CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SG/C/2010/000591/8580 Penalty
Complaint No. CIC/SG/C/2010/000591

Complainant : Mr. Kuldip Singh Yadav
B-116, Shiv Park
Nangloi, New Delhi-110041

Respondent : Mr. Rajinder Kumar
Deemed PIO & FSO, Circle-12,
Dept. of Food & Supplies, GNCTD
Mangolpuri, Delhi;

Facts arising from the Complaint:
Mr. Kuldip Singh Yadav filed a RTI application with the PIO/AC (North West), Dept. of Food & Supplies, GNCTD on 05/12/2009 asking for certain information. However on not having received the information within the mandated time, a Complaint was filed under Section 18 of the RTI Act with the Commission. On this basis, the Commission issued a notice to the PIO/AC (North West), Dept. of Food & Supplies, GNCTD on 06/05/2010 with a direction to provide the information to the Complainant and further sought an explanation for not furnishing the information within the mandated time.

Subsequently, the Commission received a copy of letter dated 27/05/2010 of the deemed PIO/FSO, Circle-09 addressed to the Complainant vide which information has been provided to the Complainant. Further, it has been observed from the statements made by the FSO circle that information is claimed to have been sent on 19/01/2010. However, to this effect the FSO Circle-09 has neither provided any proof nor given any explanation or clarification to the Commission as was directed in the Commission’s notice dated 06/05/2010. Further, the Commission also received a letter dated 21/06/2010 form the Complainant stating that he has not received any information till date. The fact that the Commission’s directions have not been complied in terms of providing any proof of having sent the information on 19/01/2010 prima facie amounts willful defying of Commission’s direction.

Decision dated 16/07/2010:
The Complaint was allowed.
“In view of the aforesaid, the deemed PIO/FSO Circle-09 is hereby directed to present himself before the Commission on 12/08/2010 at 03.00pm along with his written submissions to show cause why penalty should not be imposed and disciplinary action be not recommended against him under Section 20 (1) and (2) of the RTI Act for defying the Commission’s direction. Further, the deemed PIO may serve this notice to such person(s) who are responsible for having faulted in complying with the Commission’s direction, and direct them to be present before the Commission along with the deemed PIO on the aforesaid scheduled date and time. The deemed PIO should also bring along proof of seeking assistance from other person(s), if any.”
Facts leading to showcause hearing on 20/12/2010:

On non-appearance of the deemed PIO, the Commission again issued a showcause notice to him to appear before the Commission alongwith his written submissions on 17/09/2010. During the show cause hearing held on 17/09/2010, the FSO (Circle-9), Mr. Sukram Pal appeared and submitted his written submissions stating that the initial reply dated 19/01/2010 was provided by the then FSO Mr. Rajinder Kumar through UPC. However, on perusal of the reply dated 19/01/2010 it appears that the information provided to the Complainant was incomplete.

The Complainant had sought information on four queries whereas information had been provided on query-01 only. The complete information had been provided to the Complainant on 28/05/2010.

In view of this, the Commission directed the then FSO Mr. Rajinder Kumar to present himself before Commission on 20/12/2010 at 03.00 pm along with your written explanations to show cause why penalty should not be imposed and disciplinary action not be recommended against him for not providing the complete information to the Complainant within the stipulated time and failing to comply with the provisions of RTI Act, 2005.

Relevant Facts emerging during showcause hearing on 20/12/2010:

Respondent: Mr. Rajinder Kumar, Deemed PIO & the then FSO, Circle-09 presently in FSO, Circle-12, Mangolpuri, Delhi;

The Respondent Mr. Rajinder Kumar has stated that the RTI application dated 05/12/2009 was received in his office on 15/12/2010. The initial reply was furnished to the Complainant by him on 19/01/2010. Mr. Rajinder Kumar has accepted that the information provided to the Complainant was in respect to Query 1 only. The deemed PIO Mr. Rajinder Kumar has not offered any reasonable cause for not providing the complete information to the Complainant. He has also submitted that complete information had been handed over to the Complainant on 30/01/2010 but he has no proof of the Complainant receiving the same. The complete information has been provided to the Complainant on 28/05/2010. The Respondent has also brought a letter from the Complainant acknowledging that the he has received the complete information on 30/09/2010.

