

**NAGALAND INFORMATION COMMISSION
OLD SECRETARIAT COMPLEX
POST BOX NO.148
NAGALAND: KOHIMA -797001**

No.NIC/Appeal-52/2010/ Dated Kohima, the 19th November, 2012

Appellant: Smti Zavekholu Epao,
Resident of Kenuozou Hill Colony, Kohima.
Smti Phuholi Sumi, Kohima.

Respondent Secretary, Nagaland Public Service, Kohima.

Public Authority: Nagaland Public Service Commission,
Kohima..

Date of hearing and
pronouncement of decision: 17.11.2012
Date of issue of final order 19.11.2012

Present:

1. Smti Dellirose M. Sakhrie, Addl Secy. Social Welfare Deptt and former Secy. & FAA, NPSC, Kohima.
2. Smti Sarah R. Ritse, Secretary & AA, NPSC
3. Shri Kelhouseto Nakhro, Dy. Secretary & PIO, NPSC, Kohima
4. Kumari Asangla Imti, Under Secy & former PIO, NPSC, Kohima.

Facts of the case

The Hon'ble Gauhati High Court, Kohima Bench vide its order passed in W.P (C) No.54 (K) 2011 dated 22.11.2011 directed that the appeal case No. NIC/Appeal 52/2010/305 dated 16.12.2010 be remitted to the Nagaland Information Commission for **deciding the appeal afresh** keeping in view the information sought for by the petitioner No. 1 and also provision of Section 8 and 10 of the Act. It further directed that the appeal preferred by the petitioners shall

be decided by the Commission by 30th January, 2012 upon hearing all the parties concerned.

Pursuant to the decision of the Hon'ble Gauhati High Court, Kohima Bench, the Nagaland Information Commission held a detailed hearing on 24.01.2012 and passed order on the matter on 30.01.2012.

The Nagaland Information Commission had, through the proper channels, sent the copy of its order on the appeal case after deciding the appeal afresh, to the Registrar, Gauhati High Court, Kohima Bench with copy to the Additional Advocate General, Shri Nagaland L.S. Jamir. The Commission had all along assumed that the Hon'ble Gauhati High Court, Kohima Bench would give a verdict on the decision of the Nagaland Information Commission in the appeal case under reference and had inferred that the matter was sub-judiced until a clear verdict was arrived at or order passed or directions given to the NIC on whether the Hon'ble High Court accepted or rejected its decision/orders passed on 30.01.2012. In the mean while a writ petition WP(C) No.180 (K) 2012 on 27.09.2012 was filed by the petitioner on which matter the Hon'ble High Court was pleased to issue a notice to the Nagaland Information Commission to show cause vide its order in the WP(C) No.180 (K) 2012 dated 27.09.2012 returnable within one month.

The appellants in the writ petition filed before the Hon'ble High Court had expressed appreciation of the NIC's decisions and in para 9 of their writ petition had stated that the petitioners are not aggrieved by the decision of the State Information Commission given in the order of 30.01.2012 as information sought were entirely dealt with and decided by the Commission in accordance with the law as well as in accordance with the facts and circumstances of the matter. However, vide letter dated 02.05.2012 addressed to the Chief Information Commissioner, Nagaland, the petitioners had requested that the Commission to take appropriate action against the NPSC officials for violating the Commission's order dated 30.01.2012. The subject matter mainly dealt with the Nagaland Information Commission's order dated 30.01.2012 directing the PIO, NPSC and FAA, NPSC to make all out efforts to locate these documents/information particularly the attendance sheet of the 10 (ten) candidates who appeared in the NCS, NPS & Allied Services Examinations, 2008 and 1 (one) candidate for the post of Lecturer Examination, 2008, sought by the petitioners and furnish the same to the petitioners with a copy to the Commission within thirty **(30) days** of the issue of the order.

The Commission had received the letter cited by the petitioners (Dated 02.05.12) alleging that the Commission had not taken any action on this application/complaint filed by the petitioners on 02.05.2012 but decided against taking any action on the matter since it was awaiting the verdict or further directions of the Hon'ble High Court on its order passed on 30.01.2012, and also its presumption that any directions or any actions initiated by the Commission on the subject matter would be improper till the clear verdict or the order of the

Hon'ble High Court were received. This conclusion is arrived at because the present NIC had, on the clear directives of the Hon'ble High Court to decide the appeal afresh, had done so on 30.01.2012 and forwarded the same to the Hon'ble High Court and awaited its verdict or decisions.

