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

Date of Decision: 8.5.2018.

+ **W.P.(C) 9493/2015 & CM APPL 22272/2015**

UNION OF INDIA

..... Petitioner

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

versus

R.K. JAIN

..... Respondent

Through: Mr. T. Sudhaker, Adv

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

Preface

1. The core question, which is raised in this writ petition, pertains to the power of Central Information Commission (CIC) to recommend disciplinary action against the First Appellate Authority (FAA).
2. It is the contention of the petitioner/Union of India that no such power is vested in the CIC.
3. On the other hand, the respondent contends to the contrary.
4. The background in which aforesaid question has arisen is, briefly, sketched out hereafter.
5. On 19.10.2013, the respondent had filed an RTI application seeking notings in respect of his earlier RTI applications. Furthermore, the name and designation of each of the Central Public Information Officer

(CPIOs)/deemed CPIOs and other officers who had dealt with each of his RTI applications. In addition thereto inspection of all files, records and documents and copies of related notings was also sought.

5.1 This apart, the respondent also sought information with regard to the staff assigned and other information pertaining to the office of the Attorney General of India; information pertaining to opening of registers in the Administrative/Cash sections of the Departments of Legal Affairs; and information with regard to foreign and domestic tours of Ministers and officers of the rank of Joint Secretary and above.

5.2 Since the concerned, CPIO came to the conclusion that it was not practicable to provide the wide array of information sought by the respondent, the request was denied vide order dated 21.11.2013. However, while doing so, the respondent was invited to carry out an inspection and to take copies of thereof after he had inspected the record.

5.3 This aspect of the matter is reflected in paragraph 7 of the impugned order dated 12.11.2014 passed by the CIC.

6. Be that as it may, the respondent being aggrieved, he preferred an appeal with the FAA, which was disposed of vide order dated 26.12.2013. Via the said order, FAA sustained the decision of the CPIO.

6.1 For the sake of convenience, the operative part of the FAA's order is extracted here:-

“....6. I have assessed the facts and circumstances of the case and come to the conclusion that the CPIO, the respondent has acted as per provisions of Act. The respondent has submitted the original record before the First Appellate Authority it appears that appellant wants information regarding matter of record coming under Section 7(8) of RTI Act. For the safety and preservation of the record and monitoring the discipline in the

system of administration it is necessary that both parties should consider about Section 7(9) of RTI Act which is the pulse of the Act. We should protect pulse for the survival of the Act. Hence statute does not permit to leave unsafe the record which is the base for providing for information.

Hence, in view of above the order dated 21.11.13 passed by the Respondent is upheld. No penal action is required for Respondent. Appellant may kindly note that if in future any information coming under Section 7(9) is sought by him, his request will be rejected, ab initio. Hence, the appeal is rejected.

7. The appellant may kindly note that since the proceeding has been closed, no further hearing may be conducted in this matter. Moreover, if there is any grievance against the order of the Appellate Authority he may file a second appeal before the Hon'ble CIC sitting at 2nd Floor, August Kranti Bhawan, Bhikaji Cama Palace, New Delh-110066 (within 90 days) i.e. period as prescribed under the provision of RTI Act, 2005.....”

7. The respondent, however, escalated the matter further and filed an appeal with the CIC.

7.1 Pertinently, the CIC, on its part, while passing the order whereby appeal was allowed, recommended disciplinary action against the FAA. In addition thereto, the CIC directed the petitioner to furnish certified copies of the information sought by the respondent in response to his RTI application dated 19.10.2013 within 21 days of the receipt of the order. Furthermore, certain other recommendations were made by the CIC with which, one is, presently, not concerned, at least in these proceedings.

7.2 Insofar as, recommendation of disciplinary action against the FAA was concerned, the same is contained in paragraph 14 of the CIC's order, which is extracted hereafter for the sake of convenience :-

“ 14. The Commission observes: Passing orders in first appeal without hearing or sending hearing notice is illegal and will render the order invalid. The Commission sets aside the order of First Appellate Authority for violating RTI Act and breach of natural justice by denying the appellants a chance of presenting his case and by raising entirely a new defence which was never claimed. Commission finds it deserves action though the concerned officer retired from service and recommends Public Authority to initiate disciplinary action against the concerned FAAO for acting totally against the RTI Act in this case.”

(emphasis is mine)

8. The petitioner being aggrieved has approached this court by way of the instant writ petition.

Submissions of counsel

9. Mr. Jasmeet Singh, has advanced arguments on behalf of petitioner, while Mr. T. Sudhaker has made submissions, on behalf of respondents.

10. It is Mr. Jasmeet Singh's submission that the CIC does not have the jurisdiction to recommend disciplinary action against the FAA. For this purpose, Mr. Jasmeet Singh has drawn my attention to the provisions of sub section (2) of section 20 of the RTI Act, 2005 (in short '2005 Act').