The Commission asked the Deemed PIO Mr. Rajinder Kumar to explain why he provided answer only for query-1 instead of providing the information for all the four queries. He states that he was new to the job and therefore did this by mistake.

Section 20 (1) of the RTI Act states, “Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, 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, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees;

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:
Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

A plain reading of Section 20 reveals that there are three circumstances where the Commission must impose penalty:

1) Refusal to receive an application for information.
2) Not furnishing information within the time specified under sub-section (1) of section 7 – 30 days.
3) Malafidely denying the request for information or knowingly giving incorrect, incomplete or misleading information or destroying information which was the subject of the request
4) Obstructing in any manner in furnishing the information.

All the above are prefaced by the infraction, ‘without reasonable cause’.

Section 19 (5) of the RTI Act has also stated that “In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.”

Thus if without reasonable cause, information is not furnished within the time specified under sub-section (1) of section 7, the Commission is dutybound to levy a penalty at the rate of rupees two hundred and fifty each day till the information is furnished. Once the Commission decides that there was no reasonable cause for delay, it has to impose the penalty at the rate specified in Section 20 (1) of the RTI Act and the law gives no discretion in the matter. The burden of proving that denial of information by the PIO was justified and reasonable is clearly on the PIO as per Section 19(5) of the RTI Act.

Mr. Rajinder Kumar, Deemed PIO & the then FSO, Circle-09 has been able to offer no reasonable cause for the delay in providing the information. The RTI application was made on 05/12/2009 hence the information should have been provided to the Complainant before 05/01/2010. Instead it appears that the information was provided to the Complainant only on 28/05/2010 i.e. after the delay of more than 100 days. The Respondent has given written submissions in which he states that he realized only after providing the information on point-01 on 19/01/2010 that he had not provided information on queries 02, 03 & 04. He claims that he gave the information on 30/01/2010 to the Complainant personally but does not have any proof of this. He further states that he was on leave from 08/05/2010 to 06/06/2010 due to the marriage of his daughter. He states that the information which was provided on 28/05/2010 was provided in his absence. The Respondent has provided no reasonable cause for the delay in providing the information to the Complainant. The Commission therefore sees this as a fit case for levy of penalty under Section 20(1) of the RTI Act. since the delay has been for over 100 days the Commission imposes the maximum penalty of `25000/- under Section 20(1) of the RTI Act on Mr. Rajinder Kumar, Deemed PIO & the then FSO, Circle-09.
Decision:

As per the provisions of Section 20 (1) of the RTI Act 2005, the Commission finds this a fit case for levying penalty on Mr. Rajinder Kumar, Deemed PIO & the then FSO, Circle-09. Since the delay in providing the correct information has been over 100 days, the Commission is passing an order penalizing Mr. Rajinder Kumar `25000/ which is the maximum penalty under the Act.

The Chief Secretary of GNCT of Delhi is directed to recover the amount of `25000/- from the salary of Mr. Rajinder Kumar and remit the same by a demand draft or a Banker’s Cheque in the name of the Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2nd Floor, August Kranti Bhawan, New Delhi – 110066. The amount may be deducted at the rate of `5000/ per month every month from the salary of Mr. Rajinder Kumar and remitted by the 10th of every month starting from February 2011. The total amount of `25000/- will be remitted by 10th of June, 2011.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi
Information Commissioner
20 December 2010

CC:
To,

1- The Chief Secretary
GNCT of Delhi
New Delhi

2- Shri Pankaj K.P. Shreyaskar,
Joint Registrar and Deputy Secretary
Central Information Commission,
2nd Floor, August Kranti Bhawan,
New Delhi – 110066