances within 45 days showing reasons duly recorded in writing, but the concerned FAA advanced no reasons whatsoever in the order explaining the delay in deciding the appeal which is no doubt contrary to the provisions of the Act. The explanation advanced by the present FAA, Sri Sailohunna, Additional Director of School Education in his written representation dated 08.10.2007 is considered but found to be not satisfactory. In absence of specific decision on the part of the concerned FAA in deciding the Appeal No-2 of 2006-07, we are not in a position to uphold the validity of the said order and, therefore, it is liable to be set aside.

Issue No.(iii):

16. In view of the findings arrived at against issue No.(i), the appellant is entitled to have clarified further information as against combined first and fifth items and separately for third item in the light of the discussion made in paragraphs 9 and 11 above.

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Issue No.(iv):

17. Having regard to the discussion made in the preceding paragraphs, we do not find any malafide intention on the part of the Respondent 2 being the SPIO to deny disclosure of any information to the appellant as sought for in contravention of the provisions of the Act.

Decision:

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

- (i) The order dated 20.01.2007 passed by Sri K.D.Choudhury, former Additional Director of School Education and the FAA in Appeal No.2 of 2006-07 is hereby set aside.
- (ii) The decisions of the Respondent 2 communicated vide his letter No.F.13(3-43)SE/GL-1/2005 Vol.II dated 25.09.2006 are modified to the extent that he is under obligation to provide the following further information against first and fifth items combined and separately for third item as mentioned in the written request dated 27.05.2006 of the appellant in the light of the discussion made in paragraphs 9 and 11 of this judgment within a period of 15 days from the date of passing of this judgment and order :-
 - (a) Authenticated copy of the order No.F.44(959)-DE/71 dated 21.04.1978 of the Director of Education, Government of Tripura imposing punishment upon the appellant.
 - (b) A clarification about the revocation of the contemplated suspension order issued vide No. F.7(1)HEO/71 dated 08.09.71 in the light of the discussion made in paragraph 11 of this judgment.
- (iii) The decisions of the Respondent 2 as against second and fourth items of information as mentioned in the said written request of the appellant are hereby upheld.

20. 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 Sri K.D. Choudhury, former Additional Director of School Education and the FAA (now the ADM, West Tripura District, Agartala) and the Director of School Education, Government of Tripura being the head of the Public Authority.


21. Pronounced.

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

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

[Handwritten signature]

Authenticated.


(S.C. Saha)
Secretary

31/10/07



Tripura Information Commission


TRIPURA INFORMATION COMMISSION
P. N. Complex: Gorkhabasti: Agartala

Appeal No. 10 of 2007-08/1013-17

October 31, 2007

Copy to:

1. Sri Ram Singh Chauhan, Railmandi, P.O- Jaswantnagar, District- Etawah, Uttarpradesh (Appellant).
2. Sri Sailohnuna, Additional Director of School Education, Government of Tripura, Agartala (FAA).
3. Sri A.C. Das, Senior Research Officer in the Directorate of School Education, Government of Tripura, Agartala (SPIO).
4. Sri K.D.Choudhury, Additional District Magistrate & Collector, West Tripura District, Agartala (former Additional Director of School Education and the FAA).
5. The Director of School Education, Government of Tripura, Agartala (Head of the Public Authority).


(S.C. Saha)
Secretary

31/10/07

Tripura Information Commission