

RTI/urgent

Surgey / FMR
10/5/18

Dated: 09.05.2018.

To
✓ Shri Sydney D' Silva,
Joint Commissioner & 1st Appellate Authority(RTI),
Central Tax, Howrah GST Commissionerate,
M.S. Building (6th Floor),
15/1, Strand Road, Kolkata-700 001.

From: Nirmalya Prasad Roy,
Flat No.F-3, River Palace,
280, K.B.C. Road, Hatkhola,
P.O: Chandannagar-712136.
Dist: Hooghly.

Sir,

Sub:-Furnishing of Information under RTI Act, 2005 – Appeal case.

Kindly refer to reply on my original RTI application dated 28.03.2018 received from CPIO, O/o. the Commissioner of Central Tax, Howrah GST Commissionerate by me on 01.05.2018 vide C.No.IV(16)01/RTI/CGST/HWH/NPR/2018/3460A dated 26.04.2018. Since I am aggrieved and dissatisfied with some of the replies furnished by CPIO, I do hereby appeal to you for providing me the correct point-wise desired information with relevant copies of supporting documents.

Point No. 1 : No comment.

Point No.2 : The information furnished by CPIO is certainly wrong, since according to the said sub-rule, in cases of superannuation, the pension papers shall be forwarded by the Head of Office to the Accounts Officer not later than four months before the date of superannuation of a Government servant. But, in reply against Point No.3, the CPIO himself has informed that the pension papers were forwarded to PAO only on 26.09.2016 which was only one month and five days before the date of retirement in place of four months..

Point No.3 : By furnishing the reply against the point the CPIO has admitted that the completed pension papers were lying with them from 11.05.2016 to 26.09.2016 which is a gap of 4 and half months. Under the CCS(Pension)Rules, 1972 as amended, maximum of 2(two)months time has been allowed to the Head of Office, after receipt of duly completed pension papers from the retiring Government servant not later than 6 months, for forwarding to the PAO. Therefore, the pension papers must be forwarded to PAO by Head of Office not later than four months from the retirement date. But, in this case even if my pension papers were received from Dankuni Division on 11.05.2016, those were lying with the Head of Office for 4 and half months from 11.05.2016 to 26.09.2016 i.e. an excess delay of 2 and half months on the part of the Head of Office. Moreover, the information about submission of pension papers duly completed by the retiree is not correct since the retiree submitted those on 07.03.2016 in the office of the Assistant Commissioner, Dankuni Division which was 7 months and 24 days before his retirement date and certainly not five(05)months from the stipulated date. So, there was no question of delay on the part of the retiree, rather the pension papers duly completed were submitted by the retiring Govt.servant 1 month 24 days in advance of 6 month period. Xerox copy of my duly receipted forwarding letter from the O/o.the Asstt.Commissioner, Dankuni Division is enclosed for your kind perusal. (A-1)

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Point No.4.: As detailed under Point No.3 instead of any delay on the part of the retiree in submission of completed pension papers, those were submitted much in advance to facilitate/allow more time to the Head of office in processing the case so that there is no delay in sanction of pensionary benefits. It will not be out of place to mention that the question of submission of completed pension papers by the retiring Government Servant under Rule 59(c) (iii) should arise only after compliance of the conditions mentioned in Rule 59(c) (i) and Rule 59 (c)(ii) by the Head of Office, which was not at all done in violation of rules. Hence, the reply furnished by the CPIO is not correct reply.

Point No.5: Noted that Form 7 (Pension Calculation sheet) which is required to be given to the retiree under the rules and GOI decision under Rule 61 one month prior to his date retirement duly signed and countersigned by PAO, was not at all furnished to the retiree for his prior information about his admissible retirement benefits, which is disobedience to GOI decision in the matter.

Point No.6: No comment.

Point No. 7 : It is indeed surprising and shocking to note that the actual date of submission of my Service Book to PAO, C.Ex, Kol-IV is not available with the Commissionerate. Previously, it was informed by CAO, C.Ex, Kol-IV in writing vide his letter dt.06.01.2017 addressed to the Supdt(Vig.) with copy endorsed to me that the S/Book was sent to PAO in time i.e. 4(four) months prior to date of retirement but it was understood from written information furnished by the PAO that the same was received in his Office only 10(ten)days before my date of retirement. I may, therefore, kindly be informed the exact date of submission of S/Book to PAO, C.Ex, Kol-IV, CBEC supported by valid documentary proof since the desired information must be available in your office.

Point No.8 : The information furnished by the CPIO appears to be not in order. As will be clear from the relevant provision of CCS(Pension)Rules,1972 as amended and Civil Accounts Manual, the Head of office has been made accountable for correct and timely settlement of pensionary benefits ~~noting from his office~~ and for this he has been entrusted almost absolute power and authority in pensionary matter and the PAO has been authorized only to check/scrutinize the entitlements before authorizing payments and issue of PPO. He has no power of auditing or to raise unnecessary and wrong objection which will delay the case. Therefore, immediately on receipt of pension case from the Head of Office the PAO should take expeditious action in pension authorization matters so that there is smooth passage towards timely settlement of pensionary benefits. Moreover, the fact of grant of these MACPs were very much in the knowledge of the PAO and pre-check and post check of the arrear bills must have also been done in this case by PAO but no objection were raised then. But it is most unfortunate that at the time of pension authorization the PAO raised wrong objections misinterpreting MACP rules and OMs of DOPT (Nodal Authority). The Head of Office also unfortunately yielded to wrong pressurisation of PAO reducing my Last pay from 82,400/- to 80,200/- as on 31.10.2016 even after issue of LPC dt.02.11.2016 showing Rs.82,400/- (copy enclosed) which is surprising enough. The reduction of my pay was effected retrospectively from 01.09.2008 with total disregard to all relevant rules by issue of revised pay fixation order dt.09.12.2016, after 38 days of my retirement. Moreover, my MACP case was long overdue in view of all juniors and seniors

having been granted the same long before me and at last I had to get my due MACP after RTI reply in an Appeal case by the Addl. Commr., C.Ex, Kol-II Comm'te and on receipt of detailed service particulars etc. from Kol-IV Comm'te before grant of all these three MACP upgradations. However, the information sought for in my original RTI application may kindly be furnished.

