

**CENTRAL INFORMATION COMMISSION**  
**Block IV, 5<sup>th</sup> Floor, Old JNU Campus**  
**New Delhi 110067**

Appeal No. CIC/OK/A/2006/00154

Dated January 2, 2007

Name of the Appellant:

Shri Pyare Lal Verma  
52, Avas Vikas Colony  
Jail Road, Aligarh.

Name of Public Authority:

- (1) Ministry of Railways,  
Railway Board.  
New Delhi.
- (2) Ministry of Personnel,  
Public Grievances &  
Pensions, New Delhi.

**Date of decision:**

January 29, 2007

**FACTS:**

On 3.3.2006, the appellant submitted an application to the Railway Board under the RTI requesting for copy of the decision taken and action taken/orders passed including file noting in connection with granting the benefit of Army service for ex-ECOs of RPF in their file No.96/SEC (E)/SR-2/5. CPIO informed applicant Shri Pyarelal of the decision recorded on the file but informed the appellant that in terms of DOPT Office Memorandum dated 2.2.06, the inspection/copies of file noting cannot be acceded to. Dissatisfied with this, the appellant preferred an appeal before the first appellate authority of the Railway Board in the Ministry of Railways. The first appellate authority also concurred with the findings of the CPIO. Consequently, the appellant preferred his 2<sup>nd</sup> appeal before this Commission.

2. The matter was heard on 13.7.2006 by the Information Commissioner Dr. OP Kejariwal who after hearing both parties, decided as follows:

“The Commission noted with serious concern that some public authorities were denying request for inspection of file notings and supply copies thereof to the applicants despite the fact that the RTI Act, 2005 does not exempt file notings from disclosure. The reason they were citing for non-disclosure of ‘file notings’ was the information posted on the DOPT website [[www. righttoinformation.gov.in](http://www.righttoinformation.gov.in)] to the effect that ‘information’ did not include file notings. Thus the DOPT website was creating a lot of unnecessary and avoidable confusion in the minds of the public authorities. The Commission had written to the Department of Personnel on 26<sup>th</sup> February, 27<sup>th</sup> March, 8<sup>th</sup> May and 26<sup>th</sup> May, 2006 for removing the restriction on ‘file notings’ from their website. The DOPT regrettably had not acted on the issue so far. The Commission hereby directs the Secretary, Ministry of Personnel & Public Grievances, in exercise of powers conferred on it under Section 19(8) of the Right to Information Act, 2005 to remove the instruction relating to non disclosure of file notings from the website within 5 days of the issue of this order failing which the Commission shall be constrained to proceed against the Ministry of Personnel”.

3. The decision of the Commission was duly communicated to the parties to the case and to the Secretary Ministry of Personnel, Public Grievances and Pension (hereinafter referred to as DOPT).

4. In response, the DOPT vide their letter dated 17.7.2006 submitted as follows:

- 1) That the direction has been given to the DOPT without affording any opportunity to the Ministry to make any submission in this regard.
- 2) That while making the Right of Information Bill, 2004, the Government has taken a conscious decision not to include “file notings” in the definition of the “information”. The Parliamentary Standing Committee as also the Group of

Ministers which examined the RTI Bill had also not suggested for incorporation of the 'file notings' in the definition of "information". Accordingly, on the website of DOPT it has been clarified that "information" does not include 'file notings'. The Ministry also requested that the matter may be placed before the full Commission for consideration.

5. The Commission in its weekly meeting on 1.8.2006 decided that the matter will continue to be heard by the Single Bench as before. The decision of the Commission was communicated to the DOPT on 2.8.2006.

6. On 4<sup>th</sup> August, 2006, the matter was heard when Shri S.B. Paliwal, Joint Secretary DOPT appeared before Information Commissioner, Dr. O.P. Kejariwal and updated the Commission on the Government thinking on various amendments proposed by the Government in the RTI Act including on the "file notings". During the course of hearing, it was made clear to the DOPT that the continuation of the instructions advising non-disclosure of file notings on the web site of the DOPT was against the letter and spirit of RTI Act notwithstanding the current thinking of the Government on the subject. The DOPT pleaded that as there were comparatively less number of working days between the 12<sup>th</sup> and 21<sup>st</sup> of August, 2006, they may be given some more time to discuss the matter thoroughly. In view of their submissions, the Commission vide its order dated 8.8.06 directed DOPT to comply with its order by 22<sup>nd</sup> August, 2006 and report compliance immediately thereafter. The orders of the Commission were formally communicated on 8<sup>th</sup> August, 2006.

