

**ARUNACHAL PRADESH INFORMATION COMMISSION, (APIC)
ITANAGAR, ARUNACHAL PRADESH**

Appeal U/S 19(3) of RTI Act, 2005
vide No.APIC-70/2020

re-numbered from the old number vide APIC-13/2017

**BEFORE THE HON'BLE COURT OF SHRI GOTO ETE, THE STATE INFORMATION
COMMISSIONER:**

Shri Oling Modi
C/O M. Mart, Opposite of
Balaji Mandir, Pasighat Bazaar,
PO; Pasighat, A. Pradesh Appellant

-VERSUS -

Shri T. Mibang
PIO-cum-ADCF, CCF Office,
Central Circle Pasighat, A. Pradesh Respondent

Date of judgment/order: **17.12.2020**

ORDER

Appellant Shri Oling Modi is, though not present, represented by his learned counsel Mr. Oring Modi in person before the Commission. Mr. T. Mibang, PIO-cum-ADCF, of the Office of the Chief Conservator of Forests, Central Circle, Pasighat, is also present through audio/video conferencing.

This is a proceeding being taken up in relation or in continuation of the earlier order of this Commission passed on 15th of February, 2017 in a Second Appeal vide No.APIC-13/2017. Relevant extracts of order is quoted as under –

"..... On query by the Commission the Additional Deputy Conservator of Forest, Pasighat, in his submission had stated that he had already furnished answer script and marksheet of the application along with list of selected candidate.

In view of the above, the Commission direct the Public Information Officer to furnish the marks obtained by the selected candidates to maintain the spirit of transparency and accountability in the working the Public Authority as desired by the Right to Information Act, 2005." (Unquote) – Being aggrieved by above order of the Commission (APIC) the then PIO-cum-ADCF, Pasighat, Mr. Tasang Taga filed a writ petition before the Hon'ble Gauhati High Court Itanagar Permanent Bench, being WP(C)170(AP)2017, whereby, challenging the legality of the aforementioned order of the Commission and the Commission on receipt of a copy of the writ petition from the PIO passed the order dated 07.04.2017, whereby, suspending further proceeding of the appeal until receipt of any order from the Hon'ble High Court. Finally the Hon'ble High Court vide its order dated 24.07.2019 dismissed the writ petition filed by the PIO holding that there is no illegality in the order dated 15.02.2017, passed by the Arunachal Pradesh Information Commission in Appeal No.APIC-13/2017. Mr. Orin Modi learned counsel for appellant, thereafter, submitted a copy the said judgment/order dated 24.07.2019 of the Hon'ble High Court passed in WP(C)170(AP)2017 to this Commission with a request for resuming of the hearing of the appeal. The Commission on receipt of such request of the appellant renumbered the same as APIC-70/2020 and processed for hearing and disposal of the same. And, hence, the present proceeding of this Second Appeal.

Accordingly, the resumption of hearing of this matter haven been taking place on 3(three) consecutive dates, i.e, on 20.08.2020, 12.11.2020 and until today on 17.12.2020. During the course of hearing learned counsel for appellant admittedly submitted that all information's, including- written examination marks of all candidates qualified for viva voice test, so sought, except, the answer

