

Memorandum of first Appeal u/s 19(3) of the RTI Act to the First Appellate Authority

1) To

Mrs Anamika Ranavat- DGM (L)
First Appellate Authority
IFCI Limited. IFCI Tower
61, Nehru Place, New Delhi- 110019

2) Name and Address of the applicant

[Redacted area]

3) Name and address of CPIO to whom the application was addressed

The CPIO, IFCI Limited
IFCI Tower, 61 Nehru Place,
New Delhi- 110 019

4) Particulars of the RTI Application

Copy of RTI application dated 28/06/2021 (**Enclosed as Annexure-I**)

5) Particulars of the Information sought

Nature : Copies of documents .

Subject: Communication letters received from CVC/CBI during 2015-2020. recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited

6) Particulars of the information not provided

Nature : Copies of documents.

Subject: Communication letters received from CVC/CBI during 2015-2020. recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited.

7) Particulars of the order against which the appeal is preferred

Copy of CPIO order dated 02/08/2021 (**Enclosed as Annexure-II**)

8) Last date for filling the appeal: 02/09/2021.

9) Brief facts leading to Appeal

- CBI , CVC and IFCI Limited are public authorities .
- CBI and CVC work towards a cleaner and better society with a focus on curtailing social evil of corruption among the central government related public servants who discharge public duties in the interest of public. In this process CBI and/or CVC would communicate to the various other Public Authorities for initiation of disciplinary proceedings against the employees of that Public Authorities based on their enquiries/investigation..etc.
- Crores of common public are stakeholders in IFCI Limited.
- IFCI Limited, a Public Authority and is entrusted with public functions hence required to act fairly, reasonably, uniformly and consistently for public good and public welfare in the interest of public. Employees of IFCI Limited are public servants discharging public duties.
- An application was filed under RTI to CPIO on 28/06/2021 requesting for copies of Communication letters received from CVC/CBI during 2015-2020 recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited
- The said RTI application was refused by the CPIO by invoking section 8 (1) J of the RTI Act vide his order dated 02/08/2021.

- Hence the applicant preferred this first appeal to the First Appellate Authority.

10) Prayer Sought

- First Appellate Authority is requested that, if deemed fit, proper and necessary to direct the CPIO to provide the information that is Communication letters received from CVC/CBI during 2015-2020 recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited in the interest of justice.

11) Grounds for Prayer

I. Information sought was not treated as Confidential by CVC and CBI

- CPIO not rejected the information on the ground that the information was confidential information from CBI and/or CVC.
- CPIO not invoked section 11 of RTI Act.
- Therefore CPIO established that the information sought was a non-confidential information.
- It is settled law that an information being non confidential information communicated among public authorities that is CVC, CBI and IFCI Limited is public information under RTI Act.

II. Very Nature of information sought was Public Information

- The copy of documents sought were information that are inherent to the official positions of ex and present employees held in IFCI Limited who are Public Servants hence information sought is public information
- But for ex and present employees working in their official positions in IFCI Limited, CBI and/ or CVC would not be sending Communication letters to IFCI Limited recommending initiation of disciplinary proceedings hence information sought is public information.
- The information sought was not the employee's personal information or private information hence information sought is Public Information.
- The information sought was the communication from one Public Authority to another Public Authority hence public information not a personal information just because the communication contains names of certain employees.
- **The information sought does not comprise the individual's personal details or private details which are unrelated to their official positions in the organisation hence information sought is public information.**
- In recent Judgement Honourable Supreme Court in case of CPIO, Supreme Court of India Vs Subhash Chandra Agarwal in 2019 held as under:-

*47. Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a distinction in its treatment of personal information, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. **We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word***

'information' which if disclosed would lead to invasion of privacy to mean personal information, as distinct from public information.

- CPIO refused the public information, by invoking section 8 (1) J of the RTI Act, under the guise of personal information for his untenable and invalid and unjustifiable reason that the said communications of CBI and CVC contain the names of certain employees, is wrong application of RTI Act hence needs to be over turned in the light of Honourable Supreme Court decision referred by CPIO himself and subsequent judgements that the personal information is either Personal Records, Medical Records and /or Professional Records of one individual who is a present and/or ex-employee with IFCI Limited. Therefore CPIO denial of public information, by invoking section 8 (1) J of the RTI Act, is ground less and wrong application of RTI Act hence deserves to be set aside in the background of Honourable Supreme Court Judgement on RTI Act in 2019 on personal information.

