

# CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

**File No.CIC/SA/A/2014/000494**

**Appellant** : **Dr.Dheeraj Kapoor**  
**Respondent** : **Directorate of Health Services**  
**GNCTD, Delhi**  
**Date of hearing** : **17-10-2014**  
**Date of decision** : **31-10-2014**  
**Information Commissioner** : **Prof. M. Sridhar Acharyulu**  
**(Madabhushi Sridhar)**  
**Referred Sections** : **Sections 3, 19(3) of the RTI**  
**Act**  
**Result** : **Appeal allowed/**  
**Disposed of**

The appellant is represented by Mr. S.C.Kapoor. The Public Authority is represented by Dr. Beena Khurana and Mr. Harish Kumar, Directorate of Health Services, GNCTD, Delhi. Third party Dr Chetna Kapoor was also present.

## **FACTS:**

2. The appellant through his RTI application dated sought information of Dr Chetna Kapoor who is currently posted in DGHS dispensary Viz

i) Detail of Salary : w.e.f date of joining i.e 07/01/2002 to 31/07/2013. Detail Should include :

- a. Basic Pay
- b. Non Practise allowance
- c. Grade Pay
- d. Dearness allowance
- e. House Rent allowance
- f. Academic/annual allowance

g. Transport allowance (Taxable/non Taxable)

h. Deductions : UTEGIS I, UTEGIS S, DGHS, GPF, Income Tax deduction, Education Cess etc.

ii) Detail of residential adress as mentioned in Service Book w.e.f date of joining

iii) Detail of rent reciepts against HRA, for income tax exemption against HRA if any.

3. PIO replied on 18-11-2013. Being unsatisfied with the information provided, the appellat preferred First Appeal on 17-12-2013. Claiming non-satisfaction over the information provided, the appellat has approached the Commission in Second Appeal.

**Decision:**

4. Both the parties made their submissions. The appellat is represented by his father and mother. The Commission observes that except the information that is to be furnished under Section 4(1)(b) of the RTI Act, the rest of the information pertaining to Public Servant is generally treated as 'third party' information, which is to be provided after hearing the

objections from the third party and giving the opportunity to the third party, to appeal against the decision to give the 'third party' information to the RTI applicant.

5. Before going into the question as to whether the information disclosed by the respondent authority of the third party who is a Public servant is valid or not, it is necessary to look into the relevant law, Section 8(1)(j) of the RTI Act:

*“(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”*

6. Central Information Commission in number of its decisions has not allowed disclosure of income tax returns, PAN numbers, details filed for tax determination, bank accounts, source of funds, partnership details, plan to run dealership etc. However any activity of a public servant in his official capacity has to be disclosed. Service matters like appointment, suspension, revocation of suspension, postings, calculation of pension, details of leave, tour, etc were allowed to be disclosed. However entire service book of a particular employee cannot be disclosed as that matter between employee and employer. Employee can seek it and get it, but for others it is third party information, Hon'ble Supreme Court of India in **Girish Ramchandra Deshpande Vs. Central Information Commissioner & Ors. [Special Leave Petition (Civil) No. 27734 of 2012]** dated 3 October 2012 had observed as follows :

**“13. .... The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. ... but the petitioner cannot claim those details as a matter of right. ....The details disclosed by a person in his income tax returns are “personal information”**

Hon’ble Supreme Court of India in **R. K Jain Vs Union of India (UOI) and Anr. [ SLP (C) No. 22609 of 2012]** with regard to third party information made similar observations regarding personal information with reference to third party under Section 8(1)(j).

Hon’ble Delhi High Court in the case of **Vijay Prakash Vs Union of India [W.P. (C) 803/2009]** observed:

“20. .... a distinction must be made between "official" information inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant's private or personal details as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency. Thus, if public access to the personal details such as identity particulars of public servants, i.e. details such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on case by case basis may take into account the following relevant considerations, i.e.

i) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

ii) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

...

The Commission in **Ms. Manisha Vs. Integrated Headquarter of Army** (MOD) [CIC/WB/A/2007/001636-SM] with regard to Voluntary disclosure of Salary details Under Sec 4 (1) (b)(X) had observed as follows :

“4. Section 4(1) (b) (x) reads as follows:

“the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations”.