scripts/sheets of the written examination of the appellant himself and of all other successful candidates for appointment to the posts of Forest Guards as sought in item No.1 of his application under Form-A have now been furnished to him by the PIO. According to him, the PIO initially vide his letter No.CAC/378/E/2015/4672 dated 17.10.2016 provided all names of candidates qualified for viva voice test for appointment to the posts of Forest Guards at Annexure-A and written marks and viva voice marks obtained by the appellant at Annexure-B but denied him (appellant) from furnishing the rest information so sought for by him which included – written examination marks along with answer scripts/sheets and viva voice marks of all successful candidates qualified for viva voice test for Forest Guards including Viva Voice marks secured by all candidates as kinds of information exempted under clause-(d) & (g) of sub-section (1) of Section-8 of the RTI Act. Being aggrieved by such decision of the PIO he filed the First Appeal before the First Appellate Authority U/S 19(1) of the RTI Act. The First Appellate Authority-cum-Chief Conservator of Forests, Central Circle, Pasighat, vide his letter No.CAC/378/R/2015/5327-28 dated-16.12.2016 dismissed the First Appeal filed by the appellant in denial from furnishing the written examination marks and answer scripts of other third party as category of information's exempted U/S 8(1)(d) & (g) of RTI Act, 2005. Being not satisfied with the decision of the First Appellate Authority the appellant filed the Second Appeal before the Arunachal Pradesh Information Commission U/S 19(3) of the RTI Act, 2005, being APIC-13/2017. And, accordingly, the Commission heard the appeal on 15.02.2017 during which the appellant pleaded for an order for furnishing of the written examination marks and answer script/sheets of all other candidates and of the answer scripts/sheets of his written examination who had qualified for the viva voice tests for the posts of Forest Guards, in as much as, the answer scripts/sheets of his written examination had not then been provided to him nor had he then been provided the written examination marks along with answer scripts/sheets of all other candidates who had qualified for the viva voice test aforesaid. After hearing the parties on 15.02.2017 the Commission issued the Commission's order dated 15.02.2017 at later stage and the particular contents of this Commission's order dated 15.02.2017 which reads as - "*..... On query by the Commission the Additional Deputy Conservator of Forest, Pasighat, in his submission had stated that he had already furnished answer script and mark-sheets of the application along with list of selected candidate.*"(unquote) – made him confused as the same creates a circumstance appearing to be that the answer scripts of the written examination so sought have been already furnished to him by the PIO, in as much as, neither answer scripts of any one had been furnished to him by the PIO nor had he seen or heard the PIO claiming during the hearing of the appeal on 15.02.2017 to have furnished him the answer scripts of any of the candidates qualified for viva voice test aforesaid. Being confused of the Commission's order aforesaid he (appellant) intended to file an application to the Commission to seek for rectification of the order but before his filing of such application for rectification/amendment of the order PIO filed the aforementioned writ petition, challenging the legality of the Commission's order dated 15.02.2017, as aforesaid.

Present PIO-cum-ADCF of the CCF's Office, Pasighat, Mr. T Mibang, on his part, stated during the said hearing of the appeal in clear admission of the fact that no answer scripts/sheets of any of those candidates qualified for viva voice test for recruitment to the posts of Forest Guards has yet been furnished to the appellant. In other words, the said PIO has not in any way controverted or disputed the fact as raised by the appellant all about such non-furnishing of answer scripts either of himself or of other candidates to him by the PIO. Having carefully read and considered the available materials on records it also transpires that Mr. Tasang Taga the earlier PIO-cum-ADCF, in his RTI replies vide letter No.CAC/378/E/2015/4672 dated-17.10.2016, has , though expressed his readiness to allow inspection of his (appellant) answer script, denied to furnish the answer scripts either of the appellant himself and of other candidates qualified for the said viva voice test as categories of information's exempted under clause (d) and (g) of sub-section (1) of Section-8 of the RTI Act, 2005. The First Appellate Authority vide his order

No.CAC/378/R/2015/5327-28 dated-16.12.2016 denied from furnishing the written examination marks and answer scripts of other candidates on the same grounds of exemption U/S 8(1)(d) & (g) of the Act, whereby, implying only to the extent that the written examination marks along with answer scripts of the appellant could be furnished. Another part of the content of this order of the FAA which reads as – “The information provided by Shri Tasang Taga, ADCF (Asst. PIO) of this office vide Memo No. CAC/378/E/2015/4672 dated-17.10.2016 is correct and sufficient” goes without saying on records that, other than furnishing of the list of qualified candidates for appearing the viva voice tests for appointment to the posts of Forest Guards and the marks obtained by the appellant in his written examination and viva voice test, neither the PIO nor the FAA had furnished or even had made any attempt to furnish the answer scripts either of the appellant himself or of other candidates to the appellant. On careful reading of the relevant contents of the Commission’s order dated 15.02.2017 as quoted in the preceding paragraph the same is also found not clearly speaking, if the answer scripts of the appellant himself or of the other candidates had been furnished by the PIO to the appellant. Over and above, the PIO still expressed his reluctance until this date of hearing on this 17th day of December, 2020 to furnish the answer scripts of all other successful candidates for appointments to the posts of Forest Guards.