7. On 21.8.2006, Secretary DOPT submitted that the matter has been examined in consultation with the Ministry of Law, Department of Legal Affairs as directed by the Prime Minister. He also submitted an opinion from the Additional Solicitor General raising the following points:

- “1. The definition of “information” under the RTI Act does not include “file notings”.
  2. The 2<sup>nd</sup> appeal in the instant case has been heard by a single Bench, even though the DoPT vide their letter dated 17.7.2006 requested for placing the matter before Full Commission;
  3. The Full Bench in its meeting dated 1.8.2006 decided the issue without hearing the DoPT – hence violation of principles of natural justice.
  4. Section 12(1) and 12(2) of RTI Act provides that every decision of the Commission should be a Full Bench decision.
  5. In view of the above, the decision of the Information Commissioner, Dr. O.P. Kejariwal is not sustainable.”
8. In view of the above submissions which had raised basic questions on the law, the Commission considered the issues raised and decided to hear this matter in full Bench. The Commission also made it clear in the notice that the DoPT may like to request Shri Gopal Subramaniam, the Additional Solicitor General of India to attend the hearing and to assist the Commission in arriving at a decision in regard to the points raised by him in his note annexed with the letter from the Secretary to DoPT. The Commission also requested Shri Prashant Bhushan, Senior Advocate, Supreme Court of India, and Shri K.C. Mittal to assist the Commission in this regard. The matter was heard by the full Bench of the Commission on 20<sup>th</sup> December, 2006. The hearing was attended by:-
- (1) Shri P.P. Malhotra, Additional Solicitor General
  - (2) Shri R. Ramanujam, Joint Secretary, DoPT
  - (3) Shri K.G. Verma, Director, DoPT
  - (4) Shri B.L. Meena, CPIO, Railway Board
  - (5) Shri V.K. Samuel, ACPIO, Railway Board
  - (6) Shri P. Rawale, DIG (Admn.), RPF
  - (7) Shri Pyarelal Verma, Appellant

(8) Shri Prashant Bhushan, Advocate, Supreme Court

9. At the time of hearing, the Chief Information Commissioner at the outset made it clear that the full Bench would like to hear as regards the legality of the decisions taken by a single bench and as to whether it is mandatory under the law that each of the case which is to be decided by the Commission has to be decided by its full Bench as pointed out by the learned Additional Solicitor General in his legal opinion submitted to the DoPT. It was also stated by the Chief Information Commissioner that the Commission would also like to hear the DoPT regarding the legality or otherwise of the directions issued to it even though it was not a party to the present case. It was also made clear that the Commission would not like to review its decision on “file noting” as this matter has already been decided in several other cases which have already been pointed out to the DoPT, on the basis of the law.

10. Opening the arguments, the Additional Solicitor General, Shri Malhotra, on behalf of the DoPT submitted that it was on the basis of the law on file noting that he sought to challenge the decision of the single Bench. He asserted that it was not the intention of the legislature to make “file noting” as a part of ‘information’ as defined under Section 2(f) of the Right to Information Act. In this context, he submitted the historical background of the Right to Information Act. He submitted that Section 8(e) of the Freedom of Information Act, 2002 clearly stipulated that the following information, not being information relating to any matter, shall be exempted from disclosure:-

“Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to existing decision or policy formulation.”

ASG Shri Malhotra also submitted that the present Government wanted to make the Right to Information Act more progressive, participatory and meaningful and accordingly the National Advisory Council originally submitted a draft in which the definition of the word ‘information’ explicitly included ‘file notings’. He

pointed out that the final enactment did not incorporate 'file notings' within the ambit of the word 'information' in Section 2(d). The learned Additional Solicitor General submitted that this explicit omission of the words "file notings" from the definition of the word 'information' was a deliberate conscious decision of the Parliament which chose not to include "file notings" within the meaning of word 'information' as defined under Section 2(f) of the Act of 2005.

