

MEGHALAYA INFORMATION COMMISSION, SHILLONG

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No.MIC/Appeal/5/2009/17,

Shri Lamsalanki Pariat of Iawmusiang Main Road, - Appellant
Tympang Club, Jowai

-Vrs-

(1)D.A.A., Meghalaya Public Service Commission, Shillong }
(2)Shri P.E.War, P.I.O., M.P.S.C., Shillong } Respondents

5-3-2009

ORDER

The Appellant and the Respondents are both present in the Commission today.

The case of the Appellant is that he had applied for information from the Respondent No. 2 viz., the PIO, office of the Meghalaya Public Service Commission, Shillong vide his application dated 1-10-2008 duly addressed to him along with the application fees of Rs.10/- duly received by the PIO on 1-10-2008.

The information includes the following:

- (i) copy of the question papers of Political Science and General Studies
- (ii) copy of his answer scripts
- (iii) copy of model answers for the above subjects
- (iv) The cut off marks for the above subjects
- (v) The process and procedure followed in the evaluation of the answer scripts.
- (vi) Inspection of the original copies before taking copies of the answer scripts and the model answers.

Failing to receive any response from the PIO within a period of 30 days as required by Law he had preferred the First Appeal before the DAA viz., the Secretary, Meghalaya Public Service Commission, Shillong on 24-11-2008.

Meanwhile the PIO vide his letter dated 26-11-2008 responded to his application as follows:

“(i) copy of question papers of Political Science and General Studies were allowed to take by the candidates when examination is over.

(ii) & (iii) it is exempted as per clause (j) of Section 8 of the RTI Act.

(iv) The cut off marks desired cannot be applied in view of Section 8(1)(j) of the RTI Act, however, marks obtained by him:

General Studies - 45
Political Science - 117.50
Total = 162.50

(v) Evaluation has been processed by Optical Scanner by reputed & Trustworthy Consultancy Agency.

(vii) – OMR Sheets were generated and evaluated through computerization process”.

In response to the Appeal dated 24-11-2008, the DAA vide letter dated 15-12-2008 disposed of the Appeal as follows:

“(a) There is no Law of penalizing the PIO for the delay.

(b) & (c) Commission’s stands with the reply already furnished by the PIO vide letter No. MPSC/RTI/3/08-09/2 dated 26-11-2008.

However, the PIO is directed to supply the question paper of General Studies and Political Science”.

Not satisfied with the decision of the DAA, the Appellant preferred the instant appeal before this Commission.

The above information has been sought by the Appellant from the PIO, who is the Under Secretary to the Meghalaya Public Service Commission, Shillong in connection with the Preliminary Examination, 2007 conducted by the Meghalaya Public Service Commission on 26th July, 2008. The main objective of the Preliminary Examination is to reduce the number of candidates who would be called to participate in the Final Written Examination in the combined Civil Services Examination for filling up vacancies in the Meghalaya cadre of the Meghalaya Civil Service and the Meghalaya Police Service. Therefore, by its very nature this examination is a qualifying examination which qualifies candidates securing above certain total marks known as the cut off marks for appearing at the Main Written Examination. The Appellant is one of the candidates who incidentally did not qualify for the Main Written Examination. Though the Appellant/ candidate never disclosed before this Commission his academic performances at the various examinations, it is presumed that he is a bright student and failure to qualify for the Main Written Examination might have therefore come as a shock to him. This has prompted him to make the request for the information before the Respondents and subsequently through the instant appeal before this Commission.

The Appellant vide his original application presented before the PIO requested 6(six) items of information. Out of these, it appears that the PIO has made a positive response only on item No. 5 viz., “how were the answer script evaluated and what procedure followed up during evaluation”. Subsequently while disposing the appeal, the DAA had directed the PIO to furnish the reply on item No. 1 of the original application for information viz., “copy of question papers of Political Science and General Studies”. Therefore what has not been furnished to the Appellant which the DAA claimed exemption under section 8(1)(j) are the following:

- (i) Copy of his answer scripts of the indicated subjects.
- (ii) Copy of model answers for the indicated subjects.
- (iii) The cut off marks for the indicated subjects.

- (iv) Inspection of original copies of answer scripts and the model answers of indicated subjects.

The DAA has been asked to file a report giving details of consideration in deciding that the above information are exempted under section 8(1)(j) of the RTI Act, 2005. The extract from letter No. MPSC//RTI/3/08-09/ dated 7-2-2009 of the DAA is produced below:

“If the information 2 & 3 (copy of my answer scripts and copy of model answers for the above subjects) as sought for by the Applicant/Appellant are furnished I am afraid that it will open a flood gate to other candidates to resort to the same course of action as done by the Applicant/Appellant and in the process may make the Commission unworkable. In this regard the Commission may be pleased to refer to paragraph 5 of the appeal petition. In the instant case, the disclosure of the answers sheet of an individual/applicant/candidate if permitted would result in rendering a flood gate of applications of such information under the Right to Information Act, 2005”.

