

**Case No.** : SIC/DBR.2/2022  
**Complainant/ Appellant** : Suman Das  
**Respondent** : SPIO, Directorate of Civil Defence and  
Commandant General of Home Guards,  
Beltola, Guwahati  
**Date of Hearing** : 22/02/2022  
**Complaint/ Second** : Dr. A.P.Rout,  
**Appeal heard by** State Chief Information Commissioner, Assam

**(Treating information in connection with Departmental Proceeding under Life & Personal Liberty)**

**O R D E R**  
**22/02/2022**

1. The petitioner Sri Suman Das has filed one RTI petition before the SPIO, O/o the Director General of Civil Defence and Commandant General of Home Guards, Beltola on 22.1.2022 seeking following information:
  - I. Please provide information and documents regarding whether permission to be taken from Director General of Civil Defence & Commandant General of Home Guards, Assam while giving deployment to Home Guard Volunteer in the State of Assam in any agencies, if yes provide the relevant act/rules and section.
  - II. Provide information and documents whether a District Commandant or Home Guard is eligible to issue command certificate by himself, if yes provide the relevant act/rules and section.
  - III. Provide information and documents whether there is any specific order specifying the need of Director General of Civil Defence & Commandant General of Home Guards, Assam while giving deployment to Home Guard Volunteer thorough online Home Guard deployment system in any agencies.
  - IV. Provide information and documents related with date on which date the Online Home Guards Deployment System started in Assam Home Guard Organisation.
  - V. Provide information and documents whether there is any order since inception of online Home Guard Deployment system till 11.11.2019 by Director General of Civil Defence & Commandant General of Home Guards, Assam specifying regarding seeking his permission while giving deployment to Home Guard Volunteers through online Home Guard deployment system in any agencies.
  - VI. Provide information and documents circulated in relation with flow chart or the deployment procedure in connection to the Online Home Guard Deployment System in Assam which is adopted since the inception of Home Guard deployment system till 11.11.2019.
  - VII. Please provide the instruction which was given as approval by the appropriate authority of the Govt. of Assam regarding the Centralised online Home Guard Deployment System.
  - VIII. Please provide latest govt. rules/instruction order/ circulars issued in connection with Home Guard volunteers deployment issued since 2018.
  - IX. Please specify whether organizational order should be given the most priority of the Statutory Order and Rule.

- X. What are the enquiry assigned to SSO-HG(G) Subhas Ch. Das, SSO(A) Jyoti Bora, Principal Central training Institute –CD &HG, Panikhati Arju Khan Choudhury and Commandant Dharani Barua of AISF-II Bn Chabua, Dibrugarh since 1.10.2019 to till 28.1.2021.
- XI. Details of letter received by your office from the O/o the District Commandant Home Guard, Kamrup from 1<sup>st</sup> Sept. to 30<sup>th</sup> Oct. 2019
- XII. Provide the details of letter no. KHG.93/2019/694 dated 4.10.2019.
- XIII. Provide the details and documents regarding whether any provision exist regarding providing of Secret note to an officer whose ACR is been critically and negatively reported. ( If yes. ....)
- XIV. Provide information and documents regarding the relevant provision whether the negatively pronounce ACR along with the secret note is to be provided or not to the caused officer.
- XV. Provide information and documents regarding the relevant provision whether the negatively pronounced ACR is to be circulated openly and than reach the destination without been marked as confidential or it should be directly routed from the accepting authority to the Non performing officer and should be marked as confidential.
- XVI. Provide information and copies of the proposal for commendation medal/Disc of Director General of Civil Defence and Commandant General of Home Guard Assam to the Gazetted Officer under the Directorate of CD & HG, Assam since January 2017 to December 2018.
- XVII. Provide the names of the Gazetted Officer who has received the Director General of Civil Defence and Commandant General of Home Guard Assam commendation medal/ Disc from January 2017 to December 2018.
- XVIII. Provide the name of the 1<sup>st</sup> Gazetted Officer under the Directorate of CD & HG, Assam whose Director General of Civil Defence & Commandant General of Home Guards, Assam Commendation Medal/Disc was withdrawn.(Also provide order copy.....)
- XIX. Provide the copy of Govt. order owing to non-receipt of the Govt. Approval for which Sri A.K.Sinha Kashyap, IPS, The Director General of Civil Defence & Commandant General of Home Guards, Assam has withdrawn the DGCD & CDHG, Assam Commendation medal/ Disc of the Gazetted Officer.
- XX. Provide information and copy of letters which were communicated as s follow up measures initiative to the Govt. of Assam by Sri A.K.Sinha Kashyap IPS for regularizing and formalizing the non approval issue of Govt. in regards to Commendation Medal/Disc of Director General of Civil Defence & Commandant General of Home Guards, Assam.
- XXI. Provide the names of the Gazetted Officer who has submitted and returned to the DGCD & CGHG, Assam Commendation Medal/Disc owing to the DGCD & CGHG, Assam instruction.(Please provide details and names...)
- XXII. Provide information regarding owing to non approval of the proposal of the online Home Guard Deployment System, whether any instruction was issued by Sir A.K.Sinha Kashyap, IPS, for withdrawl of the decision of his predecessors and stopping the Online Home Guard Deployment System.
- XXIII. Provide specific information regarding what is the maximum time limit after the date of initiation for a Departmental Proceeding against any act of delinquency by any subordinate Gazetted Officer of the State of Assam.
- XXIV. Provide specific information regarding any initiative taken from the Directorate of CD & HG, Assam or either by Sri A.K. Sinha Kashyap, IPS during his tenure against Any Gazetted Officer whose Departmental Proceeding time frame has either lapsed or was dragged for a prolong period.

