

NAGALAND INFORMATION COMMISSION
Old Secretariat Complex,
Post Box No. 148
Nagaland, Kohima - 797001.
Tel: 0370-2291041, Fax: 0370-2291774, Website: www.nlsic.gov.in



No. NIC/Appeal-16/2016-17

Dated Kohima, the 8th December, 2016.

Appellant : Shri. Amos Odyuo,
President,
Lotha Students' Union,
Head Post Office Kohima,
P.O Box – 950,
Kohima, Nagaland,
Mobile No. 8974340267, 7005505909

Respondents : (i) Shri. Khrupi Sothu,
Secretary & FAA,
Nagaland Public Service Commission,
Nagaland, Kohima.

(ii) Ms. Asangla Imti,
Deputy Secretary & PIO,
Nagaland Public Service Commission,
Nagaland, Kohima.

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

Date of hearing : 23.11.2016 at 12:30 PM.

Date of Decision : 08.12.2016.

Present:

1. Shri. Khrupi Sothu, Secretary & FAA, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 9436618557.
2. Ms. Asangla Imti, Deputy Secretary & PIO, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 8794145667.
3. Shri. Kelhouseto Nakhro, Deputy Secretary & former PIO, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 9436600680.
4. Shri. T. George Kire, Controller of Examination, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 8014061433.
5. The applicant(now appellant), Shri. Amos Odyuo, President, Lotha Students' Union, Head Post Office Kohima, P.O Box – 950, Kohima, Nagaland, Mobile No. 8974340267, 7005505909.

FACT OF THE CASE

An applicant, Shri. Amos Odyuo, President, Lotha Students' Union, Head Post Office Kohima, P.O Box – 950, Kohima, Nagaland, Mobile No. 8974340267, 7005505909 had submitted an RTI application vide letter No. LSU-RTI-02-16 dated 11.08.2016 addressed to the PIO, Nagaland Public Service Commission, Nagaland, Kohima along with the prescribed application fee of Rs. 10/- paid in cash, seeking the following information:-

1. *The total marks obtained by candidates in the written examination as per NPSC advertisement No. NPSC-03/2015 dated 29.07.2015, 16.10.2015 and 20.01.2016 for the posts of EAC, NPS, NSS & Allied Service 2015.*
2. *The total marks obtained by each candidates who could not be qualified in the Viva-Voce conducted by the NPSC from 1st July 2016 to 2nd August 2016 as per NPSC advertisement No.NPSC-03/2015 dated 29.07.2015, 16.10.2015 and 20.01.2016 for the posts of EAC, NPS, NSS & Allied Service 2015.*
3. *The total marks scored by each of the qualified candidates in the Viva-Voce who were selected for various post of EAC, NPS, NSS & Allied Service per NPSC advertisement No.NPSC-03/2015 dated 29.07.2015, 16.10.2015 and 20.01.2016 for the posts of EAC, NPS, NSS & Allied Service 2015.*

On receipt of the above RTI application on the same date i.e. **11.08.2016**, Ms. Asangla Imti, Deputy Secretary & PIO, Nagaland Public Service Commission, Nagaland, Kohima had, vide letter No. NPSC/RTI-2015 dated **09.09.2016** furnished the following replies:-

Sl No.1. While the final results are declared, the examination process of NCS, NPS, NSS & Allied Services, 2015 is not over, as the waiting list is valid for 1(one) year from the date of declaration of results. Moreover, as per the Nagaland Civil Service (Probationers' Final Examinations) Regulations, 2005 Rule-8, the marks of the successful candidates of EAC are still confidential. However, individual marks can be furnished to the candidate concerned on production of Admit Card.

Sl No.2. As stated above marks secured by each candidate is issued individually on production of Admit Card of the written examination.

Sl No.3. As stated above.

However, on not being satisfied with the above information furnished by the Deputy Secretary & PIO, the applicant had submitted a first appeal vide letter No. LSU-RTI-03-16 dated 23.09.2016 addressed to the First Appellate Authority, Nagaland Public Service Commission, Nagaland, Kohima.

