

**ODISHA INFORMATION COMMISSION  
BHUBANESWAR**

**Present: Shri B.K.Mohapatra,  
State Information Commissioner**

**Date: 9<sup>th</sup> January, 2020**

**Second Appeal No.1293/2015**

Pramod Kumar Nanda,  
Government of Universe,  
Nanda Research Laboratory,  
Universal Welfare, Defence & Judicial Department,  
Badapari,  
Dist- Khurda.....Appellant

**Vrs.**

1. Public Information Officer,  
Office of the Panchayat Samiti,  
Bari,  
Dist- Jajpur
2. First Appellate Authority,  
Office of the Panchayat Samiti,  
Bari,  
Dist- Jajpur.....Respondents

**Decision**

This is a Second Appeal preferred under section 19(3) of the Right to Information Act, 2005, for short "the Act".

2. The appellant named above sought 22 point information by presenting an application in form-A under section 6(1) of the Act to the Public Information Officer (PIO), Office of the Panchayat Samiti, Bari, Dist- Jajpur on 23.01.2015, and as complete information was allegedly not supplied to him in time the appellant preferred an appeal before the BDO-cum-First Appellate Authority, Bari by making an application in form-D on 02.04.2015. Being

aggrieved by the alleged inaction on the part of the First Appellate Authority, the appellant has approached this Commission with the present second appeal.

3. Upon notice, both the PIO and the First Appellate Authority entered appearance and submitted their respective show cause in shape of written submissions. Although vide their written submissions respectively under letter No.2873 dated 08.05.2017 and letter No.2972 dated 18.05.2017 the PIO and the First Appellate Authority stated that the available information had been supplied to the appellant under Block Office letter No.1085 dated 25.03.2015 by registered post, in course of hearing of the appeal, this Commission keeping in view the dispute raised by the appellant, issued directions from time to time to the respondents for supply of complete and authenticated information. As reported by the PIO vide his subsequent written submissions before the Commission, information was again supplied to the appellant under Block Office letter No.3381 dated 12.06.2017 and No.218 dated 19.01.2018.

4. A further perusal of the case record would reveal that out of 22 point information sought for by the appellant, the information relating to 8 points was supplied to him, information relating to 11 other points was intimated as being not available, and the balance information relating to 3 points namely point Nos.5, 13 and 15 was not supplied on the ground that the corresponding Register i.e. Receipt Register (Volume-I) of the year 2011 was not traceable in the office. In that view of the defence plea taken by the respondents, this Commission vide order dated 06.02.2018 appointed the Project Director, DRDA, Jajpur as the Authorised Officer in view of Rule 7(1)(c) of the Odisha Information Commission (Appeal Procedure) Rules 2006, to conduct an enquiry to find out the person(s) guilty of lapses for not furnishing the complete information and / or for causing obstruction to the free flow of information to the appellant.

5. The Authorised Officer vide his enquiry report submitted under letter No.4142 dated 13.08.2018 has arrived at the finding that Sri Prafulla Kumar Giri, Ex-Senior Clerk of Bari Block (since retired) is guilty of lapses resulting in non-supply of the information under point Nos.5, 13, and 15 to the appellant

inasmuch as although he was in charge of the Issue & Diary Section, and he had taken charge of the relevant Register from his predecessor, he did not hand over the same to his successor in office. The enquiry report of the Authorised Officer further reveals that although in course of enquiry Sri Giri was asked to trace out and produce the said Register, he failed to do so, and his plea that he had handed over the said Register to the then BDO, Sri Sambit Kumar Gadanayak, was also not believed by the Authorised Officer.

6. A copy of the enquiry report of the Authorised Officer was supplied to Sri Prafulla Kumar Giri and he was asked to show cause as to why penal action under section 20 of the Act shall not be taken against him basing upon the findings of the Authorised Officer. Sri Prafulla Kumar Giri submitted his show cause supported by an affidavit sworn on 11.01.2019 and diarised in this office on 17.01.2019, pleading, inter-alia, that in course of official business, the Receipt Register was being referred to by different sections of the office, and the higher authority also often was asking for the said Register, and as per the official practice while handing over the Register to the authority, no written receipt was being obtained. He further stated that during shifting of the Office to a new building, the said Register might have been misplaced, and that the missing or misplacement of the Register was not attributable to his any intentional act or omission. He also sought for clemency on the ground of his being a low paid pensioner.

