

## CENTRAL INFORMATION COMMISSION

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**F.No.CIC/AT/A/2010/000757**

**Dated, the 12<sup>th</sup> November, 2010**

**Appellant : Shri D.P. Bhatia**

**Respondent : Customs and Central Excise, New Delhi**

**s**

This matter came for hearing on 03.11.2010 pursuant to Commission's notice dated 13.10.2010. Appellant was present in person, while the respondents were represented by Dr.Shobhit Jain, Deputy Commissioner & CPIO and Shri Sanjeev Yadav, Vigilance Officer.

2. Appellant had filed a complaint dated 31.10.2009 against one, Shri Sansar Chand, Additional Commissioner before the Vigilance Department of the public authority and now through his RTI-application dated 19.02.2010, desired to know the action taken on his complaint from the date of receipt till 19.02.2010 — date-wise. Additionally, he wanted to receive photocopies of the entire correspondence made in this regard as well as copies of the note-sheets.

3. In the second-appeal, it is the appellant's plea that the CPIO and the Appellate Authority, through their respective communications / orders dated 18.03.2010 and 22.04.2010, had denied him copies of correspondence and note-sheets, on the ground that disclosing the names of the officers dealing with the matter were barred under Section 8(1)(g) of the RTI Act.

4. Appellant had called the reasons spelt-out by the respondents as 'baseless'. He claims that he had a right to know as to what action was

taken by the public authority against the Additional Commissioner of Central Excise and Customs in respect of whom appellant had filed a complaint.

5. Respondents, while reiterating their point that disclosure of the details of the file-noting was potentially risky for the officers who made notings in the file in a matter as sensitive as the complaint of one officer of the public authority against another, argued that since the officers making the file-notings were recording their notes in confidence in a confidential file, they answered the description of those who were the source of an information for decision-making purposes and must be provided the protection under Section 8(1)(g) of the RTI Act.

6. Respondents further pointed out that the original complaint-petition of the appellant having been initially processed by the Vigilance Department was transmitted on 04.02.2010 to the HRD Department of the public authority, where all action in such matters usually lie. They, therefore, claimed that there was no further action at their end in the matter of this complaint of the appellant.

7. The short-point for decision is whether file-notings in vigilance files should be allowed to be disclosed.

8. This matter is covered by the ratio of Commission's decision in *K.L.Bablani Vs. DG Vigilance, Customs & Central Excise; Appeal No.*[CIC/AT/A/2009/0617](#); *Date of Decision: 16.09.2009*, wherein it was held that the file-notings in vigilance files cannot be authorized to be disclosed as these amounted to information confidentially held by the public authority and thereby came within the scope of Section 11(1) read with Section 2(n) of the RTI Act. The operating portion of that order read as follows:-

“6. *This is not the first case in which employees of a public authority have demanded disclosure of file-notings in matters of vigilance and disciplinary enquiries held against them. In most cases, the purpose is to find out the identity of those officers who had taken favourable and those who had taken unfavourable view of the conduct of such employees in recording the file-notes. The employees are aware that it is these notes, which eventually lead to decisions for, or against, them by the competent authority and want, for their own different purposes, to gain access to the identities of those recording the notes as well as the notes recorded to pursue their agendas about, or against, the officers recording those notes. It has happened in a few cases that even bona-fide comments made in such sensitive files by officers, when disclosed to the person in respect of whom such comments were made, brought retribution to the officer recording the note in the shape of a court proceeding, a notice for damages and so on. In some cases, even intimidation was resorted to. Frequently, officers recording such notes were juniors to those in respect of whom the case was being processed. Naturally, no officer recording the note wanted his identity to be disclosed lest he became the victim himself later at the hands of the senior person, whose conduct it became his duty to examine at some stage. Confidentiality of note-files, therefore, is an entirely wholesome principle conducive to good governance. Any compromise with objectivity in processing matters extant in the file, is potentially damaging to governance by exposing those entrusted with the charge of processing the matter to, undue, and sometimes, intimidating, scrutiny by interested parties.*

7. *It is my belief, therefore, that a public authority which is authorized to hold file-notings in sensitive files, such as vigilance and disciplinary matters, confidential under the provisions of Section 124 of the Indian Evidence Act can also*

*hold such documents (file-notings) confidential under Section 11(1) of RTI Act read with Section 2(n), on satisfying certain conditions. Section 2(n) of RTI Act, which states that .....renders a public authority holding the information a “third-party” in respect of the confidential information it holds. Since the information satisfies the requirement of being a third-party information, it being confidential as well as it comes within the scope of Section 11(1).....*

8. *Since the matter comes squarely within the purview of Section 11(1) being a confidential third-party information, the reason why it can be disclosed is that it is in public interest and, not otherwise. It needs to be proved that public interest supersedes the protected interest if such information were to be disclosed.....*

10. *I do not think that applying Section 10(1) and hiding the names of the authors of the file-notings will serve any purpose. As has been rightly pointed out by the respondents, even without the authors’ names, the identity of the authors of the notes could be disclosed by reference to the hierarchies through which the file passed as well as the handwriting in which the notes were recorded.”*

9. It was also pointed out in that order that protection needs to be provided to the officers of sensitive Department such as the vigilance in performing their duties from the probing eyes of outsiders.

10. Consistent with the above, it is held that there shall be no disclosure in respect of the above query.

11. Matter disposed of with these directions.

12. Copy of this direction be sent to the parties.

( A.N. TIWARI )  
CHIEF INFORMATION COMMISSIONER