

Central Information Commission

Shri Salil Kapat vs Ministry Of Defence on 12 November, 2009

CENTRAL INFORMATION COMMISSION

Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-1100

File No.CIC/SM/A/2009/001310/LS

Appellant : Shri Salil Kapat

Public Authority : Ministry of Defence
(through Dr. D.K. Tyagi, Dir. Air-(II), Smt.
M.V. Bhanumati, Dir. IC (III) & Shri S.D.
Banga, Dy. Sect. (MS)

Date of Hearing : 11.11.2009

Date of Decision : 11th & 12th Nov, 2009

FACTS

:

By his RTI application dt. 03rd February, 2009, the appellant had sought huge information about the Indian Defence Estt. on 12 paras which are reproduced below:-

"1. News agencies reported on 21/06/1995 that, then Indian Defence Secretary, Mr. K.A. nambiar met then Asst. Secretary of U.S. Defence Mr. Joseph Nye in the Washington D.C. and signed Indo-U.S. Non lethal Weapon treaty and/or agreement. Cyber warfare is a product of Non lethal weapon and can crash any flying aircrafts, which was published in the Times of India on 09/09/08 and enclosed herewith as 'A'.

Under the circumstances please do let me know under RTI Act as to how many Indian Air Force (both fighter & non-fighter) planes are crashed since 1982, provided the information with date of the accident and death-toll wise. Do also provide the exact nature of Indo-U.S. non-lethal weapon program and name of the U.S. Corporates and/or suppliers like Boeing, Lockheed Martin, Rand, I.B.M. etc., who are directly or indirectly linked in this Non- lethal weapon program and also provide the name of Indian private sector associates in this program.

2. Besides above information please do let me know how many projects in the nature of Electronic observation System, non Ionizing form of Radiation, Positron Emission Tomography (P.E.T. Scanner) with remotely control aspect, Radiation Biology etc., are with the Indian Defence Ministry?

3. How many officers/employees are there in the Indian Defence Ministry who had been to foreign Countries for tour or training purpose? How many officers' spouse (close relatives) are having Green Card of U.S.A. or Blue Card of European Union?

4. Lt. General S.K. Sinha (retired) recently alleged before the Media that Certain matter related to service condition/decorum/protocol of field Marshal Manekshaw was pending for more than decades and those files started moving as soon as field Marshal was hospitalized and put into I.C.C.U. kindly provide information whether Field Marshal Manekshaw's pending matters are still pending or settled? If settled details thereof.

5. Mr. Pranab Mukherjee then Indian Defence Minister had signed one pact or agreement with the U.S. Defence concerning 'Military Medicine,' kindly provide the details of it and how many Indian hospitals are connected with this project? If Indian Council for the Medical Research is also a party to Indo-U.S. military Medicine Project? Also provide the name of all the Indian Defence Medical Units and/or Research Institutes and if they have/had any foreign collaboration ever and the details thereof. 'B' 6. Enclosed as 'B' please find a report of C.A.G. on Life Science Group (L.S.G.), Kindly intimate me the name and address of all the associates of L.S.G., both Indian and foreign associates. If L.S.G. is linked with above stated 'Military Medicine' project? If Reliance life Science and RPG life Science are associated with L.S.G.? If any development of L.S.G. is patented by its private sector associates? Besides let me know that are the functions of Electro Medical Laboratory? Is there any distant observation system in Electro Medical Laboratory with P.E.T. scanner? When President Kalam had fallen down, then was he subject to Electro Medicine treatment for curing?

7. What is the name of the psychological unit of Ministry of Defence and/or D.R.D.O.? How many employees of this unit had been to U.S.A. or Europe? How many psychological evaluation been conducted pertaining to suicides of Indian Soldiers?

'C' 8. Enclosed as 'C' please find a report of C.A.G. on I.N.S. Jalashwa, which was purchased from the U.S.A., with a stipulated condition that it won't be used in war and Americans are allowed to survey it any time on board. Under the circumstances kindly let me know who was the Indian Defence Minister then, when these conditions were approved by the Cabinet? Could it be so that, under manipulation of the C.T.A. such restrictive terms and condition were adopted to deprive the Indian navy of its own warship? If any investigation been conducted and/or proposed to divulge the identity of the betrayers in the Indian administration who had master-mined the futuristic espionage against Indian Navy? Did Cabinet Committee on Security approved the deal knowing it that it won't be used during war?

