



दक्षिण रेलवे/SOUTHERN RAILWAY

No.P(R)171/Policy/SCT

प्रधानकार्यालय/ Headquarters Office
कार्मिक शाखा/ Personnel Branch
चेन्नै/Chennai - 600 003
दि./ Dated: 22-07-2014

पी बी सी सं/ PBC No: 109 / 2014

All PHODs / DRMs / CWMs / CEWE / CAO / CPM / Dy.CPOs / Sr.DPOs /
DPOs / SPOs / WPOs / APOs of HQ / Divisions / Wokshops / other Units, etc.,
(As per mailing list -'A')

विषय/Sub: CIC's Decision No.CIC/AD/C/2009/001263/VS/06523 &
Appeal No.CIC/AD/C/2009/001263/VS dated 23-05-2014
– Public authority under section 2(h) of the RTI Act, 2005
Regarding.

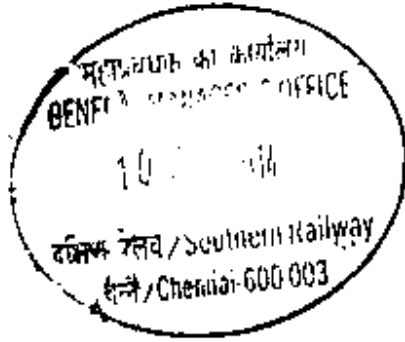
A copy of Railway Board's letter No.2011-E(SCT)I/22/6 dt.07-07-2014 on
the above subject is enclosed for information, guidance and necessary action.

(V.SRINIVASAN)

वरिष्ठ कार्मिक अधिकारी/नियम
Senior Personnel Officer/Rules
कृते मुख्य कार्मिक अधिकारी
For Chief Personnel Officer

संलग्न/Encl: as above

प्रतिलिपि/Copy to : The Genl Secy / SRMU
The Genl Secy / AISCSTREA
The Genl Secy / AIOBCREA
The Genl Secy / NFIR



GOVERNMENT OF INDIA/ भारत सरकार
MINISTRY OF RAILWAYS/ रेल मंत्रालय
(Railway Board)/(रेलवे बोर्ड)

No.2011-E(SCT)I/22/6.

Rail Bhawan, New Delhi.

Dated 7-07-2014

The General Manager (P), *Southern Chennai*
All Indian Railways/PUs,
The DG/RDSO Lucknow
The CAO, DMW Patiala
MD, KRCL Mumbai.

Sub: CIC's Decision No.CIC/AD/C/2009/001263/ VS/06523 & Appeal
No.CIC/AD/C/2009/001263/VS dated 23.05.2014 - Public authority
under section 2(h) of the RTI Act, 2005 Regarding.

A copy of CIC's decision No.CIC/AD/C/2009/001263/ VS/06523 and
Appeal No.CIC/AD/C/2009/001263/VS dated 23.05.2014 wherein it has passed an order
that "The Association is not a public authority under section 2(h) of the RTI Act,
2005" is enclosed herewith for information.

All concerned in the matter under your control may please be
advised accordingly.

DA: As above.


(Gautam Mondal)
Dy. Director, Estt. (Res)

**Central Information Commission
Room No.4, Club Building
Old JNU Campus, New Delhi - 110 067.
Tel No: 011 - 26106140**

**Decision No.CIC/AD/C/2009/001263/VS/06523
Appeal No. CIC/ AD/C/2009/001263/VS
Dated: 23.05.2014**

Appellant: Shri Shrawan Kumar Bhivgade
Western Railways
Carriage Work Shop, N.M.Joshi Marg
Lower Parel, Mumbai

Respondents:

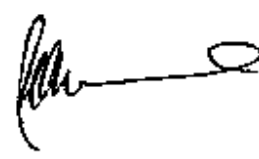

1. Central Public Information Officer
Western Railways
Head Quarters Office, Churchgate
Mumbai
2. The General Secretary
All India SC/ ST Railway Employee's
Association (Regd.)
Central Office 171/B-3, Basant Lane
Railway Colony, New Delhi-110001
3. Central Public Information Officer-39
JDE (Res), Railway Board
Railway Bhawan, New Delhi

Date of Hearing: 26.03.2014

ORDER

Facts

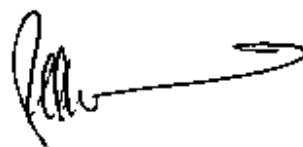
1. The High Court of Delhi vide order dated 30.01.2014 set aside the Commission's order dated 02.01.2011 and remanded the matter for fresh hearing on merits. The Commission vide order dated 02.01.2011 had declared the All India SC/ ST Railway Employee's Association (henceforth the Association) a public authority under the RTI Act, and directed the Association to appoint a CPIO and FAA in the organisation within 15 days.
2. The background of the matter is this that the appellant had filed an application dated 04.04.2009 under the RTI Act seeking information about certain elections. The respondent no. 2 denied the information sought on the ground that they were not a public authority under the RTI Act. The appeal came up before the Commission on 23.06.2010. The Commission declared the Association a public authority vide order dated 02.01.2011.

