

Central Information Commission

Neerja Kathuria vs Directorate Of Education on 31 July, 2020

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Central Information Commission

,
Baba Gangnath Marg, Munirka
, New Delhi - 110067

/Second Appeal No. CIC/DIRED/A/2018/159674
CIC/DIRED/A/2018/160902

Smt. Neerja Kathuria

...

/Appellant

VERSUS

PIO/DDE, Directorate of Education,
Dist. South, RK Puram, New Delhi
RTI Branch

...

/Respondents

Through: Dr. Ashok Kumar Tyagi,
PIO/Dy. Director, Zone 23 present
Through audio conference

Date of Hearing : 16.07.2020
Date of Decision : 31.07.2020

Information Commissioner : Shri Y. K. Sinha

Since both the parties are same, the above mentioned cases are clubbed together for hearing and disposal.

Case No.	RTI Filed on	CPIO reply	First appeal	FAO	2nd Appeal filed on
159674	06.06.2018	25.06.2018	11.07.2018	06.08.2018	26.09.2018
160902	06.06.2018	25.06.2018	05.07.2018	31.07.2018	01.10.2018

(1) CIC/DIRED/A/2018/159674

The Appellant filed an RTI application dated 06.06.2018 seeking information on the following 12 points pertaining to the recruitment process for the selection of Headmistress (Primary School) at Delhi Police Public School, S.J. Enclave, New Delhi- 29 was held in August, 2013:

1. Whether the said post of Headmistress (Primary School) is the Promotional Post or the post of Direct Recruitment.
2. Whether the feeder post of Headmistress is PRT or NTT or both are eligible.
3. Whether the Recruitment Rules were followed in the recruitment process as per the guidelines of the DOE and as per DSEAR, 1973.
4. How many departmental and external candidates were scrutinized and called for the interview?
5. What was the criterion adopted for the selection of the said post whether direct recruitment or promotional mode?

6. What kind of weightage/relaxation was given to the departmental/internal candidates in view of seniority/experience/qualification/length of service?
7. Name of the members of the Selection Board and their designations at that time?
8. Why the interview was held in the month of August 2013 despite the said post, was advertised in the month of March 2013.
9. What were the reasons of the delay and why the gap was so long?
10. Name of the person/body deputed for the initiation of the entire process of selection of the above said post?
11. Provide the copy of the above said post along with the details of the marks given each candidate by the members of the selection board.
12. Copy/copies of the noting's of the entire process which were got approved by the Chairperson.

[Queries are verbatim]

PIO/DDE (South), vide letter dated 25.06.2018 forwarded the reply to the Appellant provided by DDE(Zone-23).

Dissatisfied with the reply received from the PIO, Appellant filed a First Appeal dated 11.07.2018. FAA vide order dated 06.08.2018 stated as follows:

"... The Hon'ble High Court vide its Order dated 13-07-2017 in WPC 4172/2017 in Shikha Bagga Vs. Public Information Officer, Dte. of Education & ANR has restricted the information sought to be provided in respect of an unaided public school and has decided that they are bound to submit only limited information and the RTI application cannot be transferred to them as they are not Public Authority as per Section 2(h) of RTI Act, 2005. Since the requisite available information has already been provided, the instant Appeal is dismissed accordingly."

Feeling aggrieved as dissatisfied, Appellant approached the Commission with the instant Second Appeal.

Facts

emerging in Course of Hearing:

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, audio hearings were scheduled after giving prior notice to both the parties.

The Appellant along with Shri Lalit Ganesh Sharma, Advocate participated in the hearing on being contacted on the Appellant's telephone.

Appellant stated that she is one of the founder teachers of the Delhi Police Public School, Safdarjung Enclave, New Delhi and has completed 32 years in teaching profession. She stated that the aforesaid School is affiliated to CBSE and also adheres to the Rules/Guidelines formulated/framed by the Directorate of Education. She gave a brief background of the instant RTI Application stating that she was enlisted as NTT (Nursery Teacher's Training) in 1989 and since then she is rendering her services with utmost devotion, dedication and honesty. As a result, the Appellant's name was

recommended by the Management and she got an opportunity to work as Head of the School (on deputation in the year 2005-07) at one of the DPPS branches at Wazirabad, Delhi. As such, there was no permanent post of Headmistress (Primary) before 2013. That in August, 2013, a process to fill up the post of Headmistress for the primary wing was initiated and accordingly the post was advertised in all the leading newspapers. Consequently, several candidates had applied for the said post, including the Appellant. She specifically mentioned that the aforesaid post is only a promotional post and as such there is no RR (Recruitment Rules) for direct recruitment. In spite of that, an advertisement was published for direct recruitment.

