

I.R.M Kottegoda v Industrial Technology Institute (ITI)

RTIC Appeal (Documentary Proceeding)/[2172]/[2020]- Order adopted as part of the formal meeting of the Commission on [03.11.2020]

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)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Director General : D.G. Hapuarachchi

Appellant: I.R.M Kottegoda
Notice issued to: Designated Officer (DO), Industrial Technology Institute

RTI Request filed on	13.08.2019
IO responded on	13.08.2019 – Acknowledgement
First Appeal to DO filed on	27.08.2019
DO responded on	29.08.2019 – according to the Appeal to the RTIC and the written submissions of the PA
Appeal to RTIC filed on	18.11.2019

Brief Factual Background:

The Appellant had by request dated 13.08.2019 requested the following,

“I participated for the interview head for the post of ADG- R&G [Additional Director General (Research and Development)] and ADG-TS [Additional Director General (Technical Service)] on 2019.07.03. I would like to know my marks at the interview for both posts and also my rank among other candidates for each of above post.”

As the Information Officer (IO) failed to respond within the time period stipulated under the Act the Appellant on 27.08.2019 lodged and appeal with the DO. According to the Appeal to the RTIC and the written submissions of the PA the DO has replied but it is not filed to the RTIC. Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 18.11.2019

Order:

In view of the prevailing situation in the Western Province from October 27th -23rd November 2020 with curfew imposed in certain areas due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the Commission's Rules on Fees and Appeal Procedures of the RTI Commission's Appeal (Gazette No. 2004/66, 03.02.2017) were postponed during the aforementioned period.

Accordingly, this Appeal will be taken up for hearing on 01.12.2020 under and in terms of a Documentary Proceeding.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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Matters Arising During the Course of the Hearing:

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals will be considered in terms of Rule 19 of the RTI Commission's Appeal and Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017) as documentary proceedings. As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.

The Appellant by letter 12.09.2019 informed the Commission the following,

“ They sent finally only interview mark for ADG- R&G post, but my rank among other candidates is not given for ADG- R&G post. Also for ADG-TS interview both rank and marks are not given so far.”

The Public Authority (PA) by letter dated 18.02.2020 informed the following,

ADG- R&G post- “ The copy of an extract of the marks for the post of Additional Director General (Research and Development) has been given. Since the rank is not mentioned in the interview Panel report, we are not allowed to make any amendments to the interview.

ADG-TS post- “ We have received only a recommendation from the interview panel for the post of Additional Director General (Technical Services), interview, which has not

been approved by the Board of Management. Hence, we already informed you that this document will be submitted to you after obtaining the approval from the Board of Management.”

Further, the PA has submitted a written submissions dated 08.10.2020 in relation to the information requested and the Commission noted the following,

- *“....That the Appellant has come before the Right to Information Commission on 18.11.2019, which lies beyond the 2 months as specified in the ACT.*

In relation to Appellant’s marks and rank at the Additional Director General (Research and Development) interview

- Appellant’s marks - *“.....marks and rank at the Additional Director General (Research and Development) interview was handed over to her on 29.08.2019,*
- Appellant’s rank - *“..... According to the interview scoring sheet for this ADG- R&G post we did not rank the candidates among others who faced with this interview. The only thing we had was the marks of each candidate’s according to the interview criteria and Dr. Kottegoda’s marks have already been handed over to her as requested. Once this interview panel report was approved by the Board of Management I/or anyone in the Institute was not allowed to make any alterations or additions to this document and therefore I am not in a position to give any detail which was not in the interview panel report”*

In relation to Appellant’s marks and rank at the Additional Director General (Technical Services) interview

- *“..... after appointing the new Board of Management in May 2020, ITI holds its next Bord meeting on 21.05.2020. In the circumstance, the decision taken at the Board meeting held on 19.11.2019 to cancel the aforesaid interview for this post of ADG-TS was pending for approval from the Board of Management until the 21.05.2020.*
- *Now Board of Management has approved the decision to cancel the aforesaid interview based on the observation made upon the interview panel report dated 21.07.2019 and therefore, now I am in the position to hand over the marks of the Dr. Kottegoda for the interview of ADG-TS,*
- *I am available with the marks of the interview for the post of ADG-TS only after 21.05.2020.”*

Order:

The Commission noted the following and made directions accordingly,

- The marks of Additional Director General (Research and Development) interview- it is noted, by letters/documents dated 12.09.2019, 18.02.2020 and 08.10.2020 that the Appellant is in receipt of the marks of Additional Director General (Research and Development) interview,
- The rank of Additional Director General (Research and Development) interview- it is noted, by letters/documents dated 18.02.2020 and 08.10.2020 that the PA is not in the

possession, control and custody of the information concerned. The right of the citizen to acquire information from a PA arises when the PA concerned is in the possession, custody or control of the information requested under and in terms of Section 3 (1) of the Right to Information Act, No.12 of 2016. In the above circumstances, the PA cannot provide this information as the information requested by the appellant is not in the possession, custody or control of the PA.

- The marks at the Additional Director General (Technical Services) interview- It is noted by written submission dated 08.10.2020 that the information can be provided only after approval from the Board of Management is obtained on 21.05.2020. It is emphasized that a citizen's right to access information requested, in the possession, custody or control of a public authority, can be denied only by citing one or more reasons referred to in section 5 (1) of the Right to Information Act. In any event, the Public Authority has now agreed to provide the said marks and is therefore directed to release the marks to the Appellant, with a copy to the Commission within two weeks of receipt of this Order.
- The rank at the Additional Director General (Technical Services) interview- The PA is directed to inform whether the PA is in possession, custody and control of the information under and in terms of 3 (1) of the Act and if available to provide the same to the Appellant with a copy to the Commission within two weeks of receipt of the Order.

The Appeal is concluded.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).
