

NAGALAND INFORMATION COMMISSION

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No. NIC/Appeal-8/2017-18

Dated Kohima, the 4th October, 2017.

Appellant : Shri. Toketo Swu,
C/o Minister,
National Highways Office,
Nagaland Civil Secretariat,
Kohima,
Mobile No. 9862417144

Respondents : i) The Secretary & FAA,
Justice & Law Department,
Nagaland, Kohima.

ii) The Additional Secretary & PIO,
Justice & Law Department,
Nagaland, Kohima.

Public Authority : Justice & Law Department, Nagaland, Kohima.

Date of hearing : 19.09.2017 at 11:00 AM.

Date of Decision : 04.10.2017.

Present:

1. Smti. Khanrinla T. Koza, Secretary & FAA, Justice & Law Department, Nagaland Civil Secretariat, Nagaland, Kohima, Mobile No. 9436063517.
2. Shri. Ngamjok Konyak, Addl. Secretary & PIO, Justice & Law Department, Nagaland Civil Secretariat, Nagaland, Kohima, Mobile No. 9436015208.
3. The applicant (now appellant), Shri. Toketo Swu, C/o Minister, National Highways Office, Nagaland Civil Secretariat, Mobile No. 9862417144.

FACT OF THE CASE

An applicant, Shri. Toketo Swu, C/o Minister, National Highways Office, Nagaland Civil Secretariat, Mobile No. 9862417144 had submitted an RTI application dated **25.01.2017** addressed to the PIO, Justice & Law, Chief Minister's Secretariat, Nagaland, Kohima along with the prescribed application fee of Rs. 10/- in cash seeking the following information:

1. *Copy of proposal letter that was put up for regularisation of "Nagaland State Legal Services Authority" as a department.*
2. *Name of person approved by the Cabinet to man the post of UDA (The cabinet order reads only the post of Dak runner as uncode which means all the other post were approved with name of candidate).*
3. *Can Govt. Officials defy the order of the Government? If no, why did the office of law and justice appoint an LDA in place of the post of UDA that the cabinet approved for appointment?*

The RTI application dated **25.01.2017** was received by the public authority on the same day i.e. **25.01.2017** as evidenced on the body of the application however, on not getting any response to his RTI application from the PIO within the stipulated time limit of 30 (Thirty) days, the applicant had preferred a first appeal dated **28.02.2017** before the First Appellate Authority, Department of Justice & Law, Nagaland, Kohima.

On receipt of the first appeal dated **28.02.2017** on the same day, the Commissioner & Secretary & FAA, Department of Justice & Law, Nagaland, Kohima had conducted the hearing

in the presence of the Addl. Secretary & PIO, SO, JSO and the applicant (now appellant) on **29.03.2017** and passed decision vide No. LAW/RTI/32/2015(PT-1) dated 05.04.2017.

On not being satisfied with the decision passed by the Commissioner & Secretary & FAA, Department of Justice & Law, Nagaland, Kohima, the applicant (now appellant) had preferred a second appeal dated Nil before this Commission.

Meanwhile, the Old Secretariat Complex wherein many offices and establishments including the Nagaland Information Commission were located was completely destroyed by fire on 02.02.2017 during the public unrest in connection with the issue of the ULB (Urban Local Bodies) elections, and no items and properties such as office files, case files, documents, records, IT equipments and office furniture etc. could be retrieved. And with no office building, as a stop-gap arrangement the Commission was functioning from the guard house of the official quarter of the State Information Commissioner at Agri Farm Colony for collection of documents and reconstruction of files till the Commission shifted to an alternative office accommodation in a new location around the 1st week of August 2017.

On having shifted to a new location, since the applicant was not satisfied with the reply of the PIO to his RTI Application dated 25.01.2017 and the decision of the FAA to his subsequent first appeal dated 28.02.2017, the Commission had decided to hear the appeal giving opportunity of being heard to the parties on **19th September (Tuesday), 2017 at 11:00 A.M** in the **Hearing Room of Nagaland information Commission, Below Raj Bhavan, Officers' Hill Colony, Nagaland, Kohima** and had also directed the parties **to bring the files and relevant documents** in question for scrutiny during hearing.

OBSERVATIONS AND FINDINGS:

Shri. M. Patton, IAS, the then Commissioner & Secretary & FAA, Department of Justice & Law, Nagaland, Kohima, had, vide letter dated 15.09.2017 informed the Commission that since he had already demitted the charge of the Justice & Law Department few months back, he had requested Smti. Khanrinla T. Koza, Secretary & FAA, Justice & Law Department, Nagaland Civil Secretariat, Nagaland, Kohima, to represent him for the hearing.