III Information sought was not a personal information

- CPIO has incorrectly applied Honourable Supreme Court judgment in 2012 in the case of Girish Ramchandra Deshpande Vs CIC in his order for refusing the information sought as under:-

Honourable Supreme Court has, in the above order, clearly spelt out that that the communications like Copies of all memos issued to third respondent, show cause notices and orders of censure/ punishment ..etc as the Personal Information of employee which are between Employer and Employee. **"Whereas copies of Communication letters from one Public Authority that is CVC and CBI to another Public Authority that is IFCI Limited recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited during 2015-2020 are not a**

communication between the Employer and Employee hence do not fall under the preview of "personal information"

Honourable Supreme Court has further, in the above order, categorically made clear that performance of an employee in the organisation is governed by that employer organisation service rules hence personal information which has no relationship to any public activity or public interest. **"Whereas copies of Communication letters from one Public Authority to another Public Authority that is from CVC/CBI to IFCI Limited recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited during 2015-2020 are not a communication by IFCI Limited to its employees as per the service rules of IFCI Limited hence do not come under the ambit of the declaration of law by Honourable Supreme Court in respect of "personal information"**

In the afore said back drop of both the parameters stipulated by the Honourable Supreme Court in the above order, to have an information to be a personal information, is not applicable to an information, then such information is not a personal information and hence disclosure of such information do not fall under the preview of unwarranted invasion of privacy of that individual.

- The Honourable Supreme Court held in case of CPIO, Supreme Court of India Vs Subhash Chandra Agarwal in 2019 held as under:-

59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that

Personal records:

Physical, mental and psychological status, marks obtained, and grades and answer sheets, are all treated as personal information.

Professional records:

Qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information.

Medical records:

Treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members,

Information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information.

Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive

- Honourable Supreme Court in 2019 has laid down the law on section 8 (1) J of RTI Act from which it is obvious that **the information sought that is copies of Communication letters from one Public Authority to another Public Authority that is from CVC/CBI to IFCI Limited recommending initiation of disciplinary proceedings on the present and ex staff of IFCI Limited during 2015-2020 are not personal information as they are not personal records of employees held by the IFCI Limited.**
- CPIO failed to consider the nature of information sought and also failed to correctly apply the Honourable Supreme court Judgments in to the present matter on hand, which is clearly visible from CPIO order by recording that the information given by one public authority to another public authority is personal information for withholding of information under section 8 (1) J which is contrary to RTI Act hence merits to be set aside in the light of Honourable Supreme Court Judgement on RTI Act in 2019.
- Non-application of mind by the CPIO resulted in his casual and mechanical denial of the information sought under the colour of personal information by his order, which on the very face of itself is so wholly arbitrary and capricious that no reasonable person could ever have arrived such finding

and conclusion that though the various details provided by the public authorities in their communication is not personal information but referring names by the public authorities in their communication is personal information.

- CPIO had allowed himself, to irrelevant and extraneous considerations resulting in, his lack of application of mind for assessing the nature of the information sought, thereby leading to his misunderstanding of the information sought thus evolving into his disability from reaching a fair conclusion of the information sought hence eventually arriving at his erroneous and perverse finding that the names of employees referred by the Public Authorities in their communication as personal information when Honourable Supreme Court in various judgements settled law that Personal information is personal records, medical records and professional records.
- No information can be classified arbitrarily as personal information except as provided for in the RTI Act. CPIO classifying the Public Information that is given by one public authority to another public authority which is not a personal record of any individual with IFCI Limited and which is a mere communication given by one public authority to another public authority as personal Information is nothing but wholly arbitrary and unbecoming of a CPIO. Therefore the decision of withholding of public information by the CPIO is a serious violation of RTI Act and contrary to RTI Act hence merits to be set aside.
- Denial of Public information by the CPIO under the guise of personal information is not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would in fact attract the exemption contained in Section 8(1)(j) of the RTI Act, except just because the public information contains names of individuals which is not personal records of employees with IFCI Limited and which

is a general mere communication letter given by one public authority to another public authority hence cannot be made basis for denial of the Public information sought therefore deserves to be overridden.

IV. CPIO failure to consider the huge public interest involved in the matter for denying the information

- Honourable Supreme Court two judge bench judgment in 2012 in the case of Girish Ramchandra Deshpande Vs CIC in para 12 held as under:-

Of course in a given case, if the CPIO/SPIO/AA is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

- Honourable Supreme court in the above order spelt out that though the personal information cannot be sought as matter of right, it has categorically declared the law that the larger public interest outweighs the protected interests of individuals in the case of personal information, despite exemption under the said law.