Point No. 9 : Noted that no audit objections were made in regard to my MACP 1st & 2nd upgradations and earlier pay fixation orders dt 14.07.2016 and MACP 3rd upgradation and pay fixation order dt.24.08.2016 . In consideration of above, the issual of revised Pay fixation and re-fixation orders dtd.09.12.2016 was totally uncalled for, being wrong and created unnecessary problems not only for me but for the Office too since justice has not been done and wrong action has been taken both by PAO and Head of Office in defiance of rules and relevant OMs of the Government. All 3 MACP upgradations granted by the competent Cadre Control Authority has been unauthorisedly cancelled which should not have been done. In this regard ,Rule 59 of CCS(Pension) Rules,1972 should have been followed as prescribed under the rules but not done. The copies of revised fixation orders were not called for but found sent by mistake.

Point No. 10 : The information supplied by CPIO is not the desired information. Under the rules the PAO has no authority to raise such wrong objection by not clearly understanding the words, spirit and intention of the MACP rules & OMs of DOPT and particularly MACP OM dt.19.05.2009. Why did not he raise such objections while passing the arrear bills long ago and why did he allow Kol-IV Comm'te to draw monthly pay bills on the basis of earlier granted MACPs in similar cases? It is surprising that LPC on retirement was issued on 02.11.2016 by ACAO, C.Ex, Kol-IV Comm'te showing last pay of Rs.82,400/- as actually drawn on 31.10.2016 but pension and all pensionary benefits calculated on the basis of wrongly revised pay of Rs.80,200/- and not on the basis of LPC actually sent to me by post on 08.02.2017 received on 14.02.2017 forwarded alongwith pension, gratuity and commutation payment authorizations.
The information as desired in my original RTI application may kindly be supplied. ✓

✓ **Point No.11 :** The information furnished by CPIO is not the desired information . The date of the letter might be 20.12.2016 but the actual date of resubmission of pension papers, pension calculation sheet etc. under the forwarding was not 20.12.2016 as understood from PAO, C.Ex, Kol-IV and must be at least one month after 20.12.2016 . The desired information may kindly be furnished as should be available with your office ,

Point no.12 : The information furnished by CPIO is not the desired reply. From the copy of the letter dt.06.01.2017 of AC, C.Ex.(P&V), Kol-IV and letter dt.06.01.2017 of CAO, C.Ex, Kol-IV endorsed to me for information, it was understood that further necessary action about resubmission of pension papers and Service Book etc. will be taken after receipt of valuable guidance in the matter from the competent cadre Controlling Authority i.e., Kol-II Comm'te who have been approached in this regard vide letter dt.06.01.2016. It will not be out of place to mention here that at least two important relevant Service particulars enclosed with A.C, C.Ex, Kol-IV Comm'te letter dt.06.01.2017 to Dy. Commr. C.Ex, Kol-II in my respect as certified/signed by ACAO, C.Ex., Kol-IV were wrong and incomplete for reasons best known to them. However, since no reply was yet received from Kol-II Comm'te , another letter

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dt.27.02.2017 as reminder was sent to Kol-II Comm'te . But it is surprising that instead of awaiting the reply or valuable guidance from ~~NSO~~ Kol-II Comm'te all the revised pension papers and S/Book wrongly recasted on the basis of revised Pay fixation orders with huge wrong recovery of Rs.4,69,846/-from gratuity made by Head of Office as dictated by the PAO. The Cadre control authority ie.Kol-II Comm'te vide their letter dt.02.03.2017 stood by their earlier MACP upgradation order and informed that the earlier order was correct .It was then understood that wrong action has already been taken before getting the valuable guidance as sought for and without awaiting the reply of the competent authority knowing that wrong action as was already clear to them on consideration from different angles.
The information as desired in my RTI application may kindly be furnished.

Point no. 13 : The CPIO has skipped information/reply on this point. The desired information may kindly be furnished by you.. However, this it is very much clear that the Head of Office was not at all serious about the Government's resolve at the highest level to settle my pensionary benefits on superannuation correctly and in time as per CCS(Pension)Rules,1972 as amended and GOI OMs and instructions in this regard.

Point no. 14: The desired information has not been furnished and may, therefore, kindly be furnished. However, it is amply clear that that the Head of Office was not serious about timely sanction and payment of pension and gratuity and did not monitor the case from time to time for smooth and timely settlement of pensionary matters. Moreover, he has not taken action regarding sanction of Provisional pension and provisional Gratuity as laid down under Rule 64 of CCS(Pension)Rules, 1972 as amended. and GOI instructions. Had Provisional Pension and gratuity been ordered by the Head of Office under Rule 64 of CCS(Pension)Rules,1972 as amended , there would be no problem in this case and the PAO in such case had no scope of raising unnecessary and wrong objections after lapse of 8 days of retirement.
Point no. 15: Noted .

Point no. 16 : The desired information has been refused. Shri Dutta Bhowmick ,Inspector was my colleague in NSO and also in Kol-IV Comm'te,C.Ex. and was granted all the three MACP upgradations in Central Excise, Kol-IV Comm'te like me . He was posted in this Comm'te and retired on 31.03.2018 possibly from this Comm'te .Therefore, the desired information or whatever relevant information available with your office should have been furnished. But the same has been refused. I would again request you kindly to furnish the information as sought for in my RTI application dt.28.03.2018. ✓

I am enclosing herewith IPO for Rs.10/-only bearing no.23F 078106 dt.13.03.2018, if required ,for supply of copies of documents inA-4 size papers which IPO was returned by the CPIO as being excess .

