

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)**

ITANAGAR BENCH

W.P (C) No. 389 (AP) of 2010

1. Shri Lipe Ete,
S/o Late Marli Ete,
Presently residing at Itanagar,
P.O & P.S. Itanagar, Papam Pare District,
Arunachal Pradesh, presently as the Chief
Engineer, Department of Hydro-Power
Development, Government of Arunachal Pradesh

..... Petitioner

-Versus-

1. The Arunachal Pradesh State Information Commission,
duly represented by the Chief Information Commissioner,
Arunachal Pradesh, Itanagar
2. Shri Lomkar Ete,
S/o Late Mellom Ete
Permanent resident of Pobdi Village,
P.O & P.S. Aalo, West Siang District,
Arunachal Pradesh, presently serving as Office
Superintendent in the Office of the Superintendent
In the Office of the Superintending Engineer (Civil),
Department of Hydro-Power Development Namsai,
Government of Arunachal Pradesh.

..... Respondents

BEFORE

HON'BLE MR. JUSTICE P.K. SAIKIA

For the petitioner : Mr. R. Saikia,
: Mr. M. Kato,
Advocate

For the respondent No.1 : Mr. Tony Pertin

: Mr. K. Lollen,
: Ms. C.D. Thon,
Standing Counsel, State
Information Officer

For the respondent No.2 : Mr. H. Tangu,
: Mr. H. Nikang,
: Mr. P. Tsering,
: Mr. L. Tashi,
: Mr. L. Chota,
: Ms. A. R. Michi,
Advocate

Date of hearing : **25-07-2013**

Date of judgment : **06.11.2013**

JUDGMENT AND ORDER

- 1.** In this proceeding, the order dated 5/10/10 passed by the State Information Commission, Itanagar, in short, the Commission, Itanagar in connection with Case No. APIC/19/2010 imposing penalty of Rs. 20,000/- upon the petitioner, who is the Chief Engineer, the Department of Hydro Power Development, for short, DHPD allegedly for destroying information illegally has been called into question.
- 2.** Heard Mr. M. Kato, learned counsel for the petitioner and also heard Mr. K. Lollen, learned counsel appearing for the State respondent.

3. The facts as they emerge from the petition and which are necessary for disposal of the present proceeding in brief are that the respondent No.2 who is Superintendent in the office of DHPD, Government of Arunachal Pradesh had filed an application dated 22/09/2009 under Form-A of Right to Information Act, 2005, for short, RTI Act before the Public Information Officer, in short, PIO, DHPD, Itanagar seeking information in respect of 46 particulars, mentioned therein. In pursuance of such application, information on all the items except the item at Sl. No. 6 and Sl. No 37 were furnished.

4. It is stated that information at Sl.No.6 could not be furnished since the answers script were destroyed and information at Sl. No. 37 could not be furnished, as, the U.O. note, sought for, could not be traced out. The respondent No.2 being dissatisfied with the information, so furnished, filed an appeal before the the Commission which was registered as Case No. APIC 19/2010 and notice was issued upon the petitioner asking him to appear before the commission on 06.04.2010 to answer the allegations, leveled against him.

5. In pursuance to such direction, the petitioner as well as respondent No.2 appeared before the Commission and on hearing them, the Commission was pleased to direct the PIO (who is petitioner in this proceeding) to arrange a suitable day for respondent No.2 herein so that he could visit the relevant file. The Commission further directed the Secretary, (Power) and the petitioner to constitute an enquiry Committee to find out whether weeding of papers was done in accordance with the relevant rules and also to find whether answer scripts in question were available.

6. In compliance of such direction, the Secretary (Power) vide his order dated 23/04/2010 constituted a 4(four) member Committee consisting of Superintending Engineer, Under Secretary, Surveyor and Assistant Surveyor with Superintendent Engineer as Chairman of the committee. The enquiry committee, so constituted, conducted the enquiry and concluded that weeding out of answer scripts were done after more than two and a half year from the date of examination aforementioned and same was justified since it was done in accordance with the norms.