5. It is evident from the above that the details of remuneration etc., of an employee were to be disclosed by the Public Authority as a part of suo-motu disclosure under Section 4(1) (b) of the RTI Act. **In other words, information in respect of the salary and other remunerations of an employee are not privileged information and will have to be placed in the public domain.** If the Public Authority concerned has not done so yet, it must immediately place such details in the public domain. We direct the CPIO and the Appellate Authority to provide the information in regard to monthly remuneration received by Capt. Naresh Kundu (DE-83MCEME) at the time of providing the information within 10 working days from the receipt of this order. Other details sought by the Appellant need not be provided as it is not mandated under the above section of the Act.”

The Delhi High Court in **Arvind Kejriwal v. Central Public Information Officer [AIR 2010 Del 216]** considered Section 11 of the RTI Act. The Court held that once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole World. Therefore, for providing the information the procedure outlined under Section 11(1) cannot be dispensed with.

Karnataka High Court in **HE Rajasekharappa v SPIO [AIR 2009 Kar. 8]** decided on 1st July 2008 by Justice K Bhakthavatsala held that citizen had no right to information about personal information of the public servant as section 2(f) did not encompass the ‘personal information’.

7. In this case, the Commission holds that the information about the details of deductions, address etc of Dr Chetna Kapoor is her personal information the 'third party' and the PIO has to necessarily follow the procedure under Section 11(1).

8. Amount of Salary and the details of pay-scale of public servant can be part of voluntarily disclosable information under Section 4(1)(b), whereas deductions, personal loans, details of net or gross salary paid for a particular month, or seeking a salary slip (payment voucher) and residential addresses are not disclosable, unless larger public interest is involved. If an RTI Application is filed for that information, the larger public interest has to be examined by the PIOs, Appellate Authorities and the Commission.

9. Before deciding the nature of information sought in this case, one more complication need to be addressed, i.e., right of citizen seeking wife's information from public authority, who employed wife. The issue is privacy between spouses. The RTI Act did not give any specific or special exemption to share personal information with the spouses. As far as RTI Act is concerned there is no difference between the spouse and citizen. Right to privacy is an individual right and within the couple, each individual can claim or give up that right. Especially when spouses are entangled in legal disputes such as marital claims or cruelty charges, the privacy of individual spouse assumes importance in the context of demand for information. When the spouse does not consent to give information, the courts of law have to examine the need and then direct the other party to disclose if justified. For instance in maintenance petition by one spouse against the other, the court of law has to examine the claims, income and expenditure of both the spouses and direct accordingly in order to decide the issue and amount of maintenance.

10. The information about salary amount of Dr. Chetna Kapur, an employee of DGHS dispensary, the third party in this case, is in public domain and can be accessed by any person

from the website of the public authority which is supposed to disclose under Section 4(1)(b) or through an RTI Application under Section 3. Such information cannot be denied even to her husband. Whether it is for maintenance or for any other purpose, such information can be disclosed without seeking reasons for disclosure. There is no privacy pertaining to the information about salary or pay scale of public servant, which is fixed by a wage board after open hearings and paid by the state. There is nothing confidential about it. Such information cannot be considered as held in any fiduciary capacity because it is between employer and employee.

11. This Commission in its earlier order (**Jyoti Seherawat Vs. Home (General) Dept., GNCTD, File No.CIC/AD/A/2012/003341SA**) explained the right to information of salary of spouse as a citizen and culled out following points.

a) The salary paid to the public servant by the public authority is sourced from the tax paid by the people in general. The scale of salary is also fixed by the Public Authority based on certain reasonable fixation in an open exercise by Pay Revision Commissions which later would be generally approved by the Government, which is the representative of the people. Thus the information belongs to public and they have a right to access to it as per RTI Act. It has to be disclosed under Section 4 voluntarily by the Public Authority and if a member of public seeks it, it cannot be denied.