I hope, you will kindly furnish the desired information correctly and furnish the copies as desired ,within the prescribed time limits to my above address for which I shall be grateful .

Encl: As above(3 Nos.)

Dated: 09/05/2018.

Yours faithfully,
Nirmalya Prasad Roy 09.05.2018
(NIRMALYA PRASAD ROY)



RTI MATTER

भारत सरकार GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST COMMISSIONERATE
एम.एस. बिल्डिंग, 15/1, स्ट्रैंड रोड, कोलकाता- 700001
M.S. BUILDING, 1st floor, 15/1, STRAND ROAD, KOLKATA- 700001
दूरभाष सं/PHONE NO. 033-2262-8490, फैक्स/ FAX 033-2262-8490

C. No. IV (16)01/RTI/CGST/HWH/NPR/2018 / 3460A

Date: 26.04.2018

To
Shri Nirmalya Prasad Roy
Flat No. F-3, River Palace,
280, K. B. C. Road, Hathkhola,
P.O: Chandannagar,
Dist: Hooghly, Pin-712136

Sir,

Sub: - Furnishing of information under RTI Act, 2005.

Please refer to your RTI application dated 28.03.2018, which has been received at this office on 02.04.2018.

The desired point-wise information are furnished herein below:

Point No.1: So far as this point is concern Joint Commissioner (P&V), Howrah GST Commissionerate is the Competent Authority.

Point No. 2: Sub-rule 4 of Rule 61 of CCS(Pension) Rules, 1972.

Point No. 3: The concerned section received the pension papers complete in respect after 11.05.2016 and forwarded the same to the PAO, Central Excise, Kolkata-IV Commissionerate on 26.09.2016. It is clear that the applicant submitted the pension papers completed in all respect just before five(05) months from the stipulated deadline in this regard which clearly shows that the pension papers were submitted late by the applicant.

Point No. 4: No, as per available documents, the applicant submitted submitted all the pension papers complete in all respect after 11.05.2016.

Point No. 5: Form-7 was not forwarded to the applicant in the instant case.

Point No. 6: Copies of Form 8 and Form 7 as desired are enclosed against the requisite fees already paid by you.

Point No. 7: Not available

Point No. 8: So far as this point is concern it relates to PAO erstwhile Kolkata-IV Commissionerate.

Point No. 9: No. It is worth mentioning that a copy of the revised pay-fixation was already endorsed to the applicant. However, copies of pay fixation orders are enclosed as the requisite fees for two copies has been paid by you.

Point No. 10: So far as this point is concerned it is worthwhile to mention that the recovery has been made exclusively by an objection raised by erstwhile PAO, Central Excise, Kolkata-IV Commissionerate.

Point No. 11: The date as per office record is 20.12.2016. Copy as desired are enclosed against the requisite fees already paid by you.

Point No. 12: With regard to this point this is for your information that as per available records, the relevant letters are enclosed against the requisite fees already paid by you.

Point No.14: so far as this point is concerned, it may be mentioned that any information involving reasons, clarifications and justification pertaining to administrative action is not covered within the expression of information as stipulated under Section 2(f) of the RTI Act, 2005.

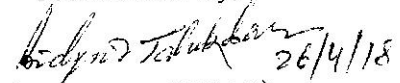
Point No. 15: As far as this point is concerned, the CCS (Pension) Rules, 1972 may please be referred to.

Point No. 16: Copies so sought are not available in this office.

In this context, it is worth mentioning that, you have furnished IPOs for Rs. 40/- (4 Nos. @ Rs. 10 each) whereas Rs. 10/- is payable for application fees and Rs. 20/- (10 copies x Rs. 2 per page) for furnishing documents. Hence, the requisite amount comes to Rs. 30/- .Accordingly, the IPO bearing No. 23F 078106 is returned herewith in original.

If you are aggrieved or dissatisfied with the reply, you are at liberty to prefer First Appeal within the stipulated time i.e. 30 (thirty) days from the date of receipt of this reply before Shri **Sydney D'Silva**, Joint Commissioner & 1st Appellate Authority under RTI Act, 2005, Central Tax, Howrah GST Commissionerate, M.S. Building (6th Floor), 15/1 Strand Road, Kolkata - 700 001.

Yours sincerely,


(BIDYUT TALUKDAR)

CPIO & ASSISTANT COMMISSIONER,
CENTRAL TAX,
HOWRAH GST COMMISSIONERATE

o/c



BY SPEED POST/ RTI URGENT

Dated: 28/03/2018.

7
Contd. A. Chatterjee
Supdt (RTI)
2/4/18

From: Nirmalya Prasad Roy
Flat No. F-3, River Palace,
280, K.B.C. Road, Hatkhola,
P.O: Chandannagar,
Dist: Hooghly, PIN: 712136.

To
The Central Public Information Officer,
CGST & C.Ex. Howrah Commissionerate,
2nd M.S. Building, Custom House,
15/1, Strand Road, Kolkata-700001.

Sir,

Sub:- Request for information under RTI Act, 2005 – Information sought by Sri Nirmalya Prasad Roy.

I would request you kindly to furnish the following information in connection with the pension case of Sri Nirmalya Prasad Roy, Inspector (retired on 31.10.2016), Kol-IV Comm'te under RTI Act, 2005 with the objective of promoting transparency, accountability and awareness in the working of the Government and for removing corruption in Government service. Point-wise information may kindly be furnished with copies thereof as sought for.

