



RTI Matter



**भारतीय कृषि अनुसंधान परिषद
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
कृषि भवन : नई दिल्ली
KRISHI BHAVAN : NEW DELHI**

No. F.1(4)/2010 – CR(A)&RTI

Dated : April 17, 2012

To

The Directors/ Appellate Authorities/CPIOs/APIOs of all ICAR Institutes/NRCs/ PDs/
Bureaux/ ZPDs.
All Appellate Authorities/CPIOs at ICAR Hqrs.

**Subject : RTI Act, 2005 – ACRs exempted under section 8(1)(j) - important decision
of CIC – reg.**

Sir/Madam,

I am to draw your kind attention towards a three bench decision dated 01.09.2011 of Central Information Commission (CIC) on the subject mentioned above. A copy of CIC's decision in the case of Shri SAA Abbasi v/s EPFO has been uploaded on Council's website www.icar.org.in for information and guidance of all concerned.

2. It is also to inform you that a book namely "Important Decisions of Central Information Commission" compiled by ISTM, New Delhi has already been uploaded on ICAR's website vide Council's circular dt. 03.11.2010 under Right to Information Act with the heading "**RTI – Important Decisions of CIC**" for information and guidance of all concerned.

3. It is requested that the officers dealing with the implementation of the RTI Act may be advised to study/refer to the decisions of the CIC on regular basis on the website at <http://cic.gov.in> so as to enable them to deal with the requests received for seeking information under the RTI Act efficiently and in the right perspective.

Yours faithfully,


(Sanjay Gupta)

**Director (Admn.) &
Transparency Officer & Nodal Officer, RTI
Tel. 011-23384774**

Copy for information to:

1. PPS to Secretary (DARE) & DG, ICAR/ PPS to AS(DARE) & Secretary, ICAR/ PS to AS&FA, DARE/ICAR/ PPS to Chairman, ASRB.
2. ADG(PIM)/ADG(CDN)/Proj. Dir.(DKMA), ICAR.
3. All Officers/ Sections at ICAR Hqrs. at KB/KAB-I/KAB-II/ NASC Complex.

CENTRAL INFORMATION COMMISSION
Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New
Delhi-110066

File No.CIC/SM/C/2011/000934

NAME OF THE RTI APPLICANT	-	Shri SAA Abbasi
RESPONDENTS	-	Employees Provident Fund Orgn.
NAME OF THE APPELLANT	-	Ms. Mridula Ghai
(Third party)		
DATE OF HEARING	-	17 th August,2011
DATE OF DECISION	-	1 st September, 2011

Facts :-

The background of the matter is that Shri SAA Abbasi, an officer of the Employees Provident Fund Organisation (EPFO), vide letter dated 31.3.2011 had sought the following information from the CPIO of EPFO :-

- "i. Attested copy of the ACRs of Ms. Mridula Ghai, RPFC-II considered for promotion to the post of RPFC-1.**
 - II. Attested copy of the Vigilance Clearance in respect of Ms. Mridula Ghai, RPFC-I, obtained and considered for promotion to the post of RPFC-I.**
 - iii. Attested copy of the Note prepared by HRM Division for promotion of RPFC-II to the post of RPFC-I, wherein Ms. Mridula Ghai, RPFC-II was also one of the candidate.**
 - iv. Attested copy of the DPC proceedings that made recommendation for promotion of RPFC-I, wherein Ms. Mridula Ghai, RPFC-II was also one of the candidate.**
 - v. Attested copy of the noting side of the relevant files on which the Note, DPC Recommendations, as referred to under item No. iii & iv above respectively, and approval to the recommendations of the DPC by competent authority has been granted.**
 - vi. Before dispatch of the information, the relevant files may be allowed to be inspected so to confirm & finalize the documents containing the requisite information."**
2. The CPIO had responded to it vide letter dated 27.4.2011 wherein, on the basis of objections filed by

Ms. Mridula Ghai, he had refused to disclose any information. Paras 1 & 2 of his letter are extracted below :-

"Please refer to your application dated 31.3.2011 seeking information under section 6 (1) of the RTI Act, 2005, addressed to CPIO (HRM) and copy of which has been transferred to CPIO (ACR/APAR) cell for sending information on point no. (i) of the application. As informed earlier, a notice was issued to Ms. Mridula Ghai, RPFC Gr. I at present on deputation, on accordance with provisions of section 11 of the RTI Act, 2005. A reply has since been received and the officer has expressed her objection, if the copies of the ACRs are given to a third party. The reply has been considered with reference to the recent decisions available at the CIC website (www.cic.gov.in) which are also relevant to decide the RTI application. in the case CIC/SS/A/2009/000145 dated 2.6.2010, it has been reiterated that copies of ACRs of other persons/employees cannot be provided to the 'third party' under the RTI Act. In another case No. CIC/At/A/2010/000408 dated 31.8.2010, while relying upon its decision in Gopal Kumar vs. army Hqrs. (appeal No. CIC/AT/A/2006/00069 dated 13.6.2006) it has been held that ACRs of the 'third party' are not to be disclosed. In a very recent case No. CIC/SS/A/2010/001146 decided on 17.3.2011, the CIC has upheld the decision of the respondent to not to give copies of ACRs and comparative statement of ACRs being 'third party' information and as held such information exempted under section 8 (1) (j) of the RTI Act.

