

## LESSONS FROM PENALTIES IMPOSED BY CIC

It is human tendency to learn some good lessons from the failure. Some of the inventions like Electric Bulb were come to the use from the failure of so many tests by Mr. Edison. Similarly, in the transparency era, scope of learning lessons from the penalty was opened now. While reviewing the decisions of Central Information Commission (CIC), where penalty was imposed for delay in furnishing information, gives a good insight about when a PIO/Deemed PIO is penalized and when they are not. For the benefit of our department I have compiled separate list of CIC decisions where the explanations furnished by the Public Information Officers were rejected and accepted.

These lists will serve the purpose of educating the information seeker as well as information provider. Further below some useful tips from the penalty proceedings of the Central Information Commission are detailed.

### **List 1:**

The following explanations, Reply, statements & Comments furnished by the Public Information Officers (PIO) / Deemed PIO's were **not accepted by the CIC** during hearing on the issue of delay in furnishing information under RTI Act.

- a. There was a "System failure" and nobody could be identified and made accountable for the delay in replying to the RTI application.  
[ C IC/OK/C/2006/00 147 dated, 01<sup>st</sup> March, 2007 ]
- b. PIO stated that the applicant is satisfied with the information and has desired that no Penalty be levied upon the PIO. Commission pointed out that the views of the applicant cannot be a reasonable cause for dropping penalty proceedings against the PIO.  
[ CIC/OK/A/2006/00400 dated, 18<sup>th</sup> May, 2007 ]
- c. If an applicant expresses satisfaction with the information provided to him after orders are passes by the CIC that does not imply that the complaint has been withdrawn.  
[CIC/OK/A/2006/00552 dated, 2<sup>nd</sup> July, 2007]
- d. The statement given by the PIO that the details of how information has been supplied and also commented that the information had been sought for " Private Purpose only" is not accepted by CIC. [CIC/OK/C/2006/00155 dated, 7<sup>th</sup> July, 2007]

- e. PIO was under same sort of a misconception about the complainant's petition being related to a grievance, which did not qualify to be an information seeking position, which was not accepted. [CIC/AJ/C/2007/00162 dated, 30<sup>TH</sup> July, 2007]
- f. The Commission takes strong exception for terming an RTI applicant as an irritant. [CIC/OK/C/2006/00134 dated, 13<sup>th</sup> September, 2007]
- g. Ignorance of the RTI Act is not a reasonable cause for delay in supply of information. [CIC/OK/C/2006/00208 dated, 13<sup>th</sup> September, 2007]
- h. The Commission is not at all convinced with the stand taken by the PIO that the information cannot be provided as it is Confidential in nature. Since the .....Department had supplied some information to the PIO, he should have forwarded the same to the applicant. However, by not doing so, she has willfully denied information to the applicant. [CIC/OK/A/2006/00617 dated, 7<sup>th</sup> September, 2007]
- i. The deemed PIO stated that decisions of Board of Governors (BOG) are secret in nature and it cannot be given, which according to the commission would amount to either willingly or **malafidely** suppressing the relevant information and inviting Penalty. [CIC/OK/A/2007/00267 dated, 21<sup>st</sup> January, 2008]
- j. The Plea by the CPIO that delay was entirely due to the failure of her junior officer is being taken rather routinely. CPIO's claim that she had sought assistance from 'X' under Section 5 (4) cannot be sustained as 'X' was a part of the CPIO's office and he could not be treated either as a holder of information or an independent functionary. [CIC/AT/C/2008/00121 dated, 01<sup>st</sup> October, 2008]
- k. The plea of a lower subordinate failing to ensure proper discharge of the PIO'S duty to comply with the Commission's directive is entirely unacceptable. [CIC/AT/A/2007/01138 dated, 18<sup>th</sup> November, 2008]
- l. Deemed PIO stated that the RTI application was clubbed with other file papers and went to the other files, due to over sight. Further he has submitted that he is not having any knowledge about the RTI Act due to not importing of training about it and he

is overburdened with work. [ CIC/OK/A/2007/00315 dated, 23<sup>rd</sup> June, 2008]

