

NAGALAND INFORMATION COMMISSION

Old Secretariat Complex,

Post Box No. 148

Nagaland, Kohima - 797001.

Tel: 0370-2291798, Fax: 0370-2291774, Website: www.nlsic.gov.in



No. NIC/Appeal-11/2013-14

Dated Kohima, the 30th January, 2014

Appellant: Shri. Toiho Y. Tuccu,
Notun Bosti,
River Belt Colony,
H/No. 170,
Blessing Apartment,
Dimapur.
Mobile No. 08575494777/ 08730934487.

Respondent: (i) Shri. Maongwati Aier,
Commissioner of Excise & First Appellate Authority,
Nagaland, Dimapur.

(ii) Shri. Bendangtoshi Ao,
Additional Commissioner of Excise & PIO,
Office of the Commissioner of Excise,
Nagaland, Dimapur

(iii) Shri. Alem Ao,
Deputy Commissioner of Excise & APIO,
Office of the Commissioner of Excise,
Nagaland, Dimapur.

Public Authority: Office of the Commissioner of Excise, Nagaland, Dimapur.

Date of hearing: 23.01.2014 at 1:00 P.M.

Date of Decision: 30.01.2014

Present :

1. Shri. Bendangtoshi Ao, Additional Commissioner of Excise & PIO, Nagaland, Dimapur.
2. Shri Alem Ao, Deputy Commissioner of Excise & APIO, Nagaland, Dimapur.
3. The applicant(now appellant), Shri. Toiho Y. Tuccu, Notun Bosti, River Belt Colony, H/No. 170, Blessing Apartment, Dimapur, Mobile No. 08575494777/ 08730934487.

FACTS OF THE CASE

The appellant Shri Toiho Y. Tuccu, Notun Bosti, River Belt Colony, H/No. 170, Blessing Apartment, Dimapur, Mobile No. 08575494777/ 08730934487, had earlier submitted an RTI application dated **09.09.2013** along with the prescribed fee of Rs. 10/- paid in cash,

addressed to the PIO, Excise Commissioner's office, Nagaland, Dimapur requesting him to furnish the following information:-

1. Service Book of Gazetted Officers.
2. Promotion system along with Orders (2011-13)
3. Excise Association, whether registered or not and power and functions.
4. Destruction Certificate of liquor and drugs w.e.f. 01.01.2005.
5. Appointment procedures i.e. whether appointment is given before or after retirement.
6. Department Service Rules.

Shri Alem Ao, Deputy Commissioner of Excise & APIO, Nagaland, Dimapur had acknowledged receipt of the RTI application dated 09.09.2013 and the prescribed fee of Rs. 10/- in cash vide Excise Revenue Receipt Sl. No. 7333 and Book No. 74 on 23.10.2013.

Shri. Bendangtoshi Ao, Additional Commissioner of Excise & PIO, Nagaland, Dimapur had vide letter No. EX-5/6/08/752 dated 30.09.2013 furnished the information to the applicant as under on each item of the information sought:-

1. Service Book of Gazetted Officers.
Ans: The information required is not understood.
2. Promotion system along with Orders (2011-13).
Ans: Promotions are given as per the Nagaland Excise Service (Revised) Rules, 1999. Photocopy of promotion orders enclosed.
3. Excise Association, whether registered or not and power and functions.
Ans: The Excise Association is a registered one. Powers and functions of the Association is outside the purview of this Department.
4. Destruction Certificate of liquor and drugs w.e.f. 01.01.2005.
Ans: Copy of Destruction Certificate enclosed.
5. Appointment procedures i.e. whether appointment is given before or after retirement.
Ans: Appointments are given against clear available vacancies subject to the approval of the Government and the appointees are allowed to join in service only after the concerned incumbent vacate the post.
6. Department Service Rules.
Ans: Booklet of Nagaland Excise Service (Revised) Rules, 1999 enclosed.

