

**A.P. Information Commission**  
(under Right To Information Act, 2005)  
HACA Bhavan, Hyderabad – 500 004.  
Phone Nos: 23230245/246 (O), 23230591/92 (F)

**Appeal No:12618/CIC/2009,**  
**Order dated 19-08-2011**

Appellant : Sri Kadiyam Sekhar Babu, H.No.15-1-183, 1<sup>st</sup> Line, Nehru Nagar, Macherla 522 426, Guntur District

Respondents : 1) The Addl. Secretary/Public Information Officer(U/RTI Act, 2005), A.P. Public Service Commission, "Prathibha Bhavan", M.J.Road, Opp: Gagan Vihar, Nampally, Hyderabad 500103.

2) The Secretary, Appellate Authority (U/RTI Act, 2005), A.P. Public Service Commission, "Prathibha Bhavan", M.J.Road, Opp: Gagan Vihar, Nampally, Hyderabad 500103.

**Order**

Sri Kadiyam Sekhar Babu, H.No.15-1-183, 1<sup>st</sup> Line, Nehru Nagar, Macherla 522 426, Guntur District has filed 2<sup>nd</sup> appeal dated **04.12.2009** which was received by this Commission on **17.12.2009** for not getting the information sought by him from the PIO and appellate authority/ A.P. Public Service Commission, Hyderabad.

The brief facts of the case as per the appeal and other records received along with it are that the appellant herein filed an application dated **02.09.2009** before the PIO seeking the following information :

*Photocopies of his answer sheets relating to Group-I Mains Exam held in August 2008.*

Since the appellant did not receive information from PIO, he filed 1<sup>st</sup> appeal dated **14.10.2009** before the appellate authority requesting to furnish the information.

The PIO/Addl. Secretary, APPSC through **Memo No.646/RT-II/2/2009 dated 27.10.2009** informed the appellant that his request is rejected as it is not possible to give copies of his answer sheets as per Central Information Commission order in Complaint No.CIC/WB/C.2006/00223.

Aggrieved, the appellant preferred 2<sup>nd</sup> appeal before this Commission requesting to arrange to furnish the information and to impose penalty U/s 20(1) of the Act.

Subsequently, the appellant has filed application dated 31.03.2010 which was received by this Commission on 09.04.2010 stating that if the order passed by the CIC, APIC on 28.01.2010 in Appeal No.4192/CIC/2009 filed by Dr. L. Srinivas Vs NTR Health University is applicable to APPSC also, he requested to dispose of his appeal by taking it as covered matter and pass orders directing the APPSC to furnish photo copies of his answer sheets.

After examining the material papers available on record, the appeal was taken on file and notices were sent to the parties concerned directing them to appear before this Commission for hearing on 15.06.2011.

The Prl. Secretary & appellate authority, APPSC through letter No.661/RT-II/2/2011 dt.24.05.2011 informed that through memo dt.27.10.2009 the appellant was informed that his request is not feasible in view of the orders of CIC, New Delhi and the Hon'ble APIC in Appeal No.1079/CIC/2007 dt.30.06.2008 gave a judgment stating that the decision of the CIC in respect of UPPSC, this Commission holds that the same decision has to be applied to the APPSC. The appellate authority further requested to exempt him from personal appearance.

On 15.06.2011 the case was called. The appellant was absent. The respondent/Addl. Secretary & PIO, APPSC was present. The appellate authority through letter dated 24.05.2011 requested for exemption from personal appearance. The same was granted.

The respondent informed that the request of the appellant was rejected basing on the decision of CIC, New Delhi, which was upheld by the Hon'ble APIC in Case No.1079/CIC/2007 dt. 30.06.2008 and the same is applicable to APPSC also.

The appellant filed written submissions dated 5.6.2010 requesting to arrange to furnish copies of his answer sheets.

This Commission on perusing the material on record and upon hearing the respondent is of the considered view that the contention of the respondent is not sustainable in view of the decision of the Hon'ble Supreme Court in Civil Appeal No.6454 of 2011 dated 09.08.2011 in Central Board of Secondary Education & Another Vs Aditya Bandopadhyay and others wherein the Hon'ble Supreme Court observed thus –

**At para 25.** *An evaluated answer book of an examinee is a combination of two different 'informations'. The first is the answers written by the examinee and second is the marks/assessment by the examiner. When an examinee seeks inspection of his evaluated answer-books or seeks a certified copy of the evaluated answer-book, the information sought by him is not really the answers he has written in the answer-books (which he already knows), nor the total marks assigned for the answers (which has been declared). What he really seeks is the information relating to the break-up of marks, that is, the specific marks assigned to each of his answers. When an examinee seeks 'information' by inspection/certified copies of his answer-books, he knows the contents thereof being the author thereof. When an examinee is permitted to examine an answer-book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer-book, there is no question of breach of confidentiality, privacy, secrecy or trust. The real issue therefore is not in regard to the answer-book but in regard to the marks awarded on evaluation of the answer-book. Even here the total marks given to the examinee in regard to his answer-book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is how many marks were given by the examiner to each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner.*

**At para 26.** *This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is whether the information relating to the 'evaluation' (that is assigning of marks) is held by the examining body in a fiduciary relationship. The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer-books. On a careful examination we find that this contention has no merit. The examining body entrusts the answer-books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer-book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer-books, in the course of his*

*employment, as a part of his duties without any specific or special remuneration. In other words the examining body is the 'principal' and the examiner is the agent entrusted with the work, that is, evaluation of answerbooks. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner. On the other hand, when an answer-book is entrusted to the examiner for the purpose of evaluation, for the period the answer-book is in his custody and to the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer-book or the result of evaluation of the answer-book to anyone other than the examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copy-right or proprietary right, or confidentiality right in regard to the evaluation. Therefore it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner.*

**At para 27.** *We, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.*

In view of the ratio laid down in the decision of the Hon'ble Supreme Court cited supra, this Commission having considered the facts and circumstances of the instant case, being similar in nature and therefore, the ratio can well be extended to the facts of the present case and as such the appellant herein is also entitled to seek photo copies of answer sheets from the respondents.

This Commission, therefore, directs the respondents to furnish certified copies of the answer sheets sought by the appellant free of cost, within 30 days from the date of receipt of this order under intimation to this Commission.

With the above direction, this appeal is closed.

**Jannat Husain**  
**Chief Information Commissioner**

**Authenticated by:**

**(Maha Prakash)**  
**Deputy Registrar**

**Copy to: DS / SO / OC / SF**