m. Statement of the Deemed PIO stating that the application received at a time when the implementation of the RTI Act was at the nascent stage and the employees were under the process of sensitization with regard to the provisions of the Act. [CIC/OK/A/2006/00699 dated, 31<sup>st</sup> July, 2008]

n. The PIO informed that the request was not covered under the provisions of RTI Act and rejected. The PIO also informed that she should consult the Punjab Civil Service Rules to know the service condition and that the concerned notification could be obtained from the Home Department. A responsible officer cannot escape his responsibility merely by saying that he depends on the suggestion of his subordinate staff. A senior and responsible officer has to apply his mind independently and take the appropriate final decision and he cannot blindly approve the decisions of his subordinate staff. If the decision of the subordinate staff is to be approved in such a fashion, then what is the need of the senior officer? [ CIC/OK/A/2006/00448 dated, 31<sup>st</sup> July, 2008]

o. The respondent explained that she was only an acting Principal and that the regular Principal had gone abroad and directed principal not to take any action on important matters till she returned. The commission finds this explanation totally unacceptable. [CIC/OK/A/2007/00013 dated, 23<sup>rd</sup> June, 2008]

p. The respondent stated that the published procedure containing the rules of their department laying down that such information may be treated as confidential. They were bound by the rules contained in their published procedure. It has been very clearly mentioned in Section 22 of the RTI Act that the Act will prevail over other laws, whichever, there is any inconsistency between the RTT Act and other laws. . The commission look grave objection to the stand of the respondents.[ CIC/OK/A/2007/00961 dated, 23<sup>rd</sup> June, 2008]

q. Respondent stated that the month-long strike by the non-teaching staff cause for the delay. Delay in providing information more than 6 month not accepted. Further The respondents stated that as it was not clear as to who were the custodian of the

information, the application was transferred from one Department to another. The same was not accepted. [CIC/OK/C/2007/00197 dated, 21<sup>st</sup> January, 2009]

r. The PIO submitted that in the month of January & February, the employees of the University were on strike and for that reason, the official functioning of the University was completely dislocated and RTI application unattended till July, 2007. Commission not accepted the delay for more than four month, after the end of the strike. [CIC/OK/A/2007/00980 dated, 18<sup>th</sup> August, 2008]

s. The public information officer stated that there was no deliberate intention to delay the matter, But wanted to take the entire matter to in logical conclusion. The board regrets for this delay and gives an unconditional apology for the same. Commission not agreed for six months delay. [CIC/OIC/A/2006/00727 Dtd. 18.07.2008 ]

t. PIO stated that he was in touch with the railway board and since the necessary clarification were yet to be received from the railway board; the information could not be supplied to the applicant. The explanation not accepted by the commission and applicant should have been informed about the status /progress of his application. [CIC/OIC/C/2006/00160/ Dated 3<sup>rd</sup> September 2007]

u. The PIO has not mentioned a single reason for the delay in supply of information to the applicant in spite of having an opportunity to do so. [CIC/OIC/A/2006/00471 Dated 2<sup>nd</sup> July 2007]

v. PIO stated that the delay in providing the information has not been caused intentionally or willfully. The FAA states that at the time receipt of application Principal was abroad. In her absence the then PIO could not take any decision. Respondent PIO has failed to provide reasonable cause for the delay of almost six months. [CIC/OIC/A/2007/00203 Dated 4<sup>th</sup> July 2007]

w. The commission feels that the legal opinion was obtained just to delay the information to the appellants; otherwise the provision of the RTI Act are so clear that a single reading is sufficient to understand it and the information can be denied only if the requested information falls under the provision of the section 8 and 9 of the RTI Act. There is therefore no need of any legal opinions. The commission also finds reference to the case pending in the consumer court as totally irrelevant. Also under RTI Act 2005 the burden of proof to justify the denial of information is on the PIO and in this case PIO has failed to provide the burden of proof. [CIC/OIC/A/2006/00637 Dated. 04.07.2008)

