



प्रधान सीमा शुल्क आयुक्त (सामान्य) कार्यालय

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)

नवीन सीमा शुल्क भवन, बलार्ड इस्टेट,

NEW CUSTOM HOUSE, BALLARD ESTATE,

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टेली फोन न. /Tel. No. (022) 22634330 फैक्स न/Fax No (022)22757416]

फा सं : RTI/APPEAL/GEN/BSM/48/2018-19

आदेश तिथि : 15.10.2018

जारी करने की तिथि : 15.10.2018

आदेश संख्या: 48/2018-19

द्वारा पारित : डॉ. वी. एस. मीना
अपर सीमा शुल्क आयुक्त
सूचना का अधिकार अधिनियम के प्रथम अपीलिय प्राधिकारी
प्रधान सीमा शुल्क आयुक्त (सामान्य) का कार्यालय
नवीन सीमा शुल्क भवन,
बेलाड इस्टेट, मुंबई- 400 001

प्रस्तावना

- 1) यह प्रति उस व्यक्ति के प्रयोग के लिए निःशुल्क है जिसके लिए यह पारित किया गया है।
- 2) सूचना का अधिकार अधिनियम 2005 धारा की 19 (3) के तहत इस आदेश के विरुद्ध अपील, आदेश पारित करने की अंतिम तिथि या आदेश प्राप्ति की तिथि से 90 दिनों के भीतर, केन्द्रीय सूचना आयोग, नई दिल्ली में की जा सकती है।
- 3) इस आदेश में प्रस्तावना सहित कुल 03 पृष्ठ सम्मिलित हैं।

BRIEF FACTS OF THE CASE

Subject: - Appeal filed by Shri Rattan Deep under Section 19(1) of the Right to Information Act, 2005 against CPIO's Order No. RTICG/GEN/163/2018-19 dated 11.09.2018.

This is an order passed in the case of an Appeal dated 15.09.2018, filed by Shri Rattan Deep (hereinafter referred to as the Appellant) received in this office on 18.09.2018 against the order of the CPIO bearing F.No. RTICG/GEN-163/2018-19 dated 11.09.2018.

Briefly the facts of the case are that the Appellant residing at House No. 493, Sector 5, Gurugram, Pin 122001 Haryana had sought following information under the Right to Information Act, 2005 vide his RTI application dated 16.08.2018 received in this office on 20.08.2018, the same are reproduced as under:-

"He requires the under-mentioned information from this office in larger public interest as he is one of the 45 qualified candidates of Inspector of Central Excise, Income Tax etc. Examination, 1982 conducted by Staff Selection Commission, New Delhi for appointment in the post of Examiner and Preventive Officer. His Roll No. was 1510948. Copy of options given for various posts by the persons having following Roll Nos, their respective Rank and the post of Examiner or Preventive Officer who had joined this Custom House in the post of Examiner or Preventive Officer may kindly be provided 5010450, 1550110, 5010742, 1212661, 6711306, 5011258, 1212909, 5011408, 5510221 and 1710779. For the purpose of saving valuable time, he wants to submit following facts for kind consideration that the information sought by him is not a third party information as the information being sought directly relates to him and it has not been declared it by any one as confidential. Accordingly, the information sought by him is beyond the purview of Section 11 of the RTI Act, 2005. The information sought by is also not exempted under any of the clauses of Section 8(1) of the Act. However, if it is assumed that the information falls under clause (e) or clause (j) of sub-section (1) of Section 8 of the Act the same can be provided in terms of sub-section (3) of Section 8 of the Act as a period of 20 years has lapsed since the incident to which the information relates. The information sought is available in personal files of the officers concerned in terms of the Record Retention Schedule of Govt. of India and none of the personal files has become ripe for weeding out so far. It is his fundamental right under Article 14 and 16 of the Constitution of India have been breached by some of the Public Authorities. It is fundamental Principle of good governance that the State shall not discriminate with any one. Accordingly he is in a position to prove that the information is sought in larger public interest without causing invasion of the privacy of any individual. In any case it is submitted that the information may please be provided at least by invoking Section 10 of the Act".

The CPIO/RTI (General), NCH, Mumbai vide his Order F. No. RTICG/GEN-163/2018-19 dated 11.09.2018 has disposed of the same, with respect to information sought by the appellant in the RTI application which is reproduced as under:-

"Point No. 1 – In this regard, it is informed that the information sought is not available in this office as no such record is maintained in this office. Accordingly, the information sought cannot be provided. Reliance is placed in the case of Khanapuram Gandiah v. Administrative Officer and Ors. in SLP (C).34868 of 2009 (decided on January 4, 2010) the Hon'ble Supreme Court of India has held as under :

6. ".....Under the RTI Act, "information" is defined under Section 2(f) which provides:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed."

7. ".... The Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him."

Further, in the matter of CBEC & Anr. Vs. Aditya Bandhopadhyay & Ors in SLP (C) No. 7526/2009 the Hon'ble Supreme Court had held that:

35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public

authority, to collect or collate such non-available information and then furnish it to an appellant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'advice' or 'opinion' in the definition of 'information' in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

GROUND OF APPEAL

Aggrieved by the CPIO's above said reply, the applicant Shri Rattan Deep has filed the present appeal dated 15.09.2018 and the same was received in this office on 18.09.2018 on the following grounds –

"Provided Incomplete, Misleading or False Information."

PERSONAL HEARING

The personal hearing was granted to the appellant on 03.10.2018 and 04.10.2018 at 11.30 am but he did not turn up for the same.

FINDINGS

I have gone through the RTI application dated 16.08.2018, CPIO's reply dated 11.09.2018 and appeal application filed by the Appellant dated 15.09.2018 which was received in this office on 18.09.2018.

It has been observed that the CPIO had denied the information to the Appellant on the ground of non-availability of information with the department as the information pertains is more than 35 years old. Further it is observed that the Appellant has not stated any reason as to how this information sought is relevant to him or the information would be relevant to public activity and interest.


It has also been observed that the appellant has been filing repeated RTIs as well as corresponding appeals regarding the same matter merely changing the text of the RTI or Appeal (e.g. in case of order RTI/GEN/Appeal/BSM/63/2017 dated 22.12.2017, RTI/GEN/Appeal/BSM/56/2017 dated 16.11.2017 among others), despite the fact that he has been time and again informed that the information is not traceable in the department and hence, cannot be made available to him. The Honourable CIC order no. CIC/AD/A/2013/001326 dated 25.06.2014 finds appropriate relevance here wherein the Commission decided that:

- a. No scope of repeating under RTI Act.
- b. Citizen has no right to repeat.
- c. Repetition shall be ground of refusal.
- d. Appeals can be rejected.

In view of the foregoing discussion and Hon'ble CIC's Judgement, I am of the considered view that information cannot be made available as the same is not available in this office and also in the past, the appellant has been informed in this regard and is still filing multiple appeal applications on the same matter.

ORDER

In view of the above, I uphold the order of the CPIO and reject the appeal filed by the Appellant as per the provisions of the RTI Act, 2005.


(DR. B.S. MEENA)
APPELLATE AUTHORITY
ADDL. COMMISSIONER OF CUSTOMS (G),
NEW CUSTOM HOUSE, MUMBAI

Copy to:-

1. Shri Rattan Deep,
House No. 493, Sector 5,
Gurugram, Haryana - Pin 122001.
2. The CPIO RTI (G), NCH, Mumbai.
3. Office Copy