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

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Date of Decision: 16.10.2019

+ W.P.(C) 2874/2014

CPIO DELHI CANTONMENT BOARD Petitioner
Through Mr.Ankur Mishra, Adv.

Versus

CENTRAL INFORMATION COMMISSION Respondent
Through Mr.S.C.Singhal, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. Present writ petition is filed by the petitioner seeking to quash the impugned order of the Central Information Commission dated 3.12.2013.
2. Respondent No.2 who is an employee of the petitioner, Delhi Cantonment Board on 17.09.2012 moved an application seeking detailed information from the office of the Delhi Cantonment Board. As CPIO delayed and did not provide necessary information, the respondent No.2 filed an appeal with First Appellate Authority. The First Appellate Authority also recorded that the information be provided to the respondent by CPIO. On 16.11.2012 as the respondent still did not get the information, an appeal was filed before CIC. It is a matter of fact that information was provided to respondent No.2 on 28.02.2013.
3. The grievance of the petitioner is limited to the order dated 3.12.2013 of CIC by which due to delay of 142 days in furnishing information to the

respondent a penalty of Rs.25,000/- was imposed on the CPIO and the same was to be deducted in five equal instalments from her salary.

4. It is the submission of learned counsel for the petitioner that all necessary information has been provided, though this aspect has been denied by the learned counsel appearing for respondent No.2.

5. I have heard learned counsel for the parties.

6. The case of the petitioner before the CIC was that admittedly the application was received by the CPIO on 17.09.2012. There is no doubt, there is a delay in giving the information, as the information was provided to respondent No.2 on 28.2.2013. However, the case of the petitioner is that, on receipt of the application, the CPIO had forwarded the application to the Assistant Office Superintendent. The Assistant Office Superintendent provided the requested information to the CPIO on 24.9.2012. However, the file was not in the possession of the CPIO as the dealing hand took the key of the almirah in which response to the RTI application was kept. The dealing hand, who was employed on a daily wage basis left the job without prior intimation. It was only subsequently, when the lock of the almirah was broken, that the said response was retrieved and the requisite information was provided to the respondent No.2 on 28.2.2013.

7. Learned counsel for the petitioner has pointed out that the dealing hand in question, namely, Mr.Vibhu Raj was employed on 10.10.2011 on contract basis as a spokesperson cum public relation officer (PRO). He was assisting the CPIO. Copy of the appointment letter has been placed on record.

8. The Assistant Office Superintendent provided the requisite information and forwarded it to Vibhu Raj, the dealing hand on 24.9.2012.

The abovesaid information was received by Mr.Vibhu Raj and receipt regarding the same has been endorsed on the document placed on record. Vibhu Raj left his job without handing over charge and without intimation. Hence the delay in supply of information to Respondent No.2.

9. Learned counsel for respondent No.2 has vehemently argued that the facts placed on record are sketchy and do not show any bona fide on the part of respondent No.2.

10. In my opinion, this court need not conduct a detailed trial of the facts in issue. Copies of relevant documents have been placed on record and the reasons for delay are stated on oath. There are no reasons to disbelieve the reasons for delay as stated. It is also a matter of fact that the CPIO has taken premature retirement in 2013 and is no longer in employment of the petitioner.

11. Section 20(1) of the RTI Act reads as follows:-

“Section 20 (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.”

12. Reference may be had to the judgment of a Coordinate Bench of this court in the case of ***Registrar of Companies & Ors. vs. Dharmendra Kumar Garg & Anr., ILR (2012) 6 Del. 499*** where the court held as follows:-

“61 The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfil their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

13. Reference may also be had to the judgment of the Division Bench of the Allahabad High Court in the case of ***Kalp Nath Chaubey vs. Information Commissioner, Central Information Commission & Ors., (2010) 79 ALR 359*** where the Division Bench held as follows:-

“11. The order in proceeding under Section 20 of the Right to Information Act, 2005 is an order of penalty and the said power can be exercised only when the Central Information Commissioner at the time of deciding any complaint or appeal is satisfied that without any reasonable cause the Central Public Information Officer has refused to receive the application or has not furnished the information within the time specified under sub-section (1) of Section 7 or mala fide denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information. A perusal of the different grounds, which have been made for invoking the power of penalty indicate that there has to be finding that there was no reasonable cause or knowingly or mala fide incorrect or incomplete information was given. The penalty proceedings are quasi judicial proceedings where the Commission is entrusted with the power to impose penalty.....”

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15. Section 20 of the Right to Information Act, 2005 which empowers the Central Information Commissioner to impose penalty has to be more stringently observed. For imposing penalty an opinion has to be formed that the Public Information Officer without any reasonable cause has not furnished the information within the time specified. The formation of the opinion has to be on the basis of objective consideration. The opinion has to be formed on the basis of relevant materials. The formation of the opinion should disclose materials on the basis of which the opinion/conclusions are formulated. We are of the view that the opinion as contemplated under Section 20(1) of the Right to Information Act, 2005 for imposing penalty has not been formulated by the Central Information Commissioner.

16. An authority, when exercises power to impose penalty, is bound to give reasons for conclusion. Merely repeating the words given in the sections does not satisfy the requirement of law. The Public Information Officer may have committed lapse bona fide or mala fide, there may or may not be a reasonable cause but the authority has to advert to the cause shown by the officer before imposing penalty, without adverting

to the relevant cause shown by the Public Information Officer, the penalty cannot be imposed. It is true that Right to Information Act, 2005 is a beneficial piece of legislation and the same has been enacted to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authority. The provisions of the said Act have to be implemented in a manner as to achieve its object.”

14. Hence, it is only where a CPIO has failed to furnish information within the time prescribed without reasonable cause or malafidely etc. that the penalty may be imposed.

15. In my opinion, in the light of the facts as stated above, a clear bonafide explanation is given to explain the delay. Keeping in view the documents and the averments made on affidavit by the petitioner, in my opinion, it is a fit case where no penalty should be imposed.

16. In view of the above, the present petition is allowed. The cost of Rs.25,000/- as imposed on the CPIO is quashed. Petition stands disposed of.

JAYANT NATH, J

OCTOBER 16, 2019

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