The then First Appellate Authority (FAA), the Commissioner & Secretary, Department of Justice & Law, Nagaland, Kohima had, after hearing the first appeal on 29.03.2017 passed decision vide No. LAW/RTI/32/2015(PT-1) dated 05.04.2017, stating that the RTI application dated **25.01.2017** was received by the P.S to the Commissioner & Secretary, Department of Justice & Law on the same day i.e. **25.01.2017**, as the PIO was on Earned Leave from 19.01.2017 to 03.02.2017. However, the next day i.e. 26.01.2017 was Republic Day which was a National holiday, while 28th and 29th were also holidays being Saturday and Sunday. Few days later, all government offices were shut down and public movements restricted till 20.02.2017 during the public unrest in connection with the issue of the ULB (Urban Local Bodies) elections. And on receipt of the RTI application on 23.02.2017, the PIO had, vide letter No. LAW/RTI/32/2015(Pt-I) dated **01.03.2017** furnished the information to the applicant (now appellant). Hence, though there was delay in furnishing the information, the delay was not intentional but justifiable.

Meanwhile, the applicant had filed first appeal to the FAA on 28.02.2017 and refused to withdraw the appeal on the ground that the information furnished to him was not satisfactory. Hearing of the first appeal by the FAA was fixed on 27.03.2017, however, it could not be held due to the Pen Down Strike by the State Employees and the hearing was re-fixed on 29.03.2017.

The FAA submitted that the following information on the three (3) queries were furnished to the applicant as given below:-

1. *The Nagaland State Legal Services Authority (NSLSA) was set up as a Department by an Act, the Legal Services Authority Act, 1987. A copy of the Act was also enclosed.*
2. *The Cabinet does not approve any person by name to man any post. A copy was also enclosed.*
3. *No, the Department cannot appoint any person directly to the post of UDA since it is a promotional post. Therefore, Shri. Qhetoï Swu was appointed as LDA and the senior most LDA was promoted as UDA.*

The applicant (now appellant) submitted that he was satisfied with the information given against query Nos. 1 and 2 however, he was **not satisfied** with **query No. 3**. He stated that the Cabinet had approved for creation of several posts including UDA-cum-Accountant with the names of the candidates under the Nagaland State Legal Services Authority (NSLSA), however, he contended that the Department had defied the Cabinet Order and had appointed his brother, Shri. Qhetoï Swu to the post of LDA instead of UDA. He claimed that his brother, Shri. Qhetoï Swu was the first employee as LDA and there was no other LDA senior to him under the NSLSA which is a different establishment with a judge of Gauhati High Court, Guwahati as Executive Chairman and District & Session Judge as Member Secretary. The Secretary of the Justice & Law Department is only an ex-officio member of the NSLSA under the NSLSA Rules 1998. Further, he stated that all other employees of the NSLSA are enjoying the scale pay of the **director** except his brother, Shri. Qhetoï Swu who was the lone employee drawing salary of a **district** employee.

Shri. Ngamjok Konyak, Addl. Secretary & PIO, Justice & Law Department, Nagaland, Kohima stated that during the hearing of the first appeal on 29.03.2017, the applicant(now appellant) was also shown all the relevant papers and offered to inspect the files personally. The PIO also submitted that the Cabinet had, vide No. CAB-2/2008(Pt) dated 31.05.2011 approved for creation of 1 No. each of the five (5) posts namely, (i) Steno Grade-II, (ii) UDA-cum-Accountant, (iii) Computer Assistant, (iv) Office Peon and (v) Dak Runner, however, these posts were not against any particular individual's name. A copy of the above Cabinet decision was also produced before the Commission during the hearing.

Smti. Khanrinla T. Koza, Secretary & FAA, Justice & Law Department, Nagaland, Kohima had also clarified that the NSLSA functions as a wing/establishment under the Department of Justice & Law, Nagaland, Kohima. It was set up by the Central Government for providing legal services. It is an autonomous body and is headed by an Executive Chairman and a Member Secretary, but appointment of its employees is done by the State government and the staff are transferable within the Department. The Secretary & FAA further stated that the Cabinet had approved for the creation of the posts only and not for appointment. And consequent upon the creation of the posts, the senior most LDA who was serving as LDA in the Office of the District & Session Judge, Wokha was promoted to the post of UDA since the post of UDA is a promotional post and Shri. Qhetoï Swu who was serving as LDA on Contingency basis since 2009 was regularised against the resultant vacancy of the post of LDA.

