

NAGALAND INFORMATION COMMISSION
OLD SECRETARIAT COMPLEX,
POST BOX NO. 148
NAGALAND
KOHIMA – 797001

No. NIC/Appeal-22/2008

Dated Kohima, the 28 January, 2009

Appellant : **Miss. Zenyite-ü Mero, C/o Pinky Teacher,
Oking Christian School, Kitsubozou,
(Chakhesang Church) Kohima.**

**Respondent
Public Authority** : **Nagaland Public Service Commission,
Kohima.**

Dates of Hearing - **18.12.2008
07.01.2009
21.01.2009**

Date of Decision - **28.01.2009**

Present - **Mr. Timikha Koza Advocate
Representing the appellant**

**Ms. Asangla Imti, PIO, Nagaland Public Service
Commission, Kohima.**

Facts.

The Commission received an Appeal from Miss. Zenyite-ü Mero, C/o Pinky Medeo, Teacher Oking Christian School, Kitsubozou, Kohima on 20.11.2008 stating that she had appealed to the first appellate authority against the refusal of the PIO Nagland Public Service Commission, Kohima to furnish Marks obtained in writing and Viva Voce by 10 successful Candidates for PGT during recruitment result declared by NPSC on 25.4.2008, but that the First Appellate Authority had in her order refused to give the information sought. Hence she was appealing against the 'reply' made by the Appellate Authority i.e. Secretary, NPSC, Kohima vide letter dated. 11.11.2008.

The appellant Ms. Zenyite-ü had through her RTI application dated 10.6.2008 addressed to the PIO, NPSC, Kohima requested for Marks obtained in writing and Viva Voce of 10 successful Candidates for PGT (Pol. Science) during the recruitment result declared under NPSC vide order No. NPSC/C.32/2007 dated 25.4.2008. She stated that she was a Candidate and that there had been a variation in the marks shown in her mark sheet first issued that had been the basis of her position in the result declared by NPSC and the subsequent marksheet supplied to her after her complaint to the NPSC. Hence she required the marks obtained by other candidates to ascertain her position vis a vis the others. The PIO, Ms. Asangla Imti, on 19.6.2008 informed the applicant that the marks obtained in writing and Viva Voce did not come under the purview of disclosure of information or

official record, that the marks could be furnished only to concerned candidate who apply in writing and that marks obtained by 10 successful candidates can not be disclosed as this is against the policy of the Commission. Ms. Zenyite-ü then submitted an appeal to the Commission, which should have first been preferred to the First Appellate Authority. The Commission returned the same to the appellant to prefer the same to the First Appellate Authority, if she so wished. She submitted her appeal to Mrs. Dellirose M. Sakhrie, Secretary, NPSC and Appellate Authority on 30.10.2008 for provision of the information sought.

The appellate authority in her order dated 11.11.2008 maintained that “ disclosing information of other candidates pertains to Third Party information and decided that unless it involves established existence of wider public interests, in her opinion it did not warrant disclosure of such information by the Commission (NPSC) the marks obtained by 10 successful candidates in this case. The Appellate Authority also pointed out that marks secured by the appellant in Viva Voce were well accounted at the time of tabulating the final result and hence the contention made by the appellant that Viva Voce marks secured by her was not awarded at the time of declaring the final result was not correct.

The Commission received second appeal from Ms. Zenyite-ü Mero on 20.11.2008 against the order of the First Appellate Authority requesting the Commission to examine the case and to furnish the information sought.

The Commission decided to hear the second appeal. Hearing of the appeal was held on 18.12.2008 with Shri Timikha Koza, Advocate representing the appellant and the PIO of NPSC Ms. Asangla Imti and Mrs. Dellirose M. Sakhrie, Appellate Authority and Secretary NPSC present.

