

CENTRAL INFORMATION COMMISSION

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Appeal No.CIC/AT/A/2007/00229

Dated, the 21st September, 2007.

Appellant : Shri Sudesh Kumar, 31/10 Old Rajinder Nagar, New Delhi-110060.

Respondents : Shri Devendra Mishra, Addl. Director General (NZU) & CPIO, Directorate General of Vigilance, Customs & Central Excise, North Zonal Unit, C.R. Building, I.P. Estate, New Delhi.

Shri Jogendra Singh, Director General (Vig) & Appellate Authority, Directorate General of Vigilance, Customs & Central Excise, North Zonal Unit, C.R. Building, I.P. Estate, New Delhi.

This is a second-appeal filed by the appellant, Shri Sudesh Kumar against the order of the Appellate Authority (AA), dated 21.9.2006. The Central Information Commission (CIC) had passed an order on 14.5.2007 in second-appeal No.CIC/AT/A/2007/00229, in which it had given the respondents (viz. the Directorate General of Vigilance, Customs & Central Excise) the following directions:-

“8. After deliberating on the request contained in columns 7, 10 and 11 of the pro-forma enclosed by the appellant, it was decided that the respondents would furnish to the appellant, within 6 weeks from the date of the receipt of this order, the following information:

- (i) The respondents will furnish to the appellant information regarding the number of officers who continued to hold sensitive posts despite their names figuring on the Agreed List.*
- (ii) The respondents will also furnish to the appellant information about the appointing and transferring authorities of the officers at serial number 1.*
- (iii) The appellant shall also be furnished with the year-wise list of officers who were appointed in sensitive positions despite their names appearing in the Agreed List of the year in which they were posted to such sensitive posts.*
- (iv) There will be no obligation on part of the respondents to furnish to the appellant names of the officers figuring on the Agreed List in any given year. Since the Agreed Lists are prepared year-wise on the basis of information which is not conclusive and officers figuring on the Agreed List of one year may be excluded from the list of the next or subsequent years, when it is found that the grounds for their inclusion was not substantial, disclosing their names may result in irretrievably tainting their reputations. Further, a certain level of confidentiality about the names of those*

who appear on such Agreed Lists, is imperative if the purpose for which such Agreed Lists are prepared is at-all to be served. A public authority is entitled to be allowed certain leeway in making up its mind about who to appoint to which post. Unless allowed to effect these choices on the basis of a range of information, both open as well as confidential, such choices could be exposed to serious error and turn out to be flawed. Agreed Lists are one of the several inputs with which the transferring authority equips itself to make the choice of personnel for posts.

I am, therefore, not inclined to grant to the appellant his request for the names of officers who figured on such agreed lists in the past several years. His request for the numbers of such officers on the agreed list has already been met by the CPIO.”

2. The respondents have come up in a petition before the Commission pointing out the following:-

- “(i) The orders of the learned Information Commissioner, directing for disclosure of information, which was not even sought by the appellant, is out of the ambit of the powers conferred upon the CIC under Section 19(8) of the RTI Act.*
- (ii) Para 8(iii) of the orders of the learned Information Commissioner is in contradiction and violation of his own observations contained in para 8 (iv). Further, the part disclosure of the Agreed List, which is a highly sensitive and confidential document would not only hamper the process of investigations against the officers covered in the lists, but would also affect their reputation / image and infringes the right to privacy. Thus, it would cause unwarranted intrusion into the privacy of an individual. Hence, exemptions under sections 8(1)(h) and 8(1)(j) of the Right to Information Act, 2005 would apply. Further, even the part disclosure of the Agreed List would defeat the very purpose of making the Agreed List as the officers would become cautious and the object of preparing will be frustrated and will not be in the administrative interest of the Government.”*

And therefore, they went on to make the following prayer to the Commission:

- “(i) The orders of the learned Information Commissioner, directing for disclosure of information, which was not even sought by the appellant may kindly be suitably modified. Accordingly, the information about the appointing and transferring authorities may not be disclosed to the appellant.*
- (ii) In para 8(iii) of the orders of the learned Information Commissioner, the contradiction and violation of his own observations contained in para 8(iv) may kindly be removed. Accordingly, list of officers who were appointed in sensitive positions despite their names appearing in the*

Agreed List may not be disclosed as it amounts to a part disclosure of the Agreed List, which is a highly sensitive and confidential document.

- (iii) Since, the Agreed Lists are prepared in consultation with CBI, who had in the case of Smt.S.R.Sawant vs. this Directorate raised serious concern about disclosure of names of the officers in the Agreed Lists, it is requested that comments of CBI may also be obtained and considered.*
- (iv) It may kindly be clarified that the information in respect of only five years excluding the year 2006-07 may be provided as against 15 years requested by the appellant. The same was already agreed in the hearing but inadvertently not mentioned in the order.*
- (v) Till the decision on this review petition is taken, the operation of the order F.No.CIC/AT/A/2007/00229 dated 14.05.2007 passed by the learned Central Information Commissioner may kindly be stayed and*
- (vi) May pass any other order which may be deemed fit and proper in the interest of justice.”*

3. Accordingly, the parties were again called for a hearing before a Division Bench on 20.8.2007. The appellant was present in person while the respondents were represented by Shri Pankaj Jain, Asst. Commissioner and Shri Devendra Mishra, ADG.