1. The designation of the authority in the Commissionerate who is accountable for correct and timely sanction of pension and pensionary benefits of Government employees retiring from his Office on superannuation under CCS(Pension) Rules, 1972.
2. Please inform with specific mention of relevant provision of CCS(Pension) Rules, 1972 or Civil Accounts Manual whether any of those provisions was at all followed/observed in this case with a view to settle the pension case correctly and timely.
3. Please inform action taken by the Comm'te to ensure timely and correct payment of pensionary benefits as admissible under the rules for which the Head of Office is duty bound and it is the right of the retiring Govt. servant to receive those retirements dues correctly as admissible and also in time, since he submitted all pension papers duly completed about eight months prior to his superannuation on 31.10.2016(AN).
4. Please inform whether the certificate by the Head of Office regarding length of service to be reckoned for pension and gratuity and also the emoluments and average emoluments to be reckoned for the purpose of pension and gratuity as prescribed under CCS(Pension) Rules, 1972, as amended, was furnished to the Govt. servant eight months before retirement asking the Govt. servant to represent against it. If so, receipted copy thereof, may please be furnished.
5. Please inform if Pension Calculation Sheet in Form-7 signed by Head of Office and countersigned by the PAO which is required to be furnished to the retiree in Form 7 was at all furnished, if so, a copy of the receipted document may please be furnished.

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6. It appears that the pension papers and Service Book duly completed were not forwarded to PAO,C.Ex, Kol-IV four (4) months prior to retirement as prescribed under CCS(Pension)Rules,1972 as amended. In this connection please furnish copy of forwarding letter in Form 8 and Form-7 with Part 1 duly filled in originally/initially, and signed by Head of Office with actual date of despatch from Kol-IV Comm'te and its date of receipt in PAO office with dated proof thereof.
7. Please furnish the information about the actual date of submission of Service Book to PAO,C.Ex.Kol-IV and actual date of receipt by PAO with documentary proof thereof. Please furnish copy of the forwarding letter of Service Book with proof of dated acknowledgement in PAO office.
8. Please mention the provisions of CCS(Pension)Rules,1972 as amended or the Civil Accounts Manual under which the PAO has been entrusted with the power to dictate action to Head of Office, even after expiry of one week of retirement of the Govt servant, by raising objections regarding pay fixation and even financial upgradation under ACP/MACP etc.granted by other competent Comm'te in respect of the already retired Government servant and also mention the provision of rules under which the Head of Office is also required to take action as ordered/instructed by PAO accordingly without judging the validity of those objections and without informing the concerned retiree under the rules in spite of LPC already issued to him after retirement.
9. Please inform as to whether any audit objections were made in regard to my earlier MACP 1st & 2nd upgradations and Pay fixation orders dt.14.07.2016 under CCS(RP) Rules, 2016 and MACP 3rd upgradation and pay fixation order dt.24.08.2016,if so ,an extract of the noting/order may be furnished.
10. Please mention the para of Annexure-1 (conditions for grant of MACP upgradations) of MACP OM dt.19.05.2009 under which granting of 1st MACP to those already granted 1st ACP on 09.08.1999 would be treated as "irregular"as done in my case. Instead there are number of illustrations in the OM dt.19.05.2009 under which grant of 1st & 2nd MACP has to be granted as had been rightly and appropriately granted by the competent cadre control Comm'te. However,it appears that even Kol-II Comm'te mentioned wrong provision of para 5 of Annexure-1 in support of their decision of grant of 1st & 2nd MACPs issued under Estt.Order 80.2015 dt.09.10.2015, which appears to be not applicable in such cases. The main reason of pre-condition for grant of 1st & 2nd MACP is non grant of any "regular promotion"even after completion of 20 years of regular service in the same grade even after grant of 1st ACP .This most important point has not been taken into account either by PAO or by Kol-IV Comm'te resulting in mess.

However, I may kindly be furnished copies of relévant orders/O.Ms in support of your decision of issuing pay re-fixation and revised fixation of pay order by ACAO,Kol-IV dt.09.12.2016 in respect of a very old case decided after review/reconsideration after RTI reply in Appeal case by Kol-II Comm'te and after following detailed procedures as under the rules to avoid any incorrectness, which was very much in the knowledge of both Kol-IV Comm'te.

11. Please inform the actual date of resubmission of pension papers, pension calculation sheet after necessary rectification entries in the S/Book regarding the observation raised by PAO,C.Ex,Kol-IV and enclose copies of revised Pension papers ,Pension Calculation Sheet alongwith the copy of the forwarding letter with dated receipt by PAO,Kol-IV.
12. Please submit documentary proof in support of the action taken by your office in resubmission of my wrongly prepared pension papers before receipt of guidance vide their letter dt. 02.03.2017 from Kol-II Comm'te in this regard which contradicts Kol-IV Comm'te's above letter dt.06.01.2017 and CAO's letter to Supdt(Vig), Kol-IV^{At. 06.01.17} with copies endorsed to me from which it was rightly understood that pension papers will be resubmitted only after receipt of valuable guidance from the cadre control Authority.
13. Please inform action taken by the Head of Office when the PAO did not issue PPO and authority for gratuity payment in time even after one month before retirement date..
14. Please inform the reasons for violating the provisions under Rule 64 of CCS(Pension) Rules,1972 and GOI instructions in this regard by immediate sanction of Provisional Pension & gratuity addressed to the retiree/retired Government servant.
15. Please furnish information regarding the forms and procedures for claiming penal interest on delayed payment of gratuity under Rule 68 of CCS(Pension)Rules,1972 as amended
16. For the sake of transparency and fairness in pension matter , please furnish copies of order on latest pay re-fixation, revised fixation of pay , LPC and Pension calculation sheet in respect of Sri Soumendra Dutta Bhowmick ,Inspector retired on 31.0.2018.

I may also be allowed to visit the office for inspection of relevant files and documents if necessary as per RTI Act,2005.

I declare that I am a citizen of India and the information sought is in larger public interest .The information sought for do not fall within the scope of Section 8(1) Of the Act. I am enclosing herewith blank/partly filled IPO for Rs.40/-(forty)only herewith - of which Rs.10/- (bearing No.23F 078103 dt.13.3.2018) being the prescribed fee for seeking information under RTI Act,2005 and Rs.30/-(bearing No.23F 078104 to 6 = 3 Nos. x Rs.10 each)for supplying me the copies of maximum of 15 copies of letters/communications etc. in A4 sheets as called for.The information/copies of documents etc. as sought for may be furnished/sent to my residential address by Speed Post urgently for my information and necessary action.