9. on 26th January 2008, media disclosed that the French President during his Republic day visit in India had bagged the upgrade contract for I.A.F. Mirage fighters. Kindly let me know the name of the contractor and the contract amount to upgrade Mirage Fighters, who were the other bidders and their bidding amount?

10. British Advanced jet Trainer Hawk was supposed to be delivered to the I.A.F. in the year 2006 and thereafter as per agreement signed by the NDA Govt., May I know when the first lot of Hawk were delivered to I.A.F.? If it was delayed then what are the steps been taken against the supplier? Is there any penalty clause regarding delay been incorporated in Hawk deal?

11. It is reported in the Newspapers that there is a huge delay in the part of Israel's supply to AWACS and EWS. Could it be so that Israel is mounting pressure by delaying their supply? What are the penalty measure that Ministry of Defence adopts in any procurement contract to avoid delayed supply? If such penalty measure is there then how many contractors who did not supply in time, were punished? Please provide all the information in details.

12. C.A.G. divulged that our beloved soldiers posted in Siachen Glacier are regularly using torn and recycled uniforms. Please do let me know in details about this pathetic situation and who are the officers in South Block responsible for this anti national act?"

2. As the information sought by the appellant pertain to a number of CPIO's of the Ministry of Defence and also to one CPIO of the Air Headquarters, the concerned CPIO's responded to the paras concerning them vide various letters as mentioned herein after:-

1. Wg. Cdr. T. Sajan's letter dt. 09.06.2009;
2. Col. R.S.Bhatia's, letter dt. 11.06.2009;
3. MoD letter dt. 04.06.2009;
4. Shri P. Mohanty, (Dir. Navy-Acq) letter dt. 25.05.2009;
5. DRDO letter dt. 04.05.2009;
6. Deputy Secretary (MS)'s letter dt. 04.05.2009;
7. Director (Estt.)'s letter dt. 15.05.2009;
8. Deputy Director (G)'s, letter dt. 01.05.2009; and
9. Director (Air II)'s, letter dt. 23.02.2009.

3. Dissatisfied with the information provided to him, the appellant has filed an appeal which was disposed of by Shri R.K. Gosh, Joint Secretary (Air) vide his letter dt. 06.04.2009. Another appeal filed by the appellant was disposed of by the Appellate Authority of DRDO vide letter dt. 30th April, 2009.

4. The present appeal is directed against the orders of CPIOs and AAs.

5. The matter is called for hearing on 11.11.2009. The appellant not present. The Public Authority is represented by the Officers named above.

6. Shri Tyagi would submit that information on all the paras has already been provided to the appellant vide various communications and, therefore, nothing is pending. Shri Tyagi, however, was

directed by the Commission to consolidate the information provided to him para wise and put up before the Commission for perusal on 12.11.2009. The matter was adjourned.

7. As scheduled, the hearing was resumed on 12.11.2009 at 11:30 hrs. Shri Tyagi present. He submits his letter dt. 11.11.2009 addressed to the Registry of the Commission. The operative para of the letter is reproduced below:-

"(i). The information with respect to Para 1 of the applicant's application dated 3.2.09 with respect to the Indian Air Force planes crashed was provided by CPIO Air HQ (Encl. 1). He stated that no Indian Air Force aircraft have crashed since 1982 due to cyber warfare.

(ii). The information with respect to Para 2 of the application of the applicant was transferred to DRDO to inform the applicant directly about the information sought. The Appellate Authority DRDO intimated the applicant that the information does not come under the purview of Human Rights Violation or corruption and accordingly the appeal of the applicant was dismissed. DRDO has been placed in the 2nd Schedule of the Act except for issues of Human Rights Violation of Corruption (Encl. 2).

(iii). The information with regard to Para 3 of the application of the applicant was provided by Director (E) & CPIO and Dy. Secretary 9G) & CPIO. Dy. Secy. (G) informed the applicant that none of the spouses of the present incumbent in the Wing upto the level of CPIO held green card of USA or blue card of European Union. Director 9E) & CPIO informed the applicant that 18 officers/employees of Ministry of Defence (Sectt.) had been to foreign countries for training during the last three years. (Encl. 3 & 4).

