

H.L. Fernando v Sri Lanka Broadcasting Corporation (SLBC)

RTIC Appeal (In – person)/261/2018 (*Order adopted as part of a formal meeting of the Commission on 28.08.2018*)

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)

Chairperson: Mahinda Gammampila

Commission Members: Kishali Pinto-Jayawardena

S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appellant: Mr. H.L. Fernando

Notice issued to: Designated Officer (DO), SLBC

Appearance/ Represented by:

Appellant - H.L. Fernando

PA - W.C.P Ratnayake, Additional Secretary, SLBC

K.A. Janaki Priyadarshani, Assistant Manager III, SLBC

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| RTI Request filed on: | 13.03.2017 |
| IO responded on: | 18.12.2017 |
| First Appeal to DO filed on: | 27.04.2017 |
| DO responded on: | No response |
| Appeal to RTIC filed on: | 14.03.2018 |

Brief Factual Background:

The Appellant had by request dated 13.03.2017 requested the following information,

1. The details of the Appellant's monthly earnings since 26.10.1963 to 26.10.1996 when the Appellant was appointed as a Relief announcer on a casual basis by letter dated 25.10.1963 for purposes of computing the Appellant's E.P.F and E.T.F payments and
2. Vouchers, receipts and certified amounts of claim since 26.10.1963 to 26.10.1996 from SLBC.

Further, a letter dated 14.03.2018 was sent to the IO/DO of the SLBC by the Appellant on the basis of the non-acknowledgement of the information request.

As the Information Officer (IO) failed to respond within the timeframe stipulated under the Act, an appeal was lodged with the DO on 27.04.2017, prior to receiving the response of the IO. On 23.10.2017 the Appellant lodged another appeal with the DO.

Consequently, the IO by letter dated 18.12.2017 informed the Appellant that the information requested can be made available to the Appellant with a payment of Rs.18.00 to the SLBC under Section 25 (1) of the RTI Act.

As the DO failed to respond within the time frame stipulated by the Act, the Appellant preferred an appeal to the Commission on 14.03.2018.

Matters Arising During the Hearing

Upon being queried as to the background of the information request, the Appellant responded stating that that he joined the PA on 26.10.1963 as a Relief announcer on a casual basis in which he has engaged to date. He further submitted that he requested the information for the purpose of computing his E.P.F and E.T.F payments and that he was not made permanent due to various reasons.

With regard to the item no 01, the PA submitted that it made available the information that is in its possession which are documents of the last 05 years and informed the Appellant that neither the documents nor other details are available in the English Service in relation to the time period between 1963-1996.

The Appellant confirmed the same but submitted the receipt of the same and submitted that the information provided is insufficient for the purpose of computing his E.P.F and E.T.F payments related to the time period 1963-1996. Further, the Appellant submitted that such information was made available as a result of the appeal lodged in the Labour Department on the basis of non-payment of his E.P.F.

Nonetheless, the Appellant appreciated the fact that he had been able to obtain this information only due to the enactment and implementation of the Right to Information Act No.12 of 2006.

With regard to item no. 02, the PA produced the letter dated 26.05.2017 by the Finance Division of the SLBC including the following,

‘Due to the decay of the roof of the Finance Division most of the documents have been wetted and vouchers have been damaged by termites and rats. Therefore documents and vouchers prior to 2010 have been removed from the premises of the Finance Division.

‘Since Mr. Harold Fernando was an employee of the relief staff, no amount of money has been paid to the Employees Provident Fund and the Employees’ Trust Fund from 1963 to 2017.’

Therefore, the PA submitted that the information requested by item no.02 is not in the possession of the PA for the period of 1963-1996.

Nonetheless, the Appellant submitted that the vouchers prior to 2010 are available in his personal file maintained by the SLBC as he made a written complainant on the non-payment of the vouchers with the vouchers attached. For that reason, it was the Appellant’s contention that the information requested was in effect in the possession of the Public Authority.

Alternatively, the PA agreed that a personal file is being maintained by the PA but that it does not contain the vouchers as submitted by the Appellant.

Order

The attention of the parties is drawn to the fact that under and in terms of Section 3 (1) of the Right to Information Act No. 12 of 2016 the right of a citizen to acquire information from a PA arises when the PA concerned is in possession, custody or control of the information requested.

In the foregoing circumstances, the PA is directed to inspect and to produce the personal file of the Appellant maintained by the PA at the next hearing date for an inspection to ascertain whether the information requested is in fact contained in the files.

The Appeal is hereby adjourned.

The next date of hearing: 16.10.2018