Encl: As above(IPO for Rs.40/-)

Dated:- 28/03/2018.

Yours faithfully,
Nirmalya Prasad Roy . 28.03.2018
(NIRMALYA PRASAD ROY)

Flat No.F-3,River Palace, 280,K.B.C.Road,Hatkholra,
P.O: Chandannagar,Dist:Hooghly, PIN: 712136.



RTI MATTER

भारतसरकार/GOVERNMENT OF INDIA
केन्द्रीयकर, होवराजीएसटीकमिशनरकेआयुक्तकाकार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST
COMMISSIONERATE
एम.एस. बिल्डिंग, 15/1, स्ट्रैंडरोड, कोलकाता- 700001
M.S. BUILDING, 1st floor, 15/1, STRAND ROAD, KOLKATA- 700001
दूरभाषसं/PHONE NO. 033-2262-8490

ORDER-IN-APPEAL NO. 04/RTI/2018-19

Dated 6th 06 /2018

PASSED BY : Shri. Sydney D'Silva,
Joint Commissioner of Central Tax
&
1st Appellate Authority of Central Tax, Howrah CGST
Commissionerate, Custom House, M.S. Building
6th Floor, 15/1 Strand Road, Kolkata-700 001.

Brief fact of the case

Subject: Appeal filed under Section 19(1) of the RTI Act, 2005 by Shri Nirmalya Prasad Roy, Flat No. F-3, River Palace, 280, K.B.C. Road, Hatkhola, P.O: Chandannagar, Dist: Hooghly, Pin: 712136 against reply furnished by the CPIO, Howrah GST Comm'te under letter C.No.IV(16)01/RTI/CGST/HWH/NPR/2018/3460A dated 26.04.2018.

I. The appellant submitted an application dated 28.03.2018 seeking certain information to the CPIO & Assistant Commissioner, Howrah CGST Comm'te. The point-wise information, answer and point of appeals are depicted herein below:

Information/Query 2 : Please inform with specific mention of relevant provision of CCS(Pension)Rules, 1972 or Civil Accounts Manual whether any of those provisions was at all followed/observed in this case with a view to settle the pension case correctly and timely.

Reply of the CPIO : Sub-rule 4 of Rule 61 of CCS(Pension) Rules, 1972.

Point of Appeal : The appellant has, inter-alia, alleged that the pension papers were forwarded by the Head of Office to the PAO only on 26.09.2016 i.e. only one month and 5(five) days before his retirement in place of four months.

Information/Query 3 : Please inform action taken by the Comm'te to ensure timely and correct payment of pensionary benefits as admissible under the rules for which the Head

of Office is duty bound and it is the right of the retiring Govt. servant to receive those retirements dues correctly as admissible and also in time, since he submitted all pension papers duly completed about eight months prior to his superannuation on 31.10.2016(AN).

Reply of the CPIO: The concerned section received the pension papers complete in respect after 11.05.2016 and forwarded the same to the PAO, Central Excise, Kolkata-IV Commissionerate on 26.09.2016. It is clear that the applicant submitted the pension papers completed in all respect just before five(05) months from the stipulated deadline in this regard which clearly shows that the pension papers were submitted late by the applicant.

Point of Appeal : The appellant has, inter-alia, contended that although the pension papers were received by the Hdqtrs. on 11.05.2016 from the Dankuni Divn. and were lying upto 26.09.2016 and forwarded to the PAO only on 26.09.2016 i.e. after a gap of 4(four) months, whereas under the CCS(Pension)Rules, 1972, as amended, maximum of two months' time has been allowed on this score.

Information/Query No. 4 : Please inform whether the certificate by the Head of Office regarding length of service to be reckoned for pension and gratuity and also the emoluments and average emoluments to be reckoned for the purpose of pension and gratuity as prescribed under CCS(Pension) Rules, 1972, as amended, was furnished to the Govt. servant eight months before retirement asking the Govt. servant to represent against it. If so, receipts copy thereof, may please be furnished.

Reply of the CPIO: No, as per available documents, the applicant submitted all the pension papers complete in all respect after 11.05.2016.

Point of Appeal : The appellant has claimed that the reply furnished by the CPIO is not correct inasmuch as the pension papers were submitted by him much in advance so as to facilitate more time for the Head of Office for processing his case. Hence, there is no delay on the appellant's part. He has further stated that the question of submission of completed pension papers by the retiree should arise only after compliance of the conditions mentioned under Rule 59(c)(i) and Rule 59(c) (ii) *ibid.* which was not done in this case.

Information/Query No.5 : Please inform if pension Calculation Sheet in Form-7 signed by Head of Office and countersigned by the PAO which is required to be furnished to the retiree in Form -7 was at all furnished, if so, a copy of the receipts documents may please be furnished.

Reply of the CPIO: Form-7 was not forwarded to the applicant in the instant case.

Point of Appeal : Against this point, the appellant has contended that the Form-7, required to be provided to the retiree within one month from the date of retirement in terms of GOI's under Rule 61 *ibid.*

Information/Query No. 7 : Please furnish the information about the actual date of submission of Service Book to PAO, C.Ex. Kol-IV and actual date of receipt by PAO with documentary proof thereof. Please furnish copy of the forwarding letter of Service Book with proof of dated acknowledgement of PAO.

Reply of the CPIO: Not available.

Point of Appeal : The appellant has alleged that he is surprising and shocking that the actual date of submission of his service book to PAO, Kol-IV is not available with the Comm'te inasmuch as it was informed by the CAO, Kol-IV that the Service Book was sent to the PAO in time i.e. 4(four) months prior to the date of retirement. But it was understood from the written information furnished by the PAO that the same was received in his office only 10(ten) days before the date of my retirement. He sought for the exact date of submission of his S/Book to the PAO, Kol-IV supported by valid documentary proof since the desired information must be available in this office.