Upon being asked as to whether any complaint was filed in this regard, Appellant clarified that she had filed a complaint before the Directorate of Education, R.K. Puram, Zone-23 to which no reply has been received till date. Prior to this complaint, a written representation was also given to the school's management. The Commissioner of Police, Delhi is the Chief Patron of the School and Shri S.N. Juneja is the Executive Secretary who is a retired Government official.

Shri Lalit Ganesh Sharma, Advocate intervened and stated that the management of the School has taken necessary action and has since rectified/set-right the issues/concerns raised in the aforesaid written representation of the Appellant. But, with regard to the instant RTI Application, the school has categorically replied that they are an unaided private school which is not a public authority.

The Appellant added that she is still working as a teacher in the primary section and presently Ms. Vaibhavi Kulkarni is the Headmistress, Primary Section. She stated that she is the senior most teacher in the primary wing having an excellent service record but alleged that due to conspiracy of the Executive Secretary, who misguided the management and twisted the recruitment rules, so as to appoint Ms. Vaibhavi Kulkarni as Headmistress, despite knowing the fact that when DPC (Departmental Promotion Committee) is constituted, the Appellant could not have been ignored since she was senior to Ms. Vaibhavi Kulkarni. She also alleged that the Executive Secretary, for reasons best known to him, has deliberately misguided the Selection Board/Committee and disregarded her name for the post of Headmistress and recommended Ms. Vaibhavi Kulkarni instead by manipulating the marks given by different members of the Board/Committee. Since she did not receive any satisfactory reply either from the management or from the Directorate of Education, as a last resort, she had to resort filing an RTI.

Respondent is represented by Dr. Ashok Kumar Tyagi, PIO/Dy. Director, South District-Zone 23 through audio conference. At the outset, he submitted that since the Delhi Police Public School is an un-aided private school, the Directorate is not the custodian of records. Upon being asked as to what measures/action can be taken by the Respondent when they receive a complaint against a private school, PIO explained that they have a mechanism to deal such cases. He stated that whenever a complaint is received, the Respondent will ask for a statement from the concerned school and if it is found that there has been a grave error/violation of law, an inquiry committee is set- up. After receiving the inquiry report, they look into the aspect further as to whether any violation of relevant Rules/Circular/Guidelines and provisions of DSEAR (The Delhi School Education Act & Rules, 1973) has taken place. In case any violation has been committed, a case is registered against the school and sent to Dy. Director, Private School Branch who issues a show-cause notice and the

ensuing action follows as per the extant provisions of law. Nonetheless, the PIO volunteered to address the issues raised by the Appellant. He also requested the Appellant to visit his office/chamber on any working day with all the relevant documents/records in connection with the instant RTI Application as well as the complaint filed before the Directorate of Education, R.K. Puram, Zone-23.

(2) CIC/DIREC/A/2018/160902 The Appellant filed an RTI application dated 06.06.2018 seeking information on the following 6 points pertaining to application/representation submitted by her to Delhi Police Public School, B-4, Safdarjung Enclave, New Delhi-29 on 15.03.2018 addressing some serious issues therein for taking necessary action and despite seeking action taken report along with two reminders thereafter, she has not received any information as such:

1. What action has been taken against Ms.Vaibhavi Kulkarni (Headmistress) for concealing the fact that she was residing in a Govt. Accommodation at Delhi Cantt. & Lodhi Road and also drawing HRA. Whether recovery of that period has been effected or not?
2. What action has been taken against Ms. Bhavna Madan who has leveled false allegation of sexual harassment against the Ex-Principal -Dr. Prashant Vasudev? Besides, earlier she had submitted resignation with immediate effect because of her long absence from her duties, so under what circumstances her resignation is withdrawn/not accepted and she has been given permission to rejoin the duties, despite knowing the fact that she is a psycho / neuro patient and as per the code of conduct, no teacher who is medically unfit can undertake this nature of job which involves teaching/handling small children at their tender age.
3. What action has been taken against the appointment of Ms. Mini Malik as NTT who is not possessing professional qualification from a recognized university/ institution and who is involved into the conspiracy of the appointment of such candidates which is against the RR rules also.
4. Why Ms. Mamta Gupta is managing as In - charge Nursery and KG admissions for the last 8 to 10 years, whether there is no competent teacher at DPPS who can discharge this duty (Admission I/C) with utmost responsibility.
5. Reason of nomination of Ms. Vaibhavi Kulkarni as subject expert in the process of recruitment of teacher's (NTT, PRT, TGT). How many times she has been nominated as subject expert, may be intimated?
6. As to why the Book Shop contract is awarded to Mr. Kamal (Book & Stationary Seller/supplier within the school premises) every year. How many times his contract has been renewed? What action has been taken against him for selling pirated books and outdated /old stock notebooks, Sketch books, Scrapbooks etc. How he has been permitted to sell inferior quality of stationary items? What action has been taken against him for supplying less quantity of stationary articles despite of receiving full payment in advance from the parents?

[Queries are verbatim] PIO/DDE (South), vide letter dated 25.06.2018 forwarded the reply to the Appellant provided by the concerned PIO.

Dissatisfied with the reply received from the PIO, Appellant filed First Appeal dated 05.07.2018. FAA vide order dated 31.07.2018 upheld the reply of PIO.

Feeling aggrieved as dissatisfied, Appellant approached the Commission with the instant Second Appeal.

Facts emerging in Course of Hearing:

A written submission has been received by DDE (Zone-23) vide letter dated 10.07.2020 wherein he has stated as under:

"Here, it is pertinent to mention that as per DoE's Circular dated 01/11/2017 all DDE's Districts have been directed not to transfer RTI/DRTI applications filed under RTI Act 2005/DRTI Act 2001 to Private Unaided Recognized Schools as they are not Public Authority as per Section 2(h) of RTI Act 2005...."

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, audio hearings were scheduled after giving prior notice to both the parties.

The Appellant along with Shri Lalit Ganesh Sharma, Advocate participated in the hearing on being contacted on Appellant's telephone.

The Appellant requested the Commission to decide the instant case on merits.

Respondent is represented by Dr. Ashok Kumar Tyagi, PIO/Dy. Director, South District-Zone 23 through audio conference. He submitted that he will abide by the order of the Commission, if any in the matter.

Decision:

Upon perusal of the facts on record as well as on the basis of the proceedings during hearing, Commission observes that the PIO/DDE, Zone-23 has informed the Appellant in case no. CIC/DIRED/A/2018/159674 that the information sought is not maintained at zonal level and in case no.

CIC/DIRED/A/2018/160902, Appellant has been informed that since the concerned representation has been filed with the Delhi Police Public School and the same has not been received by the Respondent, no information is available in their zone. Further, the FAA vide orders issued in both first appeals has referred to a judgment of Hon'ble High Court of Delhi in W.P. (C) 4172/2007 in the matter of Shikha Bagga vs. Public Information Officer, Directorate of Education & Anr wherein the Hon'ble Court has categorically held that only limited and available information should be divulged

to the RTI Applicant and that the RTI Application cannot be transferred since unaided private schools are not a Public Authority as per Section 2(h) of the RTI Act.

Commission endorses the obiter dictum and ratio decidendi in the aforesaid judgment of the Hon'ble High Court of Delhi. However, it cannot accept the averments of the Respondent justifying the non-disclosure of information based on such grounds. Whether the Delhi Police Public School is a public authority or not is not the determining factor in the instant case, but the queries raised by the Appellant in case no. CIC/DIRED/A/2018/159674 directly relates to her complaint as well as certain allegations with regard to appointment of Ms. Vaibhavi Kulkarni, Headmistress, Primary Section of the aforesaid School and in case no. CIC/DIRED/A/2018/160902, the queries raised by the Appellant pertains to serious issues/malpractices that have allegedly taken place in the Delhi Police Public School, Safdarjung Enclave, New Delhi.