7. The Commission was, however, not satisfied with the report of the Committee and vide its order dated 18/5/10, it, amongst other things, directed the Committee to come up with a report if any regularly constituted committee had ever recommended the weeding out of answer scripts with further direction to the petitioner, as being PIO, DHPD, to fix a suitable date

for the inspection of the files by the respondent No.2. In the meantime, on 08.06.2010, PIO, DHPD informed the Commission that the destruction of record was done on the basis of a Circular dated 16.06.2008.

8. On hearing the parties, the Commission directed the respondent No.2 to place before it Rules/Act, if any, which envisages the constitution of a committee to recommend the weeding out of files in public office. In pursuance to the said direction, on 27/7/10, the respondent No.2 placed the Public Records Act, 1993 (in short, the Act of 1993) before the Commission. The Commission, on considering the Act of 1993 as well as Swamys' Official Manual together with the Act of 2005, came to the conclusion that the Act of 2005 overrides all other previous Act/Rules including the Act of 1993 and Swamis' Official Manual as far as preservation/destruction of official records are concerned.

9. Since the Act of 2005 did not prescribe limit for either preservation or destruction of the official records and since the petitioner prima facie destroyed the official records in violation of the prescription in the Act of 2005, the Commission, vide its interim order dated 07.09.2010, required the petitioner and 3(three) other persons, namely, the PS to the petitioner, the Xerox operator and the Chowkidar to appear before the Commission and to answer as to why the aforesaid records were destroyed presumably in violation of the requirement, so specified in the Act of 2005 and fixed the matter for final hearing on 5/10/10.

10. In the meantime, the petitioner had submitted a written statement wherein it, inter alia, stated that answer scripts of written examination of J.E Civil held in 2005 were destroyed/weeded out on 8/7/2008 in the terms of the circular dated 16/6/08 and such destruction was made since there was dearth of space in the office to keep the old records and since no one made any complaint whatsoever against the examination of J.E (Civil) even after two and half years from the date of the examination.

11. In that connection, it has been pointed out that the respondent No.2 was aware of all those facts and circumstances leading to destruction of those records on 08/07/2008 since he was the office Superintendent during such time and since he himself complained of space scarcity in the office aforesaid. Therefore, the respondent No.2 filed the application under RTI Act not to get information, sought for but to put the petitioner in trouble.

12. The fact that despite the respondent No.2 being the one of important functionaries in the office of the Chief Engineer, DHPD, the

application seeking information under consideration was made after the expiry of more than a year from the date of destruction of records is clear testimony to the fact that respondent No.2 had filed the application under RTI Act with clandestine motive and only to put the petitioner in trouble and difficulty.

13. It is also the case of the petitioner that since there was no direct authority dealing with the preservation/destruction of official records applicable to the office of the CE, DHPD and since there was huge difficulty in keeping the old records in the office aforesaid due to space crunch, the petitioner ordered the destruction of the answer scripts above in the terms of the circular dated 16.06 2008. In the teeth of above revelations, one cannot find fault with petitioner's ordering the destruction of the answer scripts aforesaid.

14. It has also been pointed out that Swamy's Manual on Office Procedure categories the official records into 3 (three) groups. They are (i) A File, (ii) B File and (iii) C File. While A Files and B Files are to be preserved for minimum 25 years, C files are to be preserved for minimum one year. C File takes care of documents which are of ephemeral nature. It is being contended that the answer scripts in question had no historical/academic/other research importance and as such those were evidently were the documents of ephemeral nature. Being so, they normally need to be destroyed after preserving for a year.

15. Regarding the destruction of public record, similar arrangement are made in the Manual of the Office procedure of 1985, (in short, Manual of 1985), issued by Govt. of Arunachal Pradesh. The Manual of 1985 also requires that official records are to be classified files wise so as to facilitate the maintenance, preservation and destruction of those records at certain intervals. The Manual of 1985 requires that the ephemeral documents are to be destroyed after preserving the same for a year whereas the documents to be kept in File B and File C are to be destroyed after preserving the same for twelve years and five years respectively. On the other hand, the documents in File A are to be preserved for ever.

