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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3573/2008

Date of decision: 13th May, 2009

UNION OF INDIA Petitioner
Through Ms. Geetanjali Mohan, Advocate.

versus

VIVEK BHATIA & ANR. Respondents
Through Mr. Shangara Singh, Advocate for
respondent No. 1.
Prof. K.K. Nigam, Advocate for CIC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

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1. Mr. Vivek Bhatia, respondent No. 1, is a Railway employee and was working as Chief Depot Material Supervisor, Stores Department, Diesel Loco Modernization Works, Patiala. He had moved an application under Right to Information Act, 2005 (hereinafter referred to as the Act, for short) dated 3rd January, 2006 asking for norms for selection to group 'B' post against the 70% quota, Marks secured, ACR for last 5 years and details of selection. The Central Public Information Officer in his reply

dated 14th March, 2006 noted "you had secured the qualifying marks in the written test, but could not get qualifying marks in Part 'B', i.e. record of service and viva-voce". Disclosure of ACRs was also denied to the respondent No. 1 on the ground that the same was a part of confidential files and cannot be provided. This order was maintained by the first Appellate Authority under the Act.

2. On second appeal, the Central Information Commissioner by order dated 13th December, 2006 directed that in the interest of transparency and in view of Section 4(1)(d) of the Act, the petitioner herein should show to respondent No. 1 all his Confidential Reports relevant for consideration of his promotion and all other relevant papers including file notings and also directed to file compliance report with the Commission within 21 days. The appeal was accordingly disposed of.

3. The petitioner here filed a review application and the respondent No. 1 also approached the Central Information Commissioner stating that he had not been furnished the relevant records as directed in the order dated 13th December, 2006. By order dated 21st February, 2007, Central Information Commissioner issued a show cause notice for imposition of penalty and once again directed the petitioner to furnish information in terms of its earlier order dated 13th December, 2006 by 9th March, 2007. It was also directed that in case deadline for providing information was not met, the Commission would be constrained to recommend serious action

including disciplinary action against the officers of petitioner. Commission also directed that in case respondent No. 1 was to again appear before the Central Information Commission, the petitioner herein would issue a privilege pass and also pay Rs.500/- as daily allowance for the respondent No. 1's stay in Delhi.

4. The third order was passed by the Central Information Commission on 18th April, 2007. It was noticed that the respondent No. 1 herein was allowed inspection of records but was not allowed to take photocopy on the ground that the earlier orders passed by the Commission did not direct photocopy of records. The Commission directed the petitioner herein to permit respondent No. 1 herein to take photocopy of records which were to be provided free of cost in view of the repeated defaults and lapses by the petitioner herein. It was also directed that in case of non-compliance penalty proceeding against the Public Information Officer shall be initiated for suppression of facts.

5. Respondent no. 1 once again approached the Central Information Commission with a case of non-compliance of order and fourth order was passed by the Central Information Commission on 13th July, 2007. The operative portion of the said decision given by the Central Information Commissioner is as under:-

"Decision:

9. The Commission heard both the parties with the Respondents maintaining that they

supplied all the information to the Appellant. The basic lapse seemed to be which was emphasized by the Appellant was that in one of the notings, a certain Railway official who was supposed to have written the Appellant's CR was stated to be deceased whereas he was alive. This was a mistake that was admitted by the Department and they even gave a statement in the Court to this effect. This submission was acceptable to the Commission also.

10. The Respondents also admitted that while giving a photocopy of the document to the Appellant, they had concealed the name of the signatory a submission which also was acceptable to the Commission taking recourse to Section 10 of the RTI Act.

11. Further, the Respondents stated that the information asked by the Appellant was spread over three files and that they were prepared to show all these files to the Appellant and also provide him photocopies of any pages he desired. The Commission directs them to provide these photocopies free of cost. This should be done by 30 July, 2007.

12. This case is thus disposed of.sd/-"

6. It is clear from the aforesaid order that the Central Information Commissioner was satisfied with the action taken by the petitioner as noted in the aforesaid decision. A further direction was given that the respondent No. 1 should be permitted to inspect three files and provide photocopy of pages free of cost. It appears that inspection was given and photocopies were provided.