x. PIO stated that the delay in replay is owed to the staff members who dealt with the RTI application. Being a PIO, he cannot wash his hands off by passing the responsibilities to his junior staff when it was incumbent upon the PIO to follow up the issue with his junior staff, since the replay to RTI application is a time bound activity. However, the PIO either transferred the application under the provisions of section 5 (5) or section 6 (3). Hence he cannot mitigate his responsibility by blaming his junior officials. This kind of reasoning is more of an excuse and less of an explanation. [CIC/OIC/A/2006/00632 Dt. 30.08.2007]

y. PIO stated that reason for delay for technical laps and has urged that there were no malafides in his alleged failure to provide the information to be applet. It is obvious that no effort had gone in to making the information available to the appellant. It is obvious that no effort had gone into making the By the CPIO even when an appeal was filed before the FAA [CIC/AT/C/2007/00160 Dated 30<sup>th</sup> July 2007]

#### **List 2 :**

The following explanations, Reply, statements & Comments furnished by the Public Information Officers (PIO) / Deemed PIO's were **accepted by the CIC during hearing as reasonable cause** under RTI Act and drops the penalty proceedings.

a. The custodies of the information stated that he had denied the information with the approval of his administrative head. Since, the information was denied under the directions of the Administrative Head, the commission exonerates him from levy of penalty. [CIC/OK/C/2006/00139 dated, 6<sup>th</sup> November, 2007]

b. The PIO stated that the delay took place because the entire District Administration had been working overtime for setting the ex-gratia claims and other rehabilitation matters arising out of the massive Tsunami and the earth quake that struck Andaman Islands. [CIC/OK/C/2006/00139 dated, 6<sup>th</sup> November, 2007]

b.

c. One deemed PIO submitted that the RTI application was never passed on to her and in her support she has attached the Day Book in which the dak/reference letters are entered for disposal. [CIC/OK/A/2007/00315 dated, 23<sup>rd</sup> June, 2008]

c.

d. The application was filed by the President of a Union asking for information about the General Secretary of another Union; he referred the matter for legal opinion of their counsel. The counsel advised that the information need not be given and so the application was rejected. The commission is aware that this issue of entertaining an RTI – application by office holders of Union has been a subject of discussion within the

Commission itself and opinion have varied. Thus penalty imposed earlier dropped. [CIC/OK/A/2006/00610 dated, 31<sup>st</sup> December, 2008]

e. The PIO submitted that the delay was caused because he had to collect the information from several departments. Further submitted that there was a country wide agitation of the Airport Authority Employees Union from November, 2006 to January, 2007 which resulted in diversion of resources and time of the Management. [CIC/OK/A/2006/00839 dated, 29<sup>th</sup> September, 2008]

f. The respondent submitted that no delay was caused in providing the information to the appellant and the stand taken by the appellant before the commission was in correct. Penalty dropped. [CIC/OK/A/2006/00464 dated, 29<sup>th</sup> September, 2008].

g. Respondent stated that the information demanded was too voluminous and the application was received at a time when the School and its teaching Department were heavily pre occupied with the conduct of theory examination , internal assessment etc. [CIC/OK/A/2007/00712 dated, 23<sup>rd</sup> June, 2008]

h. The commission directed the PIO to get a certificate from the Courier Company (Proof for dispatch of information) certifying that the consignment was booked by PA and delivered to the applicant. The PIO also directed to produce the original dispatch register before this commission. On verification, the commission dropped the penalty proceedings. [CIC/OK/C/2006/00130 dated, 23<sup>rd</sup> June, 2008]

i. The commission finds that there is a delay of only three day commission condemned the delay of three days and drops the penalty proceeding and directed the streamline the process of providing information so that there are no such delay in future. [CIC/OIC/C/2007/00067 dated 18<sup>th</sup> July 2008]

j. The principal supplied the information to the CPIO just after four days after filing of RTI application , But delayed due to subsequent changes in the appointment of PIO/ APIOs due to the movement of file to different PIO , commission accept the explanation and drop the penalty proceedings. [CIC/OIC/A/2006/00865 dated 14<sup>th</sup> August 2008]

j.