On being not satisfied with the reply of the Additional Commissioner of Excise & PIO, Nagaland, Dimapur, the applicant had preferred a First Appeal dated **04.11.2013** before the Commissioner of Excise & First Appellate Authority, Excise, Nagaland, Dimapur, which was received by the Public Authority on 04.11.2013, stating the following grounds:-

1. The information at Sl. No. 1 was not furnished.
2. The information furnished at Sl. No. 2 was not satisfactory.
3. Partial information were furnished against Sl. No. 3, 4 and 5 which were not complete/satisfactory.

On receipt of the First Appeal dated 04.11.2013, Shri. Maongwati Aier, Commissioner of Excise & FAA, Nagaland, Dimapur had without holding any hearing and passing a quasi-judicial order based on the hearing as required under the RTI Act 2005, vide letter No. EX-5/6/08/251 dated **02.12.2013** simply written to the applicant as under:-

- i. Service Books are confidential Book/documents which are subject to periodical verifications by the Accountant General, Nagaland only. The Department will be able to furnish any specific information pertaining to any individual officers only.
- ii. Promotions are given on merit-cum-seniority basis as per Government policy on the matter. According to draft Service Rules, direct entry can be made in the levels of Inspector, AIE, Head Constable and Constables for field staffs and LDA-cum-Computer Assistant in the Ministerial Service. The ratio of posts to be filled up by Direct Recruitment and Departmental promotions are as follows:-
 - a. Inspector of Excise - 50% + 50%
 - b. Assistant Inspectors - 50% + 50%
 - c. Head Constables - 25% + 75%
 - d. Constables - 100%

Not satisfied with the reply/clarification furnished by the Commissioner of Excise and FAA, dated 02.12.2013 to his First Appeal, the appellant had preferred a Second Appeal dated 13.12.2013 before the Nagaland Information Commission.

In order to give due opportunity to the appellant to elaborate the grounds for his dissatisfaction with the information received by him and to the Public Authority to submit their clarification so that the case can be expeditiously disposed, this Commission has decided to hear the appeal, giving opportunity to the parties, on 23rd January, 2014 (Thursday) at 1:00 PM in the Hearing Room of the Nagaland Information Commission, Old Secretariat Complex, Kohima.

FINDINGS & OBSERVATIONS

Whereas, the appellant, the Additional Commissioner & PIO, Deputy Commissioner & APIO attended the hearing as served due notice, the Excise Commissioner & FAA whose presence was very vital failed to appear and had simply sent a letter expressing his inability to attend the hearing due to a very unavoidable situation which he did not elaborate. The letter dated 23.01.14 was also submitted to the Commission by the Addl. Commissioner & PIO only at the time of hearing. The Commission construed this casual attitude as a lack of deference to the Nagaland Information Commission. Further, the Addl. Commissioner & PIO cannot represent the Commissioner of Excise who is the First Appellate Authority as their roles and functions are distinct. He had also **failed to conduct hearing** on the appeal filed before him by the appellant and pass orders. Deciding appeals under Section 19 of the RTI Act is a **quasi-judicial function** and it is necessary that the appellate authority (in this case, the First Appellate Authority) viz. Commissioner of Excise hold a hearing and pass necessary orders instead of simply responding by writing a letter. The failure of the Commissioner of Excise & FAA to hold a proper hearing and passing orders is viewed with seriousness by the Commission and hope it will not be repeated.

The Commission, in exercise of Section 25(5) of the RTI Act, 2005 recommends to the Commissioner of Excise & First Appellate Authority, **to ensure that in future**, whenever first appeals are filed before him, hearing is undertaken and necessary orders are issued to facilitate furnishing the information requested by the citizens/applicants by the PIOs concerned.

Due opportunity was given to the applicant (now appellant), Shri T.Y. Tuccu to give his submission and the grounds for filing of second appeal before the Commission. The Addl. Commissioner of Excise & PIO and the Deputy Commissioner of Excise & APIO were also given opportunities to make submissions and clarification during the course of the hearing.

The appellant had requested 6(six) items of information vide his RTI application submitted on 09.09.2013. The Addl. Commissioner of Excise & PIO, Nagaland, Dimapur furnished the information to the applicant on 30.09.2013 which the applicant acknowledged receipt on 01.10.2013. Hence there was no delay on the part of the concerned PIO and hence penalty is not attracted.

