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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 11092/2017 & CM Nos.45346/2017,
45348/2017 & 2610/2018

THE CENTRAL PUBLIC INFORMATION OFFICER, CENTRAL
BUREAU OF INVESTIGATION, NEW DELHI Petitioner

Through: Mr Rahul Sharma and Mr C. K.
Bhatt, Advocates.

versus

CENTRAL INFORMATION COMMISSION
AND ANR. Respondents

Through: Mr Anurag Pandey, Advocate for R-
2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **02.02.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 09.06.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') allowing the second appeal (Appeal No.CIC/SB/A/2016/001171/MP) preferred by respondent no.2 under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC rejected the petitioner's contention that the Central Bureau of Investigation (hereafter 'the CBI') was outside the purview of Section 24 of the Act and was therefore not obliged to disclose

the information as sought for by respondent no.2. Accordingly, the petitioner was directed to disclose the information as sought for by respondent no.2.

3. Briefly stated, the relevant facts necessary to address the controversy are as under:-

3.1 Respondent no.2 is an Officer with the CBI and is currently posted in STF, CBI (H.O.), New Delhi. Respondent no.2 was transferred from Imphal to Delhi on 12.09.2013. The CBI initiated departmental proceedings against respondent no.2 under Rule 14 of the CCA (CCS) Rules, 1965. The petitioner further claims that the allegations made against respondent no. 2 are grave as well as sensitive in nature.

3.2 Respondent no.2 filed an application dated 01.02.2016 under the Act seeking certain information relating to the disciplinary proceedings - Regular Departmental Action (RDA) for major penalty - initiated against him. The petitioner declined to disclose the information sought on the ground that the CBI was placed in the Second Schedule to the Act and thus was outside the purview of the Act.

3.3 Respondent no.2 filed an appeal under Section 19 of the Act before the First Appellate Authority which was also rejected by an order dated 17.03.2016.

3.4 Aggrieved by the same, the respondent no.2 preferred a second appeal (CIC/SB/A/2016/000656/MP) before the CIC which was also rejected by an order dated 16.03.2017.

3.5 Respondent no.2, thereafter, once again filed an application dated 29.04.2016 under the Act seeking certain information relating to the RDA for major penalty initiated against respondent no.2.

3.6 Respondent no.2's request for information was denied for the same reason as it was denied earlier; that is, the CBI was outside the purview of the Act by virtue of Section 24 of the Act. Respondent no.2's first appeal against the denial of information did not meet with any success and was rejected by the First Appellate Authority by an order dated 24.05.2016.

3.7 Respondent no.2 preferred the second appeal under Section 19(3) of the Act, which was allowed by the impugned order.

4. It is apparent from the plain reading of the impugned order that the CIC was of the view that the exclusionary clause of section 24(1) of the Act was not available in respect of information sought by its own officials regarding their service matters. The CIC held that since the matter involved the case of the CBI's official (respondent no.2), he had the right to know information regarding his case. The CIC further held that the petitioner had to prove that the information sought for by respondent no.2 was of the nature as specified under Section 24 of the Act. The relevant extract of the impugned order is set out below:-

“6. However, the matter at present involves the case of CBI's own official and the appellant has a right to know about his own case and a public authority which seeks to claim the exemption u/s 24 of the Act from disclosure of information, available with it and pertaining to its own employee/official, has to show/prove that the information sought is of the nature specified in Section 24 of the Act, to the satisfaction of the

Commission. The CPIO has, without applying his mind and keeping in view the very object of the RTI Act, 2005 r/w Section 24, denied information to the appellant on no legal grounds. The decision of the Hon'ble Delhi High Court, in the case of B.S. Mathur vs. PIO, is relevant in this regard:

“19. The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception”

7. The Commission, therefore, directs the CPIO to revisit the appellant's RTI application and reply to him, point wise, keeping in view the provisions of the RTI Act, 2005. The appeal is disposed of.

