

FIRST APPEAL DETAILS (प्रथम अपील विवरण)

Registration Number (पंजीकरण संख्या):	CCUMIA 2018-80164 आर. टी. आई. कक्ष (आयता) of Receipt (प्राप्ति की तारीख): R. T. I. Cell (Import) नवीन सीमाशुल्क भवन Now Custom House मुंबई Mumbai	
Type of Receipt (रसीद का प्रकार):	Online Receipt	Language of Request (अनुरोध की भाषा):
Name (नाम):	Shankar Jee	Gender (लिंग):
Address (पता):	Samved, Plot No. 4 Dabur No. Leko, Near Nagra Panchayat Hospital, Nana Bazar	
State (राज्य):	Gujarat	Country (देश):
Phone Number (फोन नंबर):	91 8849509857	Mobile Number (मोबाईल नंबर):
Email-ID (ईमेल-आईडी):	shankarjee1955@gmail.com	
Status (स्थिति):	Urban	Educational Status (शैक्षणिक स्थिति):
Is Requester Below Poverty Line ? (क्या आवेदक गरीबी रेखा से नीचे का है?):	No	Does It Concern Life or Liberty of a person:
RTI Request Registration No (सूचना का अधिकार अनुरोध पंजीकरण सं.):	CCUMIR 2018-80164	RTI Request Registration Date (सूचना का अधिकार अनुरोध पत्र दिनांक):
CPIO's	Details not provided	

First Appeal Details

Order/Decision No.
(सीपीआईओ का आदेश / निर्णय संख्या)
:

Date of Receipt of CPIO's Order/Decision(सीपीआईओ के आदेश / निर्णय के रसीद की तारीख) :

Ground for Appeal(अपील का आधार) :

Refused access to Information Requested

Reason for delay(if any) in filing this appeal(इस अपील को दायर करने में विलंब, यदि कोई हो, का कारण) :

N.A

Dear Sir,

Prayer or Relief Sought(प्रार्थना या अनुरोध की गई राहत) :

The CPIO has not given the information sought for on the grounds that the information is available in the public domain.

I would submit that the information sought for is neither placed on the internet nor is available as a priced publication in the market and therefore in terms of the decision arrived at by the CIC in the matter of Mr Ved Prakash Verma, (attached) the information sought for may kindly be directed to be provided to me.

ACTION HISTORY OF RTI FIRST APPEAL No. : CCUM11/A/2019/60001

Applicant Name
(आवेदक का नाम)

Shankar Iyer

Text of Appeal (अपील का पाठ)

Dear Sir,

The CPIO has not given the information sought for on the grounds that the information is available in the public domain.

I would submit that the information sought for is neither placed on the internet nor is available as a priced publication in the market and therefore in terms of the decision arrived at by the CIC in the matter of Mr Ved Prakash Verma, (attached) the information sought for may kindly be directed to be provided to me.

Reply of Appeal (अपील का उत्तर)

SNo.	Action Taken	Date of Action	Action Taken
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First Appeal Details

(क्रमांक)	(कार्रवाई की गई)	(कार्रवाई की तारीख)	By(कार्रवाई के द्वारा लिया)	Remarks(टिप्पणि)
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1	FIRST APPEAL RECEIVED	03/01/2019		
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[View Appeal
Document\(अपील
डॉक्युमेंट देखें\)](#)

Print Close



rtifoundation india.

Menu

reafter - CIC: Provide the details of RBI office where the records related to new notes issued are kept & the

CIC: once a certain information is placed in public domain accessible to the citizens either freely or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control' of public authority; not accessible under RTI

Information relating to appointment on compassionate grounds was sought - PIO: no time limit has been prescribed for giving compassionate appointment and the copy of the rules relating to it are available on the website - CIC: once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control' of the public authority; it would cease to be an information accessible under the RTI Act - CIC: PIO had acted consciously and with no intent to deny the information sought by the appellant and hence imposition of penalty would not be justified

Information sought:

The applicant has sought the following information -

1. Provide the action taken on the letter no. B2/Relax/Mukesh/2011/Jhun dated 27/04/2011 related to the issue of compassionate appointment of the heir of late Mr. Om Prakash Saini Ex. Postmaster Surajgarh and the copy of reply to the same
2. Provide the time limit when the heir of the deceased person will be appointed
3. Provide the copy of the rules laid by the Central Government for the compassionate appointment in the department

Grounds for the Second Appeal: The CPIO has not provided the desired information

Relevant Facts emerging during Hearing: The following were present

Appellant: Mr. Ved Prakash Verma appellant's representative through TC: 09847057882

Respondent: Mr. K. L. Saini CPIO through TC M: 09413079456

The appellant's representative stated that he is not satisfied with the information provided by the CPIO as the photocopy given to him in response to query 1 is not attested and the respondent in their reply to query 3 have informed that the rules for compassionate appointment are available in printed books/internet but he has not been able to obtain the same. The CPIO stated that he will provide an attested copy of the letter vide which Sri Mukesh Kumar's case for compassionate appointment was forwarded to the Circle office and a copy of the rules relating to compassionate appointment after downloading the same from the internet. The appellant's representative stated that penal proceedings should be initiated against the CPIO for not providing proper information.

Decision notice:

As agreed by the CPIO the information as above should be provided to the appellant within 15 days from the date of receipt of this order. It is seen that the Honble High Court of Delhi in its decision dated 1/6/2012(WP(C) 11271/2009 Registrar of Companies & Ors vs. Dharenendra Kumar Garg & Ors has held as under:

"48. In *Sh. E. Lall Vs. Sh. M.K. Bagri*, Assistant Registrar of Companies & CPIO, F. No. CIC/A1/A/2007/00112, the Central Information Commission, *Sh. A.N. Tiwari* squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. *Sh. A.N. Tiwari* by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

"9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of 'the right to information accessible under this Act which is held by or under the control of any public authority'. The use of the words 'accessible under this Act', 'held by' and 'under the control of' are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control' of the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour 'to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as much information suo-moto to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information.' (Section 4 sub-section 2). This Section further elaborates the position. It states that 'All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed'. The explanation to the subsection 4 section 4 goes on to further clarify that the word 'disseminated' used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority. As per the ratio of the above cited decision once an information is put on internet or is available in priced publication in the market it cannot be said to be 'held' or 'under the control' of the public authority and, thus would cease to be an

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- CIC once a certain information is placed in public domain accessible to the citizens either freely, or on payment of a pre-determined fee, information accessible under the RTI Act. As regards the appellant's plea for initiating penal proceedings against the CPIO, it will be apt to quote the observations made by the Hon'ble Delhi High Court in its decision dated 02/02/2012 (WP(C) 766/2010 & CM No. 1611/2010) while quashing the penalty order passed by the Commission. The aspect of levy of penalty on the PIO is governed by Section 20 of the Right to Information Act (RTI Act). It states that the CIC may at the time of deciding any complaint or appeal, impose penalty on the CPIO, where he is of the opinion that the CPIO has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information. The crux of the said provision is that the PIO should have obstructed the supply of the information with intent or should have acted consciously and deliberately in a manner so as to block the provision of the information.

It is seen from the records that a reply to the appellant's RTI application dated 20/09/2012 was provided timely by the PIO vide letter dated 11/10/2012. The PIO in response to query 1 informed the appellant that compassionate appointment case of Shri Mukesh Kumar has been forwarded to the local office while in reply to query 2 he was informed that no time limit has been prescribed for giving compassionate appointment and in reply to query 3 he was informed that copy of the rules relating to compassionate appointment are available on the website and in books. Thus, in the matter at hand, no wise reply as per available records was provided and it cannot be said that the CPIO acted consciously and deliberately with intent to deny the information sought by the appellant. Imposition of penalty on the CPIO, therefore, would not be justified.

The appeal is disposed of accordingly.