(iv). The information regarding Para 4 of the application of the applicant was provided by Dy. Secretary (MS) & CPIO. Dy. Secy. (MS) stated that no matter is pending pertaining to Field Marshal Manekshaw in the Ministry. He also enclosed the Govt. order regarding entitlement of Field Marshal Manekshaw and Marshal of the Indian Air Force urgency (Encl. 5)

(v). The information pertaining to Para 5 of the applicant's application was provided by Director (AFMS Coord) & PIO. He provided a copy of the agreement on academic cooperation in the Military mediations between Ministry of Defence of India and the Department of Defence of the United States of America (Encl. 6).

(vi). The information with respect to Para 6 & 7 was provided by Appellate Authority DRDO. DRDO as has been placed in the 2nd Schedule of the said Act except for issues of Human Right violation of corruption and the information sought by the applicant do not come under the purview of the Human Rights Violation of corruption (Encl.7).

(vii). The information with respect to Para 8 of the applicant's application was provided by Director (Navy/Acq.) 7 CPIO. He stated that the terms and conditions of the letter of acceptance in the case of acquisition of INS Jalswa are the standard terms and conditions of FMS case of the US Govt. with

all counties and not unique to the hot transfer of USS Trenton to India. He also informed that as per the terms and conditions of the LOA the article acquired can only be used for intenal security individual self defence or civic action. Therefore, no restrain is envisaged in the operational exploitation of the ship (Encl. 8).

(viii). The information with respect to para 12 of the applicant's application was provided by the Desk Officer (O-I). He informed the applicant that no torn/recycled clothing is being issued to the troops deployed in Siachen Glacier and complete requirement of subject clothing items is being met with the new stores. (Encl. 9)."

8. He would also submit that information regarding paras 9, 10 & 11 has already been provided to the appellatant vide his letter No. 23.02.2009. The operative para is reproduced below:-

"Item No. -9: No contract for the upgrade of the Indian Air Force Mirage 2000 fighter aircraft has been signed. Item No. - 10: As per the contract, the delivery of Hawk MK-132 AJT aircraft was to commence from September, 2007 onwards. The delivery commenced in November, 2007. As per contract, the vendor has to pay liquidated Damages (LD) to Government of India for slippage in delivery schedule. The requisite penalty has been charged to the vendor.

Item No. 11: a) Delivery schedule is stipulated in the contract and for delayed deliveries clause for financial penalty is integral part of the contract. Any delay in delivery of AWACS will be associated with relevant penalty.

b). Liquidated Damage (LD) Clause is incorporated in all capital procurements contracts to penalize the vendor for delayed delivery. Details of this process are available in Defence Procurement Procedure 2008 available on Ministry of Defence website www.mod.in.

c). All vendors who do not supply the equipment as per the contracted schedule are penalized in accordance to the provisions in the contract.

d). The requisite information could not be disclosed under Section 8(1)(a) & (d) of RTI Act 2005."

9. Shri Tyagi would forcefully plead that the Ministry of Defence and Air Hqrs. have taken great pains to supply the requisite information to the appellatant, and, therefore, the appeal has no merit and may be dismissed out-of-hand.

10. The appellatant is not present before the Commission to contest this claim. It is to be noted that it is for the appellatant to demonstrate as to why he is not satisfied with the information furnished so far. It is also to be noted that the appellatant has sent a representation dated 5.11.2009 to the Registry wherein he has commended the role of Shri D.K. Tyagi and Shri S.K. Ghosh in furnishing him information but has castigated some others, and has demanded action against them without clearly

bringing out the reasons for his dissatisfaction. As mentioned above, a large number of CPIOs have provided him information and the Appellant is expected to be specific as to with whose response he is not satisfied with and provide pointed reasons therefor. I am constrained to remark that the appellant has not discharged this obligation.

11. In view of the above discussion, the Commission disposes of this appeal without any orders.

Sd/-

(M.L. Sharma) Central Information Commissioner Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(K.L. Das) Assistant Registrar Address of parties :-

1. Shri Salil Kapat 3-A Abhoy Sarkar Lane Kolkata - 700 020
2. Dr. D.K. Tyagi Director (Air-II) & CPIO M/o. Defence, Vayu Bhawan, Rafi Marg, New Delhi - 110 011
3. Shri R.K. Ghose Jt. Secy (Air Acquisitions) & AA M/o. Defence, South Block, New Delhi - 110 011