2. Taking cognizance of the orders of CIC treating the copies of ACRs of persons other than the applicant under the RTI Act as 'third party information' and treating them as exempted under section 8 (1) (j) of the RTI Act, 2005, the information sought under point No. (i) of your application dated 31.3.2011 cannot be allowed and hence the information is denied under the provisions of section 8 (1) (j) of the RTI Act, 2005."

3. Aggrieved with the decision of the CPIO, Shri Abbasi had filed an appeal before the first Appellate Authority which was disposed of by the said authority vide order dated 3.6.2011 wherein the appeal was

allowed. The operative para of the order is extracted below :-

"3. Considering the material on record, the following is ordered:-

- It is observed that CPIO (APAR) has denied the information under the provisions of section 8 (1) (j) taking cognizance of the decisions of CIC in following cases:-
 - No. CIC/SS/A/2009/000145 dated 2.6.2010, wherein it has been reiterated that copies of ACRs of other persons/ employees cannot be provided to the 'third party' under the RTI Act.
 - No. CIC/AT/A/2010/00408 dated 31.8.2010, wherein, while relying upon its decision in Gopal Kumar vs. Army Hqrs. (Appeal No. CIC/AT/A/2006/00069 dated 13.6.2006) it has been held that ACRs of the 'third party' are not to be disclosed.
 - No. CIC/SS/A/2010/001146 decided on 17.3.2011, wherein the CIC had upheld the decision of the respondent to not to give copies of ACRs and comparative statement of ACRs being 'third party' information and as held such information exempted under section 8 (1) (j) of the RTI Act.

The action CPIO (APAR) cell was correct as per the position of law under the RTI Act, 2005.
- However, in another case decided on 18.5.2011 Case No. IC/SG/A/2011/000464/12432, the CIC had gone into the question in criteria exemption of an information under section 8 (1) (j) of the RTI Act and has ordered that annual confidential reports are not covered by section 8 (1) (j) of the RTI Act and disclosure of these cannot be construed as invasion on the privacy of an individual.
- It is noted that the CIC has reviewed its earlier decisions.
- It is accordingly ordered relying upon the decision discussed at (ii) above, that the CPIO (APAR) cell shall provide the desired information at Sl. No. (i) of his application

dated 31.3.2011 within a period of 15 days from the date of order."

4. Ms. Mridula Ghai has filed the present appeal before this Commission against the order of the first Appellate Authority. The matter is heard on 17.8.2011 by a Full Bench consisting of the following :-

- Shri Satyananda Mishra, Chief Information Commissioner;
- Shri M.L. Sharma, Information Commissioner; and
- Smt. Sushma Singh, Information Commissioner.

The following are present before the Commission :-

- Shri S.R. Pande for the appellant;
- Shri Sanjay Bisht, CPIO, PFO
- Shri SAA Abbasi.

5. At the very threshold, we would like to state that the appellant has filed the present appeal only against the disclosure of information referred to in para 01 of the RTI application which is as follows :-

"Attested copy of the ACRs of Mridula Ghai, RPFC-II considered for promotion to the post of RPFC-I."

It is clarified that this Bench is not concerned with other paras of the RTI application for the purposes of the present hearing.

6. Shri Pande, appearing for the appellant, strongly assails the decision of the first Appellate Authority wherein copies of the appellant's ACRs were ordered to be supplied to Shri Abbasi. It is his say that it is third party information with which Shri Abbasi has no concern. Referring to the Supreme Court judgment in Dev Dutt case (Civil Appeal No.7631 of 2002), he submits that even as per this ruling, the ACRs are disclosable only to the officers to whom they belong. These cannot be provided to third party. He also assails the Appellate Authority's order on the ground

that it is violative of section 8(1)(j) of the RTI Act. He concedes that personal information can be disclosed in the larger public interest but he vehemently argues that the Appellate Authority has not adverted to any larger public interest in the cryptic order passed by it. This order, according to Shri Pande, is devoid of merit and warrants to be set aside.