11. Continuing his arguments, the learned Addl. Solicitor General also submitted that the meaning of 'information' has to be read along with Sections 8(e) and Section 11 of the Act that provide for exemption of information available in a fiduciary relationship and protection of information provided by a third party. Since the third party also includes a public authority, the officers of the public authority who make file noting are also entitled to protection as a third party. Since file noting is only a thinking process preceding the decision, such noting cannot be categorized as 'information'. He also pointed out that the preamble of the Act also envisages that revelation of information in actual practice is likely to come in conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble of the Act, therefore, recommends that harmonization of the conflicting interest requires furnishing certain information and not furnishing certain other information to the citizens. He also emphasized that citizens have a right to demand disclosure of the information which is in public interest and relevant and what is relevant is the decision itself along with the material on the basis of which such decision has been arrived at and not who expressed what view on the file. In his written arguments, the learned Addl. Solicitor General has also cited the following two decisions of the Hon'ble Supreme Court in this regard:-

- (i) Dinesh Trivedi vs. Union of India (1997) 4 SCC 306.
- (ii) State of Bihar vs. Kripalu Shankar (1987) 3 SCR 1.

12. As regards the jurisdiction of the Commission to deal with appeals, the learned Additional Solicitor General submitted that the Central Information Commission has been defined to be a “body “comprising the Chief Information Commissioner and such number of Central Information Commissioners not exceeding ten, as may be deemed necessary. The Central Information Commission as a whole, therefore, constitutes the body and it is the Central Information Commission as a whole that has been given powers under Section 18, 19 and 20 of the Act. He also submitted that this body cannot be divided and as such no single bench can take up judicial matters. Since all complaints and appeals are in the nature of quasi judicial proceedings, no decisions can, therefore, be passed by one or more members of the Commission unless it is passed by the full Bench. In this context, he sought to bring out parity between the Central Information Commission and the National Consumer Commission constituted under the Consumer Protection Act, 1986. He submitted that the National Consumer Commission started hearing the cases in separate benches only after the amendments to the said Act were introduced in 2002. On a specific question raised by Chief Information Commissioner, he also submitted that the scope of Section 12 (4) of the Right to Information Act was limited and it was meant only for the purpose of carrying out different executive functions associated with the affairs of the Commission. Giving illustrations, he submitted that such executive functions may include fitting of coolers and air-conditioners or buying of furniture or stationery, but it cannot be expanded so as to include assigning judicial or quasi judicial cases to individual Information Commissioners in the name of the Commission. He also pointed that Section 27 of the Act makes it clear that it is the appropriate Government which by notification in the official gazette has to make rules to carry out the provisions of the Act and such rules may provide, *inter alia*, for the procedure to be adopted by the Central Information Commission or the State Information Commission as the case may be, in deciding the appeals under sub-Section (10) of Section 19. The rules already promulgated by the Central Government do not provide for constitution of benches or dealing with appeal cases by individual Commissioners.

13. As regards the third issue concerning the powers of the Central Information Commission to give directions to the public authority, the learned Additional Solicitor General submitted that at this stage it will be premature to suggest that the Government stand in the matter is misleading as according to the Government, the issue concerning the “file notings” has still not been decided by the Commission as a body. The DoPT’s view regarding “file notings” is reflected in their web site and it would not be fair on the part of any stakeholder to ask the Commission to direct a public authority not to hold a certain view only because individual Commissioners have arrived at a different view while dealing with some of the cases. He also submitted that under Section 19 of the Act, the Commission may require a public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, the following facts would, however, have to be kept in view while exercising such powers:-

- (i) The Ministry of Personnel, while clarifying certain matters under the Act has not acted in its role as a public authority but as the Central Government, or ‘nodal authority’.
- (ii) The Act contains no provisions for the Central Information Commission to give directions to the Central Government as different from a Public Authority.
- (iii) The Ministry which has performed the nodal role in getting the legislation enacted has the legitimacy to clarify issues to facilitate the implementation of the Act.
- (iv) It is the Central Government and not the Central Information Commission which has powers to remove difficulties in giving effect to the provisions of the Act under section 30.
- (v) Clarifying an issue does not amount to non-compliance with the provisions of the Act. The question of giving directions to secure compliance with the provisions of the Act does not, therefore, arise.