Shri Timikha submitted that the NPSC conducted interview/test in February 2008 for recruitment for the posts of PGT (Political Science) and when the marksheet dated 13.5.2008 for the same was received by the appellant, who was a candidate in the interview, the column for marks obtained in Viva Voce was ‘Blank’. She complaint about the same to the Secretary NPSC, and a reply was received from the Controller of Examinations, NPSC dated 2nd June, 2008 stating that the Viva Voce marks obtained by Ms. Zenyite-ü were entered correctly in the Tabulation Register but due to clerical error the marks of candidate next in serial were entered into the marksheet of Ms. Zenyite- ü which was regretted. The appellant obtained the corrected marksheet dated 9.6.2008 showing a score of 50.66 marks in Viva Voce. Since results of the test and interview (final) were declared on 25.4.2008. The appellant’s mark of Viva Voce 50.66 were not then taken into account. Hence Ms. Zenyite-ü had asked for the marks obtained by 10 successful candidates vide her RTI application dated 10.6.2008 to access her position in view of variations of total marks that had effected her position in the result list. The PIO had denied the information sought stating that it was against the policy of the Commission. The First Appellate Authority had also decided against furnishing the information in her order dated 11.11.2008 citing that Third Party is involved and unless wider public interest is involved, disclosure of information sought is not warranted.

The Appellant’s representative submitted that the Public Service Commission had advertised for the posts and conducted the test and interview for recruitment to posts in public service, hence there is public interest involved and there should be transparency in matters of marks obtained by the candidates and order of merit in the results. He therefore

contented that the marks obtained by candidates in the test and interview should be disclosed under the provisions of the RTI Act 2005.

The PIO Ms. Asangla Imti stated that disclosure of marks obtained by candidates, other than concerned candidate, is against the existing policy of the Commission, that Third Party is involved and that there is no wider public interest involved and hence marks obtained by 10 successful candidates as sought by the applicant cannot be disclosed.

The Commission asked the PIO of the NPSC whether they had taken recourse to provisions of Section 11 of the RTI Act 2005 dealing with Third Party and given opportunity to the third parties, i.e. 10 successful candidates and also considered whether public interest outweighs in importance any possible harm to the interest of such third party. The PIO stated that they had not considered provisions of Section 11 of the Act nor acted accordingly. The respondent Public Authority were requested by the Commission to show a copy of the Policy of the NPSC not to disclose marks obtained by candidates other than the concerned candidate who requests for marks obtained. The PIO expressed inability to produce the same during the hearing and requested time for locating the same to produce before the Commission. This was agreed to and next hearing was fixed on 7.1.2009.

During the hearing on 7.1.2009, with both parties present, the PIO of the NPSC submitted that they were still trying to locate the document in the Commission, i.e. policy of not disclosing marks of other candidates but are unable to trace out the same and hence regretted that they could not produce and show it to the Commission. Mrs. Dellirose, Secretary NPSC and First Appellate Authority informed that they had consulted and enquired from officials who had worked in the NPSC earlier whether they recalled any decision and Notification etc. in this respect but were unable to confirm the same. She however stated that some years back when number of candidates requested for marks obtained by other candidates in Tests and Interviews conducted by NPSC, the Commission had deliberated upon the issue and authorized the Controller of Examinations of the NPSC to issue such marksheets provided the other candidate/candidates (i.e. third party) had no objection.

Shri Timikha Koza representing the appellant reiterated his submission that it is in public interest that the marks secured by Candidates should be disclosed as the marks determine the merit list and recommendations of the NPSC for appointment to the post advertised and for which tests and interviews had been conducted. He submitted that there should be transparency in such matters of marks obtained and declaration of results which is very much in public domain.

In view of importance attached to any such policy adopted and followed by the NPSC, the Commission granted another 10 working days to the respondent Public Authority to locate and produce/show the policy Notification/records of policy decision and fixed the next hearing on 21.1.2009.

On 21.1.2009, the PIO and Appellate Authority of NPSC and appellant Ms.Zenyiteü were present. The PIO submitted that in spite of their best efforts the relevant documents could not be located and regretted for inability to produce the same. Mrs. Dellirose, Secretary of NPSC informed the Commission that the policy of not disclosing marks obtained by 'Other' candidates was followed from 2003-2004 in the NPSC.

