

Dissent Note**Dated 24.10.2020**

- I. As a member of the Selection Committee, empowered to select/ appoint the Chief Information Commissioner and Information Commissioners, as constituted U/s. 12(3) of the Right to Information Act, 2005, the undersigned had received two Agenda Note(s), along-with profiles of applicants and a covering letter dated 05.10.2020 from the DoPT, for:
- I.
- a) Recommending the name of the Chief Information Commissioner (CIC) in the Central Information Commission to the President of India; and
 - b) Recommending the names (upto 6) of the Information Commissioners (ICs) in the Central Information Commission to the President of India.
- II. That a meeting of the coram as provided U/s. 12(3) of the Right to Information Act, 2005 was held on 07.10.2020 at 7, Lok Kalyan Marg, wherein the undersigned vide Dissent Note/ Objections dated 07.10.2020 had sought deferment of the said meeting on account of failure to provide the recommendations of the Search Committee to the members of the Selection Committee in advance. Accordingly, the said meeting was deferred.
- III. That consequently, vide letter dated 19.10.2020, the DoPT had furnished to the undersigned, the profiles of the shortlisted candidates for the posts of Chief Information Commissioner and Information Commissioners (in the Central Information Commission), as approved by the Search Committee headed by the Cabinet Secretary, GoI. The following names have been recommended by the Search Committee:

Names Shortlisted for appointment as Chief Information Commissioner:

1. Shri Neeraj Kumar Gupta, IAS (UP: 1982) (Retd.), Information Commissioner, Central Information Commission.
2. Shri Yashvardan Kumar Sinha, IFS (1981) (Retd.), Information Commissioner, Central Information Commission.

Names Shortlisted for appointment as Information Commissioner:

1. Shri Subhash Chandra, IAS (KN: 1986) (Retd.), Former Secretary, Department of Defence Production, Ministry of Defence.
2. Ms. Meenakshi Gupta, IA&AS (1984), Deputy CAG, Comptroller and Auditor General of India.

3. Mr. Ira Joshi, IIS (1984) (Retd.), Former Principal Director General (News) All India Radio.
4. Shri Uday Mahurkar, Senior Journalist.
5. Shri Arun Kumar Panda, IAS (OR: 1984), Former Secretary, Ministry of Micro, Small and Medium Enterprises.
6. Ms. Saroj Punhani, IA&AS (1084), Deputy CAG, Comptroller and Auditor General of India.
7. Shri Heera Lal Samariya, IAS (TG: 1985) (Retd.), Former Secretary, Ministry of Labour & Employment.

IV. The RTI Act, 2005 is an epochal piece of legislation which ensures day to day transparency and accountability in public life, the task of appointing capable CIC/ ICs becomes even more significant in view of large-scale pendency of 36828 cases currently pending before the Central Information Commission (pendency report attached as **Annexure A**). Therefore, the following is stated:

- 1.1 The manner in which the Search Committee has conducted the exercise of shortlisting the names for CIC/ ICs is nothing but an empty formality, aimed at carrying out a hog-wash that defeats the very aim and goal of transparency and accountability that the RTI Act envisages. It is appalling that the Search Committee has failed to give any reasons or justifications in writing as to why the shortlisted candidates are more suitable among all those who applied for the said posts.
- 1.2 That a total of 139 candidates applied for the post of CIC; and 355 candidates applied for the various posts of ICs. However, the Search Committee, on the face of it arbitrarily selected names, without even bothering to provide any reasons for eliminating 137 out of the 139 candidates in case of the post of CIC; and 349 out of the 355 candidates, so applied for the posts of ICs.
- 1.3 That on perusal of the 486 applications (137 + 349) not deemed fit by the Search Committee, it is evident that those rejected are persons of equal if not more merit and have substantially contributed in public life. However, the Search Committee, apparently has neither used a criteria based approach or grading in selecting or rejecting a particular candidate. The clandestine working of the Search Committee is evident from the fact that when on 07.10.2020, the High Powered Selection Committee met for the first time to select the CIC/ ICs, the Search Committee did not even bother to provide a copy of its report to the members in advance and on account of the said failure of the Search Committee, the meeting of the Selection Committee had to be deferred. Further, even now while the Search Committee has shortlisted 9 names (2 for CIC and 7 ICs), it has once again, deliberately ignored the

mandate of the Hon'ble Supreme Court in its Judgement dated 15.02.2019 in the matter of **Anjali Bhardwaj & Others Vs. Union of India & Ors.** (W.P.(C) 436 of 2018), wherein the Apex Court had specifically directed the Search Committee to make public, the names and criteria of the candidates who applied for the said posts:

"67 (iii) it would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria."