- (vi) The Commission will only be justified in deciding any appeal that comes before it and pass orders in that case. The Ministry of Personnel was not the public authority in the case under discussion and, therefore, no direction can be given to it in respect of the case under Section 19.
- (vii) In response to a specific question from us on the scope of Sec 25(5) ASG argued that the Central Information Commission can only make recommendations and it cannot pass any orders against the Public Authority much less the Central Government in regard to their policies or exercise of functions under the Act.
- (viii) The Commission being a creature of the statute cannot travel beyond its role. It cannot *suo moto* issue any directions or any orders to authorities other than the Central Public Information Officers in respect of the specific subject matter of the appeal.
- (ix) Assuming for the sake of argument that this is a case of complaint against the Ministry of Personnel, even then under Section 18, the Commission can only take cognizance of complaints and has the powers to enquire into them. However, no authority has been granted to the Commission to follow it up with directions to the public authority.
- (x) Also, a mere disagreement with a particular interpretation of the statute by a stake holder cannot be regarded as a complaint. The Commission may interpret the statute as per its understanding considering the totality of the facts and circumstances of each case and give specific directions for disclosure. It cannot ban a public authority much less the Central Government from holding a certain view.

14. Mr. Ramanujam, Joint Secretary, DOPT submitted that under Sections 18 and 19 of the Act, there is no general power vested in the CIC to command the DOPT as under Section 25(5) of the RTI Act, if it finds that the practice of a public authority in relation to the exercise of its function under this Act does not conform with the provision or spirit of the Act, it may only give a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity. Central Information Commission can, therefore, only recommend and cannot dictate. He also submitted that the DOPT has nowhere stated that no one would disclose file notings and that DOPT has not issued any such instructions that file notings should not be disclosed. **As the web site of the DOPT reflects the views of the DOPT being the nodal Ministry in the matter these are not directions to any one.** He also submitted that the DOPT is entitled to have and hold its own views. The Joint Secretary also denied that the DOPT is misleading any one in the matter in any manner.

15. Submitting his arguments, Mr. Prashant Bhushan, learned Senior Advocate submitted that in the instant case appropriate notices were served on the DOPT and DOPT is bound under the law to obey the direction/orders passed and communicated by the CIC which is a statutory Commission constituted under the Right to Information Act. He objected to the submissions of the DOPT that instructions appearing on the web site of the DOPT were views of the DOPT as a nodal Ministry and that these instructions will remain despite any direction or orders passed by the Commission as the Commission can only give advice or recommend a course of action to the Government and cannot issue any order or direction. Information Commissioner Shri AN Tiwari explained that even in a particular file there may be elements which could be excluded from disclosure. He also pointed out that there is another aspect to file noting as in this case an officer in the same hierarchy is writing for his superiors or submitting an advice would this not be in a fiduciary capacity. Counsel Mr. Prashant Bhushan submitted that the concept of fiduciary relationship cannot be extended so as to cover Government servants. A note given by a junior officer to his senior may be

given in confidence and it may in that case be treated to be “confidential” but it does not exhibit any fiduciary relationship between the officers. However, the senior counsel conceded that if a particular file is containing matters that are categorized as ‘confidential’, such matters may be excluded from being disclosed under the RTI Act.

16. **ISSUES:**

1. Whether the decision of the Commission concerning file noting needs to be reviewed in view of the submissions from the Ministry of Personnel, public Grievances & Pensions?
2. Should the CIC hear and decide all appeals/complaints under the RTI Act sitting in full Bench only?
3. Whether the directions given to the DOPT concerning removal of instructions from their web site are legal and binding?
4. What directions, if any, can now be passed in the interest of justice?

**DECISION NOTICE:**

17. The issue concerning the disclosure of “file noting” under the Right to Information Act first came up before this Commission in the case of Satyapal Vs. CPIO TCIL which was decided by a Division Bench consisting of Information Commissioner, Mrs. Padma Balasubramanian and the Chief Information Commissioner, Shri Wajahat Habibullah, in **Appeal No.IC(PB)/A-1/CIC/2006 on 31.1.2006**. In this case it was held as follows:

“In the system of functioning of public authorities, a file is opened for every subject/matter dealt with by the public authority. While the main file would contain all the materials connected with the subject/matter, generally, each file also has what is known as note

sheets, separate from but attached with the main file. Most of the discussions on the subject/matter are recorded in the note sheets and even the decisions are recorded on the note sheets. These recordings are generally known as “file notings”. Therefore, no file would be complete without note sheets having “file notings”. In other words, note sheets containing “file notings” are an integral part of a file. Some times, notings are made on the main file also, which obviously would be a part of the file itself. In terms of Section 2(i), a record includes a file and in terms of Section 2(j) right to information extends to accessibility to a record. Thus, a combined reading of Sections 2(f), (i) & (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part. If the legislature had intended that “file notings” are to be exempted from disclosure, while defining a “record” or “file” it could have specifically provided so. Therefore, we are of the firm view that, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in “file notings” unless the same relates to matters covered under Section 8 of the Act.”

