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

Judgment pronounced on: 09.03.2018

+ W.P.(C) 2161/2018 & CM No.8924/2018

HITENDER KUMAR Petitioner

Through : Mr. Atul Ahlawat, Adv.

versus

UNION OF INDIA & ORS Respondents

Through : Mr. Jasmeet Singh, CGSC
with Mr. Srivats Kaushal,
Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

CM No.8924/2018

1. Allowed, subject to just exceptions.

W.P.(C) 2161/2018

2. Issue notice. Mr. Jasmeet Singh, who appears on advance notice says that given the order which I propose to pass, he does not wish to file a counter affidavit in the matter.

3. The petitioner has been denied information under the Right to Information Act, 2005 (in short 'the Act') on the single ground that he is not a citizen of India. The petitioner is an overseas citizen. As per the record, the petitioner has in his possession an OCI card.

3.1 It appears that the petitioner was employed with the

Consulate General of India, Sydney, Australia. The petitioner was engaged as Chauffeur-cum-Messenger.

3.2 The petitioner's services, however, was terminated in and about 2015.

4. The petitioner, being aggrieved by the fact that he was not paid the bonus and increment for 2014, took recourse to the Right to Information Act, 2005 (RTI Act) to seek information qua these aspects.

4.1 An application for this purpose was preferred by the petitioner on 22.2.2015. The CPIO (MEA), however, declined to give information to the petitioner vide his order dated 30.3.2015, on the ground that the petitioner was an Australian national. In this behalf, the CPIO (MEA) relied upon the provisions of RTI Act.

4.2 Being dissatisfied, the petitioner preferred an appeal with the First Appellate Authority via the online portal of DoPT. The appeal met the same fate.

4.3 The petitioner, however, did not give up and filed an original complaint with the Central Information Commissioner (CIC) on 25.4.2015. Vide order dated 23.6.2017, the complaint was rejected based on a proposal of the Deputy Registrar, CIC.

5. The operative part of order dated 23.6.2017 reads as follows:

“On perusal of available file/documents, it appears that the complainant, Shri Hitender Kumar, is a citizen of Australia/OCI. In terms of Section 3 of the RTI Act, 2005, a citizen of India, can seek information under the above Act, and therefore, the complainant, being a citizen of Australia/OCI is not entitled to seek information from any Public Authority.

In view of the above, it is proposed that we may dismiss the complaint on the ground that the complainant is not empowered to seek information under the RTI Act, 2005 which is applicable to Indian citizens only.”

(emphasis is mine)

6. Apparently, this proposal was counter signed by Member, CIC. It is this order which is assailed in the instant writ petition. On the face of it, the impugned order has been passed based on the proposal of a functionary of the CIC. There is no independent application of mind to the contentions of the petitioner. The Member, CIC has, as it appears on a facial reading of the impugned order, rubber-stamped as it were the proposal of the Deputy Registrar.

7. In my opinion the CIC performs *quasi* judicial function and, therefore, CIC could not have abrogated its duty to hear the petitioner on the judicial side and then passed an order on the complaint preferred by the petitioner.

8. It appears that the file containing the complaint was put up before the Member, CIC, who straight away approved the proposal without giving the petitioner an opportunity to represent his case.

9. In these circumstances the order dated 23.6.2017 is set aside with a direction to the CIC to reconsider the complaint and also the contentions of the petitioner including those advanced in the instant petition, albeit, in accordance with law.

10. Needless to say, nothing stated above will impact on the merits of the case.

11. The CIC is requested to dispose of the complaint at the earliest, though not later than 12 weeks from today.

12. Dasti.

RAJIV SHAKDHER, J

MARCH 09, 2018/mk