4. To say the least, it is a curious application to be made by a responsible public authority. The infirmities in the order of the Commission, which the AA has so conveniently assumed, do not even exist. The points considered by the Commission in its decision dated 14.5.2007 were essentially two. First, the Commission was to decide on whether the Agreed Lists as a class of information were to be disclosed, and second, what would be the disclosure norm in case it was found that the public authority had wantonly violated its own normative prescriptions and in select cases chosen to overlook the Agreed List in the matters of giving sensitive appointments to officials figuring therein.

5. In regard to the first aspect, the Commission's order was clear that the Agreed List for any given year would not be liable for disclosure for the reasons stated in the order.

6. The underlying assumption in that order (dated 14.5.2007) was that the public authority would not deviate from the Agreed List in making appointments to sensitive assignments.

7. As regards the second aspect, the Commission's order was that wherever violation of the Agreed List was noticed and, officers figuring on the Agreed List in a given year were appointed to sensitive assignments in that year, the names both of the officers taking those decisions and the officers figuring on the Agreed List and benefiting from the action of the appointing authority, would be disclosed. This was perfectly in consonance with the Commission's direction as at point 1 above, which was on the basis of the assumption that no responsible public authority would first prepare an Agreed List and

then choose to diverge from it. Allowing such divergence from an Agreed List would vitiate the very purpose of having created such a list in the first place.

8. To turn now to the submission of the public authority, wanting to be absolved of the obligation to disclose information pertaining to its divergence from the Agreed List. The public authority doubtless will receive the protection of law about disclosure obligations so long as it abides by the norms it sets out for itself. Such a protection cannot be claimed if the public authority chooses to violate the very same norms it so publicly adopts. There cannot be protection of law for violation of norms nor for norm-violators. Whenever a norm is set, certain rationality about setting such norms must be assumed. But when such norms are violated by the very public authority which first adopted them, the action needs to be strongly critiqued to make sure that it was not done for wholly inappropriate reasons. What the public authority has claimed here is the right to violate the norms which they themselves set and to escape public scrutiny for the same. They will not be allowed such luxury.

9. It needs to be reiterated that the Commission will afford all protection to public authorities for their actions to combat corruption, especially in the choice of personnel for sensitive assignments. It was due to this reason that the CIC had extended the exemption criteria of Section 8(1) of the RTI Act to the Agreed List of any given year. The respondents, however, misconstrued it as a protection from disclosure requirement even in respect of their actions which violated the very norms they had set out for themselves. The respondents cannot claim any such exemption.

10. The other point brought up by the respondents is what they have described as the CIC going beyond the RTI-request of the applicant and giving to him information which, according to the respondents, the applicant had not even asked for. This is about the Commission's direction that the respondents shall disclose to the appellant names of the officers / competent authority who effected the postings in sensitive assignments of officers still figuring in the Agreed List in a given year. The answer to this query of the respondents lies in what has been stated in the preceding paragraphs. Since it is conceded by the respondents that they had violated those norms (about the officers figuring on Agreed List not being given sensitive assignments), it becomes necessary and even imperative that those officers responsible for such violation should be made known to the public. This information is necessary and proper to complete the information solicited by the appellant about violation of the Agreed List norms by the public authority.

11. The respondents have also questioned the desirability of disclosing the names of the officers who were beneficiaries of the norm-violation by the public authority. The respondents need to be informed that as the net beneficiaries of the violations of the Agreed List norms, such officers also cannot claim protection of the exemption provided in the RTI Act. A principal function of the RTI Act is to bring into open, acts of mal-governance, malfeasance and norm-violations by public authorities and, therefore, it is imperative that not only the names of officers who so blatantly derogate from the normative position publicly accepted by the public authority, be brought out into the open, but also the names of the beneficiaries of such derogations. After the advent of the RTI Act, it is no more open to public authorities to assume high moral ground in public, and resile from it in private. This was the reason why the Commission had made those orders.

12. The respondents need to be reminded that regardless of whether or not the exemption clauses are held to apply to a given information, such information can still be disclosed in public interest, under Section 8(2) of the Act.

13. The Preamble to the RTI Act sets out the purpose of this Act, viz. to enhance public accountability of those controlling the levers of power, to combat corruption and so on. That is the Commission's reference-frame for determining when and where to apply the "public-interest-override" under Section 8(2). In this particular case, the public authority seems intent upon escaping accountability by hiding behind a veil of confidentiality in order to defend the indefensible—the identities and actions of those who violate norms and, the identities of those who are the net beneficiaries of those violations.

14. In our view, this clearly attracts the 'public-interest-override' clause of the RTI Act (viz. Section 8(2)).

15. In consideration of the above, the review-petition of the respondents is dismissed.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Sd/-
(M.M. ANSARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

Address of parties:

1. Shri Sudesh Kumar, 31/10 Old Rajinder Nagar, New Delhi-110060.
2. Shri Devendra Mishra, Addl. Director General (NZU) & CPIO, Directorate General of Vigilance, Customs & Central Excise, North Zonal Unit, C.R. Building, I.P. Estate, New Delhi.
3. Shri Jogendra Singh, Director General (Vig) & Appellate Authority, Directorate General of Vigilance, Customs & Central Excise, North Zonal Unit, C.R. Building, I.P. Estate, New Delhi.
4. The Chairman, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.