The applicant filed first appeal before the Commissioner of Excise & FAA, Nagaland, Dimapur on 04.11.2013 on the following grounds:-

1. The information at Sl. No. 1 was not furnished.
2. The information furnished at Sl. No. 2 was not satisfactory.
3. Partial information were furnished against Sl. No. 3, 4 and 5 which were not complete/satisfactory.

Instead of holding a proper hearing and passing necessary orders as required under the RTI Act, the Commissioner of Excise & FAA, Nagaland, Dimapur had, simply wrote to the appellant in the form of clarification to the issues raised by the appellant while replying to the first appeal.

Not being satisfied with the reply furnished by the Commissioner of Excise & FAA, Nagaland, Dimapur, Shri T.Y. Tuccu, the applicant filed second appeal for the Commission on 13.12.2013 citing his dissatisfaction with the information furnished in relation to Sl. No. 2, No.3, No. 4 and No. 5 of the information sought by him.

DECISION

The Commission after taking into account the case records, submission made by the appellant for the grounds of his dissatisfaction and clarification given by the Addl. Commissioner of Excise & PIO, Nagaland, Dimapur and the Deputy Commissioner of Excise & APIO, Nagaland, Dimapur is pleased to pass orders as under:-

1. In the matter of furnishing the Service Book of Gazetted Officers, since the appellant had scaled down his application to only to Gazetted Officers viz.:-
 - (a) Shri L. Merentemjen Aier, Dy. Supdt. (Rtd).
 - (b) Shri P. Chitengse, Supdt of Excise, Tuensang,

the Commission orders that the same be furnished to the applicant within 25 (twenty five) days of the receipt of this order by the Commissioner of Excise, Nagaland, Dimapur under intimation to the Nagaland Information Commission. In this respect, the Commission invokes Section 10 (2) of the RTI Act where access may be provided to that part of the record which does not contain any information which is exempted from this disclosures under this Act and which can be reasonably be severed from any part that contains exempt information.

2. In respect of reply sought at Sl. No. 2 regarding promotion system along with the orders, the appellant may be provided a copy of the Nagaland Excise Service (Revised) Rules 1999 where procedures for promotion are incorporated.
3. A copy of the Constitution of the Excise Association may also be provided to the appellant.

4. As regards destruction of Certificate of liquor and drugs with effect from 01.01.2005, since the same have been furnished to the appellant and acknowledged by him providing further information to the appellant beyond what was requested is not deemed to be necessary.
5. Regarding appointment procedure with particular reference to whether appointments are given before or after retirement, the Commissioner Excise, Nagaland, Dimapur shall furnish a copy of the Nagaland Excise Service (Revised) Rules 1999 to the appellant and clarify the matter on whether appointments are given before or after retirement (presumably to new appointees).
6. Barring submission of Service Book of two Gazetted Officers where time frame has been restricted to 25 (twenty five) days from the date of receipt of this order, compliance on the other orders of Commission at Sl. No. 2, 3 and 5 should be completed within 15 (fifteen) days of the receipt of the order of the Commission.

Decision pronounced in presence of all concerned.

Copies be given to the parties:-

1. Shri. Maongwati Aier, Commissioner of Excise & First Appellate Authority, Nagaland, Dimapur.
2. Shri. Bendangtoshi Ao, Additional Commissioner of Excise & PIO, Nagaland, Dimapur.
3. The applicant(now appellant), Shri. Toiho Y. Tuccu, Notun Bosti, River Belt Colony, H/No. 170, Blessing Apartment, Dimapur, Mobile No. 08575494777/ 08730934487.
4. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.

Sd/-

LALHUMA, IAS (Retd)
Chief Information Commissioner
Nagaland, Kohima.

Sd/-

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

Sd/-

BUKCHEM PHOM
State Information Commissioner,
Nagaland, Kohima

Authenticated by:-

(WORHONTHUNG EZUNG)
Under Secretary

(LALHUMA) IAS (Retd)
Chief Information Commissioner
Nagaland, Kohima.

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

(BUKCHEM PHOM)
State Information Commissioner,
Nagaland, Kohima