b) The information about salary of employee/officer of the same Public Authority cannot be considered as 'third party information'. The employee of the public authority is part of that public authority and hence he is not the third party. Hence there is no need to obtain the consent of the particular employee for disclosure of that information as provided under the RTI Act, unless it falls under any exception. It may be recalled that even in case of third party information, if the Commission considers the public interest demands, such information can be given in spite of refusal by the third party. Public Authorities cannot reject such RTI applications about salary under the pretext of third party information.

c) As per the provisions of various personal laws applicable to people of different religions, the husband as an earning member of family has a legal duty to maintain the wife and children. It is an undisputed fact that the dependents such as wives and children can seek a direction from the Courts of Justice. Even after the divorce, the family law ordains that Husband has a duty to provide for necessary maintenance of the wife and children. Section 125 of Criminal Procedure Code mandated that husband has a general duty to maintain wife and children. The wife's

entitlement to know the salary particulars of her husband gets further fortified by all the above legal provisions.

d) Especially when the wife is seeking the salary particulars of the Husband, from the public authority where he is working as public servant, it is the duty of the public authority to render required assistance by providing necessary information to her to secure justice. Denial of such information to wife is thus, highly unreasonable, not justified and it will also amount to breach of legal obligation.

e) The maintenance of spouse and children of the family is the legal responsibility of the earning member of the family. Depending upon the situation a husband if dependent or incapable of earning might seek similar information about the salary of the wife, if she is an employee of the public authority.

12. All that information about salary, such as DA, HRA, pension etc of public servants as available in public domain shall be made available to seekers under RTI Act also. The information about salary which is not part of 'scale', is not public information. The information for instance, about deduction of installment for personal loan, payments or savings made by public servant, expenditure details etc is his personal information. As a spouse whether he/she wants to give that private information to the other spouse or not is personal discretion of the spouse. Thus it becomes third party information as far as the spouse (husband in this case) is concerned. In his capacity as a citizen, the appellant is entitled to know the salary particulars of his wife (third party here). Similarly as a citizen has no right to know the private particulars of salary, he can have information about salary amount but not the details of deductions etc of salary of his wife. The Commission is not discussing rights and duties of spouses here, it has to decide what information to be disclosed among citizens who happens to be spouses. Sometimes spouse's interest in securing her\his right might be considered as public interest. A citizen, even if a spouse, has no right to information about deductions and expenditure from salary, as that would amount to personal information unless it is in larger public interest.



13. In the present case, the information sought about Dr. Chetna Kapoor who is currently posted in DGHS dispensary is: Detail of Salary : w.e.f date of joining i.e 07/01/2002 to 31/07/2013 including Basic Pay, Non Practise allowance, Grade Pay, Dearness allowance, House Rent allowance, Academic/annual allowance, Transport allowance (Taxable/non Taxable) and Education Cess. All this information is in public domain and thus it can be disclosed under S. 4(1)(b) and to which the appellant can also have access to.

14. The appellant had further sought information as to deductions : UTEGIS I, UTEGIS S, DGHS, GPF, Income Tax deduction, etc., Details of residential address as mentioned in Service Book w.e.f date of joining, Detail of rent receipts against HRA, for income tax exemption against HRA if any. All these details about service of public servant is not in public domain. This information has no relation to public activity. Disclosure of this information will result in unwarranted invasion of privacy, which is prohibited by Section 8(1)(j). These details are not part of 'salary' information in public domain. Salary being given is in public domain, spending of it is personal information. Disclosure of kind of expenditure by public servant could be unwarranted invasion of privacy. Section 8(1)(j) along with proviso of public interest and Section 11 will operate.

### **Third party information: PIO's Duty**

15. Thus it is third party information necessitating PIO to invoke procedure under Section 11. The PIO has a responsibility to check up whether Dr. Chetna Kapur would like to share or not such information. In this case Dr. Chetna Kapur refused to share the same with her husband with whom she is locked in marital disputes in courts of law. In fact, giving details about deduction will be useful for her as that shows her expenditure which is relevant in hearing of maintenance petition. However it is left to her personal discretion to agree or refuse.