Now that the petitioners have filed a writ petition and the Hon'ble High Court had directed that the Commission file its para wise comments on all the paras/Clauses in the writ petition and also to enable the Commission to now pass suitable orders, the holding of a further hearing on the matter was found warranted. Accordingly, the Commission fixed 06.11.2012 at 1 P.M. to have a hearing and pass suitable orders it deemed fit.

A single bench of the SIC, Shri Bukchem Phom presided over the hearing on 06.11.12 since the other SIC was suddenly taken ill and the CIC, due to unavoidable reasons could not attend the hearing. The Deputy Secretary & PIO, NPSC and Secretary & FAA, NPSC attended the hearing on 06.11.2012. However, none of the petitioners nor their Counsel attended the hearing though they were served notice to attend the hearing. They have also not intimated the NIC or given any grounds for non attendance. Hence, the presiding Information Commissioner Shri Bukchem Phom decided not to proceed with the hearing or pass any orders as a Single Bench and was of the view that the case warranted the hearing by a full Bench of the NIC. The Commission accordingly decided to hold hearing on 17.11.2012 at 1 PM and accordingly notice was issued to all concerned viz. NPSC and the petitioners/appellants.

Hearing was accordingly held on **17.11.2012** at **1 PM**. On the NPSC side, the former Secretary and FAA, the former PIO, the present Deputy Secretary & PIO, NPSC and Secretary & FAA, NPSC attended. Neither petitioners nor their Counsel attended though notice was served on them. No grounds for abstaining or written request to be exempted were received from them. The Commission decided to proceed with the hearing and pass orders as deemed appropriate under the provisions of the RTI Act 2005.

Summary of hearing

Shri Kelhouseto Nakhro the present Deputy Secretary & PIO, NPSC and Smti Sarah R. Ritse present Secretary & First Appellate Authority of the NPSC; and Kumari Asangla Imti former PIO, NPSC and Smti Dellirose M. Sakhrie former Secretary & FAA, NPSC during whose tenures the RTI applications and appeals had been filed and heard collectively mentioned that the attendance sheet of 10 (ten) candidates for NCS, NPS and Allied Services Examination 2008 and 1 (one) candidate for Lecturer Examination, 2008, has so far not been traceable and therefore copy of the same could not be furnished to the petitioners till date. They were aware of the Commission's clear orders to make all out efforts to locate these documents sought by the petitioners and furnish the same to them with copy to the Commission within 30 (thirty) days of the order issued by the Commission

on 30.01.2012. The contention of the former PIO and former FAA and present PIO and present FAA is that the **files** or the **folder** containing the attendance sheets of the candidates in question may have been mis-placed or lost during the shifting of the NPSC office from the premises near DC's office to the new office in the Capital Complex. In response to the legal notice served on him on 12.06.2012, the Deputy Secretary & PIO, NPSC, vide his letter No.NPSC/RTI ACT.2005 dated 26.06.2012 addressed to the counsel for the petitioners mentioned that the information sought by the petitioners could not be traced in spite of giving best effort to trace the same.

The Commission is of the view that loss or misplacement of such files/documents which ought to have been kept in special custody at all times not being traceable reflects adversely on the NPSC officers capacity in record keeping and management. The convenient alibi given by PIOs and FAAs of NPSC that the documents sought cannot be made available because the same has not been traceable after a lapse of 5 (five) months is found to be evasive.

The Commission also observes that the belated reply of the Deputy Secretary and PIO of NPSC issued on 26.06.2012 addressed to Counsel for appellant Zhevi Swu had never been endorsed to the Commission. Only when a copy of the writ petition filed by the petitioners was received by this Commission was a copy of the NPSC letter dated 26.06.2012 attached to the writ petition been received.

The Commission had also clearly directed the PIO, NPSC and FAA, NPSC vide its order dated **30.01.2012** to make all out efforts to locate the documents in question sought by the petitioners and furnish the same to the petitioners with a copy to the Commission within 30 days of the issue of the order. Neither the PIO of NPSC nor the FAA of NPSC, has till date, bothered or made any effort to inform the Commission about the documents in question **not being traceable**. Neither the PIO or FAA of the NPSC ever kept the NIC apprised of the developments in the matter. The time that has lapsed counted from the date of issue of NIC order on 30.01.2012 is almost 10 months, an inexcusable delay which the Deputy Secretary & PIO, NPSC and Secretary & FAA, NPSC **owned** and admitted their lapse and casualness. The non compliance to the orders passed by the Commission and other serious lapses highlighted justifies imposition of penalty under Section 20 of the RTI Act, 2005.