Since, the Search Committee has only been constituted to aid and assist the Selection Committee and it is the Selection Committee which is the statutory body to select the candidates as mentioned hereinabove. It is extremely imperative that the Search Committee discharges its functions in a transparent manner. However, by not providing the reasons for shortlisting/ rejection of candidates and by ignoring the dictum of the Hon'ble Supreme Court, the Search Committee has failed to discharge the functions for which it was constituted. Even as the Search Committee headed by none less than the Cabinet Secretary of India, arbitrarily and blatantly ignored every facet of transparency and laid down process, one is forced to conclude that it did not apply its mind at all. In either case, the whole exercise smacks of apparent bias and favouritism and therefore renders the entire process untenable.

- 2.1 That among the 2 names shortlisted for the top post of CIC, one recommendation made by the Search Committee is for Shri Yashvardhan Kumar Sinha- a 1981 batch IFS Officer. In this regard, it may be interesting to note that officers of the Foreign Service mostly work abroad and even while at-home, they have nothing whatsoever to do general administration, policy formations, service delivery and programme implementation – areas that form the overwhelming bulk of RTI queries. the assignments of the Indian Foreign Service, are largely exempted from the purview of the RTI Act, 2005. This apart from the fact that the assignments of the Indian Foreign Service are largely exempted from the purview of the RTI Act, 2005. The recommendation for the post of CIC ought to be someone with more on ground domestic experience in the field of service delivery, law, science, human rights and issues that concerns the general public in their day to day life etc. In addition to this, it is important to mention that among the sitting ICs, Smt. Vanaja N. Sarna (a 1980 batch officer) is senior most and far more experienced than Shri Sinha. In view of these factors, Shri Sinha's recommendation for the top post requires reconsideration at the outset itself, as none of

the aforesaid factors were, including the principle of seniority, were considered by the Search Committee.

- 2.2 Shockingly, another such recommendation by the Search Committee is that of Shri Uday Mahurkar, whose name has been shortlisted for the post of IC, however, Shri Mahurkar's name does not even find mention in the list of 355 applicants, as provided by the DoPT, who have applied for the position of ICs. The fact that the Search Committee has sky-dropped the name of Shri Mahurkar casts very serious aspersions on the integrity of the Search Committee. While on one hand this renders the entire exercise of inviting applications through advertisement useless, on the other hand even if one were to give the liberty of choice to the Search Committee, the basic principle of documentation of a reasoned and justified selection, has been totally overlooked.
- 2.3 In this regard, the Cabinet Secretary as Chairman of the Search Committee, must explain, within one week from today, stating the considerations for which the Search Committee chose to name Shri Uday Mahurkar- an open supporter of the ruling political party and its ideology. This issue assumes greater significance in light of the fact that Shri Mahurkar, though a journalist, has a pre-fixed ideology of supporting the ruling party (kindly verify his articles, comments, social media profile etc.) and had not even applied for the job of Information Commissioner. The Cabinet Secretary needs to explain the special reasons and pressure exerted upon him for picking up the name of Shri Mahurkar on a completely out of turn basis which smacks of apparent bias on the face of it.
- 3.1 Another important aspect is that the Central Information Commission must consist of Commissioners from different walks of life. Even the Supreme Court has emphasized on the said aspect in its judgement of **Anjali Bhardwaj & Others Vs. Union of India & Ors.** (*supra*), wherein it has held as follows:

"39. As can be seen, any person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance is qualified to become Chief Information Commissioner or Information Commissioner. The Legislature in its wisdom widened the area of consideration by not limiting it to the serving or retired government employees alone. Persons of eminence in public life are made eligible. Field of knowledge and experience is also very much broadened as it can be either

in law or science and technology or social service or management or journalism or mass media or administration and governance. The Parliament, thus, intended that persons of eminence in public life should be taken as Chief Information Commissioner as well Information Commissioners. Many persons who fit in the aforesaid criteria have been applying for these posts. However, a strange phenomenon which we observe is that all those persons who have been selected belong to only one category, namely, public service, i.e., they are the government employees. It is difficult to fathom that persons belonging to one category only are always be found to be more competent and more suitable than persons belonging to other categories. In fact, even the Search Committee which short-lists the persons consist of bureaucrats only. For these reasons, official bias in favour of its own class is writ large in the selection process.