On receipt of the first appeal by the Public Authority on same date i.e. **23.09.2016**, Shri. Khrupi Sothu, Secretary & FAA, NPSC had, vide letter No. NPSC/ESTT-9/2016 dated **21.10.2016** replied to the applicant (now appellant) stating that as per Rule No. 24(8) of the NPSC (State Civil & other Services) Recruitment Rules 2008, Rule No. 8 of the Nagaland Civil Service (Probationer's Final Examination) Regulations 2008, and Sections 8(d) and 8(g) of the RTI Act, 2005 the information cannot be furnished.

However, on not being satisfied with the reply of the Secretary & FAA, Nagaland Public Service Commission, Nagaland, Kohima to his first appeal, the applicant (now appellant) had, vide letter No. LSU-RTI-03-16 dated 02.11.2016 preferred a second appeal before this Commission.

Since the applicant was neither satisfied with the reply of the Secretary & FAA, NPSC to his first appeal dated 23.09.2016 nor with reply of the Deputy Secretary & PIO to his RTI application dated 11.08.2016, the Commission has decided to hear the appeal, giving opportunity to all the parties on **23rd November, 2016 (Wednesday) at 12:30 PM** in the **Hearing Room of the Nagaland Information Commission, Old Secretariat Complex, Kohima**. The Commission had also notified the following concerned to appear before this Commission and **also to bring the files and relevant documents** in question for scrutiny, on the above date and time for hearing.

- i) Shri. Khrupi Sothu, Secretary & FAA, Nagaland Public Service Commission, Nagaland, Kohima.
- ii) Ms. Asangla Imti, Deputy Secretary & PIO, Nagaland Public Service Commission, Nagaland, Kohima.
- iii) The applicant(now appellant), Shri. Amos Odyuo, President, Lotha Students' Union, Head Post Office Kohima, P.O Box – 950, Kohima, Nagaland, Mobile No. 8974340267, 7005505909.

OBSERVATIONS AND FINDINGS:

Referring to Section 24(8) of the Nagaland Public Service Commission (State Civil & other Services) Recruitment Rules, 2008 which states:-

“Preparation of final merit list and declaration of result when selection is done by Written or Practical Examinations followed by Interview.

(8) In case of requirement given by the department, the candidate next in the Merit List can be recommended. This is applicable only within a period of one year and only in the case of posts for which recruitment has taken place.”

Shri. Kelhouseto Nakhro, Deputy Secretary & former PIO, NPSC submitted that the above Rule implied that within a period of one(1) year from the date of declaration of result, any candidate

who did not join the post for which he/she is recommended or resigned or is incapacitated to continue in the post due to death or any other reason, then the concern department may ask the candidate next in the merit list be recommended for the post. In other words, the examination process continues till the end of one (1) year from the date of declaration of the result. Therefore, during the waiting period of one (1) year's time, any disclosure of marks of all the candidates to a particular individual or organisation may lead to a fear assessment of the position in the merit list or waiting list which may endanger the life or physical safety of the successful recommended candidates, which was a ground for exemption of disclosure of information under **Section 8 (1) (g) of the RTI Act, 2005**.

He further submitted that for the candidates recommended for the post of EAC, the final merit list of all the probationers of a particular batch is assessed under three components in accordance to **Rule 8 of the Nagaland Civil Service (Probationer's Final Examinations) Regulations, 2008**, which states:-

"8. Seniority of Probationers

(1) The Government shall prepare a merit list of all probationers who are appointed to the service on results of the same competitive examinations. Such list shall be arranged in accordance with the aggregate marks obtained by each probationer with the weight-age against each of the following three components:-

- | | |
|--|---------------|
| <i>(a) at the competitive examinations conducted by the NPSC</i> | <i>= 75 %</i> |
| <i>(b) in respect of his record in the Institute and the District; and</i> | <i>= 10 %</i> |
| <i>(c) at the final examination</i> | <i>= 15 %</i> |

Provided that in determining such order of merit, no account shall be taken of marks awarded to a probationer in any subject in which he has failed to satisfy the Director.