16. Since the answer scripts in question are documents of ephemeral nature and since both the office Manual of 1985 and the Swamys' Manual on Office Procedure require the department concerned to destroy the ephemeral documents after preserving for a year and since the department in question

did not have any Rules vis-à-vis preservation and destruction official records, the petitioner did not do any wrong in ordering the destruction in question.

17. Unfortunately, the Commission took no notice on all those vital matters and came to the conclusion that the petitioner illegally and in an unauthorized way ordered the destruction of records aforesaid. He, therefore, approached this Court with the prayer, aforesaid. In support of the arguments advanced by the learned counsel for the petitioner, he has relied on the decision rendered in the case of Central Board of Secondary Education & Anrs. Vs Aditya Bandopadhyay & Ors., reported in (2011) 8 SCC 497.

18. Notice of this proceeding was served on respondent No.1 and respondent No. 2 who are State Election Commission and the appellant in APIC case No. 19/2010 respectively. In its counter affidavit, the Commission as being respondent No.1 has stated that section 22 of the RTI Act makes the said Act final Act over all the matters covered there-under since the RTI Act has overwriting effect on all other previous Act and Rules as far as matters covered by such Act are concerned.

19. It has been pointed out that as per Section 8 (5) of the RTI Act that all the official records are to be preserved for minimum period of 20 years. Since the official records are to be preserved for minimum period of 20 years, the public authority is duty bound to provide information on any official record up to period of 20 years from the time of their coming into existence. Since the documents in question were to be preserved for a period of 20 years, there is no question of such document being destroyed well before the completion of period, specified in the RTI Act. Therefore, there cannot be any escape from the conclusion that the petitioner had destroyed the record in question in a manner not authorized under the RTI Act.

20. Referring to the Swamy's Manual on Office Procedure, it has been contended that Swamy's Manual is a collection of office circulars and as such, they cannot have the force of statutory Rules. Therefore, classification made therein as well as time limits prescribed in Swamy's Manual have no application to the document in question since matter relating to perseverance of such documents is clearly covered by the Act of 2005.

21. Referring to the Manual of 1985, it has been stated on behalf of the respondents that no reliance can be placed on such Manual since the office Manual of 1985 was issued by the Government of Arunachal Pradesh and it applies mainly to the various department in the Secretariat and none else. Being so, such a Manual hardly covers the case in hand and as such, same

could give no respite to the petitioner in an action initiated for destruction of the official records not in the terms and conditions specified in the Act of 2005.

22. Even if one assumes for the sake of argument for a moment that office Manual of 1985 as well as the Swamys' Manual have application to the case at hand yet records reveal that the prescriptions, rendered in those Manuals were also not followed. The Manual/Office Procedure aforesaid too prescribe some procedures regarding maintenance, preservation and destruction of official records. Unfortunately, the prescriptions, so rendered in those Manual/Office procedures were not at all complied with. Being so, the petitioner cannot take refuge under those Manual/Office Procedure for the illegality, he had committed in ordering the destruction of official records.

23. Referring to the Circular dated 16-06-2008, it has been stated that said circular was brought into existence in a fraudulent manner in order to cover up the misdeeds of the petitioner. The fact that such circular was brought into existence in huge deviation of Rules and Procedures which are regularly followed in transacting official business and in hush-hush manner speaks clearly that said Circular is a bogus one which was brought into existence just to screen the petitioner from punishment.

24. It is also the case of the Commission that the respondent No.2 had sought for as many as 46 information which included the answer scripts of the candidates who stood 6th and 37th in the examination held in 2005. But such information were held up contending that the answer scripts of those 2 candidates were destroyed in the meantime. The furnishing of information in part does not tantamount to furnishing of the information in the terms of the Act of 2005. The furnishing of the information in the aforesaid way deeply offends the prescription of the Act of 2005 and as such, same is punishable being an offence.