40. ...It is, however, emphasised that there can be equally suitable persons from other walks of life as well who may be the aspirants for such posts. This Court, therefore, impresses upon the Search Committee, in future, to pick up suitable candidates from other categories as well. After all, the very purpose of providing wide range of suitability was to have members in CIC by giving representation to other classes as well. This would ensure wider representative character in the composition of CIC.

- 3.2 Despite the categorical directions of the Hon'ble Supreme Court, the names shortlisted by the Search Committee only consist of bureaucrats making it appear as cosy club of retired civil servants who were being provided post retirement sinecures as quid pro quo for the commitment they may have shown to their political masters. Surprisingly, although a large number of academicians, scientists, historians, human rights activists and also persons from legal, social service backgrounds applied for the said posts of CIC and ICs, but the Search Committee did not find even a single suitable, independent candidate from the said talent pool.
- 3.3 Considering the above factual position and also the Judgement of the Hon'ble Supreme Court in **Anjali Bhardwaj & Others Vs. Union of India & Ors.** (*supra*), the entire exercise undertaken by the current Search Committee cannot be allowed to be reduced to an empty formality, or a mere eye-wash reeking of selectivity, quod-pro-quo and

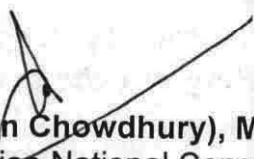
favouritism, whereas, the Search Committee ought to have demonstrated application of mind by recording reasons in writing for elimination or recommendation of a particular applicant for the prestigious posts of CIC and ICs.

- 3.4 Pertinently, even the Search Committee itself is dominated by bureaucrats and as a natural corollary of the same, its recommendations are biased and made with a pre-determined mind. Moreover, as observed by the Supreme Court, even the Search Committee should not be an overloaded bureaucratic panel.

Therefore, the purpose of the RTI Act, 2005 which is a common man's law cannot be allowed to be defeated by political favouritism and institutional subversion. Hence, proper evaluation of the candidates/ applicants with reasons in writing and disclosure of the same in public domain, must be a condition precedent before concluding the selection process, to ensure accountability and transparency across all government departments.

V. In view of the aforesaid, the undersigned recommend as follows:

- A. In view of the Hon'ble Supreme Court Judgement in **Anjali Bhardwaj & Others Vs. Union of India & Ors.** (*supra*), the Search Committee ought to be reconstituted with individuals from the field of social service, law, science, human rights.
- B. For the reasons stated above in *para IV*, all the recommendations made by the current Search Committee, should be withdrawn immediately.
- C. The Cabinet Secretary, on behalf of the Search Committee, shall provide written explanation as demanded under *sub-para 2.3 of para IV*.
- D. Keeping in mind the large-scale pendency in the Central Information Commission, a meeting of the reconstituted Search Committee ought to be called at the earliest and not later than one week from today, to short-list suitable candidates among the applicants.


(Adhir Ranjan Chowdhury), M.P.
Leader of Indian National Congress in Lok Sabha

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Most Immediate

PRIME MINISTER'S OFFICE

**South Block,
New Delhi - 110 011**

Subject: Appointment of Information Commissioners in the Central Information Commission.

Reference is invited to DOPT's note dated 25.10.2020 at page 1-4/N of File No. 4/3/2020- IR-II on the subject cited above.

2. The Prime Minister has approved recommending following to the President :

(i) to appoint

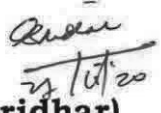
- (a) Sh. Heeralal Samariya,
- (b) Ms. Saroj Punhani and
- (c) Sh. Uday Mahurkar

as Information Commissioners in the Central Information Commission as per Section 12(3) of the Right to Information Act for a period of three years from the date they enter office.

(ii) The terms and conditions of appointment of the Information Commissioners will be as contained in The Right to Information (Terms of Office, Salaries, Allowances and other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules, 2019.

3. The Prime Minister has also signed the Submission Note to the President.

4. DoPT's File No. 4/3/2020-IR-II, is returned herewith.


(C. Sridhar)
Joint Secretary
Tel. No. 2301 5944

Secretary, Department of Personnel & Training

PMO ID no. 600/52/C/04/2020-HR

Dated 27.10.2020