Provided further that if two or more probationers have secured equal number of marks in the aggregate, their order of merit shall be the order of their dates of birth.

(2) The seniority inter-se of the probationers recruited on the basis of each competitive examination shall be determined in accordance with the list prepared under Sub-Regulation (1)."

On the above, the Secretary & FAA, NPSC and the former PIO, NPSC informed that individual marks were supplied to all candidates on the production of the Admit Cards as identity proof except those who were recommended for the post of EAC, however, they feared that disclosure of the marks obtained by any candidate in the NPSC examination and recommended for EAC could harm the competitive position of the other probationers before their final examination or probationary period was over. Further, he informed that the NPSC was of the opinion that under **Section 8 (1) (d) of the RTI Act, 2005**, any unauthorised disclosure of marks to any other person(s) might hamper the competitive position of the candidate and accordingly did not disclose the same to others. Therefore, the NPSC do not disclose marks of other candidates to any individual or organisation except to the concern individual candidates on production of Admit Cards as identity proof.

During the hearing, the applicant(now appellant) stated that there was some confusion about the different regulations since two references were made viz. the 'Nagaland Civil Service (Probationer's Final Examinations) Regulations, **2005**' by the PIO and the 'Nagaland Civil Service (Probationer's Final Examinations) Regulations, **2008**' by the FAA. However, it was clarified by the public authority that the years were misprinted and that there is only one Regulation i.e. the 'Nagaland Civil Service (Probationer's Final Examinations) Regulations, 2008'.

Further, the applicant(now appellant) stated that the above Regulations have not mentioned anything about the confidentiality or denial of marks. He pointed out that he had sought for the total marks scored by the candidates in the NPSC competitive examinations conducted for all the NCS/NPS/NSS/Allied services and not for the EAC marks only or the NCS probationers examination which is applicable only to the NCS cadre under the above Regulations of 2008.

The Commission observed that the examination process ends once the results are declared and appointment orders given to the successful candidates for the various posts and services. The Rule 8 of the Nagaland Civil Service (Probationer's Final Examinations) Regulations, 2008 was not about the competitive examinations of the NCS/NPS/ NSS/Allied services conducted by the NPSC but about the determination of interse seniority of the NCS probationers only which is done after

their year-long training and do not include the NPS/NSS and other allied services. The Commission further explained that the marks scored during the training and in the NCS (Probationers) Final Examination are taken into account in order to determine the seniority of the NCS Probationers and also to ensure that they take training seriously. Moreover, if a NCS Probationer fails the probationary exams, it does not mean that the candidate has ceased to be a NCS officer. Hence, the Nagaland Civil Service (Probationer's Final Examinations) Regulations, 2008 is applicable only to the NCS probationers and do not have any connection with the disclosure of the marks of the competitive examinations conducted by the NPSC as sought for. Therefore, the Commission viewed that the denial of information taking the shelter of this Regulation of 2008 was **irrelevant** and hence **untenable**. Further, it was also pointed out that Section 22 of the RTI Act, 2005 had an over riding effect on anything inconsistencies contained in the Officials Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act.

While agreeing with the PIO and the FAA that **mark sheets** are given to the concerned candidates on the production of their Admit Cards or Calling Letters, the applicant(now appellant) stated that he had sought for the **total marks** obtained by the candidates and **not** the **mark sheets** of the candidates.

The Commission observed that the respondents seemed to have some confusion between the **marks obtained** by the candidates and the **Mark Sheets** of the candidates. The Commission clarified that in any examination, basing on the marks obtained by the candidates in the Mains and Viva Voce, results are declared in the form of **result sheets**, whereas **Mark Sheets** are issued to both the passed and failed candidates on the production of their Admit Cards of the written examination or Calling Letters of the Viva-voce. Therefore, once the results are declared, the marks obtained by the candidates comes in public domain and ceased to be confidential and hence should be disclosed. The Commission further observed that disclosing the marks of all the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure fair play in the competitive environment, where a candidate puts his/her time in preparing for the competitive exams. This will also ensure transparency which will, in turn boost the confidence of the people seeking civil service and other government jobs.