Decision

Taking the facts of the case and submissions made by the parties who appeared into consideration, the Commission is pleased to pass orders as under with justifications:-

- i. The Deputy Secretary & PIO, NPSC failed to furnish the information to the appellants within 30 days of the issue of the Commission's orders dated 30.01.2012 regarding the attendance

sheets of the 10 (ten) candidates who appeared in the NCS, NPS & Allied Services Examinations, 2008 and 1 (one) candidate for the post of Lecturer Examination, 2008. Even after a lapse of almost 10(ten) months, the Deputy Secretary & PIO, NPSC or Secretary & FAA, NPSC has also not bothered to furnish the information to the appellants as directed by the Commission nor intimated NIC regarding their inability to do so or action taken reports. The concerned officials of NPSC handling RTI matters have not bothered even to forward a copy of the letter No.NPSC/RTI ACT/2005 dated 12.06.2012 addressed to the Counsel for the petitioners after legal notice was served on them regarding the attendance sheets sought by the petitioners in which they mentioned (Quote) **“that the information could not be traced till date in spite of giving best effort to trace the same and therefore as today the attendance sheet of the candidates could not be furnished”** (Unquote). The Deputy Secretary & PIO, NPSC has also not acted reasonably in his bounden duty to furnish the information sought by the petitioners nor kept the NIC updated on action initiated by him. The Deputy Secretary & PIO, NPSC on his own admission before the Commission acknowledged the lapse committed by him as PIO in not furnishing the information which the NIC had directed to be given to the petitioners within 30 days and also that he had failed to give a copy of his letter dated 12.06.2012 addressed to the Counsel for petitioners to the NIC nor kept the NIC informed about the status of action taken by the NPSC to locate the documents in question or the reasons for non compliance of the NIC’s orders of 30.01.2012. The Commission also finds that the Deputy Secretary & PIO, NPSC has not acted reasonably or diligently in furnishing the information within the stipulated time. On his own admission of non compliance of the orders of the NIC dated 30.01.2012 and **due opportunity having been given to him of being heard,** the Commission hereby imposes a penalty of Rs. 25,000/- (Rupees twenty five thousand only) on Shri Kelhouseto Nakhro, Deputy Secretary & PIO, NPSC under Section 20 (1) of the RTI Act 2005 for the serious lapses cited in the preceding paragraphs payable with effect from **1.12.2012** in (10) ten equal installments.

Furthermore, the NIC is pleased to order that the Deputy Secretary & PIO, NPSC on his own admission and on the basis of his letter No.NPSC/RTI ACT/2005 dated 12.06.2012 shall file an affidavit incorporating the following facts :-

- (a) That the Attendance Sheet of the following 10 (ten) candidates who appeared in the NCS, NPS & Allied Services Examinations, 2008:-

<u>Name</u>	<u>Roll No.</u>
1. N. Hito Yepthomi	160
2. Allen Wobemo Jami	161
3. Kipito Swu	162
4. Nusa thisa	163
5. V. Kaliho Sema	165
6. N. Tokato Yepthomi	166
7. Arayi Sumi	279
8. Kivitovi V. Yepthomi	314
9. H. Hinatoli Assumi	316
10. Ayeto Swu	676

And 1 (One) candidate for Lecturers Examination 2008 namely:-

<u>Name</u>	<u>Roll No.</u>
1. Daham Jurry	209

“could not be traced till date in spite of giving best effort to trace the same and therefore, as of today the Attendance Sheet of the candidates could not be furnished.”

(b) In view of the position as stated above at (a) the Police Seizure Memo does not contain the Attendance Sheet of the 11 (eleven) candidates.

(c) As far as his knowledge goes the Attendance Sheet of the NPSC Examination 2008 have not been processed for destruction as per the NPSC Rules regarding the destruction of all documents related to conduct of NPSC Examinations after **stipulated periods**.

The copy of the affidavit in question shall be furnished to the NIC positively by 20.11.2012 (Forenoon).