25. It has also been contended that under the scheme of the Act of 2005, the petitioner becomes a deemed Public Information Officer (in short, PIO) and as a deemed PIO, he is bound to provide information to anyone who seeks information under the RTI Act. Since the petitioner did not furnish the information, sought for and since he was the head of the Department, he, being the deemed PIO, was responsible for proper implementation of directions rendered in the Act of 2005. As he destroyed the records in question in a manner unauthorized by law, he has rightly been held guilty of

destruction of records and has rightly been imposed punishment by the Commission.

26. The respondent No.2 too submitted the counter affidavit echoing the allegations made by respondent No.1 against the petitioner. However, he elaborated some of the allegations already made by the respondent. According to him, the nephew of the respondent No.2 Shri. Gejum Nochi was one of the examinees in the examination, held in 2005 for selection of Junior Engineer in the office DHPD. He secured 6th position in the aforesaid the written examination. On the other hand, one Shri. Tapa Maying was placed at 37th position in the written examination.

27. But in the viva voice test, Shri. Tapa Maying was given marks more than the marks earmarked for viva voice test and same was done to drag Shri. Gejum Nochi behind Shri. Tapa Maying who secured 37th position in the written test. The respondent on coming to know such state of affairs, sought for information on those matters having filed an application under the RTI Act. However, they did not furnish such information on the pretext that such information could not be furnished since those answer scripts were already destroyed in the terms and circular dated 16.06.2008. However, the information, so furnished in pursuance to the application made by respondent No.2, is nothing but a clever attempt to hoodwink the truth.

28. In respect to the circular dated 16.06.2008, it has been stated that such circular was brought into the existence just to cover up the misdeed of enormous proportion on the part of the petitioner. The peculiar procedure adopted in bringing out such a circular is a fluent testimony of the circular brought into existence quite fraudulently. To make such a contention more and more convincing, it has been pointed out that generally any official action is first mooted and initiated by the concerned dealing assistant and thereafter, such proposal is processed in accordance with the established procedure before such proposal attains finality.

29. However, in the present case, the proposal was mooted and initiated not in normal way. Quite contrary to it, such proposal was mooted and initiated by a staff who is none other than the Private Secretary to the petitioner. More importantly, such proposal was taken straight way to the petitioner for his approval without processing it through normal route. This is clear indication of the circular in question being bogus which was just manufactured to cover up the misdeed of the petitioner. The fact that the

answer scripts were destroyed in presence of persons equally close to the petitioner doubly confirms the aforesaid conclusion.

30. The respondent No.2 too, reiterated that under the Act of 2005, any record in public office is to be maintained for a period of 20 years regardless, the nature of documents. Section 8(3) of the RTI Act makes such a position abundantly clear. Being so, during the period of aforesaid 20 years, the question of destruction of record in public office does not arise at all. If someone chooses to destroy the official records before the statutory period of 20 years, he would be doing so at his own risk and responsibility.

31. Referring to the destruction of answer scripts in question, it has been pointed out that though the petitioner had destroyed the answer scripts of examination held in 2005, he did not destroy some other documents which are much older than the answer scripts of 2005. This selective destruction of records does not augur well to advance the case of the petitioner that he destroyed the answer scripts aforementioned since those documents occupied sufficient space and since those documents outlived their utility.

32. The respondent No.2 also supported the contention of the respondent No.1 that the Act of 2005 has overriding effect on all other Acts as far as matter covered there-under. Thus, the Act of 2005 makes some special provisions vis-a-vis maintenance, preservation and destruction of official records. When the Act of 2005 itself makes some provisions on the matters aforementioned, no other Acts or Regulations would be allowed to encroach upon the area, specially earmarked for the Act of 2005, much less encroaching such a space by the office Circulars of 2008.

33. The learned counsel for the respondent have therefore, argued that the Commission did commit no wrong in imposing Rs. 20,000/- on the petitioner herein on holding that the later had illegally destroyed the official record in violation of provisions incorporated in the Act of 2005.

34. Now, we are to see whose claim stands to reason. We have already found the Commission took a firm stand that the Act of 2005 overrides any other Act and the Rules which dealt with the matters already earmarked to the Act of 2005. The respondents also claim that as far as maintenance, preservation and destruction of official records are concerned, *the destruction of public record in particular*, the Act of 2005 provides a complete mechanism to the total exclusion of such mechanism provided in any other Act or Regulation.

