

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.6789 of 2008**

South Eastern Central Railway, Through its Divisional Railway Manager, Bilaspur Division, South Eastern Central Railway, Head Quarter, Bilaspur (CG)

---Petitioner**Versus**

1. Central Information Commission Through the Information Commissioner, Club Building, Old JNU Complex, New Delhi 110 067
2. Shri Ashok Kumar Pasayat, Sola Kohli, Sardar Building, Tikrapara, Bilaspur (CG)

---Respondents

For Petitioner	:	Mr.H.S.Ahluwalia, Advocate
For Respondent No.2	:	Mr.V.G.Tamaskar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****16/11/2017**

1. This writ petition is directed against the order dated 22.9.2008 (Annexure P/1) and order dated 24.10.2008 (Annexure P/2) by which compensation of ₹10,000/- collectively has been imposed against the petitioner.
2. Mr.H.S.Ahluwalia, learned counsel for the petitioner, would submit that compensation imposed under Section 19 (8) (b) of the Right to Information Act, 2005 (hereinafter called as "RTI Act") is unsustainable and bad in law.
3. On the other hand, Mr.V.G.Tamaskar, learned counsel for respondent

No.2, would support the impugned order.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

5. Section 19(8) (a) (b) of the RTI Act provides as under:-

“19(8) In its decision, 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 for other detriment suffered;”

6. A careful perusal of the aforesaid provision would show that Central Information Commission has authority and jurisdiction to compensate the complainant for any loss or other detriment suffered by him, but the

compensation payable under Section 19(8)(b) of the RTI Act must be “for any loss or other detriment suffered” on account of denial of information under the RTI Act .

7. The High Court of Delhi in the matter of N.T.P.C. Ltd Vs. Mohd. Samad

Khan¹ has held as under:-

“17. The ambit of the power under Section 19 (8)(b) has to be determined by the scope of the powers of the CIC generally under Section 19, and as an Appellate Authority in terms of Section 19 (1) to (8). The compensation payable under Section 19 (8)(b) is "for any loss or other detriment suffered", on account of the denial of the information under the RTI Act and not just about any loss or detriment suffered by the applicant. In the context of the present case if the CIC had found that the Respondent was unfairly denied by the NTPC, the information sought for by him, the CIC was next to determine the precise loss suffered by the Respondent on account of such denial of information. Thereafter it could pass appropriate orders to compensate the Respondent for the loss or detriment suffered. In the present case, there is no finding by the CIC that the NTPC had in its records a survey report which it unfairly denied to the Respondent. This factual determination was essential for the CIC to proceed to determine the loss suffered by the Respondent on account of the denial of such information. Thereafter under Section 19(8)(b) RTI Act it was in the discretion of the CIC to award compensation. Even while exercising that power a finding would have to be rendered by the CIC on the extent of loss, even approximately, suffered by the person to whom such information ought to have been furnished. This is because the compensation that has to be awarded under Section 19 (8)(b) is for the loss or the detriment suffered" on account of the denial of such information and not just about any loss or detriment suffered by such person. There is no such determination by the CIC in the present case.”

8. Therefore, what flows from Section 19(8)(b) of the RTI Act and decision of the Delhi High Court in **Mohd. Samad Khan (supra) is that the Commission has authority and jurisdiction to impose compensation only**

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on account of denial of information under the RTI Act, whereas in the instant case, the Commission has imposed compensation upon the petitioner without recording such finding and only finding recorded is that respondent No.2 is required to travel from Bilaspur to Delhi due to lapse on the part of the petitioner, therefore, he is entitled for compensation apart from travelling expenses, which is unsustainable and bad in law.

9. In view of the aforesaid discussion, the impugned order directing payment of compensation to the extent of ₹ 10,000/- is hereby set aside.
10. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-