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

Date of decision: 29th August, 2018

+ LPA 369/2018

R K JAIN

..... Appellant

Through: Mr.T.Sudhakar, Adv. with Mr.Govind
Jee, Adv.

Versus

UNION OF INDIA

..... Respondent

Through: Mr.Jasmeet Singh, CGSC with
Mr.Aditya Madaan, Adv. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

Rajendra Menon, Chief Justice (Oral)

C.M.No.27556/2018 (exemptions)

Allowed, subject to all just exceptions

C.M.No.27555/2018 (delay)

For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA No.369/2018

1. Seeking exception to an order passed on 08.05.2018 by the learned writ Court dismissing a writ petition filed by the petitioner, this appeal has been filed. The facts in brief indicate that on 19.10.2013, the appellant had filed an application seeking information under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO). It seems that the CPIO came to the conclusion that it was not practicable to

provide the information and denied the same vide order dated 21.11.2013. However, the appellant was granted option to carry out an inspection and take out copies thereof. Aggrieved by the same, the appellant preferred an appeal under the RTI Act and the Appellate Authority did not interfere in the matter. At the instance of the appellant, however, further appeal was filed before the Central Information Commission (CIC), who decided the matter in favour of the appellant and directed for furnishing certified copies of the information and also recommended for taking disciplinary action against the Appellate Authority. Challenging this order of the CIC, writ petition was filed by the Union of India. In the writ petition it was their case that under Section 20(2) of the RTI Act, the CIC has no power to recommend for disciplinary action and the writ petition having been allowed by the writ Court, the matter has come to us in this appeal at the instance of the appellant who was the original applicant who sought information under the RTI Act.

2. The learned writ Court has found that the Appellate Authority who is termed as first Appellate Authority under the rules cannot be proceeded against under Section 20(2) of the RTI Act and no direction can be issued recommending disciplinary action or imposing penalty upon him. It is submitted that under Section 20(1) of the RTI Act it is only the CPIO who can be proceeded against for disciplinary action and as the first Appellate Authority is not the authority contemplated in Section 20(2), no action could be taken against him.

3. The learned counsel for the appellant took us through the various

provisions and argued that the expression 'first Appellate Authority' is nowhere defined under the Act. In fact, the same seems to be defined under the rules. However, an appeal under Section 19(1) of the RTI Act lies to an officer who is senior in rank to the CPIO. According to the appellant, the senior officer would also include and be known as a CPIO as there is no separate definition of the first Appellate Authority in the Act. He, therefore, argued that the words 'CPIO' appearing in Section 20(2) would also mean the Appellate Authority, that is to say that the Appellate Authority indicated in Section 19(1) would also be a CPIO and, therefore, the CIC had not committed any error in the matter.

4. The learned counsel for the Union of India pointed out that once the CPIO has been defined in the Act to mean the person who is to give the information at the first instance and when an appeal is provided to a senior officer in case of non-disclosure of information by the CPIO, contention of the appellant that the senior ranking officer, that is, the Appellate Authority would also be a CPIO cannot be accepted. He further argued that the intention of the legislature in making the CPIO liable for punishment by penal provision and recommendation for departmental inquiry is because of the fact that he is the custodian of the information and the document and he is responsible for supply of information and if it is found that he has not supplied the information in accordance with the requirement of law, it is he who is to be proceeded against for imposition of penalty or departmental action. As the first Appellate Authority only takes a decision with regard to the grievance canvassed in the appeal pertaining to non grant of information by the CPIO, it is argued that he cannot be termed as a CPIO.

5. We have considered the rival contentions and we find that the learned writ Court has gone into this aspect of the matter in detail from para-17 onwards.

6. Section 20 of the RTI Act reads as follows:-

“20. Penalties. – (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the

Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

7. From a perusal of the legislative intention and the broad architecture of the RTI Act, it is clear that under Section 20(1), the provisions have been made for imposing penalty against the CPIO and also making him liable for disciplinary action under Section 20(2), the words used are CPIO. In the RTI Act of 2005, the CPIO has been defined to mean as under:-

"2. Definitions:-

.....

(c) “Central Public Information Officer” means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;”

8. Section 19(1) of the Act reads as under:-

“19. Appeal.- Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

9. From the above, it is clear that Section 19(1) makes a provision for filing of an appeal if a person is aggrieved by a decision or inaction of the CPIO. The Appellate Authority in sub-section (1) of Section 19 is classified as an officer senior in rank to the CPIO meaning thereby that under the scheme of RTI Act, the CPIO is a different authority or officer different from an Appellate Authority to whom an appeal lies under sub-Section (1) of Section 19. If the legislative intent, as can be made out on a combined reading of various provisions are taken note of, it would be seen that the legislature only proposes for taking action against CPIO, and not against any other authority like the Appellate Authority or officer to whom the appeal lies. That being so, the legislative intent was that the penal provisions are to be implemented or enforced only against the CPIO and not against any other authority like the senior ranking officer or the Appellate Authority who decides the appeal under Section 19(1). If this was not the legislative intention, the words appearing in Sections 19(1) and (2) would have been differently worded and the construction of the statutory provision would have been entirely different. If the argument canvassed by the petitioner was to be accepted then by that interpretation, we would be expanding the meaning of a CPIO and we would be adding something more into the definition of CPIO than the one as was conceived by the legislature. This is not permissible under law and when the CPIO is only indicated to be officer against whom penal action can be taken under Section 20, we cannot read

into the said statutory provision anything more by supplying words or meaning which would enlarge the scope of the penal provisions under Section 20. That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information and in case of default or dereliction on his part, the penal action is to be invoked against him only. The Appellate Authority is not the custodian of the information or the document. It is only a statutory authority to take a decision on an appeal with regard to the tenability or otherwise of the action of the CPIO and, therefore, there is a conscious omission in making the Appellate Authority liable for a penal action under Section 20 of the RTI Act and if that be the scheme of the Act and the legislative intention, we see no error in the order passed by the learned writ Court warranting reconsideration.

10. The appeal is, therefore, dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 29, 2018

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