This decision of the Commission was duly communicated to the DOPT vide letter dated 26.2.2006 which was followed by a reminder on 27.3.2006 and 8.5.2006.

18. In Suchi Pandey Vs. Ministry of Urban Development, Government of India, this Commission vide order dated 15.5.2006 reaffirmed its decision in the Satyapal's case and advised the Ministry of Personnel, Public Grievances & Pension to remove such administrative instructions from its web site that are contrary to the RTI Act as found by the Commission. The following directions in this case are pertinent to be quoted:

“We see no reason to review this Decision. As the Decision of the Commission is binding u/s 19(7), any administrative instructions of a Ministry are of no account. The Ministry of Personnel, Public

Grievances & Pensions is advised to remove such administrative instructions from its website that are contrary to the RTI Act, 2005 as found by the Commission. In the present case, the Ministry will make available the file notings requested to the appellant.” (Emphasis added)

The decision of the Commission was again communicated to the DOPT vide letter dated 26.5.2006 and they were requested to remove the instructions concerning the file noting from their web site.

19. Similarly, in Mahendra Gaur Vs. Department of Consumer Affairs, this Commission again vide its order dated 23.6.2006 emphatically observed as follows and enjoined upon the DOPT to immediately remove its clarification of the file noting from its web site. The following observations in this case in Para 4 are quoted below:

“It is not the first time that after the decision of this Commission in Satyapal case, a public authority has denied access to file notings on the basis of the website information of DoPT. A few other public authorities have also done so, due to which this Commission has to reiterate again and again its decision that information includes “file notings”. Therefore, to avoid unnecessary appeals which subject citizens to suffer cost and time, I enjoin upon the DoPT to immediately remove its clarification on “file notings” from its web site.”

The decision in this case was intimated to the DOPT on 28.6.2006.

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immediately remove its clarification on “file notings” from its web site.”

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20. In this connection, it is also pertinent to refer to two other decisions of , Information Commissioner Shri A.N. Tiwari, concerning file notings, i.e.

- i) Appeal No.CIC/AT/A/2006/00148 dated 14.7.2006
- ii) Appeal No.CIC/AT/A/2006/363 dated 3.12.2006

In the first case, both the CPIO and the Appellate Authority of the Home Ministry have denied the appellant access to the file noting which precisely the appellant desired to have. The Commission directed the Appellate Authority to examine the matter *de novo* and to see as to whether the noting of the confidential file are barred by any exemption such as Section 8(1)(e) and 8(1)(i) and whether the notings being in the nature of a 3<sup>rd</sup> party fiduciary entrustment to a superior officer, are exempted from disclosure in terms of Section 11(1) of the Act. The issue was further elaborated in the 2<sup>nd</sup> appeal decided on 3.11.2006. Following observations of the Information Commissioner Sri A. N. Tiwari in this context are quoted below:

“Similar matters were dealt with by the Commission - in the case of K.C. Aggarwal Vs. Ministry of Home Affairs (No.CIC/AT/A/2006/00148). The substance of the order in that case was that file notings in a confidential file would attract the provisions of Section 8(1) (e) as well as Section 11(1) of the RTI Act. File notings are that part of the file in which an officer records his observations and impressions meant for his immediate superior officers. Especially when the file, in which the notings are contained, is classified as confidential, the entrustment of the file note by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a third party (in this case, the officer writing the note to the next higher officer). This being so, any decision to disclose this information has to be completed in terms of the provision of Section 11(1) of the RTI Act. When the file notings by one officer meant for the next officer with whom he may be in a hierarchical relationship, is in the nature of a fiduciary entrustment, it should not ordinarily be disclosed and, surely not without the concurrence of the officer preparing that note. When read together, Section 11(1) and Section 8(1)(e), unerringly point to a conclusion that notings of a “confidential” file should be disclosed only after giving opportunity to the third party, viz. the officer / officers writing those notes, to be heard.”

As DOPT was not a party to the above proceedings, no communication was made to the DOPT of the above decisions.