7. On the other hand, Shri Abbasi strongly opposes the appeal filed by Ms Mridula Ghai. It is his say that Ms. Mridula Ghai had worked directly under him for a number of years and, as per rules, he was supposed to write her ACRs for all these years. However, she manipulated the things and had her ACRs written by other officer(s) who were not empowered to write them as per prevailing rules. He adds that Ms Ghai was apprehensive that he (Abbasi) would correctly reflect various acts of omission and commission committed by her in the discharge of her duties while working directly under him and in order to avoid this eventuality, she manipulated the things in such a manner that her ACRs were not written by him and were written by unauthorised officers. Shri Abbasi also briefly alludes to serious allegations made by her against him, adversely reflecting on his character and integrity, just to malign him and harm his career. He had to face a departmental enquiry and was visited with punishment which was, ultimately, quashed by CAT, Delhi. When queried by the Commission as to how copies of the ACRs of Ms Ghai would be in the larger public interest, Shri Abbasi would submit that Ms. Ghai has secured promotion through fraud and manipulation by way of having her ACRs written by unauthorised officers and by misrepresenting the facts before superior officers of the department and in this context, disclosure of the requested information would be in the larger public interest as it would enable him to take legal recourse.

8. The Commission is not concerned with the friction and acrimony in the inter- personal relationship between the appellant and Shri Abbasi. The Commission is concerned only with the disclosability of the requested information. Suffice it to say that the ACRs of Ms Ghai is her 'personal information' which is protected from disclosure under section 8(1)(j) of the RTI Act. It is also third party information in respect of which procedure prescribed under section 11(1) was followed and she vehemently objected to the disclosure of this information. Accordingly, the CPIO had refused to disclose any information to Shri Abbasi. However, the Appellate Authority set aside

the order of the CPIO relying on the following decisions of this Commission viz :

- (i) Decision dated 2.6.2010 in File No. CIC/SS/A/2009/000145
- (ii) Decision dated 31.8.2010 in File No. CIC/AT/A/2010/000408
- (iii) Decision dated 17.3.2011 in File No. CIC/SS/A/2010/001146
- (iv) Decision dated 18.5.2011 in File No. CIC/SG/A/2011/000464/12432.

9. We have carefully examined the above decisions. Suffice it to say that in decisions mentioned at Sl. Nos. (i), (ii) & (iii), it is held that ACRs are not to be disclosed to a third party. However, in the decision mentioned at Sl. No.(iv), it has been expounded that the ACRs of officers can be disclosed to the public in general. The rationale for this decision is depicted by the Single Bench in one of the paras of the decision which is extracted below :-

"Therefore, disclosure of information such as property details, any conviction/acquittal of criminal charges, etc. of a public servant, which is routinely collected by the public authority and provided by the public servants, cannot be construed as an invasion of the privacy of an individual and must be provided an applicant under the RTI Act. Similarly, citizens have a right to know about the strengths and weaknesses as well as performance evaluation of all public servants. The Government is elected by the citizens of India and it is the duty of such government through its officers to protect the rights of the citizens. The salary of such government officers is also paid from the public exchequer. For these reasons, every citizen has the right to know and obtain information about the performance of every public servant or government officer to ascertain whether the duties entrusted to such public servant or government officer are being carried out."

10. In our opinion, the view taken by the Single Bench does not lay down the correct law. Suffice it to say that ACRs are personal to the officers concerned. Even as per the Supreme Court ruling in Dev Dutt's case, the ACRs are liable to be disclosed

only to the civil servants concerned. They are not liable to be disclosed to third party. Further, the government holds the officer's ACRs in fiduciary capacity. This information can be disclosed only in the larger public interest. The Single Bench has not demonstrated any larger public interest in passing the order under reference. It is also pertinent to mention that in its earlier decision dated 22.5.2009 in Appeal No. CIC/SG/A/2009/000365(J.S. Solthe -Vs- National Institute of Technology), the same Bench had taken a different view. Para 14 of the said order is extracted below :-

"14. No public purpose is going to be served by disclosing this information. On the contrary it may lead to harming public interest in terms of compromising objectivity of assessment – which is the core and the substance of the ACT, which may result from the uneasiness of the Reporting, Reviewing and the Accepting officers from the knowledge that their comments were no longer confidential. These ACRs are used by the public house-keeping and man management functions of any organization. A certain amount of confidentiality insulates these actions from competing pressures and thereby promotes objectivity."

11. In the subsequent decision, the Single Bench has not adduced any new grounds for deviating from its earlier decision.

12. On a thoughtful consideration of the matter, we are not inclined to agree with the view taken by the Single Bench for the reasons mentioned above. We may also add that Shri Abbasi has not been able to establish any larger public interest in seeking disclosure of the impugned ACRs. In our opinion, the ACRs are personal to Ms. Ghai and are exempted from disclosure under section 8(1)(j) of the RTI Act. This appeal, therefore, must fail. Dismissed.

Order reserved and pronounced on 01st September, 2011.

(M.L. Sharma)	(Smt. Sushma Singh)
Information	Commissioner
Information Commissioner	

(Satyananda Mishra)
Chief Information Commissioner