

Central Information Commission

CIC/AD/C/2009/001502

Dated January 20, 2010

Name of the Applicant : **Shri Dinesh Kumar Sen**
Name of the Public Authority : **Western Railway, Mumbai**

Background

1. The applicant filed an RTI application dt.12.7.09 with the Sr.PIO & DGM(G), WR, Mumbai seeking copies of all the notings and correspondence pages of the vigilance file No.E/161/2004/05/078/D/ 3/N pertaining to the vigilance case against him. The Dy.CVO & PIO replied on 5.6.09 denying the information as per section 8(1)(h) of RTI Act as the case was still under DAR proceedings. **(Copy not in file)** Not satisfied with the reply, the applicant filed an appeal dt.12.8.09 with the Appellate Authority reiterating his request for the information. Shri R.S.Chugh, Appellate Authority replied on 16.9.09 upholding the decision of the PIO. Being aggrieved with the reply, the applicant filed a second appeal with the Commission.
2. The Bench of Mrs. Annapurna Dixit, Information Commissioner, scheduled the hearing for January 20, 2010.
3. Shri G.D.Joshi, Sr.Vig. Officer represented the Public Authority.
4. Efforts were made to contact the appellant over the phone but contact could not be established. However, the applicant arrived later and was able to present his case before the Commission.

Decision

5. The Commission received a rejoinder dt.19.1.10 from Shri Mahavir Singh, PIO (Vigilance) in which he stated that Shri D.K.Sen, appellant who was working as Radiographer at Ratlam Divisional hospital, Western Railway **was trapped by Western Railway Vigilance team for demanding and accepting Rs.1500/-** as illegal gratification from the proprietor of the firm. He was subsequently suspended and major penalty DAR action was initiated against him as per DAR rules by the competent authority. The applicant vide his RTI application has sought copies of all the notings and correspondence pages of vigilance file related to this case. Shri Mahavir Singh stated the following in support of his denial of information:

....." investigations, checks and trap cases done by the vigilance and its working is very sensitive and confidentiality of the document has to be maintained. These include statement of various employees and outside persons, documents collected

during the investigation, correspondences and decision taken by various authorities, their views, investigation report of Vigilance Inspector which also includes name of the Inspector investigating the case etc. In short the vigilance file contains various confidential information and statements given by various persons in anticipation of confidentiality/secretcy to be maintained by the vigilance branch. If after investigation any DAR action is to be taken then all documents related to the case are forwarded to the Disciplinary Authority for initiating the DAR action, who takes the decision on the basis of material available with him. If the content and copy of vigilance file is made available through RTI, the information about trap cases and vigilance checks, methodology adopted, information about complainant, name of officials involved in the check, who assisted with the vigilance etc. will become public and they will unnecessarily be harassed for assisting the Vigilance in curbing the corruption. If their names are made public, the genuine complainants will hesitate to come forward who may otherwise wish to complain and give information, in anticipation of their confidentiality being maintained. The disclosure of such information, may endanger the safety of persons involved in the traps, checks and identify the source of information or assistance given in confidence for curbing the corruption. Hence such information are exempted u/s 8(1)(g) of the RTI Act. The information, may also be used by the culprits to influence the decision making authority, the disciplinary authority and other officials which may impede the prosecution of offenders hence was denied u/s 8(1)(h) in the subject case. The vigilance files have many information and record or part thereof which has been supplied by the third party in anticipation of treating them as confidential because if the name of complainant and nature of complaint made by him is made public then his business relation with Railway may get affected and he may be subjected to discrimination by not only by the officials against whom he made the complaint or gave statement but also other officials who may treat him as informer or complainant to vigilance. They will hesitate to complain and hesitate to assist vigilance in curbing the corruption. Hence confidentiality should be maintained and it should not be given without consent of party. The Respondent explained that the information being sought from the vigilance file relates to the trap case against the Appellant. The relevant material required for DAR proceedings has been supplied to the DA and the DA has made his opinion on the available record with him and all the copies of documents on the basis of which DAR proceedings initiated has also been supplied to the CO. So the applicant's contention that the copy of Vigilance file required to defend his case, according to the Respondent, is not acceptable.

