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

\+ W.P.(C) 4152/2017

R.K. JAIN ..... Petitioner

Through: Mr Dinesh C. Pandey and Mr Rajeev Gurung, Advocates.

versus

CENTRAL PUBLIC INFORMATION OFFICER & ANR ..... Respondents

Through: Mr Aditya Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **10.10.2017**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 28.02.2017 (the impugned order) passed by the Central Information Commission (hereafter 'CIC') imposing a penalty of ₹5,000/- on respondent no. 2, the concerned Central Public Information Officer (hereafter 'CPIO').

2. The petitioner had filed the application dated 19.05.2014 under the Right to Information Act, 2005 (hereafter 'the Act') before the CPIO, Customs, Excise and Service Tax Appellate Tribunal (hereafter 'CESTAT') seeking certain information relating to copies of cause lists of benches at Delhi for the period 01.04.2014 to 23.05.2014 and other issues.

3. It is claimed that the said information was not provided to the petitioner and consequently, the petitioner filed a complaint before the CIC requesting the CIC to impose a penalty under Section 20(1) of the Act. The

CIC after issuing the notice as required under the proviso to Section 20(1) of the Act and after considering the explanation provided by the concerned CPIO (respondent no.2) passed an order imposing a penalty of ₹5,000/- on respondent no.2 and further directing that the same be deducted from the salary payable to him.

4. The petitioner's case is that once having rejected the explanation submitted by the CPIO (respondent no.2), the CIC was left with no discretion except to levy a penalty at the rate of ₹250/- per day, subject to maximum of ₹25,000/-. The petitioner contends that the CIC had grossly erred in restricting the penalty to only ₹5,000/- as the delay in providing the information was quantified for 485 days.

5. The question whether the CIC had the discretion to restrict the penalty or whether penalty as provided under Section 20 of the Act is mandatory, is no longer *res integra*. The said question was considered by a Division Bench of this Court in ***Anand Bhushan v. R.A. Haritash: ILR (2012) 4 Delhi 657*** and the relevant extract of the said decision is set out below:-

> "15. We may at the outset notice that a Division Bench of this Court in judgment dated 6th January. 2011 in LPA 782/2010 titled *Central Information Commission* v. *Department of Posts*, inspite of the argument raised that that Single Judge ought not to have reduced the penalty imposed by the CIC but finding sufficient explanation for the delay in supplying information, upheld the order of the Single Judge, reducing the penalty. Though Section 20(1) uses the word ‘shall’, before the words ‘impose a penalty of Rs. two hundred and fifty rupees’ but in juxtaposition with the words ‘without reasonable cause, malafidely or knowingly or obstructed’. The second proviso thereto further uses the words,

‘reasonably and diligently’. The question which arises is when the imposition of penalty is dependent on such variables, can it be said to be mandatory or possible of calculation with mathematical precision. All the expressions used are relative in nature and there may be degrees of, without reasonable cause, malafide, knowing or reasonableness, diligence etc. We are unable to bring ourselves to hold that the aforesaid provision intends punishment on the same scale for all degrees of neglect in action, diligence etc. The very fact that imposition of penalty is made dependent on such variables is indicative of the discretion vested in the authority imposing the punishment. The Supreme Court in *Carpenter Classic Exim P. Ltd.* v. *Commnr. of Customs (Imports)*, (2009) 11 SCC 293 was concerned with Section 114 A, Customs Act, 1962 which also used the word ‘shall’ in conjunction with expression ‘willful misstatement or suppression of facts’; it was held that provision of penalty was not mandatory since discretion had been vested in the penalty imposing authority. Similarly in *Superintendent and Remembrancer of Legal Affairs to Government of West Bengal* v. *Abani Maity*, (1979) 4 SCC 85, the words ‘shall be liable for confiscation’ in section 63(1) of Bengal Excise Act, 1909, were held to be not conveying an absolute imperative but merely a possibility of attracting such penalty inspite of use of the word ‘shall.. It was held that discretion is vested in the court in that case, to impose or not to impose the penalty.

16. Once it is held that the quantum of fine is discretionary, there can be no challenge to the judicial review under Article 226 of the Constitution, of exercise of such discretion, of course within the well recognized limits. If this Court finds discretion to have been not appropriately exercised by the CIC, this Court can in exercise of its powers vary the penalty. In the facts of the present case, we find the learned Single Judge to have for valid reasons with which we have no reason to differ, reduced the penalty. We, therefore do not find any merits in this appeal and dismiss the same. No order as to costs."

6. In view of the above, this Court finds no reason to interfere with the discretion exercised by the CIC. The petition is, accordingly, dismissed.

7. It is pointed out that respondent no.2 has also challenged the impugned order before the Punjab and Haryana High Court. In this regard, it is clarified that nothing stated in this order shall prejudice respondent's case for relief in that petition.

VIBHU BAKHRU, J

OCTOBER 10, 2017
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