Considering all above aspects into account, now, the fact remains that the Commission by its order dated 15.02.2017 has yet not decided, if the answer scripts/sheets of the written examinations either of the appellant himself and of all other candidates qualified for viva voice for appointments to the posts of Forest Guards as sought for by the appellant in his application under Form-A can or cannot be furnished by the public authority under the RTI Act. In the light of such facts and circumstances as aforesaid and for ends of justice there is a need felt required to be decided the above issues involved in this appeal for complete and final disposal of the appeal.

ISSUES INVOLVED FOR DECISION ARE AS FOLLOWS:

(I) If the appellant is entitled to claim the answer scripts of his written examination for recruitment to the post of Forest Guards:

In this context it is pertinent again to refer or re-look the contents of both letters of the PIO vide No.CAC/378/E/2015/4672 dated 17.10.2016 and of the FAA vide No.CAC/378/R/2015/5327-28 dated 16.12.2016, wherein, both the PIO and FAA while denying, inter-alia, to furnish the answer scripts of all other candidates qualified for viva voice test for the posts of Forest Guards as categories of information’s exempted under clause (d) & (g) of sub-section (1) of Section-8 of the RTI Act, 2005 impliedly agreed to the fact that the answer scripts of the appellant himself cannot be denied under the Act. That is to say, neither the PIO nor the FAA has any dispute of the fact that the appellant is entitled to claim for furnishing of his answer scripts of the written examination for the appointment to a post of the Forest Guards. The Hon’ble Supreme Court in the case of **Central Board of Secondary Examination Vs Aditya Bandhopadhyay (2011) 6SCC 494**, held that – access to the answer sheets do not fall under any of the categories of exempted ‘information’ enumerated in clauses (a) to (j) of sub-section (1) of Section 8 of the RTI Act and, therefore, examining bodies will have to permit inspection sought for. Having kept in view the said decision of the Hon’ble Supreme Court in the aforementioned case the answer scripts of the written examination of the appellant for recruitment to the posts of Forest Guard does not fall in any of the categories of exempted ‘**information**’ enumerated in clauses (a) to (j) of sub-section (1) of Section 8 of the RTI Act and the appellant, as such, is entitled to seek for furnishing of his answer scripts of the written examination for recruitment to the post of Forest Guards. And this issue, thus, goes in favor of the appellant and, hence, non-furnishing of the answer scripts of the appellant as yet by the Public Authority is not legally justified.

(II) If the answer scripts of all other candidates qualified for viva voice test for the posts of the Forest Guards are categories of information's exempted from disclosure under clause (d) and (g) of subsection (1) of Section 8 of the RTI Act:

In this context it may be mentioned herein that neither the PIO nor the FAA has been able to establish a fact to go to show that the answer scripts of the written examination of those all other candidate for appointments to the posts of Forest Guards is an information including commercial confidence, trade secrets or intellectual property the disclosure of which would harm the competitive position of a third party and without establishment of which the same cannot be claimed to be information exempted from disclosure under clause (d) of subsection (1) of Section 8 of the Act. The life or liberty as provided in clause (g) of the subsection (1) of Section 8 of the RTI Act can be applied only in cases where there is an imminent danger to the life and liberty of a person or persons. But in the present case neither the PIO nor the appellate authority has established any fact to go to show that any such disclosure of the answer scripts of any or all other successful candidates would be imminently dangerous to the life and liberty of any person and in absence of which same cannot be claimed as information exempted from disclosure under this clause of subsection (1) of Section 8 of the Act. Those apart, the answer scripts of those all other successful candidates for appointments to the posts of Forest Guards cannot, be said to be categories of exempted 'information' under any of the clauses (a) to (j) of subsection (1) of Section 8 of the RTI Act in terms of the decision of the Hon'ble Supreme Court as held in the aforementioned **Aditya Bandhopadhyay's Case (2011) 6SCC 494**. In view of aforementioned discussions denial of answer scripts of all other successful candidates from furnishing to the appellant either by the PIO or by the FAA as categories of information's exempted under clauses (d) & (g) of subsection (1) of Section 8 of RTI Act is legally incorrect or unjustified. And, therefore, this issue is also found going in favour of the appellant.

