

**OFFICE OF THE PRINCIPAL COMMISSIONER, CENTRAL EXCISE CUSTOMS AND
SERVICE TAX, NAGPUR - I COMMISSIONERATE**

TELENGKHEDI ROAD, CIVIL LINES, NAGPUR -440001.

Phone No. 0712-2560283, 2560725, 2560813, 2560892, 2561394,

FAX No.2565068

**ORDER -IN-APPEAL PASSED UNDER SECTION 19 OF THE RIGHT TO INFORMATION ACT,
2005**

ORDER-IN-APPEAL NO. 06/2017 DATED 09.03.2017

आवेदन कर्ता का नाम	Shri A.P.Deshpande, Quarter No. 20, Central Excise Colony, Seminary Hills, Nagpur-440006
केन्द्रीय लोक सूचना अधिकारी का नाम	Pradip Gurumurthy केन्द्रीय लोक सूचना अधिकारी तथा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवम सेवा कर, मुख्यालय, नागपुर-1.
सूचना अधिकार आवेदन पत्र तथा विनती पत्र दिनांक	28.12.2016
केन्द्रीय लोक सूचना अधिकारी का जवाब पत्र दिनांक	27.01.2017
प्रथम अपिल पत्र दाखिल दिनांक	07.02.2017

PREAMBLE

1. यह प्रतिलिपी आपके व्यैयक्तिक उपयोग हेतु बिना किसी भूगतान किये जारी है।
2. इस आदेश पत्र प्राप्ती से 90 दिन के भीतर केन्द्रीय सूचना आयोग, दूसरा माला, बि विंग, क्रांति भवन, भीकाजी कामा प्लेस, नई दिल्ली - 110 066 को सूचना अधिकार अधिनियम 2005 के तहत अपील दायर कर सकते हैं।

Brief facts of the case:-

1. Shri A.P.Deshpande, Quarter No. 20, Type III, Central Excise Colony, Seminary Hills, Nagpur-440006 (herein after called as the appellant) has filed this appeal on dated 07.02.2017 received by in this office on 07.02.2017 under Section 19 of the Right to information Act, 2005 (herein after called as the RTI ACT).

2. The said appeal aroused out of the communication issued by the CPIO/Assistant Commissioner (RTI) of Custom, Central Excise and Service Tax, Nagpur I Commissionerate vide letter of F.No.1(22)84/RTI/NGP-I/2016/847 dated 27.01.2017.

The appellant was not satisfied with the above referred Communication and thus filed this appeal.

3. On going through the records it is seen that:-

- (i) The appellant had filed an RTI application No. Nil dated 28.12.2016 received by the CPIO/ Assistant / Deputy Commissioner (RTI) Custom, Central Excise & Service Tax, headquarter of Nagpur -I Commissionerate on 28.12.2016.
- (ii) The CPIO/ Custom, Central Excise & Service Tax, headquarter of Nagpur -I Commissionerate has communicated the decision on dated 27.01.2017.

4. The information called by the appellant in the RTI application dated 28.12.2016 was as stated below:-

- (i) What action has been taken by Assistant Chief Accounts Officer, Kendriya Utpad shulk Nagpur-I in reference to his letter dated 11.05.2016?
- (ii) What action has been taken in respect to his reminder letter dated 08.11.2016 written to Principal Commissioner, Kendriya Utpad shulk, Headquarters, Nagpur-I?
- (iii) DOPT's (Office of Director Canteens) reply given under RTI Act, 2005, wherein it is clarified that the benefit of ACP / MACP is given to Canteen employee from 26.09.1983 or actual date of appointment. In spite of this direction given by DOPT why it was not made applicable?
- (iv) Why the direction given by G. I, department of Personal and Training vide O.M. No. 3/4/2010-Dir (C) dated 01.09.2010 was not made applicable?

5. As the information pertained to Accounts department, this office vide letter of C.No. I(22)84/RTI/NGP-I/2016/19 to 20 dated 30.12.2016 has called the said information from Assistant Chief Accounts Officer, Central Excise & Customs, Nagpur-I Commissionerate.

6. The Assistant Chief Accounts Officer, Central Excise & Customs, Nagpur-I Commissionerate has submitted point wise reply which is as under:-

- i. Reply is already given to the applicant under letter of even No.2658 dated 11/15.03.2016 enclosing the copy of letter.
- ii. Shri A. P. Deshpande, Canteen Manager has joined on 29/10/1990 in Central Excise Department and he has been given 1st ACP w.e.f 29.10.2002 and 2nd MACP w.e.f 29/10/2011 which have been granted correctly. Since the reply has already been given, no action is now required.
- iii. The reply given by this office is self explanatory.
- iv. The entire matter has been examined at length and accordingly reply has been given to Shri A. P. Deshpande on 11/15.03.2016, If Shri Deshpande is not

satisfied with the reply given by the Department, he can file appeal before CAT, instead of making application under RTI on same issue.