- XXV. Provide if any adverse or critical remark or comments received from the appropriate authority of Special Branch, Assam Police HQ, Kahilipara, Guwahati during the tenure while Sri Suman Das was attached to Addl. SP under the Assam Police Cyberdome Project till the date, when he was withdrawn from his assignment,(If yes.....)
  - XXVI. Provide information regarding the application of Casual Leave made by Sri Suman Das the then District Commandant Home Guards, Kamrup during the period since inception to his service i.e., from 30.6.2010 to 11.11.2019 and how many days he availed the CL.
  - XXVII. Provide information of CL application made by Sri Suman Das during he period of 9.8.2019 to 30.10.2019.
  - XXVIII. Provide the detail status of the CL of Sri Suman Das during the period from 9.8.2019 to 11.11.2019( if the cl....)
  - XXIX. Provide information and a copy of order communicating a Direction passed from thee Directorate of Civil Defence and Home Guards, Assam to look after the work of Commandant Office of AISF-II BN, Chabua, Dibrugarh ,Assam by Assistant Commandant Sri Satyabrata Das during the leave period of Commandant, AISF-II BN in the month of June 2021, despite of the Second in Command /2 IC present and In charge of his office in the AISF II BN HQ, Chabua, Dibrugarh.
  - XXX. Provide information regarding the no. of official training programme/ meeting/ seminar attended by Sri Suman Das from 11.11.2019 to till date of the receipt of this application.
  - XXXI. Provide information regarding the numbers of added official assignment or tasks assigned from the Directorate of CD & HG Assam to Sri Suman Das from 14.11.2019 to till the date of receipt of this application.
  - XXXII. Provide the list of adverse reports from appropriate authority of any misconduct/insubordinate/misbehavior/ non performance/ and gross violation of legal provision and statute/ misinformation and events of gross procedural lapse or negative or lackadaisical attitude been displayed or carried out by Sri Suman Das since inception in his service i.e.,30.6.2010 (if yes...)
  - XXXIII. Provide information whether Sri Suman Das uses his knowledge as a tool to impress his superior.
  - XXXIV. Provide details of date from when did the SMS has started in the Online Home Guard Deployment System and whether it is still been continued.
  - XXXV. Provide the details of name of Home Guard Volunteers deployed in various agencies in Kamrup and whether SMS was generated through the centralized online Home Guard Deployment system on the date of 30.10.2019.
  - XXXVI. Provide all the details of order assigning the task of Nodal Officer and Supervisory officer of Centralised Online Home Guard Deployment system since its inception to till date of receipt of this application.
  - XXXVII. Provide the details of the name of agencies which were created and accepted by the centralized Online Home Guard Deployment System. In Assam on 30.10.2019.
2. In his RTI petition, the petitioner has sought information within 48 hours citing it as a case affecting life and personal liberty.
  3. The petitioner has sent the RTI petition through email on 26.1.2022 followed it up by sending the hard copy which is received the office of the Director General of Civil Defence and Commandant General of Home Guards, Beltola on 27.1.2022 with signature and seal.

4. On not getting any information, the petitioner filed a complaint petition u/s 18(1) of the RTI Act, 2005 before the Commission on 29.1.2022 and accordingly the matter was taken up for hearing.
5. The petitioner Sri Suman Das is present.
6. The Public Authority is represented by Sri Subhash Ch. Das SSO (HG) & SPIO. The SPIO vide his written statement dated 21.2.2022 submitted a prayer stating that *Quote* No. of information sought is very large. Collection and collation of information sought is a very time consuming and tedious process besides involving application of mind and interpretation of rules/regulations. Hence the delay in submission of information.