35. Since the Act of 2005 requires that the official records are to be preserved for 20 years, the officer, responsible for maintenance of such records, is bound to give information thereon, if someone has sought for such information any time during the 20 years of their existence. Such a proposition was, however, vigorously opposed by the petitioner.

36. On perusing the pleadings of the parties, it appears to me that before one could proceed further, he needs to find answer to two queries. Such queries arose because of diametrically opposite stands taken by the parties to this proceeding. Those questions are :- (a) whether the Act of 2005 requires all public records to be preserved for twenty years and (b) whether it overrides other Acts or Regulations prescribing the period during which the public records are to be preserved.

37. However, those questions were addressed and answered by Hon'ble Supreme Court of India in the case of the Central Board of Secondary Education (supra). On examining if the Act of 2005, section 8(3) of the Act in particular, requires all the official documents to be preserved for twenty years and if the provision of section 8(3) of the Act overrides all other previous Act and regulation covering the same matter, Hon'ble Supreme Court in the CBSE (supra) held as follows:-

"56. On behalf of the respondents examinees, it was contended that having regard to sub-section (3) of Section 8 of the RTI Act, there is an implied duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made that in that behalf. This contention is based on a complete misreading and misunderstanding of Section 8(3). The said sub-section nowhere provides that records of information have to be maintained for a period of twenty years. The period for which any particular record or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records.

57. Section 8(3) provides that information relating to any occurrence event or matter which has taken place and occurred or happened twenty years before the date on which any request is made under Section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under the rules of the public authority, is exempted from disclosure under any of the provisions of Section 8(1) of the RTI Act, then notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clause (a),(c) and (i) of Section 8(1).

58. In other words, Section 8(3) provides that any protection against disclosure that may be available, under clauses (b), (d) to (h) and (j) of Section 8(1) will cease to be available after twenty years in regard to records which are required to be preserved for more than twenty years.

Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, Section 8(3) will not prevent destruction in accordance with the rules. Section 8(3) of the RTI Act is not therefore a provision requiring all "information" to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, documents or information is required to be reserved by any public authority.

38. In view of decision, so rendered in the Central Board of Secondary Education (supra), I have no hesitation in coming to the conclusion that the Act of 2005 does not require all public records to be preserved for twenty years. Nor does it override other Acts or Regulations prescribing the period during which the public records are to be preserved and to the above extent, the decisions to the Commission are found not sustainable in law.

39. This brings us to the question whether the Act of 1993 has any application to the case in hand. One may note here that the Act of 1993 requires the authority concerned to preserve the official documents, covered by such Act for a period of twenty five years. But we need to know if aforesaid Act had any application to the present case since the petitioner arduously contends that said Act has no application to the State of Arunachal Pradesh.

40. This is because of the fact that the Act of 1993 being a Central Act was enacted in 1993, long after State of Arunachal Pradesh became an independent State of India. More importantly, there is nothing on record to show that such an Act was ever adopted by State of Arunachal Pradesh extending its operation to such a State. Being so, I have no difficulty in accepting the claim of the petitioner that the Act of 1993 has no application to the State of Arunachal Pradesh.

41. The above conclusion of mine finds more and more support from the order passed by the Commission on 05.10.2010 in Case No. APIC-19/2010. In its order dated 05.10.2010, the Commission incorporated the decisions of Secretary of Law, Govt. of Arunachal Pradesh in the following manner:-

".....on 31.08.2010, the Secretary of Law, Govt. of Arunachal Pradesh issue a note stating that the Public Records Act, 1993 does not apply in the State of Arunachal Pradesh"

42. The above observation, made by an authority as important as the Secretary of Law, Govt. of Arunachal Pradesh leaves no scope for doubt that the Act of 1993 has no application in the State of Arunachal Pradesh.

