FACTS

By an application of 27.10.2006 Shri A. T. Daryani of Shivalik, New Delhi applied to the UPSC seeking the following information:

“In the light of the RTI Act, I may be provided a certified copy of confidential correspondence with assurance sent to the Min. of Finance under your letter F. No. //15 (29)/2002-AP2, the requisite fee of Rs. 10/- is paid vide cash receipt dated 27.10.96.’

To this appellant Shri A. T. Daryani received a response dated 1.11.2006 from CPIO Shri A. K. Dash, Jt. Secretary informing him as follows:

“The Commission have taken up the issue with DOP&T for providing exemption under section 8 (1) of the RTI Act against disclosure of records, information and procedures, the disclosure of which would compromise the objectivity or fairness of testing or examination process, or processes to determine individual suitability, eligibility for appointment or promotion in Central/ State Government services/ post. Pending a decision in this regard by the govt. the Commission have taken a policy decision that such sensitive information including minutes of DPC and Assessment Sheets containing the grading may not be shared with the applicants. Further, it has been held by the CIC in several cases of appeal that disclosure of complete proceedings in the DPC and grades given by officers to their subordinates may lead to disclosure of the ACRs and as ACRs themselves are barred from disclosure, by inference the DPC proceedings should be similarly barred.’

It was only on 20.1.2009 that appellant Shri Daryani then moved his first appeal with the following payer:

“Sh. A. K. Dash, Jt. Sec. UPSC vide his letter F.2/15(12)/2006-AP-2 dated 1.11.2006 had forwarded my request to Deputy Sec &
CPIO, Min. Of Finance and requested me to await the information from him.

It is more than two years that I have neither received any reply from UPSC nor Min. Of Finance. I fail to understand as to why the CPIO, UPSC preferred to forward my request to CPIO/ Dy. Sec. Min. Of Finance when the request pertained to UPSC file.

I herewith appeal to you, Sir, to direct the CPIO, UPSC to look into my complaint and send me the required information since I made a request to CPIO, UPSC.”

In response the CPIO, UPSC, by then Shri S. C. Srivastava, Under Secretary, in his letter of 12.2.2009 provided the following information:-

“It is stated that there are a total of 12 pages of the minutes of the DPC held on 5.9.2003 for which a sum of Rs. 24/- may please be deposited with the Accounts Officer, UPSC in any mode of payment prescribed in the Right to Information (Regulation of Fee and Cost) rules, 2005, before the same are provided to you.”

This amount was paid and the information provided but appellant Shri Daryani moved an appeal on 20.1.2009 of which we have no copy of record but regarding which Appellate Authority Shri Rajiv Srivastava had noted as follows in his order of 28.4.2009:-

“The appellant preferred present appeal dated 19.2.2009 to the Appellate Authority, UPSC stating that the CPIO, UPSC has violated sub-section 3 (a) of section 7 of RTI Act by forwarding his request dated 27.10.2006 to Ministry of Finance and forgot to reply within the prescribed time under the Act. He has requested to fix the responsibility for violation of section 7 of the Act.”

In this order in appeal Shri Rajiv Srivastava JS (J&V) has held as follows:-

“When the CPIO transferred the application dated 27.10.2006 of the appellant, a proposal of the Commission was pending before the DOP&T for exemption under section 8 (1) of the RTI act. Pending decision of the DOP&T in this regard, the Commission had taken a decision not to disclose such record under RTI Act. Therefore, the CPIO, UPSC had furnished the factual position as on that date to the appellant by endorsing a copy of the letter addressed to the CPIO, Ministry of Finance. Later, by the time at the first appeal dated 20.01.2009 of the appellant was received, a decision had been taken by the Commission to share the minutes of the DPC under RTI Act. Therefore, the appellant was provided the same.
In light of the above. I don’t see any violation committed by the CPIO, UPSC in this case."

Shri Daryani has then moved his second appeal before us where his prayer is for compensation for the loss and detriment suffered as below:-

“
I Rs. One lakh for putting a senior citizen in un-necessary hassle.
II Rs. 25,000 for administrative expenses.
III Any action deemed fit by this Appellate Office.”

Appellant has gone on to the argument that because of failure to obtain the information in time, he lost the case before the Central Administrative Tribunal (CAT) and his career stood ruined.