- Honourable Supreme Court in 2019 held on Public Interest as under:-

74. This Court in Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Another has held that the phrase 'public interest' in Section 8(1)(j) has to be understood in its true connotation to give complete meaning to the relevant provisions of the RTI Act. However, the RTI Act does not specifically identify factors to be taken into account in determining where the public interest lies. Therefore, it is important to understand the meaning of the expression 'public interest' in the context of the RTI Act. This Court held 'public interest' to mean the general welfare of the Public warranting the disclosure and the protection applicable, in which the public as a whole has a stake.

76. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third party, with reference to a particular information and the person

- In a concurring judgement Justice D Y Chandrachud held as under:

76. Clause (j) of Section 8(1) provides a qualified exemption from disclosure where the information sought relates to —personal information the disclosure of which has no relationship to any public activity or interest or the disclosure of the information would cause an —unwarranted invasion of the privacy. However, the exemption may be overridden where the Information Officer is —satisfied that the larger public interest justifies the disclosure. Clause (j) is not an absolute exemption from the disclosure of information on the ground of privacy but states that disclosure is exempted in cases where —personal information is sought and there exists no —larger public interest. Where the Information Officer is satisfied that the existence of the —larger public interest justifies the disclosure of the—personal information, the information must be disclosed.

86. The information disclosed under the RTI Act may include personal information relating to individuals. The RTI Act does not contain any restriction on the end-use of the information disclosed under its provisions. The information disclosed by an Information Officer of the State pursuant to a right to information application may subsequently be widely disseminated. Clause (j) of sub section (1) of Section 8 provides that, in certain situations, even personal information of an individual may be disclosed under the RTI Act. Where the RTI Act contemplates the disclosure of —personal information, the right to privacy of the individual is engaged. The Act recognise that the absolute or unwarranted disclosure of an individual's personal information under the RTI

Act would constitute an —unwarranted invasion of the right to privacy under the statutory provisions of the RTI Act and also abridge the individual's constitutional right to privacy. However, the RTI Act has various checks and balances to guard against the unadulterated disclosure of personal information under the RTI Act.

Public Interest

107. Clause (j) of clause (1) of Section 8 requires the Information Officer to weigh the —public interest in disclosure against the privacy harm. The disclosure of different documents in different circumstances will give rise to unique —public interest factors in favour of disclosure. However, a few broad principles may be laid out as to how the phrase —public interest is to be understood. Where factors fall within this interpretation —public interest so interpreted, they are factors that weigh in favour of disclosure. The principles are as follows:

- (v) The object and purpose of the RTI Act is the fulfilment of the positive obligation on the State to provide access to information under Article 19(1)(a) of the Constitution and the existence of the restrictions on the disclosure of information does not restrict the meaning of public interest under the Act.
- (vi) As an indicative list, information concerning the accountability of officials, public expenditure, the performance of public duties, the handling of complaints, the existence of any wrongdoing by a public official, inefficiency in public administration and unfairness in public administration all possess public interest value.
- (vii) Where the disclosure of information would promote the aims and objectives of the RTI Act, there exists a —public interest in disclosing such information;

➤ **CPIO ought not to have denied the information even if in his view that the information sought is personal information for the reasons as under:-**

- i) Crores of Common Public have made their Public money/Public funds as investments in the shares and bonds of IFCI Limited which is a Public Government Company in financial sector.
- ii) This large scale of public involvement as shareholders and bond holders in IFCI Limited, clearly indicates that the above large scale public as a whole has a stake in IFCI Limited and evidently demonstrates larger bona fide Public concern about IFCI Limited in the matters of its functioning, accountability and transparency..etc to preserve their confidence in IFCI Limited. The general welfare of this large scale Public warrants the disclosure of the information.
- iii) The information sought was inherent to the public positions held by the ex and present employees as Public Servants who were discharging their Public Duties to the Public, for Public welfare and Public good, in the interest of Public who are shareholders and bond holders numbering in crores thereby revealing a larger bona fide Public Interest. This large scale bona fide public interest in IFCI Limited functioning deserves disclosure of the information.
- iv) Disclosure of the information would serve the larger bona fide public interest which certainly outweighs the protected interests of individuals whose integrity was under question and would promote the aims and objectives of the RTI Act.
- v) Any interpretation of any act is to be constructive and to achieve the objectives and true essence of that Act.
- vi) Refusal of the information by the CPIO even in his view that the information sought was personal information, is gross violation of RTI Act and contrary to the RTI Act in both letter and spirit hence deserves to be corrected in the light of declaration of public interest in the context of RTI Act by various Honourable Supreme Court Judgements

on RTI Act in the matter of CPIO opined personal information Vs Public Interest.