7. Thereafter, impugned order dated 7th January, 2008 was passed by the Central Information Commission. The Central Information

Commissioner in this order noticed the earlier orders passed with regard to inspection of the records and the fact that the respondent No. 1 had admitted that he had inspected and examined records. Thereafter, the Central Information Commissioner records that "the present hearing was a result of the disclosing of the information as per the orders of the Commission". The Central Information Commissioner then noticed the letter from General Manager, DMW, Patiala, which is quoted in the order and the subsequent correspondence produced before the Central Information Commissioner in form of reply by Mr. P.K. Sharma, (Advisor Staff), which is again reproduced. After reproducing the averments made in the letters, the Central Information Commissioner has recorded that the respondent No.1's contention of providing misleading information to him is correct. After getting the documents examined by a legal advisor the Central Information Commissioner opined that the records of respondent no. 1 have been manipulated. In the operative portion of paragraph 8 of the order it is stated as under:-

"8. According to this, it is very obvious that the Appellant's contention that he was provided misleading information in response to his application is correct. When the Appellant asked for the names of officers responsible for, what seemed to him to be, tampering of records, the Department was absolutely silent. According to the Appellant, some of the pages had obviously been changed/tampered with. To settle the issues once and for all, the Commission decided to have all those documents examined by its Legal Adviser for which the Appellant has alleged that

they were tampered with/changed/manipulated.”

“9. The Commission examined the relevant records and documents which were produced by the Respondents. After going through the relevant records, the Commission is of the opinion that records have indeed been manipulated. Shri Vivek Bhatia, the affected employee and the Appellant, has definitely undergone a lot of tension and harassment only because of the apathetic attitude of some Railway Officials, who had tampered with Government records, which is definitely an attitude unbecoming of a Government Servant. Therefore, the Commission, under the powers conferred upon it under Section 19 (8) (b), grants a compensation of Rs.15,000/- to Shri Vivek Bhatia for the loss and detriment that he has suffered and directs the Respondents to pay this compensation to him within 30 working days from the date of receipt of this decision.

10. The allegations made by the Appellant are very serious one and prima facie the allegations appear to be correct, i.e., there has been a tampering/manipulation of official records to the detriment of the Appellant’s case. The Commission, in the interest of transparency and accountability directs the Adviser (Staff), Railway Board to institute Vigilance inquiry immediately upon receipt of this Order so as to ascertain the real facts of the case.”

8. As far as direction in para 10 quoted above is concerned, counsel for the petitioner has challenged the power of Central Information Commission to direct for instituting Vigilance inquiry but has submitted that as a similar direction has already been given by the Central Administrative Tribunal by their order dated 11th March, 2008 and the

Railway Board has also vide their letter dated 8th April, 2008 accepted the said order and had asked for investigation report from the Chief Vigilance Office. The investigation report has been brought on record. The Inquiry officer has recommended disciplinary action against the errant employees and has rejected the contention regarding altering Section II of ACR and irregularities in AMM selection etc. In these circumstances, I am not inclined to go further into the said aspect. The question/issue concerning powers of Central Information Commissioner to give aforesaid directions being of academic interest is left open to be decided in another appropriate case. It will be, however, open to the respondent no. 1, if he is not satisfied with the enquiry report, to take appropriate action.

9. Petitioner has submitted that the Central Information Commissioner has acted beyond his jurisdiction by imposing compensation and there was no occasion to grant compensation when all information had been provided. The Central Information Commissioner has relied upon under Section 19(8)(b) of the Act to award compensation. The relevant portion of the said Section reads:-

Section 19

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) xxxxxx

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

10. In the impugned order under challenge, the scope and ambit of the said provision has not been considered and examined. Compensation under section 19(8)(b) can be awarded but the question is whether compensation can be awarded for loss or detriment caused for failure to comply with the Act or compensation can be awarded for general failure to maintain true and correct records that has caused loss or other detriment. This may or may not be covered by Section 19 (8) (b) of the Act but an interpretation has to be given before awarding compensation. It is also not clear from the findings in the impugned order whether the said compensation has been awarded on account of failure of the petitioner to provide requisite information as stipulated under the Act or for violation of the provisions of the Act or for harassment of the petitioner in making repeated applications before the Central Information Commissioner or on account of the fact that the respondent No. 1's ACR themselves were allegedly manipulated or tampered with. I may also note the contention of the petitioner that no show cause notice was issued to the petitioner before compensation of Rs.15,000/- was awarded to respondent no. 1. In these circumstances the matter is remanded/remitted back to the Central Information Commissioner. The parties will appear before the Central Information Commissioner on 8th June, 2009. It is clarified that the findings and observations made in this order are prima facie and tentative

and the Central Information Commissioner will decide the matter without being influenced by any observations. It is also open to the Central Information Commissioner to examine and consider whether any other provision of Section 18/19 is attracted.

The writ petition is disposed of.

SANJIV KHANNA, J.

MAY 13, 2009
VKR