Hence, the SPIO requested before the Commission to excuse him for the delay in submission of the information. It will be provided within one week from the date of hearing. *Unquote*

7. The Commission would like to examine the RTI petition seeking information whether the information falls under the provision of the Section 2(f) of the RTI Act, 2005 which reads as follows *Quote* "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; *Unquote*.  
From the above definition of the information, it can easily be deduced that the information sought by the petitioner falls under the definition as per RTI Act.
8. Whether the information submitted by the petitioner conforms to the provision of the RTI Act or not.
9. **Section 6 & 7 of the RTI Act, 2005** states *Quote Section 6 in The Right To Information Act, 2005* Request for obtaining information.—(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her: Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

## **Section 7 in The Right To Information Act, 2005**

7. Disposal of request.—

(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9: Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall be deemed to have refused the request.

And so on upto section 4

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed: Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request,—

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. *Unquote*

**10.** From the above, it is seen that the petitioner has deposited Rs 20/- and his application conforms to the provision of RTI Act, 2005.

**11.** Now the question is whether it is a case of complaint case or not u/s 18 of RTI Act, 2005. As per the petitioner's prayer dated 29.1.2022, he has filed after expiry of 48 hours.

As per section 18(c) of the RTI Act, 2005 Quote Powers and functions of Information Commission.—

(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,—

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds. *Unquote.*

After going through Section 18 of the RTI Act,2005 it is seen that this falls under Complaint case.

- 12.** (a) Examining the petitioner's prayer , it is seen that the petitioner in drawing the kind attention of the Commission under the provision of Article 19(g) and Article 21 of the Constitution of India and has mentioned that departmental proceedings when instituted against a Government servant attaches stigma on the officer and thereby affects his dignity, social status and ultimate provision of Right to livelihood as government servant may loose his job through dismissal/removal by awarding punishment after conclusion of finding in the departmental proceedings.

He further pointed out that because of the institution of the departmental proceeding even the prospect of getting better job in oil sector is not possible as his application was not forwarded by the Controlling Officer.(Copy Enclosed)

- (b) He also pointed out that because of the departmental proceedings, he is not given upgradation to Commandant/SSO/SP/ Divisional Commandant.



Because of this, the quality of official life as well as personal liberty is directly affected.

- (c) He also brought out the fact that because of non receipt of the relevant documents, he is not in a position to prepare his defense before the Enquiry Officer and the departmental enquiry is pending against him w.e.f. 2020 in utter violation of the Departmental Rules and Supreme Court guidelines (Copy enclosed).
- (d) His right to fair trial i.e., Hearing at the departmental proceedings is also affected.
- (e) His right to social security and protection of family is also getting affected because of continuation of the departmental proceedings – threat of losing a job and long pending departmental proceedings and not getting information on time as per RTI Act, 2005.

13. The SPIO Sri Subhash Chandra Das was specifically asked to comment on the above points raised by the petitioner and reason of not providing the information on time as per the provision of the RTI Act, 2005.

The SPIO said that the letter was addressed to Director General of Civil Defence & Commandant General of Home Guards, Assam. The Commission finds it factually incorrect because his letter is addressed to the SPIO, O/o the Director General of Civil Defence and Commandant General of Home Guards, Beltola.

Then he said that the information is huge and relates to the period of earlier Director General. On perusal of the RTI petition, it is found that the information relates to the maximum period of 10 years i.e., after enactment of RTI Act, 2005. This contention is also not correct.

The SPIO then came with the plea that he has high sugar and has lot of office workload, to which the Commission is not empowered to go into the details as he is still gainfully employed as a Superintendent of Police rank officer and he has been designated as SPIO by the Director General of Civil Defence and Commandant General of Home Guards and as per the RTI Act 2005, the Commission has no role to look into other workload of the SPIO and his health condition, as this could have been sorted out between him and the Controlling Officer.

Further his prayer dated 21.2.2022 is of very casual nature and only on response to the notice of the hearing issued by the Commission dated 10.2.2022.

From the above, it is clear that the SPIO has taken the whole issue of supplying information under RTI Act very casually and irresponsibly.

14. In analyzing the contention of the petitioner, the Commission is of the opinion that the petitioner must have a serious issue of trust deficit and threat of losing the job as a senior officer, he could have easily collected these documents from the department without going through the RTI petition.