21. Thus, insofar as this Commission is concerned, the issue concerning the “file noting” was well settled and the DOPT was duly informed about the Commission’s directions regarding removal of the instructions which were contrary to the provisions of the RTI Act from their web site. No objection was raised by the DOPT since the first communication was sent to them on 26.2.2006. It was only when the decision was passed in this case on 13.7.2006 that the DOPT vide their letter dated 17.7.2006 submitted that while making the Right to Information Bill, 2004, the Government has taken a conscious decision not to include “file notings” in the definition of “information” and requested that the matter be placed before the Full Bench of the Commission for consideration.

22. In view of the above, it is not at all necessary to make further observations on the issue. However, since the issues have been raised concerning points of law, it is necessary to further clarify the matter so that it can be settled once and for all.

23. In his written arguments, the learned Additional Solicitor General has quoted the following two decisions of the Hon’ble Apex Court, which provide valuable guidance, while interpreting any statute:

Baldev Singh Baijwa vs. Munish Saini 2005(12) SCC T 18

Ilaichi Devi vs. Jain Society for Protection of Orphans & ors. 2003(18)  
SCC 413

In this connection, the following observations of the Hon’ble Apex Court are worth mentioning:

“The golden rule of construction is that when the words of the legislation are plain and unambiguous, effect must be given to them. The basic principle on which this rule is based is that since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the enactment may be gathered

from several sources which are from the statute itself from the Preamble to the statute, from the Statement of Objects and Reasons, from the legislative debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Reference may be had to legislative history and latest legislation also.”

24. Thus, it is very clear that when the language used in the statute is plain and unambiguous, effect must be given to that. hsofar as the RTI Act, 2005 is concerned, the word “information’ has been defined under section 2(f) of the Act which reads as under:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.” (Emphasis added)

And Sec.2 (i) of the Act defines ‘records’ as under:

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) Any other material produced by a computer or any other device.

25. It is pertinent to note that the definitions of both the words “information” and “record” are inclusive definitions. It has widened the meaning of both the words, as under the settled law of legal interpretation an inclusive definition not only signifies what it generally connotes but also what it specifically includes. Looked from this viewpoint, unless “file notings” are excluded specifically from the word “file”, the file would include both parts – the part containing

correspondence and the part containing opinions and advices which is commonly known as “notings”.

26. The golden rule of construction as pronounced by the Hon’ble Apex Court in the above cases, the Preamble to the Statute and the Statements of Objects and Reasons also help in arriving at the true meaning of the words used in the enactment and accordingly the provisions contained in Sections 2(i) and 2(f) need be read in the context of the objectives of the Act which are set out in the Preamble viewed from this context, the Right to Information Act was enacted:-

- (i) to set out a practical regime of RTI
- (ii) to secure access to information under the control of public authorities,
- (iii) To promote transparency and accountability in the working of every public authority.

The Act, therefore, aims at bringing total transparency. The Preamble clearly states that it intends to harmonize the need to keep certain matters secret but at the same time reiterating the paramountcy of the right to know. Thus, the Act intends to bring in a total change in the mindset of “secrecy” generated by the colonial legislations such as the Official Secrets Act and the Law of Evidence. The Preamble also outlines the grounds that may necessitate withholding of the information from the citizens. The Preamble permits non-disclosure of information that is likely to cause conflict with public interests including:-

- (i) efficient operations of the Governments
- (ii) optimum use of limited fiscal resources;
- (iii) Preservation of confidentiality of sensitive information.

Thus, any information the disclosure of which is likely to cause conflict with public interest can be withheld by a public authority whether it is a part of the correspondence side or it’s a part of the ‘Noting’ side.

27. In this connection, it must be pointed out that the definitions of the words “records”, “information” and “Right to Information” were almost the same under the Freedom of Information Act, 2002. But it was for explicit provision in section 8(1) (e) of the said Act that the “file notings” were exempted from disclosure. The section 8(1) (e) of the Act of 2002 reads as under:

Section 8(1) – Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

- (e) “Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation”

While, the Act of 2005 incorporates other exemptions provided for in section 8 and 9 of the Act of 2002, it has not incorporated any such provision which will exclude the “file notings” from disclosure. Contrary to what has been submitted before us by the DOPT, it appears that the Parliament, in fact, intended that the “file notings” are no more exempted and, as such, these are to be made available to the people. **The reason for deletion of these specific words from the draft of the Act as mentioned by ASG in his arguments is more likely to be because the definitions cited above are clear and comprehensive on the subject and inclusion of the words would be rendered redundant** as pointed out by Information Commissioner Prof. MM Ansari during the hearing. Attention here is drawn to the definition of the word ‘file’ as contained in the ‘Manual of Office Procedure’ of the DoPT. As will be seen, **Section 27 of Chapter II: ‘Definitions’**, clearly states, ‘File means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:

- (a) Correspondence
- (b) Notes**
- (c) Appendix to Correspondence
- (d) Appendix to Notes’

This would imply that 'notings' are an inextricable part of a record as defined u/s 2(f) and further defined u/s 2(i)(a) of the Act unless it had been specifically exempted. Without that, by excluding 'notings' from a file, the DoPT would be going against their own Manual and established procedure mandated by them. This would also mean that if, as the Learned Counsel insists, 'notings' are not to be a part of the file, then first an amendment would have had to be carried out on the definition of a file in the DoPT's own manual.

28. Thus, from whichever angle the provisions of the Right to Information Act are looked into, **"file noting" cannot be held to be excluded** unless they come in conflict with public interest as aforesaid or are excluded under any of the provisions of the RTI Act, 2005. We therefore see no reason to disagree with the Decisions on the subject pronounced thus far by this Commission. File noting is to be made available to applicants under the Right to Information Act unless they come in conflict with public interest including preservation of confidentiality of sensitive information and are therefore excluded under any of the provisions of the Act.

The issue is decided accordingly.

29. The Right to Information Act, 2005 seeks to establish a practical regime to ensure that the right to access of information conferred on a citizen is put in actual practice in order to promote transparency and accountability in the working of every public authority. With that object in view, it provides for constitution of Central Information Commission and the State Information Commissions. In this context, it is pertinent to refer to the preamble of the Act which reads as under:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control o public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State

Information Commissions and for matters connected therewith or incidental thereto.”

30. Thus, the constitution of the Central Information Commission is central to the Act of 2005 and the Commission has been constituted to exercise the powers conferred on and to perform the functions assigned to it under this Act. The Act intends to secure complete autonomy to the Commission while exercising its powers and performing its functions assigned to it under the Act. It will be pertinent to quote the provisions contained in Section 12(4) of the Act which reads as under:

“The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.”

31. The Central Information Commission is, therefore, expected to work without being subjected to directions by any other authority under this Act and it is needless to say that any other authority would implicitly include the Government and any public authority. It is also clear that the general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner and he may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously. The autonomy granted to the Commission would implicitly mean and include that the Commission has the freedom and powers to act independently and effectively for ensuring better management of its affairs. The constitution of the Benches is an integral part of internal management of the affairs of the Commission. If the Commission is of the view that the disposal of cases or discharging of the duties can be better

managed by constitution of single or division Benches under these provisions, the Chief Information Commissioner is fully empowered to do so under Section 12(4) of the Act. The comparison with the powers assigned under the Consumer Protection Act 1986 is misplaced since there is no clause comparative to Sec 12(4) in that Act.

32. On behalf of the DoPT, it has been submitted that the rule making power is not with the Commission but it is with the appropriate Government under Section 27 of the said Act and such rule-making power includes prescribing the procedure to be adopted by the Central Information Commission or the State Information Commissions, as the case may be in deciding appeals under sub-section (10) of Section 19. Although the rule-making power has been conferred on the appropriate Government under Section 27 of the Act, insofar as internal management is concerned, the Chief Information Commissioner is fully competent to frame Regulations or to lay down guidelines or issue directions as and when so required or considered necessary for management of the affairs of the Central Information Commission and with a view to ensuring that it is in a position to function autonomously without being subjected to any direction by any other authority. The constitution of the Bench is not a part of the appeal procedure but it is a matter more connected with the internal management of the Commission and as such the rule making power conferred on the appropriate government does not in any way limit the authority of the Chief Information Commissioner to delegate powers of the Commission on an individual Information Commissioner or to a group of Information Commissioners as he thinks fit and proper for the proper performance of the functions of the Commission autonomously.

33. The very fact that the Government has already framed the rules and that these rules did not provide for constitution of the Benches makes it very clear that these matters concerning the constitution of Benches and internal management affairs of the Commission were left to be decided by the Chief

Information Commissioner and the Commission has been deciding these matters normally in its Weekly Meetings, the minutes of which are displayed on its web site for the information of the general public. In this context, it may be pertinent to mention that the Commission has so far received more than 4,000 Appeals/complaints and if the contention of the DoPT that the Commission should hear and decide all Appeals and complaints sitting only in full Bench is accepted, it would be amount to rendering the whole enactment meaningless **negating the very first words of the Prelude to the Act, “for setting out the practical regime of right to information”. No such interpretation can ever be accepted which will make the Act, which confers the right on a citizen to access information totally unworkable.**

The issue is decided accordingly.

