

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present : Shri Sunil Kumar Misra,
State Chief Information Commissioner**

Date 11th June, 2020

Second Appeal No.1687/2016

Biswajit Mohanty,
Shantikunj, Link Road,
District-Cuttack-753012.....Appellant

-Vrs-

1. Public Information Officer,
Office of the Director General of Police &
Director Vigilance,
Odisha, Cantonment Road,
District-Cuttack.
2. First Appellate Authority,
Office of the Director General of Police &
Director Vigilance,
Odisha, Cantonment Road,
District-Cuttack.....Respondents

Decision

1. Appellant, Biswajit Mohanty, is present. The PIO and the First Appellate Authority of the office of the Director General of Police and the Director Vigilance, Odisha, Cuttack are not present.

2. Vide an application in Form-A dated 16.03.2016 submitted before the PIO, Office of the Director General of Police, Vigilance, Odisha, Cuttack, the appellant had requested the PIO to provide him list of the Vigilance cases along with other specified details of the vigilance cases which had been quashed by the Hon'ble High Court of Orissa during the period 01.04.2000 to 17.03.2016. He had also sought to have the names of the accused officers and the corresponding supervising officers. Copies of standing Instructions / Rules / Guidelines / Circulars of the Vigilance Police / G.A. Department etc. governing disciplinary

action / proceedings instituted against the Investigating Officers and Supervising Officers in-charge of such cases as well as details of Departmental actions taken against the delinquent officers had also been sought. The required information had been listed out in the application in Form-A vide 4 points.

3. The PIO vide a reply dated 11.04.2016 informed the appellant that information relating to Sl.No.3 (i.e. copies of standing Instructions, Rules, Guidelines, Circulars etc.) had been uploaded in the Vigilance Web-site www.vigilanceodisha.govt.in whereas the other information sought by the appellant related to a period of 16 years and furnishing of such information would disproportionately divert the resources of the public authority. In this connection the PIO relied on Section 7(9) of the RTI Act, 2005.

4. Aggrieved, the appellant filed first appeal before the first Appellate Authority-cum-Deputy Inspector General of Police, Vigilance. In the first appeal, the appellant countered the stand taken by the PIO in respect of information sought at Sl.Nos.1,2 & 4. It was contended by him that no RTI application could be rejected under Section 7(9); and if at all any information was found covered thereunder, the PIO would have to offer an alternative mode including inviting the applicant for inspection of records and to obtain extracts and copies therefrom. The PIO should have provided information in the form in which the same was available. The appellant also stated that the PIO ought to have given prints out / photocopies of the information at Sl.No.3 instead of merely directing him to the web-site.

4.1 The First Appellate Authority agreed with the stand taken by the PIO. He also observed that the required information could not be furnished even otherwise because doing so would endanger the life and physical safety of the concerned officials or identify the source of information; hence exempt under Section 8(1)(g) of the RTI Act, 2005.

5. Aggrieved with the order of the First Appellate Authority, the appellant filed the subject second appeal vide an appeal memo in Form-E dated 26.07.2016 reiterating therein the grounds raised in the first appeal. It was also stated by the appellant that the First Appellate Authority erred in rejecting the appeal although clear grounds had been spelt out in the first appeal challenging the PIO's denial. Submitting as above, the appellant apart from seeking direction for furnishing of the required information also urged that action be taken against the respondents under Section 20(1) and he (appellant) be compensated for the loss of Rs.2,000/- suffered by him in preparing and filing the subject second appeal.

6. This case was earlier heard on a few occasions. During the initial hearings, the Commission perused the reply / order of the respondents and observed that the Ex-PIO and the Ex-First Appellate Authority were apparently not justified in invoking Section 7(9) with regard to Sl. Nos.1, 2 & 4 of the application. Because the Commission was apprised by the respondents themselves that only 50 to 60 cases might have been quashed by the Hon'ble High Court during the specified period of 16 years. The PIO was also not justified in directing the appellant to refer to the web-site in so far as Sl. No.3 was concerned. For, the web-site merely contained the Vigilance Manual and not the information sought by the appellant at Sl. No.3. Hence the present PIO and First Appellate Authority were directed to make a written memorandum in the light of the above observations.

