

**ODISHA INFORMATION COMMISSION  
BHUBANESWAR**

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

**Date: 28<sup>th</sup> November, 2019**

**Second Appeal No.3044/2016**

Ashok Kumar Nayak,  
Plot No.17, Suryanagar,  
Unit-7, Bhubaneswar,  
Dist- Khurda.....Appellant

**Vrs.**

1. Public Information Officer,  
Odisha Electricity Regulatory Commission,  
Plot No.-4, Chunokoli,  
Sailashree Vihar,  
Bhubaneswar
2. First Appellate Authority,  
Odisha Electricity Regulatory Commission,  
Bhubaneswar. ....Respondents

**Decision**

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

2. The appellant named above made an application under Section 6(1) of the Act to the Public Information Officer (PIO), Office of the Odisha Electricity Regulatory Commission (OERC), on 15.07.2016 seeking 10 point information as follows:

*"1. Certified true copies of the noting, Minutes of Meeting approved by Chairperson relating to the termination of A.K. Nayak who was working as Deputy Director (P&A), OERC.*

*2. Certified true copies of all other documents pertaining to initiation of file for termination of the service of A.K. Nayak, Deputy Director (P&A), OERC.*

3. Certified true copies of the Minutes of Meeting of the Selection Board/ Selection Committee relating to the selection of A.K. Nayak as Deputy Director (P&A) which was approved by Chairperson.

4. Certified true copies of the Performance Report on A.K. Nayak, Deputy Director (P&A) as a probationer, specified by Sri G.P. Mishra, IAS Retd. (Ex-Secretary, OERC) during his tenure as Secretary, OERC and Reporting Officer of A.K. Nayak (Deputy Director- P&A).

5. Certified true copies of the file noting or proposal initiated, showing Chairperson's approval on the matter of issuing letter No-Secy,/01/2016 dated 11.05.2016 and letter No- Secy/01/2016 dated 17.05.2016 to Sri A.K. Nayak (Deputy Director- P&A).

6. Certified true copies of the file noting initiated by Deputy Director (P&A) I/c and Office Order issued on the matter of loss of pay of Ms. Purabi Das, PAO, OERC (Noting from 24.7.15 to 6.8.15).

7. Certified true copies of the file noting till date, relating to the absorption matter of Sri Ashok Kumar Jagadev, who is on deputation from OHPC (Which must include all noting/ remarks of A.K. Nayak (Deputy Director- P&A).

8. Certified true copies of the file noting of A.K. Nayak (Deputy Director- P&A) where he has initiated the personal file of Sri A.K. Jagadev about the deputation extension of Sri Jagadev for the appraisal of the Commission and A.K. Nayak has noted about the verbal instruction of Secretary to wait for some time before issuing letter to OHPC relating to the absorption and pension matter of Sri Jagadev.

9. Certified true copies of the all file noting of Deputy Director (P&A) and approval of the Secretary relating to approved Petty Cash advance of Rs.8000/- in favour of Sri K.C. Tudu (PA) along with Office Order in this regard.

10. Certified true copies of the file noting and Office Order relating to the termination of service of Ms. Alka Khemka (Ex-Deputy Director- P&A).”

3. The PIO declined to provide the above information to the appellant on the ground that the information appertaining to Point No.2 is vague, unspecific and lack of material particulars and the information solicited vide rest of the points being “personal information” by nature is exempted from disclosure in view of clause (j) of section 8(1) of the Act. Being aggrieved thereby, the appellant approached the Secretary, OERC-cum-First Appellate Authority, by filing an appeal in form-D on 22.08.2016, and vide the order dated 14.09.2016, the First Appellate Authority while concurring the view of the PIO dismissed the appeal. Hence the present second appeal.

4. Upon being noticed, both the PIO and the First Appellate Authority entered appearance through M/s. Biswajit Mohapatra and Hrudananda Parida, learned Advocates and submitted joint show cause in shape of written memorandum reiterating the stands taken by them while dealing with the form-A and form-D applications of the appellant. They have further averred that since the dispute regarding termination of service of the appellant under OERC is subjudice before the Hon'ble Odisha High Court in Writ Appeal No.237 of 2019, disclosure of the information as sought for by the appellant at this juncture, is likely to cause undue interference in the administration of justice. In course of hearing the learned Counsel by filing an additional written note of submission further raised a point of defence that the present second appeal having been filed beyond the time limit as specified under section 19(3) of the Act is barred by limitation inasmuch as the appellant has not shown any sufficient cause to condone the delay.

5. The appellant has filed rejoinder refuting the grounds of defence taken by the respondents. According to him, the information sought for being related to his own written office note, documents etc., while he was in service under OERC, and also to the matters relating to termination of his service by the OERC, and the same being of no effect of invading the privacy of any other persons or employees, the exemption clause (j) of section 8(1) of the Act has no application to the same. His further submission is that since his service has been terminated arbitrarily on false allegations, he requires the information in order to prove his innocence in Writ Appeal No.237 of 2019 pending before the Hon'ble Odisha High Court.

