

P. Mallawaarachchi v. Sri Lanka Police

RTICAppeal(In-Person)/169/2018 - 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 RohiniWalgama
Present: Director-General Mr. PiyathissaRanasinghe

Appellant: Mr. P. Mallawaarachchi
Notice Issued to: Inspector General, Sri Lanka Police.

Appearance/ Represented by:

Appellant - Mr. P. Mallawaarachchi
Public Authority - Mr. R.A.K. Gamini, Chief Inspector, Police Headquarters.

RTI Request filed on	09.10.2017
IO responded on	N/A
First Appeal to DO filed on	24.11.2017
DO responded on	N/A
Appeal to RTIC filed on	25.01.2018

Brief Background Facts

The Appellant had requested the following information, by an information request dated 09.10.2017:

The following details relating to an interview headed/conducted by DIG Fabien Mitchell and DIG D.S.R. Wanaguru on 18.05.2009:

Certified copies of the:

- 1. Names of the officers called for the interview held on 2009.05.18*
- 2. The document which contains the marks obtained by these officers at the interview*

3. *Message bearing number CRTM 1109 dated 24.07.2009 in relation to the said interviews*

Upon receiving no response from the IO, the Appellant has made an appeal to the Designated Officer (DO) on 24.11.2017. Upon receiving no response from the DO, the Appellant made an appeal to the Commission by letter dated 25.01.2018.

Matters Arising During the Hearing

The PA by letter dated 18.05.2018 had informed the Commission that upon the receipt of the Appellant's information request dated 09.10.2017, it had inquired about the information requested from the Human Resources Management Division by letter dated 23.10.2017. Consequently, the Director of Human Resources Management (මානව සම්පත් කළමනාකරණ) Division by letter dated 24.11.2017 had submitted that since the interview concerned had been conducted by the DIG in charge of Disciplinary Conduct Division (විනය හා කල්කිරියා), none of the documents pertaining to the interview were in its custody thereof.

At the hearing, the PA confirmed the same before the Commission and submitted that he has made further inquiries from the Disciplinary Conduct Division of the PA as well but had failed to locate the information requested therein. The PA opined that since the information requested is pertaining to nine year old documents, it was probable that the PA was no longer in possession of the relevant information.

The Appellant submitted that although he was present at the *interview headed/conducted by DIG Fabien Mitchell and DIG D.S.R. Wanaguru on 18.05.2009*, his marks had not been released subsequently. Instead, interview marks of one Mr. PHettiarachchi, who had neither applied nor been present at the interview concerned, had been released. It was the Appellant's contention that the PA had awarded the marks that were allocated to him, Mr. P Mallawarachchi, to Mr. P. Hettiarachchi by mistake and consequently was unwilling to release the documents in their possession relating to the interview.

The Commission queried as to whether steps had been taken to inspect the personal files of the officers who participated at the interview concerned in order to ascertain if the requested information could be traced in response to which the PA replied in the negative. Thereafter, the Appellant drew the attention of the Commission to two documents of which the Appellant was in possession wherein the names of the officers who took part in the interview and the names of the officers whose educational qualifications were to be assessed and confirmed in order to qualify for the interview were listed. He further disclosed that the name of Mr. Hettiarachchi to whom marks were awarded, had not been included in any of the two lists.

Order

In the instant matter, since the subject matter pertains to the fact as to whether a Public Authority funded by public money has effected promotions of employees in accordance with proper procedure, we note that, as ruled in *O. W. K. Gnanadasa v. Bank of Ceylon* (RTIC Minutes 04.12.2017), the PA has a duty to disclose the information requested under and in terms of the RTI Act..

The PA is directed to inspect the personal file of one Mr. Hettiarachchi, who currently holds office as an Assistant Superintendent of Police, to whom marks had been awarded (despite the Appellant alleging that the said Mr. Hettiarachchi had neither applied nor been present at the interview held in this regard on *18.05.2009*) in order to ascertain the whereabouts of the requested information. In the event the PA fails to locate the relevant documents in the personal file of the said Mr. Hettiarachchi, the PA is directed to inspect the personal files of the other interviewees who presented themselves for the said interview concerned for this purpose.

In the foregoing circumstances, the Public Authority is directed to more fully substantiate its position that the requested documentation cannot be located and to conduct a further inquiry and inspection into the documents in question. It is required to present itself before the Commission along with the required documents for the Commission's perusal at the next date of hearing.

The Appeal is hereby adjourned.

Next Date of Hearing: 12.06.2018