16. The respondent sought her consent, which she refused. The First Appellate Authority held the information as not confidential and ordered PIO to give such information to appellant. The First Appellate Authority has not given any reasons for that conclusion. It was not FAA case that information sought was personal but there existed larger public interest and hence the information shall be given. The order does not even mention these aspects. He has held that information regarding deductions : UTEGIS I, UTEGIS S, DGHS, GPF, Income Tax deduction, etc., and detail of residential address as mentioned in Service Book w.e.f date of joining, detail of rent receipts against HRA, for income tax exemption against HRA if any, was not confidential in a short, three line order. This order is totally against the letter and spirit of RTI Act.

17. Initially the PIO has rightly refused to give above information considering it as information of 'third party'. The PIO pursued procedure under Section 11 and sought the opinion of third party Dr Chetna Kapoor, who refused to give consent, but after FAA ordered disclosure the PIO did not initiate process to inform and obtain opinion of third party. Dr Chetna Kapoor also was not informed about her right to second appeal to the Commission. The PIO complied with the order of First Appellate Authority which was against RTI Act and gave every information sought. In fact there is no reason or ground left for second appeal as the illegal order of FAA was fully complied with. Yet the appellant reached the Commission saying some of the sheets given in answer were not legible.

18. The Commission finds the order of FAA as illegal because; a. he has not given any reason, b. his direction was against the provisions of RTI Act, c. it would violate the right to privacy of Dr. Chetna Kapur. If the information sought is essential for maintenance and for deciding other petitions filed by husband, the appropriate court of law which is hearing that

case would be proper authority to direct the disclosure or otherwise of the information. The Commission holds that the information about the salary and pay scale would serve the interest and purpose of maintenance rights of the spouses. It was not fair and proper for the appellant to come in second appeal even after he got information needed for pursuing his right against his wife.

19. In this case, the Third Party refused to give her consent and the PIO had furnished the third party information to the appellant, though, in compliance of the FAA's illegal order, without giving the opportunity to the third party to prevent it by going in 2nd appeal. The Commission also observes that the FAA did not give any reasoned order overriding the requirement of consent of the Third Party in this case without saying anything on the public interest issue. The Commission, therefore, sets aside the order of FAA for reasons explained above. The Commission advises the PIOs of public authorities not to deny the right of second appeal of the public servants such as Dr. Chetna Kapur, and not to disclose the personal information without allowing them to exhaust that right of appeal by the affected party, especially after First Appellate Authority's order, which was illegal.

20. The Commission cautions the PIO in this case to be careful in future in disclosing personal information of the 'third party' and should ensure that the third party is given complete opportunity as prescribed by law even after the first appeal.

21. The Third Party, Dr. Chetna Kapoor who is present in the hearing, requested not to share her Service Book and other personal information including her residential address at any stage of her service. The Commission also observes that the PIO had already supplied wrongfully, copies of Pay Book Register (PBR), which was supposed to be private information of the third party. The Commission directs the PIO not to supply any such documents as they

squarely fall under private information of the third party. Regarding the other information sought by the appellant under 2nd appeal, the Commission observes that such information cannot be given as it was personal information of third party, who has refused to consent for the same. There is also no larger public interest involved in this regard. Hence no further information be given to the appellant, other than what is already given by the PIO. The Commission **closes** the appeal accordingly.

(M. Sridhar Acharyulu)  
Information Commissioner

Authenticated true copy

(Babu Lal)  
Deputy Registrar

Address of the parties:

1. The CPIO under RTI, Government of NCT of Delhi  
DIRECTORATE OF HEALTH SERVICES, O/o Chief District Medical  
Officer, West District, Major Ashwani Kanv Delhi Govt. Dispensary  
Building, Opposite to Radha Krishna Mandir,  
A-2, Paschim Vihar, NEW DELHI-110063

2. Dr. Dheeraj Kapoor,  
Assistant Professor of Anaesthesia & Intensive Care  
Govt. Medical College & Hospital, Chandigarh  
Department of Anaesthesia & Intensive Care  
Level-V, B-Wing, GMCH,  
Sector-32, CHANDIGARH-160030.