6. I have heard the appellant and the learned Counsel for the respondents.

7. At the outset, I take up the question of delay in filing of the second appeal, as raised by the learned Counsel for the respondents. In the present case the first appeal having been disposed of on 14.09.2016, the second appeal was due to be filed within 90 days there from in view of section 19(3) of the Act.

Needless to mention that as per the proviso to sub section (3) of section 19 of the Act this Commission is empowered to admit the second appeal on condoning the delay on being satisfied that the appellant was prevented by sufficient cause for filing the appeal in time. As it appears, the appellant has filed along with his form-E application (appeal memorandum) dated 24.12.2016 an application praying for condonation of delay on the ground that his illness prevented him from presenting the appeal in time. However, there was no specific order on the said application. Be that as it may, when the appeal was admitted vide the order dated 10.10.2019, it is implied that the delay was condoned by the Commission. It may also be mentioned here that the present is a statutory second appeal, and the respondents have raised the point of delay for the first time on the date of hearing of the appeal inasmuch as nothing in that regard was averred by the respondents much less as a ground of defence in their show cause filed in shape of written memorandum on 21.10.2019. The delay is also not so huge as to term the same "inordinate" or to attribute any gross negligence to the appellant. In the above premises, the Commission does not find any substance in the contention of the respondents on the point of limitation.

8. It is informed to the Commission that the appellant was previously employed as Deputy Director under the OERC, and during the period of probation his service was terminated. He challenged the order of termination before the Hon'ble Orissa High Court by filing a writ petition, and the same having been decided in his favour, the present respondents have preferred writ appeal bearing No.237/2019 which is subjudice. In that backdrop, it is now contended by the respondents that since the information sought for by the appellant basically relates to his appointment and termination of service, and the dispute being subjudice before the Hon'ble Orissa High Court, the information in question is likely to cause undue interference in the administration of justice. The learned Counsel for the respondents has cited a decision of the Central Information Commission (CIC) rendered on 14.03.2006 in Appeal No.11/IC(A)/2006 (**Sunil Kumar Pattanaik – Vrs- Central Bank of India**).

9. In the afore cited case the CPIO refused to give information on the ground that the matter was subjudice and that the information sought for could be obtained from the competent authority / court. The First Appellate Authority while concurring the view of the CPIO advised the applicant to obtain the required information from the competent judicial authority / court. The CIC in the second appeal also upheld the decision of the First Appellate Authority. The aforesaid view of the CIC, however, has been overruled in a later case bearing Appeal No.CIC/WB/A/2008/00838/SG between **Mr. Ashwani Kumar Goel -Vrs. Mr. R.N. Sharma** (relied on by the appellant). The relevant part of the order of the CIC in the later case is extracted here below:

*“The CIC decision cited by the respondent states ‘The matter is subjudice. The appellate authority has correctly advised that information in question could be obtained through Curt, which is examining the matter.’ No reasoning has been offered as to which exemption clause of the RTI Act applies. The only exemption of Section 8(1) which might remotely apply is section 8(1)(b) which states, ‘information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;’ can be denied.*

*This clause does not cover subjudice matters, and unless an exemption is specifically mentioned, information cannot be denied. Disclosing information on matters which are subjudice does not constitute contempt of Court, unless there is a specific order forbidding is disclosure. I respectfully have to disagree with the earlier decision cited by the appellant since it is per incuriam.*

*This Commission rules that a matter being subjudice cannot be used as a reason for denying information under the Right to Information Act.”*

10. In the case at hand, to the notice of the Commission, there being no specific order of any court or tribunal prohibiting disclosure of the information, and here there being not a situation to think that such a disclosure would constitute contempt of court, clause (b) of section 8(1) of the Act has no application. The learned counsel for the respondents also could not convince the Commission as to how disclosure of any such information is likely to have any effect of interference in the administration of justice. In the context, it is also pertinent to mention here that this Commission does not decide any dispute

between the parties concerning their legal rights other than the question regarding the right of the applicant to get information in possession of a public authority, and the whole exercise of power of the Commission remains within the confines of the RTI Act 2005.

11. Now adverting to the core issue, for the sake of better appreciation, the 10 point information as sought for may be divided into two parts , such as point Nos.1 to 5 and point Nos.6 to 10 inasmuch as while under the first part the appellant has sought for information regarding his appointment, performance, termination of service etc., the second part relates to information regarding the file notings etc., made by the appellant and the service rendered by him while he was an employee under OERC. To reiterate, the information sought for by the appellant was not supplied to him by the respondents on the grounds that the information pertaining to point No.2 is vague, unspecific and lack of material particulars, and the information under the rest of the points is exempted from disclosure in view of clause (j) of section 8(1) of the Act. It is, however, the contention of the appellant that the exemption clause (j) is not applicable for the reasons that the information relates to his own employment and performance under the OERC and also to the grounds taken by the OERC for illegal termination of his service.

