

**H A K Jayaweera v. National Savings Bank (NSB)**

RTICAppeal(In-Person)/57/2018 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – heard as part of a formal meeting of the Commission on 22.05.2018

**Chairperson:** Mr Mahinda Gammampila  
**Commission Members:** Ms Kishali Pinto-Jayawardena  
Mr S.G. Punchihewa  
Dr Selvy Thiruchandran  
Justice Rohini Walgama  
**Present:** Director-General Mr Piyathissa Ranasinghe

**Appellant:** Mr. H A K Jayaweera  
**Notice Issued to:** S D N Perera, General Manger/CEO, NSB

**Appearance/ Represented by:**

Appellant - Mr Saman Ranahegoda on behalf of the Appellant  
Public Authority - Mr Candana Dissanayake, General Manager/Information Officer, NSB  
Ms Farzana Aniff, Manager, Chairman’s Division, NSB

<b>RTI Request filed on</b>	08.09.2017
<b>IO responded on</b>	11.10.2017
<b>First Appeal to DO filed on</b>	19.10.2017
<b>DO responded on</b>	No response
<b>Appeal to RTIC filed on</b>	21.11.2017

**Brief Background Facts**

The Appellant had requested the following items of information with Regard to Mr Suranga Nawullage, a Former Director of NSB, by an information request dated 08.09.2017.

1. Date of recruitment to NSB
2. The designation Mr Nawullage was recruited on
3. The date of retirement
4. Date of appointment to the position of the Director
5. Designation of Mr Nawullage at the time of retirement
6. Salary received by Mr Nawullage at the time of retirement
7. If the above mentioned received a salary from 09.02.2015 to 31.05.2017 as an employee of NSB
8. As per request 7, amounts received
9. If any allowance, wage or privilege was received by the above mentioned from 09.02.2015 to 31.05.2017 as a Director of NSB
10. As per request 9, amounts received
11. If the above mentioned faced an interview with regard to a promotion at NSB after 09.02.2015
12. If Mr Nawullage was eligible to receive a promotion at NSB after 09.02.2015
13. As per request 11 and 12, if the above mentioned received a promotion after 09.02.2015, the nature of such promotion
14. Educational qualifications of the above mentioned at the time of recruitment to NSB
15. Date the wife of Mr Nawullage, Ms W J S Dias joined service at NSB
16. Post to which Ms W J S Dias was recruited
17. Educational qualifications of Ms W J S Dias at the time of recruitment to NSB
18. Date of retirement of Ms W J S Dias, Director, NSB
19. (1) Number of promotions received by Ms W J S Dias after 09.02.2015  
(2) If received, nature and designation of such promotions
20. (1) If Mr Nawullage received any transport allowance or facilities as a Director after 09.02.2015  
(2) If received, nature of such allowances and facilities

The Appellant received a response by a letter dated 11.10.2017, from the Information Officer (IO) of NSB denying access to information stating that the requested information fell within the ambit of Section 5 of the Act. Dissatisfied with the response, the Appellant appealed to the DO on 19.10.2017. Since no response was received from the DO, the Appellant preferred an appeal to the Commission on 04.12.2017.

### **Matters Arising During the Hearing**

Mr Ranahegoda represented the Appellant at the day's proceedings as the Appellant had informed the Commission that he was suffering from ill health and unable to be present.

The IO submitted that the basis for refusing the information requested was that the requests concerned personal information that has no relationship to any public activity. The PA further submitted that there was an ongoing court case between the Appellant and Mr Nawullage, the Director whose information was requested. In response to the submission, it was observed by the Commission that the Act does not allow denial of information based purely on *sub judice* which is not provided for as an exemption to give information under and in terms of Section 5(1) the Act.

It was further pointed out to the PA that the information requested relates to the use of public funds and organisational information and as per Regulation 20 of the RTI Regulations (gazetted on 03.02.2017) which give effect to the Act itself, organizational information with regard to a PA and referencng executive management should be proactively disclosed to the public. .

With regards to item 1 in the information request, the Commission stated that the PA could extract the information from an annual report and provide the information to which the PA agreed. Similarly, the PA agreed to provide the information in relation to items 2 to 5.

The PA submitted that salary information requested in items 6 to 10 were private information relating to Mr Nawullage. The Commission then clarified that matters pertaining to salary, remuneration and allowances were already grouped as information that ought to be proactively disclosed under Regulation 20 of the RTI Regulations (supra). The PA submitted that there was no secrecy involved in the matter and agreed to provide the required information to the Appellant. It was observed by the Commission that some parts of requests 9 and 10 appear to be repetitions of requests 7 and 8 but subject to that, these items in the information requests also relate to information of public record. Information for requests 11 to 14 could be provided as the requests concern the scheme of recruitment/promotions of the PA and educational qualifications of persons recruited therein.

The PA submitted that the Appellant had meanwhile requested for information with regard to Mr Nawullage's wife, who is also an employee of the said PA. In responding to the submission, the Commission stated that the Appellant is not required to provide a reason for requesting such information, which should in any event be available on public record. The Commission further stated that items 15 to 20 may be provided as Mr Nawullage and the wife of Mr Nawullage were employees of the said PA, to which the PA agreed.

The PA submitted that it had written to Mr Nawullage with regard to the instant information request, requesting his consent in regard to provide the information, to which request he had responded refusing on the grounds that it interferes with his privacy, as provided for under Section 5(1)(a) of the Act. The PA also submitted that it had written to the Attorney General's Department seeking advice, to which the Department had responded stating that the PA could make a decision as it deems fit.

**Order**

It is relevant to note in this appeal that the Designated Officer in the Public Authority (PA) had failed to respond to the appeal made by the Appellant to the DO, which lack of response infringes Section 31 of the RTI Act as a duty is imposed on the DO of the PA to respond within three weeks of receiving the appeal, as to whether the DO was allowing the appeal or not.

Upon consideration of the merits of the appeal before us, it is ruled that the same concerns matters that relate to organisational information, dates of recruitment, retirement, designations of officers, salaries paid to individuals including privileges (transport allowances etc) thereon, educational qualifications of those recruited and the scheme of recruitment/promotions of the PA which are matters of public record and should in any event, be in the public domain. The Public Authority expends public funds on the same and therefore should be called upon to provide the said information. Consequently, the exemption under Section 5(1)(a) of the Act does not apply as there cannot be said to be an 'unwarranted invasion' of privacy in that regard.

The PA is directed to handover to the Appellant the information requested in items 1 to 20 subject to the condition that repetitive information requested in items 9 and 10 of the information request and already listed in items 7 and 8 of the said request may be excluded. Consequent upon agreement of the PA in that regard and an undertaking made therein to this Commission, the information is to be provided to the Appellant with a covering letter to the Commission listing the information provided on or before 03.07.2018. The PA is not required to be present for the next hearing if the information agreed upon is provided to the Appellant as aforesaid, in which case this appeal will be taken off the list of appeals to be heard on that day.

The Appeal is adjourned subject to the above condition.

Next date of hearing: 03.07.2018

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