7. As the reply given by ACAO vide above referred letter was not satisfactory in respect question No iii and iv, this office has further called for the report on 24.01.2017.

8. The Assistant Chief Accounts Officer, Central Excise & Customs, Nagpur-I Commissionerate has submitted the reply on point No. 3 & 4, which as under:-

iii. Shri A. P. Deshpande was appointed in Central Excise Departmental canteen on regular pay scale w.e.f 29.10.1990. Prior to this date he was working in the Canteen of NEERI Nagpur during the period from 26.03.1987 to 28.10.1990. Since NEERI is an Autonomous Body and hence the service rendered in such body should not be counted as regular service for granting benefits of MACP as per DOP&Ts O.M. No. 35034/3/2008-Estt(D) dated 19.05.2009.

iv. As regards directions given in Para No. (i) of DOP&Ts O.M. No. 3/4/2010-Dir(C) dated 01.09.2010 wherein it is stated that the service rendered by Shri A.P. Deshpande for the period from 26.03.1987 to 28.10.1990 cannot be counted for the purpose of ACP and MACP as per O.M No. 35034/3/2008-Estt.(D) dated 19.05.2009 as it is not rendered in the Departmental Canteen run in the offices of the Central Government, though it is counted for pensionary benefits vide this office of letter. F.No. II(29) 2/2000/Et-II/4040 dated 02.03.2011. In this connection a copy of letter dated 08.02.2016 received from NEERI Nagpur is enclosed and accordingly Shri Deshpande has been informed vide letter dated 15.03.2016.

9. On the basis of reply submitted by Assistant Chief Accounts Officer, Central Excise & Customs, Nagpur-I, the CPIO/ Assistant Commissioner, Central Excise and Service Tax letter of F.NoI(22)84/RTI/NGP-I/2016/847 dated 27.01.2017 has forwarded the same reply to the RTI applicant Shri A. P. Deshpande.

Grounds of appeal

10. Being aggrieved with the CPIO's order/communication, the appellant filed an appeal dated 07.02.2017 received in this office on 07.02.2017. The appellant has stated that the information received by him is not satisfactory as the information called in RTI application is different from the information given by the department. There is no resemblance between the two. The appellant has requested to initiate action according to applicable rules and to give him the point wise information once again.

11. The grounds of appeal as elaborated by the appellant in his appeal are as under:-

He wants to specify that he was appointed in NEERI Departmental Canteen and not in NEERI Autonomous organisation. Please refer to his appointment by Departmental Canteen Management Committee's letter of F No. NDC/Man/87, March 23, 1987, wherein at Para No. 2 it is clarified that the rules applicable to him is as laid by Directorate of Departmental Canteens, Ministry of Home affairs, Government of India, New Delhi. The Rules laid down by NEERI Autonomous Organisation is not applicable to him. In this reference please refer to the pages 3 Para 14 of NEERI, Nagpur letter No. O.M.No. AO/5(2)/NDC/90, Sept10,1990 regulation of services of

employees of NEERI departmental canteen. Wherein it is specifically stated that his service falls under which department? And the regulation made applicable to him.

In above reference please refer to his appointment order issued by Central Excise Departmental Canteen issued vide C.No. II(31)4/90/ET-I/27989 Nagpur date 27.09.1990. Where in it is clearly written that his appointment was under NEERI Departmental Canteen to Central Excise Department Canteen on inter departmental transfer basis. In Para 5 it is clearly stated that he was governed by Rules and Regulation laid by Directorate of Canteens, Ministry of Home Affairs, New Delhi.

Therefore to give the benefits of MACP to the canteen staff/employee the Director (Canteen) has issued O.M. No. 3/4/2010-Dir (c) G.I, Ministry of Personnel, PG and Pensions(D.OP&T) dated 01.09.2010 has given direction in Para (i) is applicable to him. However the same is not made applicable to him.

Regulation which are not applicable to Canteen staff and are applicable to Government staff was applied for calculating MACP vide O.M 35034/3/2008 Estt (D) G.I dated 19.05.2009 and the said information was given in reply to RTI application. This O.M is applicable to Central Government Civil in employees only.

The appellant has requested to initiate action according to applicable rules as stated above.

Personal hearing recorded

12. The appellant was given personal hearing on 20.2.2017 at 11:00 a.m. The appellant appeared for the hearing and requested to provide point wise reply which was sought by him from CPIO and requested for giving reply to his two letter dated 11/5/2016 addressed to Chief Accounts Officer, Central Excise and Customs, Nagpur-I and letter dated 8/11/2016 addressed to Principle Commissioner, Central Excise and Customs, Nagpur-I Commissionerate. He wants to know why the instruction contained in O.M.No.03/4/2010 -Dir(C) dated 01.09.2010 has not been followed by Chief Accounts Officer in his letter dated 11/15.03.2016.

Discussion and Finding

13. I have carefully gone through the appellant's appeal dated 07.02.2017 filed against the CPIO/Assistant Commissioner order issued vide letter of F.No. IV(16)01/RTI/2014/H-II/878 dated 04.04.2016.