The appeal was heard on 24-9-2010. The following are present.

**Appellant**
Shri A. T. Daryani

**Respondent**
Shri S. C. Srivastav

CPIO Shri S.C. Srivastav, Under Secretary UPSC submitted that although a response had been given to appellant Shri Daryani as early as 1.11.2006, which was within the time mandated by section 7 (1), he has appealed only on 22.1.2009. Since the policy of UPSC had undergone a change in the meantime a sympathetic view was taken on this appeal, otherwise time barred, and information provided on payment of the requisite fee. CPIO admitted that the documents provided were not certified to be true copies but these were readily accepted when they were personally handed over to appellant Shri Daryani.

Appellant Shri Daryani on the other hand submitted that the failure to provide documents otherwise accessible to him under the Act had led him to loss of promotion in 1997 which had a cascading affect so that he lost three promotions and his juniors superseded him; his appeal was rejected by CAT for his failure to produce the requisite documents. In response to a question as to why he had not moved an appeal immediately on refusal Shri Daryani submitted that he had been in communication with UPSC but had been extended shabby
treatment. Although he himself was a government servant he was made to run from pillar to post in the UPSC like a peon. It is only when he became frustrated with this treatment then he moved his appeal.

DECISION NOTICE

Secretary, UPSC will please take note of the complaint of Shri Daryani of the mistreatment of an RTI applicant in the premises of UPSC and so restructure the system as to make it RTI friendly. On the other hand even if we accept the argument of Shri Daryani, there is a time limit mandated by the law, which we require to be observed, and there was nothing to prevent appellant from moving his appeal even while pursuing the matter at the level of CPIO where as per his own admission he was being treated shabbily.

Nevertheless, on the question of failure of CPIO to provide him the information sought at the initial stage we must observe that the initial policy of that public authority was for refusing the DPC. Our ruling in light of the RTI Act has led to a change in the policy of UPSC. The CPIO cannot be held liable for penalty simply because he has complied with UPSC policy, although that policy was misplaced. He has in fact responded to the RTI application of Shri Daryani well within the time mandated by subsection (1) of section 7. There is, therefore, no liability for penalty.

On the other hand while we have noted that the information sought by appellant Shri Daryani has now been provided in response to his appeal, the demand of CPIO for payment of Rs. 24/-, which has in fact been paid is in violation of section 7 (6). The DOPT is by no means an authority under the law to determine the application of exemption under section 8 (1). If the UPSC had a grievance regarding a decision of this Commission the recourse would have been to obtain a stay in Writ before the High Court under Article 226 of the Constitution. This was not done and, therefore, UPSC has forfeited the right to charge fees with regard to this application. The initial fee charged for the application that was responded to will remain. However the fee of Rs. 24/- being the cost of information
provided will now, therefore, be refunded to appellant Shri Daryani within 10 working days of the receipt of this decision notice under intimation to Shri Pankaj K. P. Shreyaskar, Jt. Registrar, Central Information Commission.

The remaining question is only of whether compensation has become due. The loss or detriment suffered according to appellant Shri Daryani stems from his being passed over in promotion from 1997. However, his application is dated 27.10.2006, and it is hence not possible to co-relate the two events. It could, however be argued that had the information sought been provided in the first instance appellant Shri Daryani could have contested the matter more effectively. However, this is a question that must remain hypothetical and we must come to the conclusion then there can be no realistic assessment of the loss or detriment suffered. Moreover, the failure of appellant to move an appeal for nearly two years on refusal of his initial request, and the ready condoning of the delay, hardly bears out his claim of loss or detriment suffered. But because the UPSC has undoubtedly erred in refusing information initially on grounds patently invalid, this Commission directs that a token compensation of Rs. 5000/- be provided to appellant Shri Daryani for the detriment suffered in the form of psychological stress arising from the failure of UPSC to provide the information to Shri Daryani required for his career development, in the first instance. This compensation will be paid to Shri Daryani within 10 working days of receipt of this decision notice under intimation to Shri Pankaj K. P. Shreyaskar, Jt. Registrar, Central Information Commission. The appeal is thus allowed in part. There will be no other cost

Reserved in the hearing with regard to issue of compensation. The complete decision is announced in open chamber on this twenty-seventh day of September 2010. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
27-9-2010
Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)
Joint Registrar
27-9-2010