

C J Wijayawardhana v. Sri Lanka Telecom PLC (SLT)

RTIC Appeal(In-Person) /295/2018, /298/2018 and /299/2018 - *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 24.07.2018

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

Present: Director-General Piyathissa Ranasinghe

Appellant: C J Wijayawardhana
Notice Issued to: Designated Officer, SLT

Appearance/ Represented by:

Appellant - C J Wijayawardhana
Public Authority - Rajitha De Silva, Legal Officer, SLT
D C Panapitiya, Manager/RM, SLT

RTI Request filed on	15.12.2017 and 18.12.2017
IO responded on	08.01.2018
First Appeal to DO filed on	19.01.2018
DO responded on	No Response
Appeal to RTIC filed on	02.03.2018

Brief Background Facts

The Appellant had requested the following items of information, by two information requests dated 15.12.2017 and one information request dated 18.12.2017;

1. Information relating to all executive officers of Grade A3, A4 and A5 of Sri Lanka Telecom PLC (SLT) whose requests for extension of service in SLT beyond 55 years of age were approved by the Chairman/GCEO during years 2016 and 2017 (up to date)
2. Information relating to all executive officers of Grade A1 and A2 of SLT whose requests for extension of service in SLT beyond 55 years of age, which were approved by the Board of Directors during the years 2016 and 2017 (up to now)
3. Information relating to all executive officers of Grade A1 and A2 of SLT whose requests for extension of service in SLT beyond 55 years of age, which were not approved by the Board of Directors during the years 2016 and 2017 (up to now)

The IO responded by letters dated 08.01.2018 denying the information citing Section 5(1) of the Act. Dissatisfied with the response, the Appellant appealed to the DO on 19.01.2018. The DO

acknowledged the Appeal of the Appellant but failed to respond. Citing the failure to obtain a decision on his Appeal, the Appellant preferred an Appeal to the Commission on 02.03.2018.

Matters Arising During the Hearing

The PA submitted that the Appellant was seeking correspondence between the employee and employer, the disclosure of which would cause prejudice to the relationship between the parties. The PA further submitted that the Appellant had failed to demonstrate the public interest in the disclosure of the information requested, resulting in the PA's denial of the information under Section 5(1)(a) of the Right to Information Act No. 12 of 2016.

On questioning the Appellant whether the information requested was private information, the Appellant submitted that his extension of employment was not granted which was the reason behind the information request. He further submitted that the PA does not follow a policy in granting extensions in employment and alleged favouritism and discrimination in the process, as the reason to request the said information.

The Commission queried from the PA this allegation of the lack of transparency in granting extensions. The PA submitted that the ordinary retirement age of an employee of the PA is 55 years of age which may be extended to the 60 years of age. In order to obtain this extension, the employee is required to make a request in writing to the Board of the PA which is followed by a performance evaluation subsequent to which the extension is granted at the discretion of the PA. The PA further submitted that there is a Policy Document with regard to extension of employment.

The Appellant submitted that he received an extension of employment, but wanted to prevent other employees from being subject to favouritism and discrimination in the process of applying for the same. The Commission noted that certain information requested by the Appellant such as correspondence between the employee and employer could not be provided as it may be supplied in confidence and as such may fall within Section 5 (1)(i) or may fall within another exemption under the Act. This was so since the Appellant's information request was broad. The Appellant submitted that he was willing to amend the information request limit it to policy documents, directives and regulations with regard to extension of employment.

Order

As the Appellant has agreed to amend/ limit his information request to policy documents, directives and regulations with regard to extension of employment to the exclusion of confidential communication between the employer and employee, the PA is directed to provide the information of the amended request, with regard to policy, standards and regulations followed in respect of extension of employment to the Appellant, with a covering letter and a copy of information to the Commission on or before 11.09.2018.

The PA is further directed to observe the principles laid down in Regulation 20 of The Gazette No. 2004/66, 03.02.2017, which discusses proactive disclosure of information regarding employment schemes. The Appeal is concluded on the basis that the requested information is to be provided to the Appellant on or before 11.09.2018.

Order is directed to be 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).