After perusing the relevant provisions of the DSEAR, 1973, Commission is of the considered opinion that the aforesaid information should be available with the Respondent, as a monitoring and regulatory agency of the State. The Respondent's responsibility does not end with simply reiterating the school's stance. Most of the information sought in the aforesaid RTI Applications should be accessible to the Respondent as per provisions of the DSEAR, 1973. The Respondent's reply which primarily demonstrates their helplessness, citing the outright denial from disclosure of any information to the Appellant, on the grounds that the school is a private unaided school and does not fall within the ambit of the RTI Act.

The role and responsibility of the office of the Directorate of Education as per the DSEAR, 1973, is clearly that of a supervisory and regulatory authority over all the schools operating within the Union Territory of Delhi and to ensure quality education is imparted to the students in Delhi schools. The DSEAR, 1973 specifically contains provisions and stipulations that are applicable exclusively to "unaided schools", meaning thereby that the unaided schools do fall within the purview of the DSEAR, 1973 and are answerable to the Directorate of Education as well as accountable on multiple counts before the Respondent. Every school which is recognised by the Directorate of Education is amenable to the provisions of the DSEAR, 1973. It includes Sections 50, 55 and 56 which lay down inter alia specific conditions for grant and for suspension/withdrawal of the recognition granted to a school. Thus it can be inferred that violation of the specific provisions as applicable to the unaided school/s can lead to suspension or withdrawal of the recognition of the school. Section 15 of the DSEAR, 1973 provides the specific terms and conditions of contract of service of the employees of the unaided schools and violation of these provisions should be inquired into and monitored by the Directorate of Education, in terms of the DSEAR, 1973.

Rule 190 of the DSEAR, 1973 provides for inspection and supervision of Schools:

(1) The Director shall be responsible for the supervision and inspection of all recognised schools, whether aided or not.

It is unfortunate to note that the Directorate of Education, instead of exercising its regulatory and supervisory authority over the school, has resorted to the role of merely conveying the decision of

these schools.

It has been held on numerous occasions in the past by the Commission that the Directorate of Education cannot plead helplessness or powerlessness and choose to hide behind the school's denial of information, simply parrotting their lines. A co-ordinate Bench of this Commission had decided on a similar subject matter, in the case of *Rajwanti Agarawal vs. Dte. Of Education [CIC/AD/A/2013/000122-SA]* vide order dated 20.05.2014 holding as follows:

"5. The Commission in a number of cases involving the respondent authority came across cases whereby they have shown their inability to procure information if the school involved was private unaided school. The respondent authority had submitted in those cases that the information was not provided to them under Rule 180 of the Delhi School Education Rules, 1973 and that they had no other source to collect the information or that it was not under their possession. The Commission finds it necessary to explain certain significant provisions of the Delhi School Education Act & Rules, 1973 so that the respondents understand that they were given enough regulatory power to secure the information from schools.

The Respondent public authority is duly empowered by the DSEAR, 1973 and is expected to exercise proper control and monitor the functioning of the schools by making it necessary for schools to submit necessary documents in terms of the DSEAR, 1973. The documents mandatorily submitted by schools to the public authority, must contain the necessary information, accessible to any citizen of this country, under RTI Act, 2005. The Directorate of Education through its Director is empowered with definite inherent powers to ensure that the Directorate possesses significant amount of information about the schools in the form of mandatory documents and returns submitted by the school. Hence, in the light of this legal and factual position, the Commission cannot accept the contentions of the Respondent public authority that the information sought in the aforesaid RTI Applications are not available/maintained with them.

Notwithstanding the fact that Dr. Ashok Kumar Tyagi, PIO/Dy. Director has voluntarily offered to address the issues and concerns raised by the Appellant pertaining to the subject-matter of the aforesaid RTI Applications, the Commission deems it fit to direct the PIO to facilitate inspection of all the documents/records in this regard and by exercising inherent powers vested by the DSEAR, 1973, provide assistance to the Appellant in addressing the queries raised in the aforesaid RTI Applications. Further, Appellant is also advised to carry all the documents/records in support of her statements/claims/allegations that have emerged during the proceedings of the hearing, in order to facilitate action by the PIO.

The PIO shall provide photocopies of all the relevant documents to the Appellant, free of cost before 31.08.2020 and a compliance report to this effect shall be sent to the Commission within a week thereafter.

With the aforesaid observations and directions, the instant Second Appeal is disposed off.

Y. K. Sinha (. . .) Information Commissioner () Authenticated true
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