The respondent no. 2 filed a writ petition in the High Court against the aforementioned order of the Commission.

Hearing

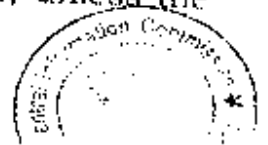
3. Appellant and respondents were present before the Commission.
4. Appellant submitted that the Association is a public authority under the RTI Act because the railways provided various facilities not only in the form of finance but also in the form of other benefits and that the Association was not paying rent and electricity. Appellant stated that the facilities included grant of special casual leave to the office bearers, issue of journey passes, allotment of office accommodation, accommodation facility to the office bearers; telephone, electricity and furniture, etc.
5. Appellant stated that the Association is directly or indirectly controlled by the railways, and that the lists of nominated committee members, workshop executive committee, and office bearers of Association are circulated by railways.
6. Respondent no. 1 said that as per Railway Board's letter No. 2009-E(SCT) 1/22/d dated 17.07.2009 the Association has been recognized as a welfare association governed by its own bye-laws whose main objective is to mitigate the grievances of the SC/ST railway employees and hence has been provided with certain facilities from time to time in the interest of smooth functioning.
7. It was stated that the election of the Association is conducted at various levels as per bye-laws, and that there is no instruction from the Railway Board to nominate observers at the election of the association. It was said that certain facilities, viz., office accommodation, telephone, notice board, etc. is provided to the Association, but the railway administration has no control over the association.
8. Respondent No. 3 said that the railway administration has no powers/jurisdiction or role to play in the internal matters of the association such as their general body meetings, proceedings of election of office bearers, decision to remove elected office bearers, income/expenditure and balance sheet etc.
9. It was stated that the Association is looking after the welfare of SC/ST railway employees, hence certain facilities had been provided keeping in view the welfare nature of the activities. The facilities provided to the said association is not more than the facilities provided to the recognized trade unions. The list of the elected office bearers as submitted by the association is circulated by the administration.



10. Respondent no. 2 stated that the Association is provided with offices by the Railway Board, however the rent and electricity charges for the same is recovered from time to time. It was stated that the Association is neither a public authority by virtue of any law, nor is it owned or substantially financed by the government.
11. The respondent no. 2 cited some cases. The respondent said that as per Supreme Court order Thalappalam Ser. Coop. Bank Ltd. v. State of Kerala. Civil Appeal No. 9017 of 2013 merely providing subsidies, grants, exemptions, privileges, etc. cannot be said to be providing funding to a substantial extent, unless it is shown that the body practically runs on that funding and that if such funding is stopped then the body would not be able to exist.
12. The respondent no. 2 also cited Northern Zone Railway Employees Co-operative Thrift & Credit Society Ltd. vs. Central Registrar Co-op Society. W.P. (C) 12210/2009, and said that it was held by the High Court that if a society is provided with some facilities in the nature of accommodation on a reasonable rent or rent free accommodation, and its office bearers are provided special passes or casual leave to attend the meetings of the society the same cannot be said to be a case of "substantial financing".

Discussion:

13. It emerged from the hearing that the Railway Board has granted facilities which includes accommodation, casual leave, travel passes, telephone, computer, internet, furniture, notice boards, etc. to the Association as per instruction issued by the Railway Board from time to time. The list of nominated committee members, list of workshop executive committee, list of elected office bearers of the Association are also circulated by railways.
14. As per the balance sheet of the Association, income of the association is from membership fee, FDRs with the bank, interest from the bank, etc. Various expenditures includes printing charges, expenditure for training, furniture, travelling expenses, legal expenses, gifts, telephone bills, stationery, salaries, website, etc. for which funds are raised by the association.
15. As per the affidavit submitted by the Railways before the High Court in W.P. (C) 1983/2011 All India SC/ ST Railway Employee's Association v/s Shrawan Kumar Bhivgade & Ors. the electricity charges and rent of office accommodation of the Association were recovered from time to time and no grant has been given by the Railways to the Association.
16. The issue in the matter is whether the facility provided to the Association is a "substantial finance" as envisaged by section 2 (h) of the RTI Act. Merely providing subsidies, grants, exemptions, privileges, etc., as such cannot be said to be providing funding to a substantial extent, unless the



record shows that the funding was so substantial to the Association that it would not be able to exist if the assistance was not available.

17. From the submissions made in the hearing it can be concluded that it does not appear that the facilities and funding provided was so substantial that the Association would not have been able to exist if that assistance had not been given. What emerges is that the assistance provided to the Association cannot be termed as "substantial finance" taking into account the elements brought out in the hearing and the judgements cited above. The Association does not appear to be controlled by the Railway Board.

Decision:

18. The Association is not a public authority under section 2(h) of the RTI Act, 2005.

The appeal is disposed of. Copy of decision be given free of cost to the parties.



Vijai Sharma
(Vijai Sharma)
Information Commissioner

Authenticated true copy:

(Signature)

(V.K. Sharma)
DO & Deputy Registrar