RTIC Appeal (In-Person) /295/2018, /298/2018 and /299/2018 heard together with RTIC Appeals (In-Person) 319/2018 and 402/2018 - *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 24.07.2018

Chairperson: Mahinda Gammampila
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Appearance/ Represented by:

Appellant - C J Wijayawardhana
Public Authority - Rajitha De Silva, Legal Officer, SLT
Ranmalee Meepagalla, AAL on behalf of SLT
Rajeev Amarasuriya, AAL on behalf of SLT
P W Jayasekara, AAL on behalf of SLT
Anne Devananda, AAL on behalf of SLT
D C Pananpitiya, Manager, SLT he
K N Stembo, DGM, SLT
Nipunu Silva, Manager, SLT

RTI Request filed on	18.12.2017
IO responded on	02.07.2018 (as received by the Appellant)
First Appeal to DO filed on	19.01.2018
DO responded on	04.09.2018 (as received by the Appellant)
Appeal to RTIC filed on	02.03.2018

The Appellant, in addition to the information request considered at the previous hearing, had filed an additional information request to the PA with regard to information relating to the request for an extension of service at SLT beyond the age of 59 years on 18.12.2017.

The requested information are as follows;

1. Recommendations of superiors/committee
2. Copy of Board Paper submission
3. Copy of Board of Directors decision

Matters Arising During the Hearing

The PA submitted that the Appellant had filed multiple information requests with regard to matter in issue and had been informed of a few more information requests being filed in relation to the same. The PA raised the objection of an abuse of process by the Appellant in its submission and submitted that the Appellant was abusing the process established by the RTI Act deliberately inconveniencing the PA. The PA cited a few Indian Authorities including *ICAI Shaunak H Satya (2011) 8 SCC 781* and *Deshmukh Suresh Bhagwanrao v CBEC, Department of Revenue, New Delhi (31.05.2007, CIC Digest (vol. 11) 1516 (280)* as instance in which an information requester made vexatious claims.

The PA further submitted by way of request to the Commission to take up all matters connected together in the interest of administrative efficiency as all requests related to and arose from one issue..

In response, the Appellant submitted that he has had a long standing respectable career with the PA and would not want to retire from service without having matters in question unanswered as it could be prejudicial to him. The Appellant further submitted that such policies, standards and regulations followed in respect of extension of employment were requested to ensure that there is transparency in the process adhered to in the granting these extensions.

It was suggested that the information requested could be amended to limit it to the following, namely;

1. Policies, standards and regulations followed in respect of extension of employment
2. Based on the aforesaid, the reason for not granting the Appellant an extension of employment in the first instance.

In response, the Appellant submitted that he was willing to limit the appeal to the two items as discussed, provided the PA would respond. He further submitted that the change in circumstances led him to file multiple requests from time to time.

Counsel for the PA submitted that these decisions have been made in confidence, and a fiduciary responsibility lies on the part of the PA as these recommendations were made in relation to a number of applicants by a select committee in confidence. The Counsel requested the Commission for time to obtain instructions from the PA on its ability to provide the same.

Order

As the Appellant has agreed to amend/ limit his information request to include;

1. Policies, standards and regulations followed in respect of extension of employment
2. Based on the above mentioned, the reason for not granting the Appellant and extension of employment in the initial instance

Item 1 is directed to be provided to the Appellant as directed at the previous hearing. It appears that the information pertaining to item no. 2 would not attract the above cited exemptions as the information directly concerns the Appellant.

The attention of the PA is drawn to *O W K Gnanadasa v Bank of Ceylon (RTIC Appeal (In-Person) /131/2017) decided on 06.02.2018*, in which the Commission directed the disclosure of information relating to the recruitment and promotion schemes of Bank of Ceylon. In respect of submitting information regarding item 2 of the amended request, the PA's attention is drawn to Section 6 of the RTI Act, which allows for the PA severe information under certain circumstances.

Section 6 of the Act states as follows;

“Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed”

All Appeals filed by the Appellant in relation to this matter are to be taken up together on the next date of hearing.

The Appeal is adjourned

Next date of hearing – 14.11.2018