Shri. Kelhouseto Nakhro, Deputy Secretary & former PIO, NPSC reiterated that as per the **Nagaland Public Service Commission (State Civil & other Services) Recruitment Rules, 2008**, since the waiting period is of one year, the marks can be disclosed only after the waiting period of one year is over. Further, he submitted that the information sought was exempted under Section 8 (1) (g) of the RTI Act, 2005 as the disclosure may also endanger the life or physical safety of any person or identify the source of information.

The Commission was not convinced with the above explanation of the NPSC that disclosure of the total marks of all the candidates could potentially pose threat on the life or physical safety of the successful candidates. The Commission also observed that the respondents (FAA and the PIO) could not prove or justify their stand. The anticipation that any disclosure of marks of all the candidates to a particular individual or organisation may lead to a fear assessment of the position in the merit list or waiting list which may endanger the life or physical safety of the successful recommended candidates is farfetched. Citing some examples of other States, the Commission informed that in the exams conducted by the Railways and the Banks, the marks of both the passed and failed candidates are disclosed, and therefore the submission of the FAA regarding the denial of the marks obtained by the candidates on the ground that it would endanger the life and liberty of a person under Section 8 (1) (g) of the RTI Act, 2005 was not tenable. Further, the Commission was of the opinion that the respondents cannot take advantage of Sections 8 (1) (d) and 8 (1) (g) of the RTI Act, 2005 since the grounds and averments given by the Public Authority i.e. the NPSC are based upon surmises and conjectures.

The Commission viewed that competitive examinations are conducted in the interest of the public and the successful candidates appointed to various services and posts for public service. While acknowledging that the NPSC has the duty and responsibility to conduct examinations for appointments to the services of the State as enshrined in the Constitution, it is in the domain of the NPSC 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. It is based on the total marks obtained by the candidates (in the Mains and Viva Voce), that the results are declared in the order of merit which becomes the basis for recommendation of the NPSC for appointment to the various advertised posts. Hence, while the procedures and

regulations are prescribed, conventions followed to conduct such examinations, and some measures of confidentiality observed in the process of collecting and tabulating the marks, the marks obtained by each candidate and the arranged order of merit once recorded becomes records, which in the interest of transparency, cannot be kept secret under protection of Section 8 of the RTI Act 2005. The Commission is of the view that transparency and disclosure should go hand in hand in the declaration and notification of such results of examinations which are conducted in the interest of public.

DECISION:

On the above observations and findings, the Commission decided that the Deputy Secretary & PIO, NPSC shall furnish the information to the applicant(now appellant) as sought at query Nos. 1, 2 and 3 against the Roll Numbers of the candidates **within two (2) weeks** from the date of issue of this decision, with a copy to this Commission.

Decision pronounced in the presence of all parties present on 23.11.2016.

Copies be given to:-

1. Shri. Khrupi Sothu, Secretary & FAA, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 9436618557.
2. Ms. Asangla Imti, Deputy Secretary & PIO, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 8794145667.
3. Shri. Kelhouseto Nakhro, Deputy Secretary & former PIO, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 9436600680.
4. Shri. T. George Kire, Controller of Examination, Nagaland Public Service Commission, Nagaland, Kohima, Mobile No. 8014061433.
5. The applicant(now appellant), Shri. Amos Odyuo, President, Lotha Students' Union, Head Post Office Kohima, P.O Box – 950, Kohima, Nagaland, Mobile No. 8974340267, 7005505909.
6. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.
7. Office Copy.

Sd/-

TOSHI AIER, IAS (Retd.)
Chief Information Commissioner

Sd/-

CHANBEMO LOTH
State Information Commissioner

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Secretary