43. Now, one needs to know if there is any Act or Regulation which requires the public officers in the State of Arunachal Pradesh, more particularly, the authority in office in question to preserve the official record over a certain period of time. In this context, it may be stated the respondents categorically claim that neither the Swamy's Manual on Office Procedure nor the Manual of 1985 has any application to the office of the Chief Engineer, Department of Hydro-Power Development, Government of Arunachal Pradesh which allegedly destroyed the record in question in violation of statutory provisions.

44. On my careful perusal of Manual of 1985, I have found that said Manual primarily deals with preservation and destruction etc. of official records pertaining to State Secretariat. On the other hand, the Swamy's Manual on Office Procedure is admittedly a collection of Government's Circulars and as such, it cannot have the force of statutory Rules. On the other hand, application of the Circular dated 16-06-2008 to the office in question is very doubtful since it is alleged to be bogus and fabricated one and as such, no reliance can be placed on the same. To the above extent, I have found the contention of the respondents on this count sustainable and acceptable.

45. However, on considering the materials on record which have bearing on the dispute under consideration, I have found that there is nothing on record to show that there is any Rule/Act having application to the office in question in regard to preservation and destruction of official records. That being so, I am of the considered opinion that in the facts and circumstances of the present case, one may fall upon the Office Manual of 1985 as well as Swamy's Manual on Office Procedure to have some guidance in resolving the dispute before this court.

46. For ready reference, the relevant part from the Swamy's Manuals is reproduced below:-

"105. Categorization of records :- Files may be recorded under any one of the following categories :-

(1) Category 'A' meaning 'keep and microfilm :- This categorization will be adopted for :

(a) files which qualify for permanent preservation for administrative purposes (vide Part 'A' of Appendix-25) and which have to be microfilmed because they contain:

(i) a document so precious that its original must be preserved intact and access to it in the original form must be restricted to the barest minimum; or

(ii) material likely to be required for frequent reference by different parties.

(b) files of historical importance such as those listed in Part 'B' of Appendix-25.

(2) Category 'B' meaning 'keep but do not microfilm :- This category will cover files required for permanent preservation for administrative purposes, such as those listed in Part 'A' of Appendix-25. It will, however, exclude the nature of material falling under the category described in (i) or (ii) of sub-para.

(1) (a) above and therefore need not be microfilmed.

(3) Category 'C' meaning 'keep for specified period only :- This category will include files of secondary importance and having reference value for a limited period not exceeding 10 years. In exceptional cases, if the record is required to be retained beyond 10 years, it will be upgraded to 'B' category.

113. Review and weeding of records:- A category 'C' file will be reviewed on the expiry of the specified retention period and weeded out unless there are sufficient grounds warranting its further retention. Justification for retaining a file after review will be recorded on the file with the approval of branch officer/divisional head concerned. Retention after a review will be for a period not exceeding ten years, including the period already retained. If a file was originally retained for a period of 10 years any further retention will require up-gradation of the category.

(2) Category 'A' and Category 'B' files will be reviewed on attaining the 25th year of their life in consultation with the National Archives of India. In these reviews, the need for revising the original categorization of Category 'B' files may also be considered.

(3) The year of review of category 'C' files be reckoned with reference to the year of their closing and that for category 'A' and category 'B' files with reference to the year of their opening.

(4) Beginning in January each year, the departmental record room will send to the sections/desks concerned the files due for review in that year, together with a list of files in the form of Appendix-31, in four lots-in January, April, July and September.

(5) (i) Files received for review will be examined by, or under the direction of, the Section Officer or the desk functionary concerned and those files which are no longer required will be marked for destruction. Other files may be marked for further retention vide sub-paras. (2) & (3). It may, however, be ensured that in case of injury has been initiated departmentally or by a Commission of Injury or as a result of Court proceedings having a bearing on the subject matter contained in the files/documents concerned or the files/documents which are required in connection with the implementation of order/judgment of any court of law, such files/documents will not be destroyed, even if, such files/documents

have completed their prescribed life as per the Record Retention Schedule.