10.1 According to Mr. Jasmeet Singh the power to recommend disciplinary action vests in the CIC only qua CPIO. It is learned counsel's submission that since it is a penal provision it has to be construed strictly.

11. On the other hand, Mr. Sudhaker contends to the contrary. Learned counsel says that purpose and object of the 2005 Act has to be gathered from the scheme of the said Act. It is the submission of Mr. Sudhaker that, if the stand taken by the petitioner is accepted then, the CIC would be left powerless and would not be able to enforce orders issued to extricate information in cases where there is procrastination or obduracy.

11.1 Furthermore, learned counsel says that the CIC has not only administrative powers but also *quas-judicial* powers under the 2005 Act and therefore, the power to recommend disciplinary action against the FAA ought to be read into the scheme of the said Act. In this context, Mr. Sudhakar says that the definition of the term CPIO would take within its fold FAA as well. In this regard, Mr. Sudhakar pointed out that the 2005 Act did not advert to the expression First Appellate Authority (FAA), and that, this expression finds mention in the Right to Information Rules, 2012 ('2012 Rules') framed under the 2005 Act. For this purpose, my attention has been drawn to the rule 2(c) of the 2012 rules.

11.2 Following same line of argument, my attention is drawn to sub section (1) of Section 19 of the 2005 Act which, *inter alia*, adverts only to the fact that if a person is aggrieved by the decision of CPIO, he would have the right to file an appeal before the person above the rank of the CPIO. There is no express reference to FAA.

12. In sum, Mr. Sudhakar contends that this court should construe the act in such a manner that its purpose and object is fulfilled and that the process of disclosure of information should be made robust, having regard to the scheme of the 2005 Act.

13. In support of his submission, Mr. Sudhakar has relied upon the judgment of the Supreme Court in the matter of *Namit Sharma Vs Union of India* (2013)1 SCC 745. In particular, Mr. Sudhakar, has relied upon observations made in paragraph 16, 84 and 85 of the said judgment.

Reasons

14. I have heard the learned counsel for the parties and perused the record.

15. In my view, as indicated right at the outset, the only issue which arises for consideration in the present proceedings is whether the CIC is vested with the power to recommend disciplinary action against the FAA.

16. Mr. Sudhaker in my view is right that the 2005 Act does not use the expression FAA. The expression FAA is defined in rule 2(c) of the 2012 rules which reads as follows:-

“First Appellate Authority” means an officer in the public authority who is senior in rank to the Central Public Information Officer to whom an appeal under sub-section (1) of Section 19 of the Act lies;”

17. If one were to transpose this definition to sub section (1) of section 19, one would be able to gather that, though, the expression FAA is not specifically used, it alludes to the said authority. Therefore, the submission of Mr. Sudhakar that CPIO and FAA is one and the same authority or the term CPIO would subsume FAA, in my view, cannot be accepted.

18. Section 19 (1) of the 2005 Act, inter alia, provides for an appeal to the FAA, in case, a person is aggrieved by the decision recorded by the CPIO. Likewise the provision for a second appeal to the CIC against the decision of the FAA is made in sub section (3) of section 19 of the 2005 Act. Thus, it is clear that the 2005 Act provides for a two-tier appeal mechanism.

19. Therefore, having regard to this broad architecture of the 2005 Act, one can gather that the legislature has consciously made only the CPIO amenable to penalties under section 20 of the 2005 Act. Under sub section (1) of Section 20 of the 2005 Act, pecuniary penalty can be imposed on the CPIO. While under sub-section (2) of Section 20, the CPIO is also liable to be called out for disciplinary action, if a recommendation in that behalf is

made by the CIC or the State Information Committee ('SIC')

20. I agree with Mr. Jasmeet Singh that since these are penal and/or provisions having grave civil consequences they have to be construed strictly.

21. Having said so, I do concede that Mr. Sudhaker has a point, inasmuch, as perhaps, the act requires a re-look, so that more teeth could be given to the CIC and the SIC with regard to their supervisory jurisdiction over the FAA. That being said the cure in that behalf does not lie with the Court. It is the legislature that needs to examine the issue as it is an aspect which squarely falls within its domain.

22. The judgment cited in the matter of *Namit Sharma*, in my view, does not deal with the issue at hand and therefore, for the aforesaid reasons, I am of the opinion that in so far as, the impugned order recommends disciplinary action against the FAA, it needs to be set aside to that extent.

23. The writ petition is disposed of in the aforesaid terms.

24. The CIC's order dated 12.11.2014 is modified to the extent indicated above.

RAJIV SHAKDHER, J

MAY 08, 2018

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