Information/Query No. 8 : Please mention the provisions of CCS(Pension)Rules 1972 as amended or the Civil Accounts Manual under which the PAO has been entrusted with the power to dictate action to Head of Office, even after expiry of one week of retirement of the Govt. servant by raising objections regarding pay fixation and even financial upgradation under ACP/MACP etc. granted by other Competent Commissionerate in respect of the already retired Govt. servant and also mention the provision of Rules under which the Head of the Office is also required to take action as ordered/instructed by the PAO accordingly without judging the validity of those objections and without informing the concerned retiree under the rules inspite of LPC already issued to him after retirement.

Reply of the CPIO: So far as this point is concerned, it relates to PAO erstwhile Kolkata-IV Commissionerate.

Point of Appeal : The appellant has, inter-alia, contended that as per Pension Rules, 1972 the Head of office is made accountable for correct and timely settlement of Pensionary benefit and has been entrusted with almost absolute power in this regard. Whereas, PAO is authorized only to check/scrutinize the entitlements before authorizing payment and issue of PPO and has no power of Auditing or to raise unnecessary wrong objection to delay the case. Therefore, immediately on receipt of Pension case from the Head of office, he should take expeditious action in pension authorization matter. Moreover, he has further claimed that the fact of grant of these MACPs were very much in the knowledge of the PAO and pre check and post check of the arrear bill must have also been done in this case by PAO but no objections were raised then and it is most unfortunate that at the time of Pension authorization the PAO raised wrong objections misinterpreting MACP Rules and OMs of DOPT. The Head of office also unfortunately yielded to wrong pressurization of PAO reducing the appellant's pay on 31.10.2016 even after issue of LPC dated 02.11.2016. Over and above, the reduction of his pay was effected retrospectively from 01.09.2008 with total disregard to all relevant Rules by issue of revised pay fixation order dated 09.12.2016, after 38 days of his retirement. He further narrated that he had to get his due MACP after RTI reply in an appeal case by the Addl. Commr., C.Ex, Kol-II Comm'te and on receipts of detailed service particular from Kol-IV Comm'te before grant of three MACP upgradation.

Information/Query No. 9: Please inform as to whether any audit objections were made in regard to my earlier MACP 1st & 2nd upgradations and pay fixation orders dt. 14.07.2016 under CCS(RP) Rules, 2016 and MACP 3rd upgradation and pay fixation order dt. 24.08.2016, if so, an extract of the noting/order may be furnished.

Reply of the CPIO: No. It is worth mentioning that a copy of the revised pay-fixation was already endorsed to the applicant. However, copies of pay fixation orders are enclosed as the requisite fees for two copies has been paid by you.

Point of Appeal : The appellant has stated that since no audit objections were raised pertaining to his first and second MACP upgradations, the issuance of revised pay fixation and re-fixation orders dated 09.12.2016 was totally uncalled for and consequently, wrong action has been taken both by the PAO and Head of office in defiance of relevant Rules and OMs. In this regard, he has further stated that Rule 59 of CCS(Pension) Rules, 1972 should have been followed but not done.

Information/Query No.10: Please mention the para of Annexure 1(conditions for grant of MACP upgradations) of MACP OM dated 19.05.2009 under which granting of first MACP to those already granted first ACP on 09.08.1999 would be treated "irregular" as done in my case. Instead there are number of illustrations in the OM dated 19.05.2009 under which grant of first 1st and 2nd MACP has to be granted as had been rightly and appropriately granted by the competent Cadre Controlling Commissionerate. However, it appears that even Kol-II Comm'te mentioned wrong provisions of para 5 of Annexure 1 in support of their decision of grant of 1st & 2nd MACPs issued under Estt. Order 80/2015 dated 09.10.2015 which appears to be not applicable in such cases. The main reason of pre-condition for grant of 1st and 2nd MACP is non grant of any "regular promotion" even after completion of 20-years of regular service in the same grade even after grant of 1st ACP. This most important point has not been taken into account either by PAO or by Kol-IV Comm'te resulting in mess.

However, I may kindly be furnished copies of relevant orders/OMs in support of your decision of issuing pay re-fixation and revised fixation of pay order by ACAO, Kol-IV dated 09.12.2016 in respect of the very old case decided after review/reconsideration after RTI reply in Appeal case by Kol-II Comm'te and after following detailed procedures as under the Rules to avoid any incorrectness, which was very much in the knowledge of both Kol-IV Comm'te.

Reply of the CPIO : So far as this point is concerned it is worthwhile to mention that the recovery has been made exclusively by an objection raised by erstwhile PAO, Central Excise, Kolkata-IV Commissionerate.

Point of Appeal : Against this Point Sri Nirmalya Prasad Roy, the appellant has claimed that under the Pension Rules the PAO has no Authority to raise such wrong objections by not clearly understanding the words, spirits and intensions of the MACP Rules & OMs and particularly MACP OM dated 19.05.2009. It has further been alleged that why did he allow to draw monthly pay bills on the basis of the earlier granted MACPs. Accordingly, pensionsary benefits have been calculated on the basis of reduced basic pay i.e. Rs.80,200/- from Rs.82,400/- and not on the basis of LPC actually sent to him by post on 08.02.2017.

Information/Query No.11 : Please inform the actual date of resubmission of pension papers, pension calculation sheet after necessary rectification entries in the Service Book regarding the observation raised by PAO, C.Ex, Kol-IV and enclose copies of revised pension papers, pension calculation sheet alongwith the copy of the forwarding letter with dated receipt by PAO, Kol-IV.

Reply of the CPIO : The date as per office record is 20.12.2016. Copy as desired are enclosed against the requisite fees already paid by you.

