

Sir,

Most humbly, I beg to state that I have been promoted to the grade of Inspector on ad-hoc basis from STA vide order No 103/2016, dated 6.9.2016 through a Review DPC of 2016 – 17, held in the face of issuance of Revised Draft Seniority List of STA on 20.5.2016. On the basis of Annual DPC of 2016 – 17, 27 Nos. of STAs have been promoted to the grade of Inspector w.e.f. 1.4.2016 vide order No.56/2016, dated 31. 3. 2016. As per DPC rules, Review DPC is conducted for inclusion of candidates who were eligible for promotion on the date of original DPC, and, for that matter, promotion as an outcome of Review DPC is given effect from the date of original promotion order which is under review. Therefore, in my case, promotion to the grade of Inspector ought to have been given effect from 1.4.2016, and, accordingly, I have failed a representation on 18.09.2017 before the Additional Commissioner (P&V), CGST & CX, Howrah Commissionerate with a copy to the Assistant Commissioner(P&V), CGST & CX, Howrah Commissionerate, which has not been disposed of till date, and as a result thereof, I have been drawing less pay as compared to my juniors promoted to the grade of Inspector w.e.f. 1.4.2016.

2. In this context, I do hereby seek the following information under Sec. 6 (i) of RTI Act, 2005.

Information Sought For

Action Taken Report with reference to my representation, dated 18.09.2017 and decision there to be furnished.

3. I hereby pay amount of Rs. 10/- (rupees ten) only as requisite fee.

Encls:- (i) Estt.order No. 103/16.
dated:- 6/9/2016.
(ii) Estt. Order No. 56/2016.
dated:- 31.3.2016.
(iii) Representation ,
dated:- 18.12.2017

Yours faithfully,
Debabrata Chakraborty
 20/6/18
 (DEBABRATA CHAKRABORTY)
 128, SAMABAY PALLY, BALLY
 HOWRAH - 711205

RS. NO - 92 D U048883

one



RTI MATTER/MOST URGENT
BY SPEED POST

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)34/RTI/CGST/HWH/DC/2018-19/ / 6613A

Date: 06.07.2018

To,
Shri Debabrata Chakraborty,
128, Samabay Pally, Bally,
Howrah - 711205

Sir,

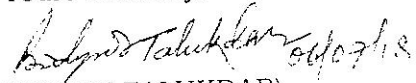
Sub: - Furnishing of information under RTI Act, 2005.

Please refer to your RTI application dated 20.06.2018 which has been received at this office on 21.06.2018. The information so sought for in your RTI application is furnished below as per available records.

A review DPC for regularization of Ad-hoc Inspector since 2013 till date was fixed on 24.04.2018 and 04.05.2018. The DPC was convened to review the ad-hoc promotion to the grade of Inspector in Annual DPC from 2013-14 to 2017-18 and this included the Annual DPC of 2016-17 under which the applicant(s) got the promotion. However, the said DPC is deferred indefinitely as there is an uncertainty about the status of the CAT case no. OA/350/868/2017 and MA/350/292/2018 in the matter of Pradip Kumar Prasad & Ors Vs Central Excise & Customs.

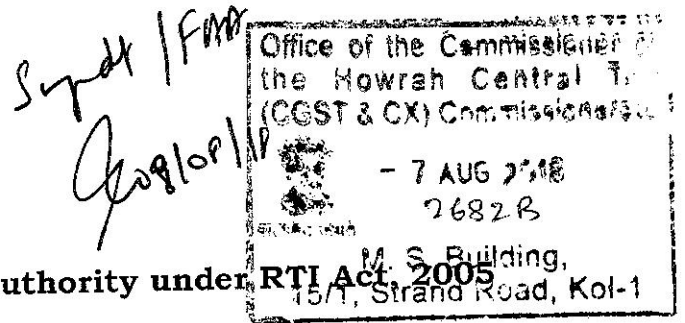
If you are aggrieved or dissatisfied with the reply, you are at liberty to prefer First Appeal within the stipulated time i.e. 30 (thirty) days from the date of receipt of this reply before Shri **Sydney D'Silva**, Joint Commissioner & 1st Appellate Authority under RTI Act, 2005, Central Tax, Howrah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

Yours sincerely,


(BIDYUT TALUKDAR)

CPIO & ASSISTANT COMMISSIONER
सीपीआईओ और सहायक कमिशनर,
CENTRAL TAX केंद्रीय कर
HOWRAH GST COMMISSIONERATE
हावड़ा जीएसटी कमिशनरेट

To
Shri Sydney D'Silva.
Joint Commissioner & 1st Appellate Authority under
Central Tax,
Howrah GST Commissionerate,
M. S. Building (6th Floor),
15/1, Strand Road,
Kolkata - 700001.