BASANT SETH

Information Commissioner

Citation: Mr. Rajulal Saini v. Department of Posts in File No. CIC/BS/A/2013/000764/5035

Share your comments with RTI Foundation of India.

Your name

E-mail

Comment *

Submit

OFFICE OF THE APPELLATE AUTHORITY,
(Under the Right to Information Act, 2005)
Office of the Commissioner of Customs (Import)
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI – 400 001.

F.No. RTI/IMP-I-57/2018

Date of order: 29.01.2019

RTI/IMP-I-Appeal-16/2018

Date of issue: 29.01.2019

ORDER PASSED BY: Shri Dharendra Mani Tripathi,
Joint Commissioner of Customs (Import-I)
1st Floor, Old Building, New Custom House,
Ballard Estate, Mumbai- 400 001.

ORDER NO. 16/2018-19

As per Section 19(3) of the RTI Act, 2005, the appeal against this order shall lie within ninety days from the date on which the decision should have been made or actually received, with the Central Information Commission, R.No. 308, 2nd floor, August Kranti Bhavan, Bhikaji Cama Place, New Delhi- 110 066.

BRIEF FACTS OF THE CASE

1. Shri Shankar Iyer, Samved, Plot No. 4, Darbar No. Tekro, Near Nagar, Panchayat Hospital, Nana Bazar, Gujarat Pin- 3887120. (hereinafter referred to as appellant) had filed an application dated 01.12.2018 under Right To Information Act, 2005, received in this office on 04.12.2018. Following information was sought by the appellant under RTI Act, 2005.

Please provide the copies of the following related to project imports CTH98.01.

- a) Public Notice No. 91 dated 05.12.1972
- b) Public Notice No. 8 dated 20.01.1976
- c) Public Notice No. 2/88 dated 14.03.1988.

2. The CPIO vide its letter F.No. RTI/Imp-I-57/2018-19 dated 01.01.2019 disposed the above said application stating the same were as being available in public domain i.e. (www.cbic.gov.in and <https://dgft.gov.in>).

3. Aggrieved by the order of CPIO the applicant has filed an Appeal dated 03.01.2019 received in this section on 03.01.2019 on the following ground:-

“The CPIO had not given the information sought for on the grounds that the information was available in the public domain.

The information sought for was neither placed on the internet nor was available as a priced publication in the market and therefore in terms of the decision arrived at by the CIC in the matter of Mr. Ved Prakash Verma (attached) the information sought for may kindly be directed to be provided.”

4. In this regard in the report dated 09.01.19 submitted by CPIO received from concern section (Appraising Main), it has been stated that the information as sought for was almost 20, 47 & 43 years old respectively and were not available with this office, at this juncture and as such the content of the same were not known so as to offer any comment vis-à-vis clauses (a), (c) & (i) of sub-section (1) of Section 8 of The RTI Act, 2005. The applicant had also not provided the purpose of the same or as to what details were there in those documents. Further as per Section 2 (j) of the said Act, "right to information" means the right to information accessible under this act which is held by public authority. Now, since such desired old documents is not available with the office.
5. In view of the above, Appellate Authority has given a date of P.H on 18th January, 21st January & 23rd January respectively but on telephonic conversation appellant has refused to attend the P.H.

DISCUSSION AND FINDINGS

6. I have seen the RTI application and the record as available on file.
7. Considering the information sought for, I do not find any reason to interfere with the order of The CPIO.

ORDER

8. The Subject appeal is disposed on above lines.

o/c
issued by speed post
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29/01/19
EM1491668422N

(Signature)
29.01.19

(Shri Dharendra Mani Tripathi)
Appellate Authority
Joint Commissioner of Customs (Import-1)
New Custom House, Mumbai.

Copy to:

1. Shri Shankar Iyer, Samved, Plot No. 4,
Darbar No. Tekro, Near Nagar, Panchayat Hospital,
Nana Bazar, Gujarat Pin- 3887120.
2. CPIO,
Dy. Commissioner of Customs,
RTI Cell (Import-1), NCH, Mumbai-01.