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

+ W.P.(C) 5915/2017

UNION OF INDIA

..... Petitioner

Through: Ms Anjana Gosain with Ms Rabiya
Thakur, Advocates.

versus

COL NAVRAJ SINGH GREWAL AND ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.07.2017

CM No.24613/2017

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 5915/2017 & CM No.26612/2017

3. The petitioner (Union of India) has filed the present petition impugning an order dated 06.10.2016 (hereafter the impugned order) passed by the Central Information Commission (hereafter 'CIC') whereby the CIC partly allowed an appeal preferred by respondent no.1 (Col. Navraj Singh Grewal) against the order dated 23.01.2015 passed by the First Appellate Authority (FAA). By the said order dated 15.12.2015, FAA rejected respondent no.1's appeal against a letter dated 25.11.2014 whereby the petitioner's request for certain information was denied.

4. The petitioner claims that the impugned order passed by the CIC is

erroneous as the information directed to be supplied to respondent no.1 is contrary to paragraph 471 of the Army Regulations; Rule 184 of the Army Rules, 1954; and Section 8(1)(e) of the Right to Information Act, 2005 (hereafter 'the Act').

5. Respondent no.1 is a serving officer of the Indian Armed Forces and was sought to be tried under General Court Martial (GCM) under the aegis of HQ 7 Inf Div. In the GCM proceedings that were held on 30.01.2014, it was held that respondent no.1's trial was barred by limitation under the Army Act, and this decision was confirmed by the GOC-in-C, Western Command on 04.07.2014.

6. In the context of the aforesaid proceedings, respondent no.1, by a letter dated 27.10.2014, sought the following information under the Act: -

- "(a) Copy of the Report on Application of Trial (RAT) alongwith the Notings / Orders under Army Rule 37 based on which my GCM was convened.
- (b) Copy of recommendations and correspondence of Maj Gen Virendra Kumar, the GOC 15 Inf Div, on the Findings and Opinion of Court of Inquiry (C of I) conducted against me.
- (c) Copy of all File Notings pertaining to my case where Directions of GOC-in-C Western Command have been given as also Directions / Recommendations of GOC 11 Corp, GOC 7 Inf Div, Goc 15 Inf Div & Cdr 29 Inf Bde to include those since the beginning of C of I, Summary of Evidence (S of E), the GCM and thereafter.
- (d) Findings and Opinion of my C of I."

7. The Central Public Information Officer (CPIO), under the cover of his letter dated 25.11.2014, provided certain information to respondent no.1. However, admittedly, the information as sought by respondent no.1 was denied.

8. Aggrieved by the same, respondent no.1 preferred an appeal before the FAA, which was rejected on the ground that information pertaining to (a) Report on Application of Trial alongwith the Notings / Orders under Army Rule 37 based on which GCM was convened; (b) copy of recommendation and correspondence of one Major Gen. Virendra Kumar, GOC 15 Inf. Division on the findings and opinion of the Court of enquiry conducted; and (c) copy of all file notings pertaining to respondent no.1's case where direction of GOC-in-C, Western Command has been given as also directions/recomendatons of GOC, 11 Corps, GOC, 7 Inf Div, GOC 15 Inf Div, were exempted from the disclosure under Section 8(1)(e) of the Act.

9. The order dated 23.01.2015 was carried in appeal before the CIC. The CIC held that the information sought under paragraph 2(b) and 2(c) of the petitioner's RTI application were exempted from disclosure under Section 8(1)(e) of the Act and thus, respondent no.1's application was rightly rejected by the CPIO and the FAA. However, the CIC held that insofar as the information under sub-paragraph 2(a) and 2(d) is concerned, the same will not be exempted from disclosure under Section 8(1)(e) of the Act, since they pertain to enquiry against respondent no.1 (appellant therein). The operative part of the decision of the CIC is set out below:-

"Commission has perused the facts of the case on record and observes that exemption under 8(1)(e) has been appropriately applied by the CPIO for denying information sought vide sub paras 2(b) and 2(c).

However, Commission partially rejects invoking of Section 8(1)(e) for information on sub paras 2(a) and 2(d) as the inquiry pertains to the Appellant himself, Commission finds it appropriate to allow disclosure of said information. However, while partially accepting the CPIO's rationale of invoking Section 8(1)(e) Commission directs him to provide all available information sought in the said sub paras after appropriately blacking out the names of officers figuring in the Report except that of the Appellant.

Commission's direction should be complied within 15 days of the receipt of this order.

The appeal is disposed of accordingly."

10. Ms Gosain, learned counsel appearing for the petitioner submitted that CIC had erred in directing disclosure of the said information as it was contrary to paragraph 471 of the Army Regulations as well as Rule 184 of the Army Rules, 1954.

11. Paragraph 471 of the Army Regulations reads as under:-

"471. Confidential Nature of Reports- The reports by officers of the JAG's department are confidential and will not be communicated directly or indirectly to any authority lower than the authority to whom they are addressed. When proceedings are forwarded to lower formations or to units, such reports will be removed."

12. It is apparent from a plain reading of the above, that the said regulation only pertains to dissemination of information regarding reports by officers of the Judge Advocate General's Department (JAG Department).

Dissemination of such information to authorities who are lower in hierarchy than to whom the communications are addressed, is proscribed. Plainly, paragraph 471 of the Regulation has no application in case of information required to be provided under the Act. This is not a case of dissemination of information by general channels but on a specific request of the concerned officer. Undeniably, the information sought by respondent no.1 pertains to proceedings (GCM) initiated against him and thus, there is no question of withholding the same on the ground of the rank of respondent no.1.

13. The next aspect to be addressed is whether information sought by respondent no.1 is to be denied in terms of Rule 184 of the Army Rules, 1954. The said Rule is set out below:-

"184. Right of certain persons to copies of statements and documents.—(1) Any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution or defence at his trial.

(2) Any person subject to the Act whose character or military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid unless the Chief of the Army Staff for reasons recorded by him in writing, orders otherwise."

14. It is apparent from a reading of Rule 184 that it does not proscribe disclosure of information as sought by respondent no.1. Rule 184 is couched in affirmative terms and expressly provides that persons tried by the court-martial would be entitled to certain documents. The said Rule cannot be read

to proscribe disclosure of information not specifically indicated. Thus, the contention that the impugned order passed by CIC is contrary to Rule 184 is also unmerited.

15. The contention that the information directed to be disclosed by CIC is exempted under Section 8(1)(e) of the Act is also without merit. Section 8(1)(e) of the Act only proscribes a disclosure information, which is available to a person in his fiduciary capacity. The information sought by respondent no.1 pertains to his own case and Section 8(1)(e) of the Act would have no application in the given facts.

16. In view of the above, this Court finds no reason to interfere with the impugned order.

17. The petition and the application are, accordingly, dismissed.

VIBHU BAKHRU, J

JULY 17, 2017
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