The Secretary & FAA, NPSC shall immediately constitute a team of officials to once again make all out efforts to trace the attendance sheet of all the candidates including the 10 (ten) candidates who appeared in the NCS, NPS & Allied Services Examinations, 2008 and 1 (one) candidate for the post of Lecturer Examination, 2008, since this material information is a vital document in the case in hand, and if located, shall in particular hand over the attendance sheets of the 11 candidates in question to the appellants under intimation to the Commission.

Decision pronounced on 17.11.2012 in the presence of all concerned.

Copies be issued to the following:-

1. Smti Dellirose M. Sakhrie, , Addl Secy. Social Welfare Deptt and former Secy. & FAA, NPSC, Kohima.
2. Smti Sarah R. Ritse, Secretary & AA, NPSC
3. Shri Kelhouseto Nakhro, Dy. Secretary & PIO, NPSC
4. Smti. Asangla Imti, Under Secy & former PIO, NPSC.
5. The appellants.

Sd/-
Lalhuma IAS (Rtd)
Chief Information Commissioner,
Nagaland, Kohima

Sd/-
Kevinino P.Meru
State Information Commissioner,
Nagaland, Kohima.

Sd/-
Bukchem Phom
State Information Commissioner,
Nagaland, Kohima

Authenticated by

Secretary
Nagaland Information Commission

Taking all the facts of the case and the submissions made by all concerned into consideration, the Commission is pleased to pass orders as under:-

- i. The Deputy Secretary and PIO of NPSC failed to furnish information as directed by the Commission in its order dated 30.01.2012 to the appellants within 30 days of the issue of the order of the Commission. Furthermore, the Commission is of the impression that the Deputy Secretary & PIO, NPSC has treated the whole matter very casually and indifferently. This is borne out by the fact that he has never kept the NIC informed after failing to furnish the information to the petitioners even after expiry of the stipulated time frame. He has also not bothered to endorse the copy of his letter dated 12.06.2012 addressed to the counsel of the petitioners after receiving the legal notice where vital information regarding the documents in question were reportedly **Not traceable**. The Commission considers these serious lapses by the officials of the NPSC as total disregard for the directions issued by the NIC. He has not acted reasonably and diligently in his bounden duty to furnish information sought by the petitioners/appellants. Under these circumstances the Commission finds the Deputy Secretary and PIO, NPSC justifiably liable for imposition of penalty or even for disciplinary proceedings being recommended against him under the Service Rules applicable.

For his lapses which attract imposition of penalty under Section 20 RTI Act and even disciplinary proceedings, the Commission orders that the Deputy Secretary & PIO, NPSC be imposed a penalty of Rs..... (Rupees)only payable in 4 equal installments.

- ii. The Secretary and Appellate Authority of NPSC who is the Administrative Head of the Commission and who also admitted that the documents in question cannot be traced is hereby directed to file an affidavit (before the appropriate authority) to the effect that the documents viz. particularly the **Attendance Sheet of the 10 candidates** for NCS, NPS and Allied Services Examination 2008 namely:-

<u>Name</u>	<u>Roll No.</u>
1. N. Hito Yephthomi	160
2. Allen Wobemo Jami	161
3. Kipito Swu	162
4. Nusa thisa	163
5. V. Kaliho Sema	165
6. N. Tokato Yephthomi	166
7. Arayi Sumi	279
8. Kivitovi V. Yephthomi	314
9. H. Hinatoli Assumi	316
10. Ayeto Swu	676

And 1 (One) candidate for Lecturers Examination 2008 namely:-

<u>Name</u>	<u>Roll No.</u>
1. Daham Jurry	209

have till date not been traced in spite of intensive search conducted by all the officers and staff of NPSC. This is the main reason that the documents have not been furnished to the petitioners and there are no other valid grounds for not handing over copies of the attendance sheet to the petitioners.

The copy of this affidavit signed by the Secretary and FAA, NPSC shall be given to the appellants and also the Commission for records within ----- days.

It is also recorded that this affidavit binds the signatory to be fully liable for the statements in the affidavit which if proved false subsequently would attract perjury under the Indian Penal Code.

Decision pronounced on 06.11.2012 in the presence of all concerned.

Copies be issued to the following:-

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

(LALHUMA) IAS (Rtd)
Chief Information Commissioner,
Nagaland, Kohima

(KEVININO P. MERU)
State Information Commissioner,
Nagaland, Kohima.

(BUKCHEM PHOM)
State Information Commissioner,
Nagaland, Kohima

