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

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Date of Decision: 21.11.2013

+ W.P.(C) 1590/2012

UOI ..... Petitioner

Through:Mr.Saqib with Mr.Akshay Chandra and Mr. Ravjyot Singh, Advocates

versus

RAKESH MEHROTRA ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The respondent before this Court vide application dated 30.3.2011 sought the following information from the Central Public Information Officer(CPIO) in Department of Personnel and Training (DOPT):-

"1. Pl link earlier file also dated 26/5/2010
2. DFA submitted dated 26/5/2010
3. Copy of the note may be added to the file dated 9/6/2010 and needful done 10/6/2010
4. Previous file on the subject not traceable. However a copy of the note approved by ---- at pp60.70 K attached and draft ACC note submitted dated 11/6/2010
5. Pl fair note dated 20/6/2010
6. Fair DO submitted on 23/11/2010
7. File submitted wrt direction of PMO at p.17/N(para2 ---) for

taking further necessary action 24.11.2010

8. Comment of the Deptt was sought on letter of Mr.Sushil Kumar MP.LS ------ now Department has submitted its comments. Reply of Deptt ------ at pp 88-98/c
9. Character and antecedents of R.K.Mehrotra received. He has been declared clear from vigilance angle in that report (pp-78-87/c) and note for CS submitted for approval dated 30/7/2010
10. Draft note dated 30/7/2010
11. Fair note dated 3/8/2010 and 5/8/2010
12. Another fair note as directed by EO dated 6/8/2010
13. Signed fair note dated 10/8/2010
14. Fair note date 1/7/2010
15. Para 16 has been modified as desired, submitted for consideration 2/7/2010
16. Pl fair dated 2/7/2010 by EO
17. Fair corrected note signed by EO dated 5/7/2010
18. Fair note submitted dated 25/6/2010
19. Fair modified note for consideration dated 28/6/2010.
20. Decision to ask the Ministry to get character and antecedent verification and then to put up to ACC dated 28/6/2010
21. DFA and fair note dated 29/6/2010
22. Letter to Ministry for character and antecedent verification report
23. Draft ACC note for approval dated 16/11/2010
24. As desired a note for consideration of second name in the panel submitted for consideration dated 16/11/2010(documents please).
25. File called back from MOS (PP) as per discussion with EO, note drafted (all documents please)
26. Pl communicate paragraph of NPIT to ministry immediately. (Document and letter to Ministry please)."

2. Some information was disclosed to the respondent vide communication dated 11th April, 2011. The respondent, however, was not satisfied with the information supplied to him and therefore preferred an appeal which came to be dismissed by the First Appellate Authority, vide order dated 18th May, 2011. The respondent thereupon

preferred a second appeal before the Central Information Commission which, by impugned order dated 28.2.2012 directed as under:-

> "4. During the hearing, the Appellant insisted that since the ACC had already decided and its decision already implemented, the matter was complete and over, and, therefore, the Cabinet papers could no longer be held back in accordance with the proviso to the subsection 1(i) of Section 8 of the Right to information (RTI) Act. On the other hand, the Respondent pointed out that in some other matter involving similar information, the Delhi High Court had granted a stay against the order of the CIC and, therefore, the ACC papers should not be disclosed till the matter was finally decided by the Delhi High Court. The Appellant, however, argued that the stay granted by the Delhi High Court would not apply to his case as, in this case, not only the ACC decision had already been complied with and the matter was complete but also because the court had not given any direction to the CIC not to allow disclosure of such information in every such case.
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> 5. We tend to agree with the arguments offered by the Appellant. In this case, there is no reason to withhold the information since the matter has already been decided by the ACC and is now complete and over. In conformity with the provisions of subsection 1(i) of Section 8 of the Right to Information (RTI) Act, now the desired information, namely, the entire material which had been placed before the ACC including the ACC note and all the enclosures should be disclosed. We direct the CPIO to provide the copies of all these documents to the Appellant within 10 working days of receiving this order."

3. Though, when examined on a standardize basis, the application filed by the respondent under RTI Act does not seem to be disclosing the precise information which he had supplied. It is quite apparent from the response given by CPIO in the light of 7 note sheets which he had made available to one Mr. Sudhikar under RTI Act that the petitioner knew what precisely was the information which the respondent was to give. A perusal of the impugned order would show that the only information which is being withheld from the respondent are ACC papers pertaining to appointment of Member in Telecom Regulatory Authority of India(TRAI). The petitioner is seeking to deny the aforesaid papers to the respondent on the ground that the information in question is exempt from disclosure under Section 8(1)(i) of RTI Act and also under Article 74(2) of the Constitution.