- **CPIO failure to consider huge public interest involved in the matter by not even making a reference to the context of Public Interest which is so glaringly visible on the face of CPIO order itself clearly established that the information sought is not a Personal Information.**
- **Further, as per the Judgement referred by the CPIO himself in his order, when it is opined by the CPIO that the information sought is a personal information, CPIO ought to have given his grounds /basis/rationale how and why the context of huge Public Interest involved in the matter, would not applicable to the information sought on hand. CPIO failure to provide his grounds /basis/rationale while denying the information under section 8 (1) j , once again emphatically established that the information sought is not a Personal Information.**
- In the above back ground, the information sought is absolutely beyond the purview of Section 8 of the RTI Act and the bar stipulated under Section 8(1) (J) of the RTI Act is not attracted to which the CPIO is taking shelter. Therefore the decision of refusing of information by the CPIO is gross violation of RTI Act and contrary to RTI Act hence merits to be set aside.

V. Failure by the CPIO to record his reasons in his order

- In the concurring judgement Justice D Y Chandrachud held as under:

108. We have adverted to the substantive content of –personal information and –public interest as distinct factors to be considered by the Information Officer when arriving at a determination under clause (j) of clause (1) of Section 8. In the present case, the information sought by the respondent raises both considerations of –public interest and –personal information. The text of

*clause (j) requires the Information Officer to make a determination whether the —larger public interest justifies the disclosure of personal information sought. The Information Officer must conduct balancing or weighing of interests in making a determination in favour of disclosure or non-disclosure. The Information Officer must be cognisant that any determination under clause (j) of clause (1) of Section 8 implicates the right to information and the right to privacy as constitutional rights. Reason forms the heart of the law and the decision of the Information Officer must provide cogent and articulate reasons for the factors considered and conclusions arrived at in balancing the two interests. In answering the third referral question in its entirety, this Court would be remiss in not setting out the analytical approach to be applied by the Information Officer in balancing the interests in disclosure with the countervailing privacy interests. Justice S C Agrawal speaking for a Constitution Bench of this Court in **S N Mukherjee v Union of India** observed:*

—9. The object underlying the rules of natural justice —is to prevent miscarriage of justice|| and secure —fair play in action. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules.

(Emphasis supplied)

The requirement to record reasons is a principle of natural justice and a check against the arbitrary exercise of power by judicial and quasi-judicial bodies. In making a determination under clause (j) of clause (1) of Section 8 in a given case, it would not be satisfactory if an Information Officer were merely to record that the privacy interest outweighed the public interest. Something more is required. By providing an analytical framework to address the two interests to

be weighed and requiring the Information Officer record detailed reasons within this framework, the arbitrary exercise or discretion of the Information Officer is guarded against.

- CPIO while refusing the information sought on his wrong pretext of personal information, grossly failed to record his reasons in his order for the same, thus making his order a non-reasoned order and non-speaking order for the grounds as under:-
 - i) How and why the information sought is personal information in nature in the context of RTI Act in the backdrop of various Supreme Court Judgements that personal records are only personal information not mere names crept in the communication amongst public authorities as Personal Information.
 - ii) How and why providing information sought would not serve the larger public interest in the context of RTI Act, when huge public interest is involved in the matter, for denying the information as personal information.

Hence deserves to be overridden in interest of justice and equity.


VI. Failure to comply with statutory requirement of RTI Act.

- Section 8 (1) J provides a statutory compliance to the section 8 (1) J on which the CPIO denied the information which is mandatory with THE use of word "**Shall**" as under:-

"Provided that the information which cannot be denied to the Parliament or State Legislature shall not be denied to any person".

- There is absence of CPIO compliance with the fundamental statutory requirement in the CPIO order that is recording CPIO reasons that the information sought is the information that is to be denied for the parliament and/ or state legislature, hence the information is denied to the applicant.
- CPIO explicit noncompliance with the fundamental statutory requirement, candidly established that the information sought can be provided to the Parliament or State Legislature, but denied to the applicant. Therefore the denial of information by the CPIO deserves to be set aside under the RTI Act.

12. Verification

 hereby declare that I am citizen of India and the particulars furnished in the appeal are to the best of my knowledge and belief true and correct and that I have not suppressed my material fact.

Place : Srikalahsti.

Date: 13/08/2021

Enclosures: Annexures- I to II.