The PIO in a written statement dated 21.1.2009, while appreciating the Commission's patience in allowing them time to locate the relevant documents, regretted their inability to locate and produce. She submitted that it has been the practice for last many years not to disclose marks of other candidates as a requirement of official secrecy which had attained the status of convention which is apt to be protected. The PIO prayed that the appellant's request for supply of marks of other 10 candidates may be set aside as non supply of such information would not adversely effect the interest of the petitioners (appellant)

DECISION.

The Commission note that the information sought have not been furnished to the appellant. The respondent Public Authority have maintained that it is against the policy of the NPSC to disclose Marks of other candidates.

The Public Service Commission, the NPSC in this case has the duty and responsibility to conduct examinations for appointments to the services of the State as enshrined in the Constitution. To that effect it is in the domain of the Public Service Commission to frame rules and procedures for the conduct of such examinations that come within its purview and to declare the results based on the performance/marks Scored by the aspiring Candidates. The marks obtained by any candidate become the basis for determining the position of the candidate in the order of Merit list, and for recommending for appointment to the advertised post the candidates so arranged in order of merit, under normal circumstances, unless other considerations as prescribed or otherwise are taken into consideration with justification. Hence while the procedures and regulations as prescribed, and conventions are followed to conduct such examinations, the marks obtained by each candidate and the arranged order of merit become records and documents and are held by the NPSC. On the basis of which results are declared and notified. The issue here is whether such records can be disclosed.

The PIO of NPSC has also held that third party is involved and hence the marksheets of other candidates cannot be disclosed. However, she has also replied to the Commission's query, that they have not taken recourse to Section 11 of the RTI Act 2005 providing for opportunity to be given to Third Parties for disclosure of such information.

At the same time the Secretary and Appellate Authority of NPSC had stated during the hearing that the NPSC had deliberated and taken decision authorizing the Controller of Examinations to furnish/disclose the marksheets of other candidates if such third party, i.e. other candidates have no objection. It can be deduced from the above statements of the representatives of the Respondent Public Authority that provisions relating to third parties in the RTI Act 2005 have not been adhered to/followed nor have they resorted to the decision already existing in the NPSC to disclose marks of other candidate provided the other candidates have no objection. No prove, record or otherwise of any other candidate objecting to disclosure of their marks have been shown or stated to the Commission.

Even if any third party, on being given opportunity under section 11 of the RTI Act 2005 represents against proposed disclosure of third party information, while taking a decision by the concerned Public Authority, it should be properly considered if public interest outweighs in importance any possible harm to the interest of such third party. The Commission has not been enlightened by the respondent Public Authority about having gone through such exercise as required under the RTI Act 2005.

The Commission take the view that conduct of such examinations by the NPSC for appointment to services under the State involves public interest, since the successful recommended candidates, if found suitable under other connected prescribed norms, are to be appointed in the interest of public.

The PIO has in written statement submitted that marks obtained by other candidates are not disclosed as a matter of secrecy. The Commission hold the view that while in the process of collecting/tabulating the marks, some measure of confidentiality may be observed, but once the marks are recorded and become records, in the interest of transparency, the marks cannot be kept secret under protection of Section 8 – Exemptions of the RTI Act 2005. In fact the results of such examinations are declared and notified on the basis of such recorded marks and any result based on marks not disclosed is not likely to pass public scrutiny. Hence the Commission is of the view that transparency and disclosure should go hand in hand in declaration and Notification of such results of examinations conducted in the interest of Public.

The Commission therefore direct the PIO of the NPSC to furnish the information sought to the applicant, within 10 working days from the pronouncement of this decision, duly observing and adhering to the provisions of the RTI Act 2005 and confirm to this Commission.

Pronounced in open proceedings today 28.1.2009.

Copies be sent to

1. The Chief Secretary, Nagaland.
2. The Principal Secretary (P&AR), Nagaland, Kohima.

(P. TALITEMJEN AO) IAS (Rtd)
Chief Information Commissioner,
Nagaland.

(REV.DR. W. PONGSING KONYAK)
State Information Commissioner,
Nagaland.

(DR. KUHOI K ZHIMOMI)
State Information Commissioner,
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Authenticated by me

(SOYIMNA AIER KOZA)
Under Secretary
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