

**OFFICE OF THE REGISTRAR GENERAL, GAUHATI HIGH COURT,  
MAHATMA GANDHI ROAD, PANBAZAR, GUWAHATI**

**RTI APPEAL NO. ID No.06/17 dated 12.12.2017**

APPELLANT : - Sri Pratap Chandra Das,  
R/o-West Jyotinagar, Surabhi Path,  
Near Kalimandir, Guwahati-21

RESPONDENT :- Registrar (Judicial)  
&  
PIO, Gauhati High Court

DATE OF APPEAL :- 12.12.2017

DATE OF HEARING :- 21.12.2017

DATE OF ORDER :- 08.01.2018

**FACTUAL BACKGROUND:-**

Being aggrieved by the response received from the respondent within prescribed period, the appellant Sri Pratap Chandra Das, preferred this appeal which is doctated vide Regd. ID No. 06/17 dated 12.12.2017.

Before a discussion is directed towards the issue in question, a brief reference to the background of this appeal would be advantageous.

The appellant was a member of Assam Judicial Service. He retired on 31.07.2016 as Special Judge CBI Additional Court No.2. Chandmari, Guwahati, on superannuation at the age of 60 years. The record also reveals that at the relevant time the number of posts of Selection Judge District Judge was 09. The number of posts was increased to 27 i.e. 25% of 107 posts in Grade-I the Assam Judicial Services, as per amendment of the Assam Judicial Service Rule, notified on 12.12.2016. Thereafter, the process for filling up the posts of Selection Grade was initiated on 25.04.2017. At that time the appellant was not in service. The process has culminated with promotion of 22 numbers of officers of Grade-I of Assam Judicial Services to the Selection Grade District Judge vide Notification No. HC.VII-31/2017/4269/A dated 01.09.2017.



Having not found his name in the said Notification, the appellant, vide his RTI application dated 03.11.2017 had sought for following information:-

*"I may please be informed of the reason as to why I am not promoted to the post of Selection Grade District & Sessions Judge, in terms of the Notification dated 1.9.2017 of the Hon'ble Gauhati High Court, at Guwahati, although I have fulfilled all the norms and criteria under the Assam Judicial Service Rule, 2003, as mentioned in the aforesaid Notification."*

In response, the Registrar (Judicial) & PIO, Gauhati High Court, vide letter No. HC.XXXV-1/2017/265/RTI dated 21.11.2017, had provided the following information to the applicant:-

**"Reasons do not come under the purview of Sec. 2(f) of RTI Act, 2005".**

**Ground of Appeal :**

Then, assigning following reasons, the appellant preferred the present appeal:-

- (i) *For that impugned order of rejection dated 21.11.2017 in FORM-D is illegal, inoperative and not binding upon the appellant in as much as the Appellant's name having omitted from the list of promotes to the post of Selection Grade District & Sessions Judge vide Notification dated 1.9.2017 of the Hon'ble Gauhati High Court, without assigning any reason thereof and thereby the appellant being the worst sufferer, denying his legitimate right to promotion, although the Appellant has/ had fulfilled all the required norms and criteria, as required under Rule 18 read with Schedule-E2 of the Assam Judicial service Rules,2003; the appellant has the right to information, as required, as to why the appellant is/was not so promoted.*
- (ii) *For that the PIO cum Registrar(Judicial) having rejected the application in FORM-A has virtually withheld transparency and accountability in working of the public authority on an unfounded and unreasonable ground and that without applying her Judicial mind thus it has frustrated the very object of the Right to Information Act,2005.*
- (iii) *For that the PIO cum Registrar (Judicial) most illegally misread, misinterpreted and misunderstood the "information", as defined u/sec 2(f)*

*of the RTI ACT,2005. "Information," means any materials in any form" as the section 2(f) of the said Act defines. "Information" is thus sufficient to cover up the information, as requested by the Appellant.*

- (iv) *For that in any view of the matter, the impugned order dated 21.11.2017 in FORM-D rejecting the application in FORM-A dated 3.11.2017 is illegal, unjust and bad in law and therefore, the same cannot stand in the eye of law. The impugned order is, therefore, liable to be set aside.*

While admitting the appeal on 12.12.2017, the date of hearing was fixed on 21-12-2017 and the appellant was duly notified about the date, vide letter no.HC.XXXV-10/2017/280/RTI dated 13.12.2017. Accordingly the appellant and the respondent appeared and both are heard accordingly.

**Decision and reasons thereof:-**

Having heard both the parties we have gone to the records carefully. Also we have gone through case law referred by the Id. PIO.

The moot question to be decided here in this appeal is whether the Id. PIO is justified in rejecting the prayer of the appellant. It is to be mentioned here that the Id. PIO has rejected the application on the ground that reasons do not come under the purview of Sec. 2(f) of RTI Act, 2005. So, answer to the question i.e. whether reason/justification is classified information or not, will clinch the entire issue.

During hearing the appellant reiterated the grounds of appeal taken in his appeal petition and vehemently submitted that the provision of Right to Information Act is misunderstood by the Id.PIO and, therefore, he prayed for providing the above information.

Whereas, the Id. PIO has submitted that reasons do not come under the purview of Sec.2 (f) of RTI Act, 2005. In support of the contention, the Id. PIO has submitted one case law of Central Information Commission (***F. No. CIC/SS/A/2013/000838-YA***) (***Senthil Kumar Vs. Dr. Rahman DOH***).

We have gone through the case law i.e. ***Shri G. Senthil Kumar (Appellant)- vs.- Dr. Raman (Respondent) (F. No. CIC/SS/A/2013/000838-YA***, where it has been held that interrogative queries viz. "how/why/when" do not come under the RTI Act.



While holding so, the CIC has relied upon a decision of Hon'ble High Court Of Bombay in ***Writ petition No. 419/2007 dated 03.04.2008 ( Dr. Celsa Pinto- vs.- Goa State Information Commission)*** where it has been held that:-

***"The definition (of information) cannot include within its fold answers to the question "why" which would be same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification, because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."***

Mention to be made here that Sec.2 (f) define information as *"any material in any form , including records, documents, memos, e-mails, opinions, advices, press-releases, circulars, orders, log books, contracts, reports, papers, samples, models, data-materials held in any electronic form and information relating to any private body which can be assessed by a public authority under any other law for the time being in force"*.

But, if justifications cannot be properly classified as information as held by Hon'ble High Court of Bombay in ***Dr. Celsa Pinto –vs- Goa State Information Commission (supra) and by the CIC in Shri G. Senthil Kumar(Appellant)- vs- Dr. Raman (supra)*** the Id. PIO is perfectly right in rejecting the application preferred by the appellant. The decision of the Id. PIO, thus, suffers from no irregularity or infirmity warranting any interference from this authority.

We have given our anxious consideration to the submission to the appellant and in view of the above discussion and findings, the same are found to be devoid of merit.

The Id. PIO also submitted that the answer to the query put by the appellant in his RTI petition is not available in the record of concerned Section of the High Court and as such no information could be generated to that effect. It is true that the PIO cannot generate information which is not available on the record. But this fact has been reflected in the reply. Therefore, such submission warrants no consideration from this authority and accordingly the same is not considered.



Accordingly, the appeal stands dismissed. Copy of this order be communicated to the appellant as well as to the PIO. Also the same be uploaded in the website of Gauhati High Court.



Handwritten signature and date: 08-01-18

**REGISTRAR GENERAL**

**&**

**APPELLATE AUTHORITY.**

**GAUHATI HIGH COURT.**