Though the RTI Act does not have the requirement of the petitioner cause of action, the petitioner has specific cause of action which is in conformity with the Delhi High Court Order of **Har Kishan vs President Secretariat Through ... on 12 January, 2021 (W.P.(C) 7976/2020 Quote**

**“The Court is of the opinion that whenever information is sought under the RTI Act, disclosure of an interest in the information sought would be necessary to establish the bonafides of the applicant. Non-disclosure of the same could result in injustice to several other affected persons”.**  
**Unquote.**

15. Further the Commission though does not want to go into the details of the time taken in connection with the departmental enquiry as pointed out by the petitioner

but would like to examine the case under the RTI Act 2005, and under Article 19 of the Constitution of India which guaranties *Quote*

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business *Unquote*

The petitioner in his contention supra has provided documentary proof that his petition for employment is rejected because of departmental proceedings and thereby his rights under Article 19(g) i.e., freedom of profession, occupation, trade, business etc is completely violated.

**16.** Further Article 21 of the Constitution of India which is described by the Supreme Court has heart of fundamental rights and even available to the non citizens. Justice Bhagwati in interpreting Article 21 has rightly stated it embodies the Constitutional Value of Supreme importance in a democratic society.

Provision of Article 21 is so sacrosanct that they cannot be suspended ever during emergency.

**17.** The Commission in analyzing the prayer of the petitioner and provision under Article 19(g) and Article 21 of the Constitution of India as enumerated above (points 15 and 16) and also in referring to historic judgements of Supreme Court of India under Article 21 in Kharak Singh Vs. State of U.P. AIR 1963 SC 1295, Sunil Batra Vs. Delhi Administration, Mohini Jain Vs. State of Karnataka, 1992 SC, Unni Krishnan Vs. State of Andhra Pradesh, 1993 SC, Subhash Kumar Vs. State of Bihar, Lachma Devi. Vs. Attorney General of India and landmark judgments in A.K.Gopalan Vs. State of Madras, 1951, AIR 1950 SC 27, Maneka Gandhi Vs. UOI, 1978 AIR 1978 SC 597, decides that Right to reputation, Right to hearing, Right to social security, and protection of family, Right to livelihood, Right to live with human dignity, Right to fair trial/fair hearing at departmental proceedings fall under Right to life and personal liberty under the ambit of Article 21 of the Constitution of India and the petitioner has correctly taken shelter under the provision and applied the information within 48 hours.

**18.** The SPIO as stated above is trying to mislead the Commission with wrong information, and then taking the lame excuse of his health. He could not give in satisfactory reply based on rules or Act to counter the prayer of the petitioner to satisfy the Commission on the ground of violation of the RTI Act, 2005, Article 19(g) and Article 21 of the Constitution of India.

**19.** The petitioner further exhibited utter callousness in not complying with the provision of the RTI Act by not providing the information within 48 hours.

**20.** Assuming his plea that sought for information is huge, he has also failed administratively to convey to the petitioner seeking more time.

**21.** Therefore, the Commission thinks it a fit case to impose penalty under the provision of Section 20 of the RTI Act 2005 as the information is not given even within 25 days and as the SPIO is still seeking one week more time.

The Monetary penalty as mentioned in the Act is Rs 250/- per day limiting to Rs 25,000/-.



However, the Commission takes a lenient view and **imposes a penalty of Rs 250.00 only and directs the SPIO to deposit fine in the Head of Account “0070-Other Administrative Services” by Treasury challan and also furnish a copy of Treasury challan’s receipt to the Commission within 30 days.**

**Further the SPIO is also directed to give the information within one week positively.**

Sd/-  
(Dr. A.P. Rout)

Authenticated true copy.

Sd/-  
Secretary & Registrar  
Assam Information Commission

**Memo No. SIC/DBR 2/2022**

**Dtd. 22.2.2022**

Copy to:

1. The Principal Secretary to the Govt. of Assam, Home & Political Department, Dispur, Assam for information.
2. The Director General of Civil Defence and Commandant General of Home Guards, Beltola, Guwahati 28 for information
3. The SPIO, Director General of Civil Defence and Commandant General of Home Guards, Beltola, Guwahati 28 for information and necessary action as ordered above.
4. The petitioner Sri Suman Das, S/o Lt. Sukumar Das, C/o Tileswar Gohain, Balijan Saiding, Chabua, Pin Code 786184, Dibrugarh, Assam for information.
5. Computer Section for uploading in the Website.
6. Office File.
7. Order Book.

Secretary & Registrar  
Assam Information Commission