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

+ W.P.(C) 5549/2017

R.K. JAIN

..... Petitioner

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

versus

CENTRAL PUBLIC INFORMATION OFFICER
& ANR

..... Respondents

Through: Mr Sanjeev Narula, Senior Standing
Counsel for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.01.2018**

1. The petitioner has filed the present petition impugning an order dated 03.03.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC'), whereby the penalty proceedings initiated against respondent no. 2 under Section 20(1) of the Right to Information Act, 2005 (hereafter 'the Act'), had been dropped on the sole ground that respondent no.2 had retired from service.

2. The learned counsel for the petitioner submits that the levy of penalty under Section 20(1) of the Act is in the nature of a personal penalty on the concerned officer and is not contingent on whether he or she is continuing in service or not.

3. Section 20(1) of the Act reads as under:-

“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.”

4. It is apparent from the above that the penalty imposed on the State Public Information Officer or the Central Public Information Officer is a penalty imposed on the concerned officer and is not a penalty on the concerned public authority. There is, thus, much merit in the petitioner’s contention that the CIC’s decision holding that no penalty could be imposed on respondent no. 2 on account of him having retired from service is erroneous.

5. Having stated the above, it is also necessary to observe that in terms of the proviso to section 20(1) of the Act, respondent no.2 was entitled a

reasonable opportunity of being heard before any penalty could be imposed on him. The expression “reasonable opportunity” obviously implies that the concerned PIO must be provided a real and meaningful opportunity to defend himself. In the present case, it is noticed that respondent no. 2 had expressed his helplessness in providing further explanation as he did not have access to the relevant records of the public authority. Concededly, respondent no. 2 had superannuated from services with the public authority and, thus, was not in a position to provide the necessary explanations.

6. Clearly, in such circumstances, unless effective orders were passed enabling respondent no.2 to access the relevant records, no penalty against respondent no.2 could have been imposed. Since, no such orders were issued by CIC, this Court is of the view that no penalty could have been imposed on respondent no.2.

7. Given that considerable time is elapsed, this Court is of the view that no effective purpose would be served by remanding the matter to the CIC and the matter ought to be put to rest. In view of the above, this Court is not inclined to exercise its discretion to interfere with the operative part of the impugned order.

8. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

JANUARY 03, 2018
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