Point of Appeal : The appellant has contended that the date of re-submission of pension papers and pension calculation sheets etc. were not 20.12.2016 as understood from the PAO, Kol-IV and the date must be at least one month after 20.12.2016

Information/Query No.12 : Please submit documentary proof in support of the action taken by your office in resubmission of my wrongly prepared pension papers before receipt of guidance vide their letter dated 02.03.2017 from Kol-II Comm'te in this regard which contradicts Kol-IV Comm'te's above letter dated 06.01.2017 and CAO's letter to Supdt (vig), Kol-IV dt. 06.01.2017 with copies endorsed to me from which it was rightly understood that pension papers will be resubmitted only after receipt of valuable guidance from the Cadre Control Authority.

Reply of the CPIO : With regard to this point this is for your information that as per available records, the relevant letters are enclosed against the requisite fees already paid by you.

Point of Appeal : In regard to this point, the appellant has contended that although Kol-II, the Cadre Controlling Authority was approached for guidance for resubmission of pension papers and S/Book along with a reminder dated 27.02.2017 having been issued, but without waiting for Kol-II's guidance, revised Pension papers and S/Book were wrongly recasted on the basis of revised pay fixation orders, Rs. 4,69,846/- was wrongly recovered from gratuity by Head of office as dictated by the PAO. However, subsequently, Kol-II vide its letter dated 02.03.2017 informed that the earlier MACP order was correct. He further added that wrong action has already been taken before getting the valuable guidance and without waiting the reply of the competent Authority knowing that wrong action as was already cleared to them on consideration of different angles.

Information/Query No.13: Please inform action taken by the Head of office when the PAO did not issue PPO and authority for gratuity payment in time even after one month before retirement date.

Reply of the CPIO: Inadvertently, no reply/information has been furnished.

Point of Appeal : It has been alleged by the instant appellant that the CPIO has skipped the reply/information on this point. He sought for the same and he further alleged that the Head of office was not at all serious to settle his pensionary benefits correctly and in time as per the applicable Rules.

Information/Query No.14: Please inform the reasons for violating the provisions under Rule 64 of CCS (Pension) Rules, 1972 and GOI's instructions in this regard by immediate sanction of provisional Pension & gratuity addressed to the retiree/retired Government servant.

Reply of the CPIO : so far as this point is concerned, it may be mentioned that any information involving reasons, clarifications and justification pertaining to administrative action is not covered within the expression of information as stipulated under Section 2(f) of the RTI Act, 2005.

Point of Appeal : It has been claimed that the Head of office was not serious about timely sanction of Pensionary benefit , did not monitor the case time to time for timely settlement of his Pensionary benefit , he has also not taken action regarding sanction of Provisional pension and Provisional gratuity as laid down under Rule 64 of CCS (Pension) Rules, 1972 as amended. Besides, in case of sanction of provisional pension and Provisional gratuity by the Head of office under above mentioned Rule, the PAO in such case would not have any scope to raise any unnecessary and wrong objections after lapse of 8 days of retirement.

Information/Query No.15 : Please furnish information regarding the forms and procedures for claiming penal interest on delayed payment of gratuity under Rule 68 of CCS (Pension) Rules, 1972 as amended.

Reply of the CPIO : As far as this point is concerned, the CCS (Pension) Rules, 1972 may please be referred to.

Point of Appeal : No comment.

Information/Query No.16: For the sake of transparency and fairness in Pension matter, please furnish copies of order on latest pay re-fixation, revised fixation of pay, LPC and Pension calculation sheet in respect of Sri Soumendra Dutta Bhowmick, Inspector retired on 31.03.2018.

Reply of the CPIO : Copies so sought are not available in this office.

Point of Appeal : Against this Point, the appellant has requested for supply of copy of orders on latest pay re-fixation, revised fixation of pay, LPC and Pension calculation sheet in respect of Sri Soumendra Dutta Bhowmick, Inspector, who was his colleagues in NSO and in Kol-IV Comm'te as well and was granted all the three MACPs upgradation in C.Ex Kol-IV Comm'te like him. Hence, according to the appellant Sri Soumendra Dutta Bhowmick, Inspector had retired on 31.03.2018 possibly from this

Comm'te, therefore the desired information or whatever relevant information available with this office should have been furnished but the same has been refused. He has requested for furnishing the information as sought for in his RTI application dated 28.03.2018.

II. Aggrieved with the reply dated 26.04.2018, the appellant has preferred the instant appeal.

The Appellant has thus prayed for the following relief:

Prayer for supply of correct point wise desired information with relevant copies of supporting documents.

III. An opportunity for Personal Hearing was granted to the appellant on 25.05.2018 at 11.00 AM. But, the appellant did not turn up for the subject Personal Hearing.

IV. Discussion & findings

(a) I have gone through the case records, the appeal dated 10.05.2018 vis-à-vis the reply dated dt.26.04.2018 furnished by the CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate pertaining to the RTI application dated 28.03.2018 filed by the instant appellant.

(b) In the instant case, I find that out of the 16(sixteen) points of information i.e. 1 to 16, the appellant has preferred appeal against all the points excepting Point No.1, 6 & 15 respectively. As a matter of fact, the crux of the issue revolves around non supply of information/documents pertaining to his pension case, by the CPIO, as sought for by the instant appellant in his application dt. 28.03.2018.

(c) In the instant case, I intend to discuss the appeal point-wise.

(i) Point of appeal No.2 : So far as this Point of the subject RTI application is concerned, I find that the reply furnished by the CPIO is just and precise.

(ii) Point of appeal No.3 : I find that albeit the appellant has claimed that he has submitted the pension papers in time but since the same were neither proper nor complete, consequently, he has to submit his papers afresh. I observe that the entire episode has taken place, on this score, due to the submission of pension papers by the appellant in an incorrect and improper manner in the first place.