Sub: - First Appeal against information furnished by CPIO & Assistant Commissioner, Central Tax, Howrah GST Commissionerate.

Sir,

Please refer to my RTI application dated 15.06.2018 (copy enclosed), wherein I sought information regarding action taken on my representation dated 21.11.2017 addressed to the Commissioner, CGST & Central Excise, Howrah Commissionerate (copy enclosed) for rectification of date of effect of my promotion in the grade of Inspector.

However, in reply to my RTI application, I have not been informed whether any action in that respect has been initiated / contemplated or not. Instead, I have been informed about indefinite deferment of date of review of ad-hoc promotion in the grade of Inspector for the period from 2013-14 to 2017-18 as a fall out of the CAT case mentioned therein, which is not at all relevant to my representation.

Accordingly, I solicit your kind attention to provide me information to the effect that why I should not get date of effect of my promotion in the grade of Inspector w.e.f. 01.04.2016, which was the date of promotion of STAs in the grade of Inspector who are junior to me in the grade of STA as per revised draft seniority list dated 01.09.2015 communicated on 20.05.2016. In this connection, my representation dated 21.11.2017 and RTI application dated 15.06.2018 should be considered properly and necessary information in respect of action initiated against my representation may be communicated to me at the earliest.

Yours faithfully,

- Enclo:-** 1). RTI Application
Dated:- 20/06/2018
2). RTI reply, I.R.No. 6613A
Dated:- 06/07/2018
3). Promotion Order No. 56/2016
Dated:- 31/03/2016
4). Promotion Order No. 103/2016
Dated:- 06/09/2016
5). Representation Letter
Dated:- 18/09/2017

Debabrata Chakraborty
07-08-2018

(DEBABRATA CHAKRABORTY)
128, Samabay Pally, Bally, Howrah
Pin:- 711205
West Bengal



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. 09 /RTI/2018-19

Dated 31/08 /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 Debabrata Chakraborty of 128, Samabay Pally, Bally, Howrah-711205, W.B against the reply/information furnished by the CPIO, HWH GST Comm'te vide his office letter under C.No.IV(16) 34/RTI/CGST/HWH/DC/2018-19/6613A dated 06.07.2018.

I. The appellant submitted an application dated 20.06.2018 seeking certain information from the CPIO & Assistant Commissioner, Howrah CGST Comm'te. The information, reply and point of appeal are depicted herein below:

Information/Query. : Action Taken Report with reference to the appellant's representation dated 18.09.2017 (incorrectly mentioned the date of representation as 21.11.2017 in his appeal) addressed to the Addl. Commissioner, CGST & Central Excise, Howrah Commissionerate (incorrectly mentioned the addressee as Commissioner in his appeal) for rectification of date of effect of his promotion in the grade of Inspector and decision there to be furnished.

Reply of the CPIO : A review DPC for regularization of Ad-hoc Inspector since 2013 till date was fixed on 24.04.2018 and 04.05.2018. The DPC was convened to

review the ad-hoc promotion to the grade of Inspector in Annual DPC from 2013-14 to 2017-18 and this included the Annual DPC of 2016-17 under which the applicant(s) got the promotion. However, the said DPC is deferred indefinitely as there is an uncertainty about the status of the CAT case no. OA/350/868/2017 and MA/350/292/2018 in the matter of Pradip Kumar Prasad & Ors – Vs- Central Excise & Customs.

Point of Appeal : The appellant has contended that, in reply to his RTI application, he has not been informed whether any action in that respect has been initiated/contemplated or not. Instead, he has been informed about indefinite deferment of date of review of ad-hoc promotion in the grade of Inspector for the period from 2013-14 to 2017-18 as a fall out of the CAT case mentioned therein, which is not all relevant to his representation.

Accordingly, the appellant has solicited kind attention of the 1st Appellate Authority to provide him information to the effect that why he should not get date of effect of his promotion in the grade of Inspector w.e.f. 01.04.2016, which was the date of promotion of STAs in the grade of Inspector who are junior to him in the grade of STA as per revised draft seniority list dated 01.09.2015 communicated on 20.05.2016. It has also been claimed that in this connection his representation dated 21.11.2017(actual date is 18.09.2017) and RTI application dated 15.06.2018 (correct date is 20.06.2017) should be considered properly and necessary information in respect of action initiated against his representation may be communicated to him at the earliest.

II. Aggrieved with the reply dated 06.07.2018, the appellant has preferred the instant appeal.

The Appellant has thus prayed for the following relief:

Prayer for supply of necessary information in respect of action initiated against his representation dated 18.09.2017 which may be communicated to him at the earliest.