(ii) Files/documents referred to above may be, destroyed only after submission of the Report by the Commission or completion of injury or implementation of the judgment/order of court (s) with the approval of the concerned Joint Secretary/Head of the Department. In case the implementation of the court order has been challenged/appealed against either by the Government or by the applicant in a higher court, the concerned files/documents will not be weeded until such time the appeal/challenge is considered and finally decided. In such cases the limitation period prescribed for appeals should also be kept in mind.

(6) After review, the record clerk/desk assistant will make entries of revised categorization/retention period in the file registers and return them to the departmental record room along with the list (Appendix-31) after completing Column (3) thereof.

(7) The departmental record room, under the supervision of Departmental Record Officer (DRO), will ;

(a) transfer category 'A' and category 'B' files surviving the review under taken at the 25th year of their life vide sub-para (3) above, to the National Archives;

(b) in the case of other files;

(i) destroy those marked for destruction, after completing Column (4) of the list of files (Appendix-29); and

(ii) restore the rest, i.e., those marked for further retention, to the departmental record stacks after making the required entries in the record review register in the case of category 'C' files;

(8) Records not falling within the definition of file, e.g., publications, spare copies of circulars, orders, etc., will also be subjected to periodic reviews at suitable intervals and those no longer needed should be weeded out. To facilitate such reviews each section will maintain a register in the form of Appendix-32.

(9) Considering the urgency to reduce the volume of records now being retained without any significant need for their retention, the following measures may be taken in the Ministries/Departments:-

(a) A special drive may be launched every 6 months to record/review all old files and to weed out those no longer needed. The results of such special drives will be sent to DAR&PG in the pro forma shown in Appendix-33.

(b) Each Joint Secretary may review every quarter the state of indexing/recording/review/weeding out of files in his wing and allot time bound tasks towards this and to the members of the staff;

(c) Inspecting Officers may be asked to pay special attention to the stage of Records Management in the sections as well as the Departmental Record Room during their inspections.

(10) The following manner of Weeding/Destruction of records will be adopted:-

(a) Routine files/records will be manually torn into small pieces and disposed.

(b) Classified files/records will also destroyed by use of shredder, and

(c) Secret files/records will also be incinerated after being shredded as per provision under 'Departmental Security Instructions' issued by the Ministry of Home Affairs.

ILLUSTRATIVE LIST OF RECORDS FIT FOR PERMANENT PRESERVATION BECAUSE OF (A) THEIR VALUE FOR ADMINISTRATIVE PURPOSES, AND (B) THEIR HISTORICAL IMPORTANCE.'

[Vide Para. 105 (1) (a) and (2)]

A. Records of value for administrative purposes.

Papers of the following categories will normally be among those required to be kept indefinitely for administration's use:-

(1) Papers containing evidence of rights or obligations of or against the Government, e.g., title to property, claim for compensation not subject to a time-limit, formal instruments such as awards, schemes, orders, sanction, etc.

(2) Papers relating to major policy decisions, including those relating to the preparation of legislation.

(3) Papers regarding constitution, functions and working of important committees, working groups, etc.

(4) Papers providing lasting precedents for important procedures, e.g., administrative memoranda, historical reports and summaries, legal opinions on important matters.

(5) Papers concerning rules, regulations, departmental guides or instructions of general application.

(6) Papers relating to salient features of organization and staffing of Government departments and offices.

(7) Papers relating to important litigation or 'causes celebres' in which the administration was involved.

47. the Manual of 1985 have recorded similar provisions vis-à-vis classification and destruction of official records. The relevant part thereof is reproduced below:-

147. Procedure of recording

(a) Class 'A' : To be printed and preserved indefinitely. No file will be included in this class without the approval of the Branch Officer. This category will be allotted to a file in which important questions have been discussed or which contains orders establishing important precedents or general instructions or rulings of permanent importance and which are likely to be required for reference in future in the department concerned or in the other departments. The originals of all files of this category will be preserved.

(b) Class 'B' : To be preserved for 12 years. This class will cover files which contained orders and instructions etc not of permanent importance and which are not likely to be required for reference after 10 to 12 years.

(c) Class 'C' : To be preserved for 5 years. This class will consist of files of secondary importance which are desired to be preserved for a very limited period.

