

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

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Date of Decision: 22.08.2013

+ W.P.(C) 2491/2010 and CM No. 4980/2010 (stay)

THE PUBLIC INFORMATION OFFICER & ANR Petitioner

Through: Mr S.K. Dubey, Adv.

Versus

SHRI SOMEN KUMAR BOSE Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent before this Court filed an application dated 30.12.2008 with the CPIO, Department of Posts, seeking information on as many as 72 points, regarding suspension of one Mr K.M. Somasundram, who was suspended on 03.11.1995. The hand-written application runs into as many as 38 pages. Since no reply was received by him from the CPIO, he preferred an appeal before the First Appellate Authority. Vide response dated 30.3.2009, the First Appellate Authority informed him that it was not practically possible to supply the information sought by him within the stipulated time period and that in any case, a large part of the information had already been supplied to him, while responding to his earlier request under Right to Information Act. The First Appellate Authority found that

some questions were not at all comprehensible, besides being extraordinarily lengthy. However, he did direct the CPIO to furnish certain information within 15 days. In compliance of said directions, the CPIO gave point-wise information to the respondent on 20.04.2009. Being dissatisfied, the respondent preferred a second appeal before the Central Information Commission. During the course of hearing before the Commission, the petitioner informed the Commission that in the absence of any instruction from the Competent Authority, no proposal for initiating disciplinary action against Mr K.M. Somasundram, was initiated though suspension order was reviewed after every six months. It was explained that this was the reason no chargesheet against Mr K.M. Somasundram was issued to him. The appeal was disposed of by the Commission with the following order:-

“6. The Commission after hearing the submissions of both sides directs the CPIO to provide an affidavit to the Appellant giving the reasons for not initiating the disciplinary proceedings against Mr. Somasundaram and also for not issuing the charge sheet to him. The Commission is of the opinion that 14 years is long enough period for keeping a person under suspension from his job and recommends that the proposal for initiating disciplinary proceedings be forwarded to the Hon’ble Minister at the earliest (within 2 months as agreed to by the Respondent) under intimation to the Commission and to the Appellant and that all efforts be made to issue the chargesheet to Mr.Somasundaram.”

2. Section 19(1) of the Right to Information Act, to the extent it is relevant for our purpose, provides that any person, who is aggrieved on account of not receiving a decision on his application within the time stipulated in this regard, may prefer an appeal to the Appellate Authority. A second appeal against the decision of the First Appellate Authority is envisaged under sub-section (3) of Section 19 of the Act. Sub-section (8) of the said Section deals with the power of the Commission and the said sub-section reads as under:-

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

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
 - (i) by providing access to information, if so requested, in a particular form;
 - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - (iii) by publishing certain information or categories of information;
 - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) by enhancing the provision of training on the right to information for its officials;
 - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;

- (c) impose any of the penalties provided under this Act;
- (d) reject the application.”

3. It would thus be seen that as far as the case at hand is concerned, the Commission could only have directed providing the information which the respondent had sought, provided such an information was actually available in the form of a record, maintained by the public authority concerned. The other powers conferred upon the Commission are not relevant for the purpose of the petition before this Court and, therefore, need not be considered. During the course of hearing before the Commission, it was informed that the only reason for not initiating disciplinary proceedings against Mr K.M. Somasundram was absence of instructions from the Competent Authority in this regard. Whether the Competent Authority was justified in not giving any instructions with respect to disciplinary proceedings against Mr K.M. Somasundram, despite his suspension or not is not a matter falling in the domain of Central Information Commission. The Commission has no jurisdiction to require that the proposal for initiating disciplinary proceedings against Mr K.M. Somasundram be forwarded to the concerned Minister under intimation to the Commission and the respondent before this Court and also direct that all efforts be made to issue chargesheet to him. The Commission would be travelling beyond its jurisdiction in giving directions of this nature. The only function which the Commission was to verify on the appeal filed

by the respondent was to ascertain whether any information sought by him was available with the petitioner before this Court and had been denied to the respondent or not. Once it was found that there was no record being withheld from the respondent and the only reason for not initiating disciplinary against Mr K.M. Somasundram was absence of instructions from the Competent Authority for initiating such proceedings, it was beyond the jurisdiction of the Commission to direct the petitioner to provide an affidavit to the respondent, giving the reasons for not initiating the disciplinary proceedings against Mr K.M. Somasundram and not issuing the chargesheet to him. The direction issued by the Commission, in my view, was wholly uncalled for and unnecessary. The Commission, in order to satisfy itself that a correct statement was being made before it in this regard, could have directed confirmation of the said statement, by way of an affidavit, to be filed before it, with copy to the respondent, but to provide an affidavit to the applicant under Right to Information Act is not envisaged under the provisions of the said Act.

It is true that no direction as such was given by the Commission, to initiate disciplinary proceedings against Mr Somasundram, but even recommendation to initiate disciplinary proceedings, under intimation to the Commission, which gives it the character of a direction, was not the function of the Commission. This is

more so when Mr. Somasundram was not a party before the Commission, and, therefore, had no opportunity to explain his position.

4. For the reasons stated hereinabove, the writ petition is allowed and the impugned order dated 05.10.2009, passed by the Central Information Commission is set aside, subject, however, to the condition that the petitioner shall file affidavit in this Court within two weeks, specifying the reasons for not initiating disciplinary proceedings against Mr K.M. Somasundram, who came to be suspended way back on 03.11.1995. The affidavit shall be filed by the officer, who was the Disciplinary Authority of Mr K.M. Somasundram and in case he has superannuated, the affidavit shall be filed by his successor.

Dasti.

V.K. JAIN, J

AUGUST 22, 2013
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