(III) If the answer scripts of all other successful candidates are exempted under clause (j) of subsection (1) of Section 8 of RTI Act:


The Hon'ble Supreme Court referred to the problems in showing evaluated answer sheets in the UPSC Civil Services Examination that are recorded in judgment of Delhi High Court dated 05.10.2010 in **Prashant Ramesh Chakkarwar Vs UPSC**. Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other hand, the SC was of the view that information sought with regard to marks in Civil Service Exam cannot be directed to be furnished mechanically. Even in CBSE case the SC followed same logic and based on the practical difficulties in showing answer sheets of lakhs of other candidates and allowed the CBSE not to share the other's answer sheets. It is important to be noted herein that such rejection is not based on any exception under clause (e) or (j) of subsection (1) of Section 8 of the RTI Act. It is now pertinent to be pointed out herein that unlike such cases of UPSC and CBSE the present case at hand is an examination conducted by the Department for recruitment to the posts of Forest Guards in which the total successful candidates for appointment to the said posts, as disclosed by the PIO, are only 39 in numbers. It is also worthy of mention herein that any such information relating to transfer, recruitment, promotion and placement falls under the category of official activities. The CIC in the case of **Shailendra Kumar Singh Vs PIO, EPFO vide No.CIC/EPFOG/A/2018/124927** held that answer sheets of four co-employees who qualified for promotion while the appellant remained at number 5, are not their

personal information, nor do they qualify to be their confidential reports, nor that they could be treated as information relating to fiduciary relationship. The defences put forwarded by UPSC and CBSE that the disclosure of such information would result in chocking system, etc, are not available to this respondent authority because, the candidates who appeared for this promotion qualification examination were around 3000 and the answer sheets sought were about four qualified candidates who got promotion. And the Central Information Commission, thus, after hearing the parties directed the respondent authority to provide certified copies of answer booklets of selected candidates, within 7 days from the date receipt of the order. It is again to be reiterated herein that access to answer sheets, having not been fallen under any of the categories of exempted 'information' enumerated in clauses (a) to (j) of sub-section (1) of Section 8 of the RTI Act as held by the Hon'ble Supreme Court in '**Aditya Bandhopadhyay's case**' answer sheets of other successful candidates for appointments to the posts of Forest Guards cannot, thus, be treated as categories of information exempted under clause (j) of subsection (1) of Section 8 of the RTI Act. And, therefore, this issue also goes in favor of the appellant.

In view of all above it is further ordered in continuation/addition of the earlier Commission's order dated 15.02.2017 that the PIO, apart from having already furnished all other information so sought in compliance of the said order dated 15.02.2017 shall also furnish the answer scripts/sheets of the written examination of the appellant himself and of those all other successful candidates for appointments to the posts of Forest Guards to the appellant free of costs within a month time from this date of the order with intent and purpose of maintaining the spirit of transparency and accountability in making appointments to such public posts. Such copies of answer scripts/sheets shall, however, be provided to the appellant after blanking out the names and initials of the examiners. Each copy of this order be forthwith furnished to the parties for information and necessary compliance.

Both parties are directed to appear before the Commission on 17.02.2021 at 10.30 AM for further order, if any, for disposal of the appeal.

Given under my hand and seal of this Court of the Commission on this 17th day of December, 2020.


17/12/20
(Goto Ete)
Information Commissioner
APIC, Itanagar
State Information Commissioner
Arunachal Pradesh Information Commissioner
Itanagar