- (a) At the outset, it must be mentioned that the RTI Act sets out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of such authority. The Supreme Court of India has recognised the right to information as a fundamental right of the citizens of India under the article 19 of the Constitution of India. The RTI Act codifies this fundamental right. Section 3 of the RTI Act clearly confers such right on a citizen in as much as it stipulates that – "subject to the provisions of this Act, all citizens shall have the right to information".
- (b) In this Act, Section 2(f) states that "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars orders

logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

- (c) The definition of the information given in section 2(f) is exhaustive as information means any material in any form, be it written/ printed or stored in a computer or any other storage device."The section also provides records, documents, memos, e- mails, opinions advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples models, data material held in any electronic form and are included in the term "information". Information means only that information, which is available with the public authority in any material form.
- (d) Now the queries raised by an RTI applicant must confirm to the definition of "information" as laid down in Section 2(f) of the RTI Act, 2005. The future course of action to be taken up is not covered by the definition of "information". No reply can be given about the basis for an action which did not take place. An information seeker is expected to ask for information as per section 2(f) there is no scope of allegation about incomplete and incorrect information having been provided.
- (e) The queries raised by the RTI appellant in his RTI application as shown in the Para 4 supra, is in the nature of grievance and cannot be considered as "information" as laid down under in Section 2(f) of the RTI Act, 2005. The appellant has again reiterated his grievance in his appeal as discussed in the Para 11 supra, to give him ACP/MACP from his actual date of appointment i.e. date 26.03.1987 at NEERI departmental Canteen.
- (f) Thus it can be seen that the information called by the RTI applicant, could not have merited a response which did not qualify as "information in term of section 2(f) of the Act. The CPIO of Nagpur-I Commissionerate has correctly replied to the appellant, the factual position as given by the ACAO. (Assistant Chief Accounts Officer, Central Excise & Customs, Nagpur-I).
- (g) The decision taken by ACAO. (Assistant Chief Accounts Officer), Central Excise & Customs, Nagpur-I is final and if the appellant has any grievances against the Pay fixation order issued by the ACAO vide C.No. II(24)04-12/ET-II/3032 dated 24/02/2012, then the appellant is free to file appeal with concerned authority or request for re-examination of his case based on addition information, or instruction of the department on subject issue which he may provide for doing so. In case of Shri Maya Shankar Singh, the Commission vides its Decision No. CIC/VS/A/2014/000766/SB Dated 01.02.2016, has observed that information sought by the appellant are grievances that cannot be remedied before the Commission and that there are other forums for grievance redressal.
- (h) The appellant at the time of personal hearing on 20.2.2017 has requested to provide the reply to his two letter dated 11/5/2016 addressed to Chief Accounts Officer, Central Excise and Customs, Nagpur-I and letter dated 8/11/2016 addressed to Principle Commissioner, Central Excise and Customs, Nagpur-I Commissionerate. The reply to the

above referred letters are to be given by ACAO/ CAO, Central Excise and Customs, Nagpur-I.

ORDER

14. Accordingly I hereby uphold the decision of the CPIO and direct Chief Accounts Officer, Central Excise and Customs, Nagpur-I Commissionerate to re-examine his grievance and submit proper reply to the letter's of Shri A.P.Deshpande, dated 11.05.2016 and dated 08/11/2016 within 10 days.

15. If the appellant is aggrieved with the decision of FAA he is free to file appeal with Central Information Commission, 2nd Floor, August Kranti Bhawan, Bhikaji Kama place, New Delhi-110066 within 90 days from received copy of order in appeal.

A.J. Verma
2/3/17
(A.J. Verma)

Additional Commissioner
First Appellate authority
Customs, Central Excise & service Tax
Nagpur - I Commissionerate

F.No.1(22)07/Appeal/RTI/2017

Nagpur Date 02.03.2017

To
Shri A.P.Deshpande, Quarter No. 20, Type III,
Central Excise Colony, Seminary Hills,
Nagpur-440006

Copy to:-

1. Central Information Commission second floor B -wing kranti Bhawan Bhikaji Kama place, New Delhi 110066 submitted for information.

2. *Chief Accounts Officer*
~~CPIO/ Deputy Commissioner~~ Central Excise, Customs and Service Tax, ~~Division-II~~, Nagpur-I Commissionerate, Nagpur for information.

3. Assistant Commissioner (System), Central Excise, Customs and Service Tax, Computer section, headquarter, Nagpur- I Commissioner to upload the order in the website.

4. Hindi Section Officer,(Lipik) to convert the order in Hindi and provide one copy to Shri A.P.Deshpande, Quarter No. 20, Type III, Central Excise Colony, Seminary Hills, Nagpur-440006 and also submit the copy to this office.

5. Guard file.

K.S. Baharjee
2/3/2017
(K.S. Baharjee)

SUPERINTENDENT (RTI)
Customs, Central Excise & service Tax
Nagpur - I Commissionerate