6.1 Complying with the directions, the PIO stated that information in respect of Sl. Nos.3 & 4 were not available. In this connection, she referred to 3 reports received from the Superintendent of Police, Vigilance, Cuttack; the Additional Superintendent of Police; and, the Additional Superintendent of Police, Vigilance Wing. The PIO also referred to Section 8(1)(h). The Commission

considered the PIO's submission and observed that Section, 8(1)(h) could not be routinely applied particularly as, under the said Section, the PIO is under obligation to show that the process of enquiry is on and disclosure of the information might impede the process. All the same, in view of the PIO's submission that the information was not available, the Commission allowed an opportunity to the appellant to make his own submission. Further, as the PIO had wrongly referred to Section 7(9) despite non-availability of the information in respect of Sl. Nos. 3 & 4, the Commission directed the concerned PIO, Jagannath Nayak, to show cause why action under Section 20 of the RTI Act, 2005 should not be taken against him for the lapse on his part.

6.2 During the hearings on 05.12.2019 and 04.03.2020, both the present PIO and the appellant submitted further written memoranda. The Commission considered the same and sought to know from the respondents why regarding the cases which had been quashed and also were very few could not be disclosed. The Commission also asked both the parties to make their submissions regarding disclosure of the names of the Investigating Officers (I.Os) and the Supervising Officers.

6.3 As directed, the PIO submitted a written memorandum dated 27.02.2020. The appellant also filed a rejoinder to the respondents' memos dated 10.09.2019, 30.11.2019 and 28.02.2019. The Commission directed the parties to hand-over copies of their written memorandum / rejoinder to the counter-party. The parties were allowed time to make further submissions, if any.

7. The PIO has not made any further submission. She is also not present today. The appellant on the other hand is present and has been heard. During the course of the hearing today, the Commission observed that the appellant's contention regarding disclosure of the names of the Investigating

Officers and Supervisory Officers was rather general. The Commission also observed that the same was based more on apprehensions that the cases might have got quashed because of lapses on the part of the Investigating Officers than on actual failures demonstrated. Such mere apprehensions would not suffice to pass the test of public interest. Accordingly, the Commission sought to know from the appellant how the information sought vide Sl. No.2 could be disclosed. In response, the appellant has only reiterated his earlier contention.

7.1 After hearing the appellant today and also as sufficient opportunities have been given to both the parties, the Commission proceeds to dispose of the subject appeal on merits as under:

7.2. The information sought vide Sl. Nos.3 and 4 are stated as not available. Confirmations to the above effect have been filed by the PIO. The appellant has not contested the correctness of the confirmations. As regards Sl. No.2, the contention raised by the appellant is general and not specific. It has not been demonstrated if and what public interest would be subserved by the disclosure of the information relating to the Investigating Officers and the Supervising Officers. The applicability of Section 8(1)(g) of the RTI Act, 2005 to the disclosure of such information can also not be ruled out. In this connection, reliance is placed on the judgements of the Hon'ble Supreme Court in the cases of the Central Board of Secondary Education Vs. Aditya Bandopadhyaya and Others; and Bihar Public Service Commission vrs. Saiyed Abbas Rizwi and Anr. Hence the Commission upholds the decision of the PIO and the First Appellate Authority in respect of Sl. No.2. As regards Sl. No.1, however, the Commission finds no plausible reason as to why the list of quashed cases and other relevant details as have been sought cannot be provided. The decisions of the Higher/ Highest Judiciary are not secret and, in fact, are widely circulated once

the judgements are pronounced. Names of the accused in such cases are also no secret as these are mentioned in the charge-sheets which are in the nature of public documents. If a document charging a person can be made public, there would be greater public interest in making public an information regarding the acquittal of such person unless there is a bar by the concerned Court(s) on such disclosure. For these reasons and also considering that the total number of quashed cases is limited, the Commission holds that the information sought by the appellant vide Sl. No.1 of his application has to be disclosed to him. The PIO is directed accordingly.

7.3 The PIO shall ensure that the information in respect of Sl. No.1 is sent to the appellant within 15 days from the date of receipt of this order by Registered Post under intimation to this Commission.

8. With the above observations and direction, the subject second appeal in so far as it relates to furnishing of information stands disposed of. However, as the Ex-PIO, Jagannath Nayak, has not submitted any show-cause written memorandum despite directions, the proceedings under Section 20 of the RTI Act, 2005 which have been already initiated in his case shall continue.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 11th
June, 2020.

State Chief Information Commissioner
11.06.2020