“That with regard to the information sought in paras 4 & 5 of the application dated 01-01-2008, I beg to state that the Commission has no objection to furnish the cut off marks as sought for by the Applicant/ Appellant”.

“Mention may be made herein that the answer script and the evaluation has been processed by trustworthy examination consultant agency consisting of the experts in the field. As stated the answer scripts were evaluated by an expert examination consultant agency and as such the information sought for the by Applicant comes under the exemption specified under the provision of section 8(j) of the RTI Act, 2005 and as such the Commission has not committed any irregularity or illegality in not disclosing the information as sought for. Disclosure of the information as sought for at No. 5 in the application dated 01-01-2008 may compel the Commission to disclose the identity of the examiner and other persons involved in the process of evaluation and correction of the answer scripts and as such if the Commission is compelled to disclose such information the public examination may be at jeopardy which may make the system unworkable in practice”.

What emerges from the above extract of the written statement made by the DAA is as follows:

- (i) Copies of question papers on Political Science and General Studies have been furnished.
- (ii) There is no objection to furnish the information on cut off marks to the appellant.
- (iii) The process and procedure for evaluation of answer scripts.

Has been briefly mentioned in the reply furnished by the PIO.

It is not understood whether the RTI information on the question of how were the answer scripts evaluated and what is the procedure followed during evaluation? - is existing or not? What has been furnished by the PIO appears to be an

explanation rather than an R.T.I. information. Therefore, the issues for decision by the Commission are –

- (i) Whether copies of the answer scripts be made available to the appellant
- (ii) Whether copy of the model answers for the subjects on Political Science and General Studies be made available to the appellant.
- (iii) Whether the process and procedure for evaluation of the answer scripts be disclosed in details.
- (iv) Whether the right of inspection of original copies of information at (i) and (iii) above should be made accessible to the appellant.

The appellant has been denied the above information both by the PIO and the First Appellate Authority citing the provisions of Section 8 (1) (j) of the RTI Act as the ground for such denial. This particular clause of the Act states:

“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizens”:-

“information which relates to personal information disclosure of which has no relationship to public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person”

The Meghalaya Public Service Commission has been constituted under the provisions of Article 315 of the Constitution of India. Article 320 states that it shall be the duty of the Union and the State Service Commission to conduct the examination for appointment to the services of the Union and the services of the State respectively. Hence, the main function of the Meghalaya Public Service Commission is to conduct examination for appointment to the services of the State of Meghalaya. It is in exercise of such function of the Meghalaya Public Service Commission conducted the Preliminary Examination on 26th July, 2008. As has been mentioned, the main objective of the Preliminary Examination is to reduce the number of candidates which would be called to participate in the Final Written Examination in the combined Civil Service Examination for filling up of vacancies in the Meghalaya Cadre of the Meghalaya Civil Service and the Meghalaya Police Service. As already mentioned, the present appellant is one of the candidates who appeared at the Preliminary Examination but could not qualify himself for the Main Written Examination.

The Meghalaya Public Service Commission in exercise of its function conducted many such public examinations from time to time in the public interest. In fact, most of the educated unemployed youths who are academically qualified persons for appearing in such examination are eagerly looking forward for an opportunity to appear in such examination. The fact that thousands and thousands of them

appeared in such examination when conducted by the Meghalaya Public Service Commission is a clear indication of the larger public interest involved in it.

Once an examination is held by the Meghalaya Public Service Commission, be it, a Preliminary Examination or the Main Written Examination, every examinee or candidate are eagerly waiting for the result with a high expectation. Once the result of assessment by the examining body or authority falls short of their expectation, everyone becomes interested to know how the assessment is made? Whether the answer scripts have been duly evaluated and marks duly allotted to each answer. Many of them take it as a learning experience and therefore required such information to learn from their mistakes and deficiencies to improve themselves. This might have happened with most of the candidates, who appeared for the Preliminary Examination conducted by the Meghalaya Public Service Commission on 26th July, 2008 and the appellant is one of them.

Therefore, to say that the information sought for by the appellant on matters which are related to such public examinations is a personal information, the disclosure of which has no relationship to any public activity or interest is contrary to facts and therefore, not acceptable to this Commission.