On examination of the copy of the Cabinet OM No. CAB-2/2008(Pt) dated 31.05.2011 which was produced during the hearing, the Commission had also observed that the Cabinet had approved for creation of the five (5) various posts but had not recommended any name of person in particular for appointment to any of the created posts. And in effect to this Cabinet approval, the Department of Justice and Law had, vide letter No. LAW/NSLSA-11/1999 dated 21.06.2011 created the five (5) posts, however, again these posts were not against any particular individual's name.

Further, the Commission had also examined the documents and file produced during the hearing and observed that though the new post of the UDA-cum-Accountant was created in the Pay Band, PB-1 of Rs. 5200-20,200/- and Grade Pay of **Rs. 2800/-** i.e UDA of the Directorate level, Shri. Benthungo Ezung, Peshkar/LDA in the office of the District & Session Judge, Wokha who was the senior most LDA as per the Seniority List i.e. '**Combined List of the Senior most LDA of Judicial and Prosecution Establishment**' produced by the Public Authority was given officiating promotion vide Order No. LAW/NSLSA-11/99 dated 11.08.2011 to the post of UDA in the Pay Band, PB-1 of Rs. 5200-20,200/- and Grade Pay of **Rs. 2600/-** which is UDA of District level. And consequent upon the promotion of Shri. Benthungo Ezung to the post of UDA, Shri. Qhetoï Swu, LDA was regularised against the resultant vacancy of the LDA post in the Pay Band, PB-1 of Rs. 5200-20,200/- and Grade Pay of Rs. 1900/- (i.e. District level). The Order further stated that the officials shall remain posted in their present places of posting till further order.

The Commission observed that since the applicant(now appellant) claimed that his brother, Shri. Qhetoï Swu was the first employee as LDA and there was no other LDA senior to him under the Nagaland State Legal Services Authority (NSLSA), it implied that his brother, Shri. Qhetoï Swu was supposed to be the senior most LDA in the NSLSA and hence the newly created post of the UDA should have been given to him instead of regularising him to the post of

LDA. However the Commission is satisfied with the above explanation of both the FAA and the PIO and also the documents and file produced during the hearing.

Further, as clarified by the Secretary & FAA, the Commission had also observed that since the NSLSA is an autonomous wing/establishment under the administrative control of the Justice & Law Department, the employees of the NSLSA are also appointed by the Department and hence the staff are also transferable between the NSLSA and the Office of the District & Session Judge in the district level, and therefore, the above submission of the applicant that his brother, Shri. Qheto Swu was the senior most LDA and that all other employees of the NSLSA are enjoying the scale pay of the **directorate** except his brother who was the lone employee drawing salary of a **district** employee was **not tenable**.

Regarding the delay in replying to the applicant(now appellant), since the delay was not intentional and beyond the control of the public authority, the Commission had also agreed with the explanation of the then FAA and hence condoned the delay and no penalty was imposed.

DECISION:

The RTI Act, 2005 is a tool to access information from the public authorities, however, the above **query No. 3**, in the strict sense cannot be termed as information under the RTI Act, 2005 since the reply is not a documented information and is not available with the public authority. The Commission observed that the nature of information sought and the appeal appeared to be more of a **grievance redressal** rather than seeking information whatever is available with the public authority. However, as long as furnishing of information is concerned, the PIO had already furnished the replies and had also given sufficient explanations and clarifications to his queries as per his RTI application during the hearing. The FAA had also heard the appeal and even allowed the applicant to inspect the file and all the relevant papers. Therefore, no further action is required and the appeal case is **dispose of**.

Decision pronounced in the presence of all the parties on 19.09.2017 at 11:00 AM.

Copy be given to:-

1. Smti. Khanrinla T. Koza, Secretary & FAA, Justice & Law Department, Nagaland Civil Secretariat, Nagaland, Kohima, Mobile No. 9436063517.
2. Shri. Ngamjok Konyak, Addl. Secretary & PIO, Justice & Law Department, Nagaland Civil Secretariat, Nagaland, Kohima, Mobile No. 9436015208.
3. The applicant (now appellant), Shri. ToketoSwu, C/o Minister, National Highways Office, Nagaland Civil Secretariat, Mobile No. 9862417144.
4. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.
5. Office Copy.

Sd/-

TOSHI AIER, IAS (Retd.)
Chief Information Commissioner

Sd/-

CHANBEMO LOTHIA
State Information Commissioner

Sd/-

KEVIZATUO MIACHIEO
State Information Commissioner

Authenticated true copy:-

(WORHONTHUNG EZUNG)
Secretary