III. An opportunity for Personal Hearing was granted to the appellant on 24.08.2018 at 12.00 PM. Accordingly, the appellant appeared on the said date before the First Appellate Authority and Personal Hearing. During the hearing, the appellant reiterated the submission made by him in his RTI application dated 20.06.2018 and appeal dated 07.08.2018. Besides, he has requested for early redressal and consequential benefit due to him.

IV. Discussion & findings

(a) I have gone through the case records, the appeal dated 07.08.2018 vis-à-vis the reply dated 06.07.2018 furnished by the CPIO & Assistant Commissioner, Central Tax, Howrah CGST Commissionerate pertaining to the RTI application dated 20.06.2018 filed by the instant appellant.

(b) In the instant case, I find that the crux of the issue revolves around non supply of information pertaining to action taken against the representation dated 18.09.2017 submitted by the appellant for rectification of date of effect of his promotion in the grade of Inspector.

At the outset, on examination of the available records, I observe that the appellant was promoted from the grade of STA to the grade of Inspector on ad-hoc basis vide order No.103/2016 dated 06.09.2018 through Review DPC of 2016-17 held consequent upon issuance of Revised Draft Seniority List of STA on 20.05.2018. Now, the appellant has contended that he should get the date of effect of his promotion in the grade of Inspector from 01.04.2018 i. e. the effective date of promotion of his juniors - in the grade of STA - who were promoted in terms of Estt. Order No.56/2016 dated 31.03.2018.

Over and above, the appellant has further contended that instead of informing him as to any action has been taken on his representation dated 18.09.2017, the CPIO has informed about deferment of date of review of ad-hoc promotion in the grade of Inspector for the period from 2013-14 to 2017-18 in terms of a CAT case as mentioned in the reply.

In the prevailing scenario, I intend to examine the issue from the perspective of the information sought for by the appellant vis-à-vis the reply/information furnished by the CPIO concerned. From the textures/wordings, as elicited from the CPIO's reply/information, it is amply clear that the Review DPC for regularization of Ad-hoc Inspector since 2013-14 to 2017-18, scheduled to be held on 24.04.2018 and subsequently on 04.05.2018, included/covered the Review DPC held on 02.09.2016 under which the applicant(s) got his promotion to the grade of Inspector. Thus, I have not even an iota of doubt that the appellant's case was/is within the consideration of the Department. In the prevailing scenario, although, the said DPC is deferred indefinitely as there is an uncertainty about the status of the CAT case No. OA/350/868/2017 and MA/350/292/2018 in the matter of Pradip Kumar Prasad & Ors - Vs- Central Excise & Customs, the appellant's contention pertaining to non-supply/receipt of desired information from the CPIO is not commensurate

with the existing position. Besides, I am of the opinion that the stand taken by the CPIO is in consonance with the provisions of the RTI Act 2005 and to buttress his position, I place reliance on the provisions of the RTI Act 2005, wherein, it has been enshrined that the basic mandate/tenet of the RTI Act is that the information which is available with the CPIO can only be provided to an applicant, an aspect which derives provisional backing in Section 2(j) *ibid*, wherein, it has, *inter-alia*, been enshrined that the CPIO is not required to collect, compile or create information for the information seeker but he is expected to provide the information 'available' in the material form. This position also derives judicial backing /credence from the ruling as contained in Para 5 of the Hon'ble CIC's order No.CIC/SS/A/2011/001527 dated 17.02.2012.

In this context, I also take recourse to the verdict of the Hon'ble CIC in Appeal No.CIC/AT/A/2006/00588, dated 30.11.2006(CIC) and I intend to reproduce/ excerpt the relevant portion of the judgment as contained in para 11 of the subject order:

"11. Right to Information Act confers on all citizens a right to access information and this right has been defined under Section 2(j) of the said Act. An analysis of this Section would make it clear that the right relates to information that is held by or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it under Section 2(f) or if the information is non-exist, the public authority cannot provide the same under the Act. The Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination."

From the above, particularly from the provisions of the RTI Act 2005 and the different judgments pronounced by the Hon'ble CIC, it is explicitly clear that the prime condition for furnishing information/documents, as the case may be, to an RTI applicant, is availability of the same with the CPIO concerned. Since, in the instant case, the desired information is not available with the CPIO, he was/is not in a position to provide the same. Therefore, I do not feel any need to intervene into the stand taken by the CPIO concerned in the instant case.

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

V. ORDER

(1) I uphold the reply furnished by the CPIO.

(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)09/RTI/Appeal/CGST/HWH/DC/2018-19 / Date: 31/08/2018

/7186-87-B

Copy for information to:

(1) Shri Debabrata Chakraborty of 128, Samabay Pally, Bally, Howrah-711205, W.B.

(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