12. The learned Counsel for the respondents, in support of his contention with reference to clause (j) of section 8(1) of the Act, has placed reliance on a decision of the Hon'ble Apex Court of India in the case of **Girish Ramchandra Deshpande – vrs- Central Information Commissioner & Others** reported in (2013) 1 SCC 212. In the said case the Hon'ble Apex Court held as follows:

*“12. We are in agreement with the CIC and the courts bellow that that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure / punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act The performance of an employee / officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are*

*governed by the service rules which fall under the expression “personal information”, the disclosures of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate cannot claim those details as a matter of right.*

*13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information”.*

13. The second part of the information comprising point Nos.6 to 10 appertains to file notings and office orders in relation to some other employees of OERC namely, Ms. Purabi Das, Sri Ashok Kumar Jagadev, Sri K.C. Tudu and Ms. Alka Khemaka. To be more specific, under the points Nos. 6 & 10 copy of file notings and office orders have been sought for regarding loss of pay of Ms. Purabi Das, PAO and termination of service of Ms. Alka Khemaka, Ex-Deputy Director (P&A). Under the points Nos. 7 & 8 copy of file notings have been sought for regarding initiation of personal file and absorption matter of Sri Ashok Kumar Jagadev, Deputy Director (P&A) who was on deputation from OHPC, and under point No.9 copy of file notings and office orders have been sought for regarding approval of cash advance in favour of Sri K.C. Tudu (PA). The appellant vide his notes of argument dated 14.11.2019 has not pressed for the information solicited under point No.10. Hence, no further deliberation on the said point is called for.

14. The information solicited under point No.9 appears to be in relation to a financial matter having no nexus with the privacy of the concerned employee namely, Sri K.C. Tudu. Hence, in the opinion of the Commission the same does not qualify to be “personal information” to be brought within the clause (j) of Section 8(1) of the Act.

15. In so far as the information sought for under point Nos.6 to 8 is concerned, to reiterate, the same is in relation to some action taken by the OERC for or against some of its employees other than the appellant (ex-employee). To put in other words, those are the matters between the employer and the concerned employees, having no relationship to any public activity or interest. Rather, disclosure of information in that respect is likely to have an effect of invading the privacy of the concerned employees. It is the contention of the appellant that since he himself made or initiated those file notings, and since the OERC has already raised those matters as grounds in the writ appeal pending before the Hon'ble High Court in a bid to justify termination of his service, the exclusionary provisions under clause (j) of Section 8(1) of the Act cannot be attracted to the said information. Merely because the file notings had been made by the appellant in purported discharge of his official duty while being in service under the OERC does not ipso facto entitles him to seek copy of the same under the RTI Act. In course of hearing the learned Counsel for the respondents fairly conceded that the above matters having formed part of the ground taken by the OERC in the writ appeal, the present appellant being a party there to may seek order of the Hon'ble High Court for causing production of those files or availing access to the desired information. Notwithstanding availability of such an opportunity, if any, in favour of the appellant, this Commission has to act within its own confines under the RTI Act. Keeping in view the principle settled in the case of **Girish Ramchandra Deshpande** (supra), the information sought for by the appellant under the point Nos.6 to 8 having fallen under the expression "personal information", and there being nothing to suggest that larger public interest justifies the disclosure of such information, the same is held to be exempted from disclosure in view of clause (j) of Section 8(1) of the Act.

16. Now adverting to the first part of the information comprising point Nos. 1 to 5, the appellant vide his note of argument submitted on 14.11.2019 has not pressed for the information under point No.3. As regards the point No.2, the Commission agrees with the PIO that the information solicited under the said point lacks specificity and material particulars unlike the information sought for

under the other points. In so far as the information sought for under the point Nos. 1, 4 and 5 is concerned, the Commission, however, is unable to accept the contention of the respondents that the same being personal information is exempted from disclosure. The said information is in relation to the performance of the appellant (ex-employee) and the steps taken by the employer to terminate his service. Here the seeker of the information being the terminated employee himself, the question of invasion of his privacy, in case of disclosure of the information, does not arise. That apart, the dispute regarding such termination is already before the court of law. More importantly, the seeker of the information being none other than the person affected by the action taken by the employer, denial of the information to him relating to the said action would amount to denial of natural justice to him. In this context, the principle settled by the Hon'ble Apex Court in the case of **Dev Dutt – Vrs- Union of India & Others** reported in (2008) 8 SCC 725 may be referred to.

17. For the whole discussion made here-in-before, in the result, the second appeal is allowed in part. The respondent-cum-PIO is hereby directed to supply the information sought for by the appellant under point Nos. 1, 4, 5 and 9 of his form-A application dated 15.07.2016 to him free of cost within a period of 15 days from the date of receipt of a copy of this order.

A copy of this order be communicated to the appellant as well as to the respondent No.1-cum-PIO by speed post forthwith.

Transcribed to my dictation, corrected by me and pronounced in the open proceeding today this the 28<sup>th</sup> day of November, 2019.

(B.K.Mohapatra)  
State Information Commissioner