

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

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

Date 17th November, 2020

Second Appeal No.458/2016

Adwaita Prasad Sahoo,
Plot No.6, Somanath Villa,
PO-Aiginia,
PS-Khandagiri,
Bhubaneswar,
District-Khurda.....Appellant

-Vrs-

1. Public Information Officer,
Finance Department,
Government of Odisha,
Bhubaneswar.
2. First Appellate Authority,
Finance Department,
Government of Odisha,
Bhubaneswar.Respondents

Decision

1. Appellant, Adwaita Prasad Sahoo, is not present. The PIO and the First Appellate Authority of the Finance Department, Government of Odisha are also not present.

2. The appellant filed the subject second appeal vide an appeal memo in Form-E dated 20.02.2016. The appeal was directed against the PIO and the First Appellate Authority of the Finance Department. The grounds raised by the appellant in the second appeal were that while the PIO had earlier rejected his application by referring to Section 8(1)(j) of the RTI Act, 2005, the First Appellate Authority rejected the first appeal by referring to Section 8(1)(j) as well as Section 8(1)(h) whereas the above Sections were not applicable. It was contended by the appellant that the information sought by him, i.e. copies of Government Orders, Notification in respect

of the Odisha Finance Service Officers whose pensions had been withdrawn following their conviction in Vigilance cases, was not in the nature of personal information; and, on the contrary, as held by the Central Information Commission in the case of Sandeep Srivastava vrs. Western Central Railway in Order dated 30.03.2012, Notifications relating to imposition of penalty could not be treated as exempt under Section 8(1)(j).

3. This case was earlier heard on a few occasions. The PIO and the First Appellate Authority of the Finance Department submitted before the Commission that not only that the information sought by the appellant was personal in nature, the matter was also sub-judice. The commission considered the respondents' submissions and also referred to the decision of the Hon'ble Supreme Court in the case of Employees of Canara Bank as represented by its Deputy General Manager vrs. C.S. Shyam and Another (Civil Appeal No.22/2009) wherein the Hon'ble Supreme Court had endorsed and followed their earlier decision in the case of Girish Ramchandra Despande vrs. Central Information Commission. It was held by the Hon'ble Supreme Court that information relating to employer-employee relationship and Conduct / Service Rules were in the nature of personal-cum-official information and could not be divulged unless public interest warranted disclosure. Hence the appellant was asked to demonstrate what public interest would be sub-served by the disclosure of the information sought by him.

4. In compliance of the direction thus given, the appellant and his Learned Advocate submitted detailed arguments during a subsequent hearing. It was reiterated that the appellant had not sought any information of a personal nature. Further, even while the information was regarded as personal or third party information, the procedure prescribed in Section 11 was in any case not followed by the concerned authorities. Moreover, assuming that information could not be disclosed by virtue of Section 8, at least the principle of severance as per Section 10 ought to have been followed. It was also contended by / on behalf of the appellant

that the decision in the cases of Canara Bank as well as Girish Ramchandra Despande had been rendered in the context of employer-employee relationship whereas the pensioners in respect of whom information had been sought had ceased to be employees. The appellant once again referred to the decision of the Central Information Commission in the case of Sandeep Srivastava vrs. Western Central Railway.

4.1 In view of the contentions thus raised, the Commission directed the respondents to produce copies of the Orders / Notifications sought by the appellant for the Commission's perusal. The PIO was also directed to specifically state if any prohibition or bar had been issued by the Court on disclosure of the Orders / Notifications.

5. Complying with the direction, the PIO submitted 2 Office Orders. The appellant also made a further submission. The appellant referred to a Notification published by the Government of Odisha in the Gazette on May 8, 2014 in a similar matter. It was argued by the appellant that if the Government could publish a similar Order in the official Gazette, it could not be permitted to blow hot and cold in the matter of supply of the required information.

5.1 The Commission on perusal of the 2 Officer Orders as well as on consideration of the further arguments advanced by / on behalf of the appellant directed the respondents to meet such arguments.

5.2 At the time of the hearing on 10.01.2020, the PIO merely reiterated his earlier submission. The contention raised by the appellant on reference to the Gazette Notification was not met, let alone countered. The appellant on the other hand requested that the case be decided on merits.

6. The submissions made from time to time have been considered whereupon the subject appeal is decided on merits as under:

6.1 As already noted, the PIO and the First Appellate Authority had earlier relied on Sections 8(1)(j) and 8(1)(h) of the RTI Act, 2005. Section 8(1)(h) is not applicable because the two persons belonging to the OFS cadre had been already convicted which itself indicates that no investigations are pending. Coming to Section 8(1)(j), the Commission itself had raised questions by referring to the decision of the Hon'ble Supreme Court in the cases of the Central Information Commission vrs. Girish Ramchandra Despande and Employees of Canara Bank represented by its Deputy General Manager vrs. C.S. Shyam and Another. The Hon'ble Supreme Court had rendered these 2 judgements in the context of Employer-Employee relationship. The appellant has submitted that the above decisions would not apply because both the officers had ceased to be employees. The above contention is not acceptable because even a retired employee remains an employee as long as the terms and conditions of Service continue to apply to him and also as long as he continues to avail the benefits of Service. Further, if the two officers had ceased to be employees, the employer could not have taken action against them and could not have passed orders regarding withdrawal of their pensions. However, the appellant has also referred to a Gazette Notification issued by the Government in a very similar case. It has been contended by the appellant that the case under consideration not being different, a different stand cannot be taken. The Commission finds merit in the above contention. When the Government has published an order issued in a very similar case in the official Gazette, the principle of equity warrants that even the orders covered by the subject appeal should be disclosed. Further, even in the cases of the Hon'ble Supreme Court which have been cited supra, it was held that personal-cum-official information could still be disclosed if public interest warranted such disclosure. In this connection, the first thing which needs to be stated is that the two orders have been perused and the same do not contain any information which can be considered as purely personal in nature requiring severance. It also needs to be mentioned that disclosure of information relating to corruption has been given a special importance in the RTI Act

as would be evident from the fact that even an organization which is otherwise exempt from the purview of the RTI Act by virtue of Section 24 is required to disclose such information. This by itself underscores the public importance which such information have / has. It cannot also be gain-said that corruption has an adverse and corrosive effect on the public at large. Therefore, it is in public interest that punishments meted out in corruption cases are made known to the public. Disclosure of such orders of punishment would have demonstrative and deterrent effects and thus would subserve the larger public interest. The above rationale underlying Section 24 of the Act should clearly apply to the public authorities to whom Section 24 does not apply. The Commission is also of the view that disclosure of the orders would not cause any more harm to the concerned persons than the harm already caused by the orders. Above all, there is no bar or ban by any Court on such disclosure. The Commission therefore is of the considered view that it would be in the larger public interest that the orders of which copies have been sought by the appellant are provided to him.

6.1 In the light of the foregoing discussion, the Commission directs the public authority to furnish to the appellant the information sought by him. The PIO shall send such information / copies of orders to the appellant by Registered Post within 7 days from the date of receipt of this order under intimation to this Commission.

7. With the above observations and directions, the case is hereby closed and the subject second appeal stands disposed of.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 17th November, 2020.

State Chief Information Commissioner
17.11.2020