4. This issue recently came up for consideration before this Court in W.P(C) No.14069/2009, *Union of India* versus *Pramod Kumar Jain* [decided on 19.11.2013] and the following view was taken:

> "6. It would be seen from a conjoint reading of the main Clause (i) and the first proviso to the said Clause, that though there is a prohibition against disclosure of Cabinet papers, which would include record of deliberations of the Council of Ministers, Secretaries and other officers, such prohibition as far as RTI Act is concerned, is not for all times to come and has a limited duration till the Council of Ministers takes a decision in a matter and the matter is complete or over in all respects. Considering the context in which the words "the matter is complete or over" have been used it appears to me that once the decision taken by the

Council of Ministers has been given effect, by implementing the same, the prohibition contained in Clause (i) is lifted and the decision taken by the Council of Ministers, the reasons on which the decision is based as also the material on the basis of which the said decision was taken can be accessed under the Right to Information Act. Mr. Dubey, the learned counsel for the petitioner-Union of India has drawn my attention to the fact that the expression used in the main Clause is 'cabinet papers' whereas the first proviso refers only to the decision of the Council of Ministers, the reasons thereof and the material on which such decisions are based. The Cabinet comprises of the Prime Minister and the Cabinet Ministers whereas the Council of Ministers comprises not only the Prime Minister and the Cabinet Ministers, but also the Ministers of State and the Deputy Ministers. Therefore, the Council of Ministers is a larger body as compared to the Cabinet. Hence, once the decision taken by the Council of Ministers/Cabinet has been implemented, the decision taken by the said Council/Cabinet as well as the reason for such decision and the material on the basis of which the decision was taken cannot be withheld by the concerned CPIO.

7. Mr. Dubey points out that in Clause (i), Cabinet papers include record of deliberations not only of the Council of Ministers but also of the Secretaries and other officers but the proviso does not apply to the deliberations of the Secretaries and other officers, meaning thereby that even after a decision has been implemented, the deliberations of the Secretaries and other officers cannot be

disclosed. A careful perusal of the proviso would show that not only the decisions of the Council of Ministers and the reasons on which the said decisions are based but also the material on the basis of which the decisions are taken by the Council of Ministers are also required to be disclosed, once the decision has been implemented. Therefore, in case the deliberations of the Secretaries and/or other officers constitute the material which formed the basis for the decision of the Council of Ministers, the said deliberations of the Secretaries and/or other officers also cannot be withheld.

8. Mr. Dubey also draws my attention to Article 74 (2) of the Constitution of India which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court and submits that in view of the said prohibition, the decision taken by the Cabinet Committee on Appointments (ACC), the same being advice tendered to the President, cannot be directed to be disclosed. The question which arises for consideration from the submission made by Mr. Dubey is as to whether the decision taken by the Cabinet Committee on Appointments (ACC) on promotion of Additional Chief Engineers to the grade of Chief Engineers in MES of the Ministry of Defence amounts to "advice tendered by Ministers to the President" within the meaning of Article 74 of the Constitution or not. A similar issue came up for consideration before a Division Bench of this Court in Waris Rashid Kidwai Vs. Union of India & Ors. (1998) ILR Delhi 589. The

petitioner in that case filed a petition challenging the mode and manner of appointment to the post of the Chairman and Managing Director of Minerals & Metals Trading Corporation (MMTC). The procedure for filling up the said post was that the Public Enterprises Selection Board (PESB) used to lay down job descriptions, qualifications and experience for eligible candidates, shortlist candidates out of the eligible officers, hold interviews, make a panel of candidates selected as suitable for the posts and forward the same to the concerned Ministry for processing the case for approval of Appointments Committee of the Cabinet (ACC). The concerned Ministry would then process the case and forward the proposal to the Establishment Officer, Ministry of Personnel, Public Grievances and Pension who was the Secretary of the ACC for obtaining and conveying the ACC decision on the proposal. The ACC comprises the Prime Minister, the Home Minister and the Minister In-charge of the concerned Ministry. The Secretary, ACC would submit the proposal to the Home Minister and the Prime Minister through the Cabinet Secretary and the decision was finally approved/taken at the level of the Prime Minister and conveyed to the Ministry concerned by the Secretary, ACC. Mr. Arun Jaitley, counsel for the respondent contended before this Court that it cannot enquire into the respective opinion which the Members of the ACC may have expressed while considering cases of such appointments. In this regard, he contended that the decision of ACC was in the nature of advice tendered by the Council of Ministers to the President and, therefore, the Court cannot enquire

the question as to what advice was tendered. He also contended that ACC was constituted to conduct business of the Government as stipulated by Article 77 and its business was deemed to be a decision of the Council of Ministers and was in the nature of aid and advice to the President. Rejecting the contention, this Court *inter alia* held as under:

"20. ….It has, however, to be borne in mind that what is debarred to be enquired into is the aid and advise and not the material on which the advise is tendered by the Council of Ministers. That material cannot be said to be part of the advise and it is thus outside the exclusionary rule enacted in Article 74(2) of the Constitution (See: S.P. Gupta & others Vs. Union of India & Ors, and R.K. Jain Vs. Union of India & others,). Further, such an appointment does not call for any aid and advise to the President as contemplated by Article 74(1). It is only an appointment in the name of the President which is altogether a different matter. Such appointments cannot be said to be based on the advise of the Council of Ministers to the President and thus these appointments cannot be said to be protected under Article 74(2)….."

In view of the pronouncement of the Division Bench, there is no escape from the conclusion that the decision of the ACC in the matter of promotion of a Government servant does not constitute advice of the Ministers to the President within the meaning of Article 74 of the Constitution and, therefore, cannot be withheld if it is otherwise accessible under the provisions of the Right to Information Act."

5. Since the documents at Sl.No.3 to 5, 10 to 19 and 23 to 26 of the application dated 30.3.2011 filed by the respondent contain only the decision of the Cabinet Committee On Appointments and the material on the basis of the said decision was taken, the said information is required to be disclosed to the respondent. I, therefore, find no merit in the writ petition, and the same is hereby dismissed. No orders as to costs. All pending CMs also stand disposed of.

NOVEMBER 21, 2013/*ks* V.K. JAIN, J.