5. Before proceeding further, it would be relevant to refer to Section 24(1) of the Act, which is set out below:

“24. Act not to apply in certain organizations.—(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be

provided within forty-five days from the date of the receipt of request.”

6. A plain reading of Section 24(1) of the Act clearly indicates that it is an exclusionary clause and all intelligence and security organisations specified in the Second Schedule of the Act are excluded from the purview of the Act. The only exemption carved out is by the First Proviso to Section 24(1) of the Act. In terms of the said proviso, all information pertaining to the allegations of corruption and human rights violations are not within the exclusionary clause. Thus, notwithstanding, that CBI is excluded from the purview of the Act by virtue of Section 24(1) of the Act, it is nonetheless obliged to disclose the information pertaining to the allegations of corruption and human rights violation. Obviously, this is subject to the other provisions of the Act including Section 8(1) of the Act.

7. Mr Anurag Pandey, the learned counsel appearing for respondent no.2 contended that the information sought for by respondent no.2 pertains to the disciplinary proceedings, which had commenced in 2011 but were not being proceeded with. And, in the meanwhile, respondent no.2's promotion had been withheld solely due to pendency of the said proceedings. He earnestly contended that this was causing respondent no.2's immense distress and the same fell within the scope of the expression “human rights violations” as used in the first proviso to Section 24(1) of the Act.

8. The contention advanced on behalf of respondent no.2 is unmerited. The information sought for by respondent no.2 pertains to a service matter and the same cannot by any stretch be termed as “violation of human rights”.

9. The expression 'Human Rights' denotes certain inalienable rights which every individual has by virtue of being a member of the Human Family. In December, 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights. In December, 1965 the UN General Assembly adopted two covenants for observance of Human Rights: (i) The International Covenant on Civil and Political Rights; and (ii) Covenants on Economic, Social and Cultural Rights. India is a party to the said covenants.

10. India has also enacted The Protection of Human Rights Act, 1993 to provide for better protection of human rights and matters connected therewith or incidental thereto. The expression 'Human Rights' is defined under Section 2(1)(d) of the said Act to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".

11. The expression 'Human Rights Violation' as used in proviso to Section 24(1) of the Act cannot be read to extend all matters where a person alleges violation of fundamental rights. Plainly, the said expression cannot be extended to include controversies relating to service matters. The grievances that the petitioner has in respect of the disciplinary proceedings in question do not fall under the ambit of human rights violations.

12. ***In Director General and Anr vs Harender: WP(C) 5959 of 2013 decided on 16.09.2013***, a co-ordinate bench of this Court had held that "No violation of human rights is involved in service matters, such as promotion, disciplinary actions, pay increments, retiral benefits, pension, gratuity, etc."

13. In view of the above, the impugned order directing the petitioner to

disclose the information sought for by respondent no.2 cannot be sustained.

14. It is also relevant to state that the CIC in the earlier round had rejected respondent no.2's second appeal against denial of information. The relevant extract of the order dated 16.03.2017 passed by CIC in Appeal No. CIC/SB/A/2016/000656/MP reads as under:-

“5. On hearing both the parties and going through the available record, the Commission finds that the appellant had not substantiated allegation regarding corruption and human right violations. Therefore, the respondent authority has appropriately claimed exemption. The Commission further notes that while there was no delay on the part of the CPIO, almost a month had been taken for placing the RTI application before the CPIO. The Commission, therefore, recommends to the competent authority to streamline the office processes relating to handling of RTI applications. The appeal is disposed of.”

15. Concededly, the nature of information sought, the denial of which was subject matter of the said appeal (Appeal No. CIC/SB/A/2016/000656/MP), is the same as the subject matter of respondent no.2's application dated 29.04.2016. Thus, clearly, the CIC fell in error in not referring to and following its earlier decision.

16. In view of the above, the petition is allowed and the impugned order is set aside. The pending applications are also disposed of with the aforesaid observations. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 02, 2018/pkv