A note to the effect that the file has been recorded will also be made in the file register as the last entry. This will be done by writing in the red ink the letters 'Recorded A' 'Recorded B' or 'Recorded C' and the date of closing the file against main and supplementary file tiles in the Index to the register and in the file register".

Destruction of ephemeral files ---Files which are of a purely ephemeral nature will not be recorded but will be destroyed as soon as they are one year old. In case of doubt, the orders of the Under Secretary should be obtained."

48. Now, the question is how is to categorize the answer scripts in question? A perusal of documents specified in Swamy's Manual as well as Manual of 1985, I have found that the answer scripts cannot be categorized as document which is to be preserved to be kept in File A, File B and File C of the Manual of 1985. Similarly they cannot be placed in File A and File B, so stated in Swamy's Manual. In other words, the answer scripts are nothing more than the document of ephemeral nature.

49. In this context, it is worth noting that the answer scripts in question have no scientific, historical or research importance. Such documents were not the subject matter of any dispute either when they were destroyed. This again speaks loud and clear that answer scripts are undoubtedly document of temporary nature, which can easily be categorized as ephemeral documents as per categorization of official documents made in the Manual of 1985. Since nobody questions those answer scripts even after the elapsed of two and a half year from the date of examination aforesaid, it becomes one more testimony of answer scripts in question being ephemeral one.

50. I may note here that the respondent No.2, who had admittedly sought for information under the RTI Act and who ultimately preferred a proceeding before the State Information Commission, Arunachal Pradesh is one of the most important functionaries in the office which reportedly refused to give him the information, sought for. We have also found from the record that the examination in question was held in the year 2005. Answer scripts, sought for, were admittedly destroyed on 8/7/08.

51. Thus, it is found that documents in question which are already held to be ephemeral in nature were destroyed after two and half years of such documents coming into existence. What is equally important to note is that the answer scripts in question were sought for after a year of destruction of such documents. It is enormously surprising that the person who sought for some such information is found to be an integral organ of such an establishment. This conduct on the part of the respondent No.2 unfortunately raises more questions about his bonafide in seeking the information in question.

52. Another factor that has caught my attention, and that too quite prominently, is that there is specific allegations against the respondent No.2 that at one point of time he makes serious complaint alleging that due to space crunch, the officers and staffs in the establishment of Chief Engineer, DHPD could not discharge their duty to the best of their ability. In fact, the suffocative atmosphere in the office aforesaid made it impossible for them to work in such office.

53. Such a contention has not at all been disputed by the respondents. Rather, the averments, made in Annexure-10 to the writ petition, have fully corroborated such a stand taken by the petitioner. Such unchallenged claim of the petitioner, in the facts and circumstances of the present case, goes a long way in supporting the claim of petitioner that he was forced to destroy the answer scripts in question under some compelling situation.

54. It is true that the claim of the respondent No.2 that some documents older than the answer scripts in question were yet to be destroyed. It is also true that the space so retrieved by destroying the answer scripts aforementioned were not big enough to secure any advantage for proper functioning of office aforesaid. But then, there is no evidence on record to show that the records which are said to be the record, older than answer scripts in question, are ephemeral documents.

55. In the teeth of above revelation, I am constrained to hold that only for destruction of answer scripts of 2005, it cannot be said that the petitioner has adopted a selective destruction of records and he did so to get rid of his serious misdeeds. Quite contrary to it, the facts which have emerged from the materials on record and which I have discussed herein before, give an impression that in destroying the records in question, the petitioner genuinely tried to retrieve space to use the same more meaningfully.

56. In the conspectus of our foregoing discussions, I am of the opinion that the allegation that the petitioner has illegally destroyed the official documents in violation of direction rendered in the Act of 2005 remains far from being proved and as such, the Commission was not right in imposing penalty of Rs.20,000/- on the petitioner holding him responsible for destruction of records in violation of the provisions of RTI Act.

57. Consequently, the order in question is found not sustainable in law and is liable to be quashed and set aside.

58. In the result, the order under challenge is set aside and quashed. The parties are left to bear their own cost.

JUDGE

Chasie/Kevi