In this connection, this Commission refers to the decision of the Hon'ble High Court of Delhi in WP(C)No. 17583/2006; U.P.S.C. –Vrs- Central Information Commission and Ors regarding accessibility of the copy of model answers to the appellant. A relevant portion of the judgment of the Hon'ble High Court in the above case is reproduced below:

“With respect to the disclosure of the model answer to the question, I am of the view that though the UPSC had some rights over them, the disclosure would be in larger public interest. Candidates have the rights to know where they went wrong. One sure way of informing them in this regard is by disclosing the model answer”. Such decision of the High Court is also in line with the decision of the Central Information Commission in the same matter.

The Commission also refers to the decision of the Hon'ble High Court of Kolkata in WP No. 22176 of 2007, Pritam Roj –Vrs- University of Kolkata regarding questions on whether answer scripts should be furnished to the examinee/candidates; in which case, the Hon'ble High Court of Kolkata clearly decided that the examinees/candidate has accessed to the evaluated answer scripts under the Act and is not exempted under any of the exceptions from disclosure of section 8 of the Act.

The Commission observed that the DAA in her written statement has expressed an apprehension that making available the answer scripts or the model answers to the appellant will open the flood gate to other candidates to come forward and make same demand through the RTI Act rendering the Commission unworkable. While appreciating the arguments of possible hardships which the Public Authority may be facing if the information is made accessible, this Commission

would like to make it clear that hardship factor is not the ground for denial of information under section 8 or section 9 of the RTI Act.

In view of what has already been discussed above and in conformity with the decisions arrived at by the Hon'ble Delhi High Court and the Hon'ble Kolkata High Court in the above cited cases, this Commission allowed the instant appeal and decides as follows:

- (1) The MPSC shall within a period of 15 days from the date of this Order disclose the cut off marks to the appellant.
- (2) The MPSC shall within a period of 15 days made available the facilities for inspection of the original answer scripts and the model answers to the appellant and furnish the relevant copies to him.
- (3) Regarding the process of evaluation and assessment of answer scripts, the MPSC shall consider disclosing the detail information if it exists in such form as defined under section 2(f) of the RTI Act, without disclosing names of the persons involved in such process.
- (4) This Commission noted that the PIO received the original application from the appellant on 1-10-2008 but did not response to the appellant within the statutory period of 30 days. It was only on 26-11-2008 that Shri P.E.War, P.I.O., Meghalaya Public Service Commission stated vide No. MPSC/RTI-3/2008-09/2 stated that he is **directed** to furnish the information. Shri P.E.War is the P.I.O. designated by the public authority under the Law. He is, therefore, an officer of the Law and is not subject to any direction to furnish the information. It is his duty as an officer of the Law to apply his mind and to act independently. Besides, the response which the PIO indicated through the above letter is the denial of the information and not furnishing it per se, which adds insult to injury.

The PIO has been asked to show cause under section 20 of the RTI Act why penalty should not be imposed upon him for the delay of 25 days from 1-11-2008 to 25-11-2008 in furnishing the information to the appellant. The PIO vide his letter No. MPSC/RTI-3/2008-09/38 dated 7-2-2009 stated that the delay was not intentional or deliberate but put the blame on the official movement of files in his public authority. The Act does not provide any extension of time beyond the statutory period of 30 days to make up for any delay in providing information, therefore, the ground put forward for delay is not at all justifiable. Therefore, in accordance with the provisions of section 20 of the RTI Act, Shri P.E.War, PIO, Meghalaya Public Service Commission is hereby imposed a penalty of Rs.6250/- (25 days x Rs.250/-) he shall deposit the above amount to the Treasury under the Head of Account **'0070-Other Administrative Services etc., 60-Other Services, 118-Receipt under the Right to Information Act, 2005 Volume-I as under:- (02) Fees & Fines for the Penalty Amount Imposed by the Commission'** with

intimation to this Commission within a period of 30 days from the date of this Order.

Before parting with this case, the Commission in exercise of the power conferred under section 19(8)(a)(iii) recommends that the public authority of the Meghalaya Public Service Commission publish suo motu the cut of marks and the marks secured by all candidates in such Preliminary Examinations or other qualifying examinations conducted by it, to serve a larger public interest.

Under the provision of section 19(7) and (9) of the RTI Act the decision of this Commission is binding and nothing can change it except by a Writ jurisdiction of the High Court or the Supreme Court of India.

Case disposed of.

(G.P.Wahlang)
C.I.C.

Memo.No.MIC/Appeal/5/2009/17-A

Dated Shillong, the 5th March, 2009

Copy to:-

- (1) D.A.A., Meghalaya Public Service Commission, Shillong.
- (2) Shri P.War, P.I.O., Meghalaya Public Service Commission, Shillong.
- (3) Shri Shri Lamsalanki Pariat of Iawmusiang Main Road, Tympang Club, Jowai, Jaintia Hills District, Meghalaya, Phone – 9862336584.

(P.T.Rani)
Under Secretary,
Meghalaya Information Commission,
Shillong.