6. The Respondent further added that the investigation was over and NIP was issued and the Appellant has been compulsorily retired from service. Moreover, the time period for filing an appeal with the competent authority has also expired and the Appellant has not opted for any appeal. He also added that the Appellant has recently filed a case in CAT, Ahmedabad.
7. The Commission, however, in an attempt to get deeper insight into the matter requested for further explanation from the Respondents for not disclosing information under Sections 8(1)(h) and 8(1)(g) of the RTI Act while deciding that another hearing in this connection would be held to come to a decision. Accordingly, a notice was sent to both parties on 25.1.2010 informing them about the decision to hear them through video conferencing on 28.1.2010 at 10.30a.m.
8. Shri Mahaveer Singh, PIO(Vig.) & Shri D.K.Chaudhary, Dy.CVO (Stores) representing the Public Authority and the applicant were present at NIC-Mumbai.

Decision

9. The Commission, in response to the notice sent on 25.1.2010 received a letter dated 27.1.10 from Shri Mahaveer Singh, PIO, Vigilance explaining the position of the Vigilance section. Excerpts from the letter are reproduced below:

i) Vigilance file contains very sensitive and confidential information about persons associated in the check, planning, layout and methodology of executing the plan etc. It will lead to disclosure of secrecy and confidentiality of methodology and planning of decoy checks to general public. All these sensitive information if disclosed will endanger the physical safety of the persons involved in decoy checks. It will discourage officials to work effectively against corrupt officials. Hence it should be exempted from disclosure u/s 8(1)(g).

ii) If the content and copy of Vigilance file is made available through RTI, details about officials and person involved in the case will be disclosed. They will unnecessarily be harassed and subjected to discrimination by officials against whom they have given information or statements. The action of officials involved in investigation and assistance is given in anticipation of confidentiality/secrecy to be maintained by the Vigilance branch. Hence such information is denied u/s 8(1)(g).

iii) As mentioned in RTI preamble:

'AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed'.

Vigilance department work against corrupt practices in Railway and official involved in such practices. Every information which directly or indirectly supports the corrupt officials and discourage the people who work for curbing the corruption should be denied straightaway. Vigilance file and information about persons involved in vigilance checks, complainants, witnesses etc. exactly fall under this category. However, the end result of vigilance check/cases may be made available to public to assess its outcome whenever required but minute detail of file and checks should not be disclosed.

vi) Para 10(1) states that '...access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information'. This clause can not be exercised in vigilance investigation case because:

a) Whole investigation is interlinking of allegations in complaint, statements, facts and refers to various person or firm, witnesses etc. Hence to search and sever all such information from such interlinked documents is practically impossible.

b) However, if it may be attempted to sever name, designation of person involved etc. but it will not serve any purpose. There are many ingredients left after severing name, designation, firm name etc. such as nature of complaint, language and content in the complaints, content of statement, designation of official investigating the case and have given their remark and their handwriting, date of document and hierarchy of dealing a file etc. All these information can be used to identify the source and persons involved and who have handled such confidential investigation. Hence the severability clause is not effective.

vii) This is a case where DAR proceeding initiated after vigilance departmental Test Check (Decoy). All information and documents related to DAR case have already been supplied to DA while initiating the DAR proceedings. Same was also supplied to CO(applicant in this case). Whole DAR case, enquiry etc. are based on these Relied Upon Documents. There is no logic or public interest served by disclosing the document which are not part of or relied during any action against the Charged Officer. Other few documents which were not considered have already been supplied to the Appellant in other RTI application.

10. The Commission, on careful consideration of the submission by the Respondents on record and after hearing them noted that this particular case is one of 'trapping' an individual while accepting bribe and that a number of decoys have been used to

ensure success of the operation and that the any disclosure of information related to the decoys who were involved and the methodology that the Vigilance Section uses while 'trapping' is sensitive and confidential information. The Commission also noted from the contents of para 9 vi given hearinabove that using the severability clause in such cases is not practical or effective as names, designations, activities, remarks are all interlinked and identifying parts exempt from disclosure is impossible. The Commission also noted that the Appellant has filed a case in the CAT and that the case is ongoing and that all documents in relation to his DA&R case have already been furnished to him except the vigilance files and that the same are not required for defending his case in the CAT (para 9 vii). In the light of these observations the Commission denies the information to the Appellant under Sections 8(1)(g) of the RTI Act and accordingly rejects the appeal.

(Annapurna Dixit)
Information Commissioner

Authenticated true copy:

(G.Subramanian)
Deputy Registrar

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