(iii) Point of appeal No.4 : As regards this point, the CPIO has quite correctly narrated the circumstances, under which the Certificate as quoted by the appellant could not be provided.

(iv) Point of appeal No.5 : As far as the claim of the appellant against this point goes, I like to state that although the Form-7 was not provided in the first place, but subsequently, the same under the

covering letter in Form-8, has been supplied by the CPIO to the appellant as replied in Query No.6 of the application filed by the applicant.

(v) Point of appeal No.7: With regard to this point, I find merit and justification on the part of the appellant in seeking the actual date of submission of his Service Book to the PAO, C.Ex. erstwhile Kolkata-IV Comm'te and actual date of receipt by PAO with documentary proof thereof. Therefore, the CPIO should have furnished this information/copy of documents as sought for.

(vi) Point of appeal No.8 : In so far as this query goes, it is observed that the CPIO has taken the right stand by way of holding that the information sought for relates to the PAO. However, I take recourse to the provisions of Rule 64(5)(a)(ii) read with 64(5)(b) of the CCS(Pension)Rules, 1972 which makes it amply clear that the PAO concerned can direct the Head of office in such cases like the present one.

(vii) Point of Appeal No.9 : On examination of the allegation cited in this point of appeal vis-à-vis the information sought for by the appellant in his RTI application 28.03.2018, I find that the CPIO has quite correctly provided the information alongwith copy of the documents sought for by the appellant. Thus, brining into any new charges in the point of appeal cannot derive any support/backing by any canon of interpretation.

(viii) Point of appeal No.10 : Insofar as this point is concerned, I uphold the repiy furnished by the CPIO since the information sought for apparently/intrinsically revolves around recovery of excess amount paid to the appellant which has been done exclusively in the light of the PAO's order, who is empowered in such cases/circumstances by the provisions of Rule 64(5)(a)(ii) read with Rule 64(5)(b) of the CCS(Pension)Rules, 1972.

(ix) Point of Appeal No.11: As far as this point is concerned, I find that the same lodges allegations which are totally baseless, untenable and devoid of any legal backing since the genesis of these allegations are based on sheer presumption and assumption. However, it is seen that the CPIO has quite specifically replied to this query and also provided the sought for documents.

(x) Point of Appeal No.12 : On examination of this point, I find that the stand taken by the appellant appears to have virtually made allegations pertaining to the recovery effected from his Pensionary benefits. In this premise, I observe that such recovery has been made solely on the basis of the directions of the PAO concerned being empowered by the provisions of Rule 64(5)(a)(ii) read with Rule 64(5)(b) of the CCS(Pension)Rules, 1972.

(xi) Point of Appeal No.13 : So far as this point is concerned, inasmuch as the CPIO has inadvertently not replied to the query. He should obtain the information and furnish the same to the appellant, if available.

(xii) Point of Appeal No.14 : On insightful examination of this point, it is quite evident that the appellant has lodged allegation as to the lack of seriousness on the part of the Head of Office about timely sanction and payment of pension and gratuity, which is not at all tenable nor is it plausible particularly in view of the fact that sanction of pensionary benefits are disbursed only after requisite directions from the PAO, who is empowered, on this score, under the provisions of Rule 64(5)(a)(ii) read with Rule 64(5)(b) of the CCS(Pension) Rules, 1972.

(xiii) Point of Appeal No.16: As far as this point is concerned, I find merit in the contention of the appellant and the CPIO should have provided copy(s) as sought for by the appellant according to the availability after observing the provisions of Section 11(1) of the Right to Information Act, 2005.

In the light of the above discussion and findings, I proceed to pass the following orders.

VI. ORDER

(a) Point No.2 : I accept the reply furnished by the CPIO.

(b) Point No.3 : I uphold the stand taken by the CPIO.

(c) Point No.4 : I uphold the decision taken by the CPIO.

(d) Point No.5 : I hold that the CPIO has correctly provided the documents to the appellant.

(e) Point No.7: I direct the CPIO to furnish the information/copies of documents to the appellant.

(f) Point No.8 : I uphold the stand taken by the CPIO.

(g) Point No.9 : I reject the contention of the appellant and agree with the reply furnished by the CPIO.

(h) Point No.10 : I uphold the reply furnished by the CPIO.

(i) Point No.11 : I uphold the stand taken by the CPIO.

(j) Point No.12 : I reject stand taken by the appellant and agree with the reply furnished by the CPIO.

(k) Point of Appeal No.13: I direct the CPIO concerned to obtain the information and furnish the same to the appellant, if available.

(l) Point of Appeal No.14: I reject the contention of the appellant and agree with the reply furnished by the CPIO.

(m) Point of Appeal No.16 : I direct the CPIO to provide copy(s) as sought for by the appellant, according to availability, after observing the provisions of Section 11(1) of the Right to Information Act 2005.

II. The appellant is, however, at liberty to prefer a 'Second Appeal' before the Central Information Commission, Room No.326, 2nd Floor, August Kranti Bhavan, Bhikaji Cama Place, New Delhi-110066 within 90-days from the date of receipt of this order.

The appeal is disposed of accordingly.



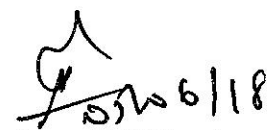
(Sydney D'Silva),
1st Appellate Authority,
&

Joint Commissioner of Central Tax
Howrah CGST Commissionerate

C.No.IV(16)04/RTI/Appeal/CGST/HWH/NPR/2018-19/3202-03-B Date:- 04/06/2018

Copy forwarded for information to:

- (1) Shri Nirmalya Prasad Roy, Flat No. F-3, River Palace, 280, K.B.C. Road, Hatkhola, P.O: Chandannagar, Dist: Hooghly, Pin: 712136.
- (2) The CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate for compliance.



(Sydney D'Silva),
1st Appellate Authority,
&

Joint Commissioner of Central Tax
Howrah CGST Commissionerate

o/c