7. It may not be out of place to mention here that pursuant to the direction given by this Commission, the BDO, Bari Block constituted a team of Officials for conducting a search for the Register in question, and as reported by the BDO vide his letter No.3972 dated 27.09.2019, the search team despite a thorough and extensive search, could not trace out the Register.

8. Further, the BDO, Bari Block had lodged a report at Bari Police Station vide his office letter No.3987 dated 03.11.2018 regarding missing/ disappearance of the Receive Register in question, and as informed by the PIO,

Bari Police on making a Station Diary Entry at the Police Station conducted an enquiry, but failed to trace out the Register in question.

9. Be that as it may, there is no dispute on record that the Receipt Register (Volume-I) of the year 2011 was in the charge and custody of Sri Prafulla Kumar Giri, the Ex-Senior Clerk of the Block Office, Bari, and that he was responsible for the due maintenance and safe custody of the same. There is also no denying from the side of Sri Giri that while making over charge of his seat on 11.07.2012 he had not handed over the said Register to his successor in office. It is also not in dispute that the information appertaining to point Nos.5, 13, and 15 of the form-A application of the appellant could not be provided to him on account of non-availability or disappearance of the aforesaid Register. The plea taken by Sri Giri that the Register was often taken by his authority or the staff of other sections for reference, does not afford him a good ground of defence much less to absolve him from the responsibility of a custodian of the Register, or from the liability arising out of its missing or disappearance. Being a public servant entrusted with some specified public documents, records or registers, he was duty bound to ensure their due maintenance and safe custody. That apart, Receipt Register is such a Register which cannot lie dormant or unused for any length of period inasmuch as ordinarily there remains flow of correspondences to the Block Office every working day to be entered into the said Register. The question that next crops up is, whether a retired employee like Sri Giri can be held liable to penal action under section 20 of the Act.

10. As on the date of the form-A application i.e. 23.01.2015, Sri Prafulla Kumar Giri was no more in service inasmuch as he retired on 31.01.2013. Had he been in service as on 23.01.2015 being entrusted with the same nature of duty which he held by the time of his making over the charge, he would have been treated as the Referred PIO in view of section 5(5) of the Act. While being relieved of the section/ seat he admittedly did not hand over the Receipt Register (Volume-I) of the year 2011 for which reason, his successor(s) in the office could not comply with the requirement under the Act in connection

with the form-A application. To put in other words, the aforesaid non-compliance is squarely attributable to the omission or commission on the part of Sri Giri. A government servant, merely for the reason of retirement, cannot escape the consequence of the actionable wrong committed by him during the period of his service. Needless to mention that Sri Prafulla Kumar Giri is in receipt of pension since after retirement from service. Hence, in the considered view of the Commission, he is treated as the Deemed PIO in view of section 5(5) of the RTI Act for the purpose of section 20 of the Act.

11. Now while taking up the question of penalty, the Commission remains alive to the mitigating circumstances as depicted from record. It is the submission of Sri Giri that now he receives Rs.9214/- per month towards pension, and with the said amount it is very difficult on his part to maintain his family and meet the medical expenses of self and his spouse. Taking note of the age of the delinquent and other mitigating circumstances vis-a-vis the nature of his delinquency, the Commission is of the opinion that imposition of penalty amounting to Rs.6000/- (Six Thousand Rupees) in consolidation on him would meet the interest of justice.

12. In the result, the second appeal is disposed of with imposition of penalty of Rs.6000/- (Six Thousand Rupees) only on Sri Prafulla Kumar Giri, Ex-Senior Clerk (since retired) of Bari Block, Dist- Jajpur, under section 20 of the RTI Act, 2005. Sri Giri is hereby directed to pay the said penalty amount by way of depositing the same by Treasury Challan under the Head **“0070-Other Administrative Services-60-Other Services-118-Receipt under Right to Information Act 2005-0014-Collection of Fees and Fines and Fines-02178-Fees and Fines under RTI Act, 2005** within 30 days from the date of receipt of this order by him, failing which the BDO, Bari Block, shall recover the said amount in 3 (three) equal consecutive monthly instalments from his pension starting from the month of April, 2020 and report compliance to this Commission.

13. A copy of this order be communicated forthwith to Sri Prafulla Kumar Giri through the BDO, Bari Block, Dist- Jajpur for necessary compliance. A copy of this order be also communicated to the BDO, Bari Block, and the PIO of the said Block Office for their information and necessary compliance. The appellant be also supplied a copy of this order.

Transcribed to my dictation, corrected by me and pronounced in the open proceeding today this the 9<sup>th</sup> day of January, 2020.

(B.K.Mohapatra)  
State Information Commissioner