34. The question that now remains to be decided is as to whether the directions could have been passed by the Commission asking the DoPT to remove its instructions/views displayed on its web site and contained in its Office Memorandum No.10/8/2006-IR dated 2.2.2006 addressed to the Railway Ministry. It is a fact that the DoPT was not a party in any of these cases where the matter concerning “file noting” was decided, but each of the Department/Public Authority has cited and submitted that the DoPT instructions are in conflict with the decisions of the Commission. This necessitated the Commission to direct the DoPT to remove these instructions from their web site which were misleading other public authorities. During the course of hearing, it has been submitted on behalf of the DoPT that the web site contains its views and these are not directions to any public authority. In fact Joint Secretary Shri Ramanujam of the DoPT has, in a closely argued presentation before us gone to the extent of stating that nowhere have they said that no one should disclose the “file noting” and that they have not stopped any public authority from disclosing “file noting”.

35. One of the arguments that has been advanced on behalf of the DoPT is that the web site reflects the views of the nodal Ministry and not of a public authority and as such no directions can be passed by this Commission on the Ministry. While making these submissions, the DoPT has relied on Section 25(5) of the RTI Act and has accordingly contended that the Central Information Commission or the State Information Commission, if it finds that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity. The provisions of Section 25 relate to monitoring and reporting implementation of the Right to Information Act. The recommendations given under this Section while monitoring the implementation of the provisions of the Right to Information Act are different in nature. It does not mean that the Commission while deciding a matter under Sections 18 and 19 cannot pass directions or issue orders or that it cannot enforce its decision. Sections 19 and 25 are different and deal with different aspects. The role of the Central Information Commission is advisory while discharging functions under Section 25 whereas it is quasi-judicial when exercising appellate powers under Section 19 of the RTI Act.

36. In this context, it is pertinent to refer to the provisions of Section 19(7) and Section 19(8) of the Right to Information Act, 2005 which read as under:-

**Section 19(7)**

“The decision of the Central Information Commission or State Information Commission, as the case may be, **shall be binding.**” (Emphasis added)

**Section 19(8)**

“In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to –

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including –
  - (i) by providing access to information, if so requested, in a particular form;
  - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
  - (iii) by publishing certain information or categories of information;
  - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
  - (v) by enhancing the provision of training on the right to information for its officials;
  - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.

37. The DoPT as the nodal Ministry must realize that it is bound by the provisions of an enactment and it cannot do anything or act in a manner which will be contrary to the provisions of any law. No public authority, Government, or statutory organization can ever claim that it is above the law. An authority which has been conferred with powers under a law is deemed to be vested with all incidental or ancillary powers to ensure that the powers conferred on it are effectively exercised. The directions of the Commission are, therefore, binding on each public authority which includes the Ministry of Personnel, Public Grievances and Pensions. The Ministry of Personnel, Public Grievances & Pensions has

erred in claiming that it is not the public authority but a nodal Ministry. In fact that Ministry cannot escape its obligations under the Act nor can it take the plea that the Commission can only give recommendations and not issue directions.

In light of the reasons recorded above, the Commission decides as under on issues 3 and 4:

(i) The Commission recommends that the DoPT will suitably amend their website and remove all instructions/views which are contrary to the above decision within one month.

(ii) Penalties u/s 20 of the Act may only be imposed on CPIOs/PIOs, or if deemed to be such u/s 5(5). In this case, CPIO of the Ministry of Personnel, Public Grievances & Pensions was not party to the processing of the application of Shri Pyarelal, nor was his assistance sought u/s 5(4), although reference was made to the Ministry. He cannot therefore be held liable for penalty. The notice issued by the Commission to the CPIO, DoPT asking him to explain as to why penalty proceedings as envisaged under Section 20 of the Act are not initiated, is therefore withdrawn.

The decision agreed to by the Commission is pronounced by the Chief Information Commissioner on this 29<sup>th</sup> day of January, 2007. Copy of this decision be given to the parties free of cost.

(Wajahat Habibullah)  
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(L.C. Singhi)  
Additional Registrar