k. Respondent stated that the appellant was requested to indicate the subject to which the information related. So that efforts could be made to locate the information. The circular, copy of which the appellant wanted is 23 years old and series No of the circular is such that it is doubtful when such

circular had ever been issued by the Department. Commission accepted & penalty proceeding dropped. [CIC/OIC/A/2006/00640 dt 4<sup>th</sup> July 2008]

l. Respondents had sent an interim replay informing the appellant that the relevant material was being collected and collated, the commission accepts & drops the penalty proceedings [CIC/OIC//C/2007/00288 dt 04.07.2007]

l.

m. Keeping in a view of the voluminous information demanded by the Appellant and the initial stage of the RTI Act 2005, the commission drops the penalty proceedings. [CIC/OIC/A/2007/00718 dt 04.07.2008]

m.

n. The respondents have submitted that the application cannot be treated as an RTI application since the fee of Rs. 10/- was not paid by the complainant. Hence, the application itself was void and the penalty proceedings dropped. [CIC/OK/C/2006/00200 dated 23<sup>rd</sup> June, 2008]

#### **Tips from Penalty proceedings of CIC:**

Some of the **other useful tips** from the penalty proceedings of the Central Information Commission are as detailed below:

a. The Commission taken lenient view on the number of days the PIO was temporary duty at different places during the delayed period. [ C IC/OK/C/2006/00 147 dated, 01<sup>st</sup> March, 2007 ]

b. The RTI application was returned saying that there was no post of CAPIO. However, the Website of the Ministry still continue to show that there is a Post of CAPIO.

c. The application returned to the Complainant saying that there was no Key No. and File number.

c.

d. PIO also wasted the financial and manpower resources of the UP Administration by sending the police to the resident of the applicant [CIC/OK/C/2006/00109 dated, 19th March, 2007].

e. The PIO seeks assistance from other officials. But they delayed in furnishing the information. PIO took 15 days to send to the applicant on receipt from the other officials. PIO liable to be penalized for 15 days delay. [Complaint No. CIC/WB/C/2007/00016 dated, 23rd January, 2007] Decision dated, 14-05-2007.

f. If there were any problem in locating the information, the same should have been communicated to the applicant. Instead of seeking clarification from the appellant, the respondent returned the copy of

his original RTI application. [CIC/OK/A/2006/00 640 dated, 23<sup>rd</sup> July, 2007]

g. The CPIO has not submitted any response to the notice nor has she presented herself for hearing before the Commission. [CIC/OK/AT/C/2007/00 131 dated, 23<sup>rd</sup> July, 2007]

g.

h. Since PIO held this position only after 09-11-2006, he can only be held liable from that date. [Complaint No. CIC/WB/C/2006/00 282 and 00693 dated, 4-12-2006 & 8-9-2006]

i. The application should have been forwarded to deemed PIO by PIO with in 6 days..... The PIO should not have taken more than three days to forward the reply to the applicant, .....In case the deemed PIO feels that more time was required to supply this information, they should have intimated either the applicant directly or through the PIO. [CIC/OK/A/2006/00617 dated, 7<sup>th</sup> September, 2007]

j. Even if Administrative Problem, the PIO should have at least sent a one line reply to the applicant stating, he would take some time to supply the information. [CIC/OK/C/2006/00 151 dated, 7<sup>th</sup> September, 2007]

k. CPIO refused to entertain the RTI application as the application filed through the Post Office and the Post Office received the application fee by acting as APIO. As per the provision of the RTI Act, One APIO /PIO can transfer as RTI application to another PIO or to another Public Authority even without transferring the fees. [CIC/OK/C/2007/00 258 dated, 25<sup>th</sup> September, 2007]

l. Section 7(1) allows only for 30 days for responding to an application under the RTI Act from the date of receipt to the date of dispatch of the information. It does not allow for 30 working days. [Decision on 07<sup>th</sup> May, 2008, Adjunct to appeal No. CIC/WB/A/2007/00274 dt 10 -03- 2007]

m. The PIO has to act independently and not as a subordinate of the Principal or any Other senior officer in providing the information under RTI Act 2005. [CIC/OIC/A/2007/00203 Dtd. 04.07.2007]

m.



The above penalty orders were gathered using the search facility provided in the CIC's website. The readers are advised to go through the entire text of the decisions available in [www.cic.gov.in](http://www.cic.gov.in) before use.

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