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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 342/2017**
VINOD SURANA Petitioner
Through: Ms. Ritwika Nanda, Adv. with
Mr. Anshul Rawat, Adv.
versus

CENTRAL INFORMATION COMMISSION AND ORS
..... Respondent
Through: Mr. Gaurang Kanth, CGSC with
Mr. K.K. Pukhral, SO, Legal Cell,
CIC

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **15.03.2019**

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the aforesaid facts and circumstances, the Petitioner most respectfully prays that this Hon'ble Court may graciously be pleased to:

a) Issue an appropriate writ for quashing the Impugned Letter/Reply dated 12.08.2015 (Annexure P-1) issued by the Respondent No.2 to the Petitioner;

b) Issue a writ in the nature of “MANDAMUS” by directing the Respondents to trace the file of the Petitioner's second appeal in case bearing File No.CIC/AT/A/2010/000363 and furnish the information sought by the Petitioner in his RTI Application dated 26.09.2014;

c) Direct the Respondents to place the entire record (s) File No.CIC/AT/A/2010/000363;

d) Issue a writ in the nature of “MANDAMUS” directing the respondent No. 1 to conduct an enquiry into the entire matter to understand as to how the file of the Petitioner’s second appeal in case bearing File No.CIC/AT/A/2010/000363 is not being located, to identify the persons responsible for the alleged disappearance of the said file and to take appropriate legal actions against such persons;

e) pass such further and other orders and issue such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The facts as noted from the writ petition are, the father of the petitioner Mr. P.S. Surana, Advocate was, on two occasions, recommended for elevation as a Judge of the Madras High Court. It appears, on both the occasions the elevation could not take place. The petitioner, desirous of obtaining the information in respect of the reasons for not proceeding with the recommendations for elevation, on October 27, 2009 made an application before the Central Public Information Officer, Ministry of Law & Justice whereby he sought information in respect of all the records pertaining to the said recommendations including the certified copies of documents recording reasons as to why the said recommendations were not proceeded with.

3. The CPIO on November 20, 2009 has replied to the aforesaid application of the petitioner by stating that it was not possible to disclose the information sought by the petitioner. In other words, the information sought

by the petitioner was declined on the ground that the information sought attracts Section 11 and Section 8(1)(e) of the Right to Information Act, 2005. Being aggrieved by the reply of the CPIO dated November 20, 2009, the petitioner on December 23, 2009 preferred a first appeal to the designated Appellate Authority under Section 19 of the RTI Act. The Appellate Authority, vide order dated February 05, 2010 disposed of the appeal inter-alia holding that the decision of the High Court in a similar matter was awaited.

4. Against this order, the petitioner approached the Chief Information Commissioner, Central Information Commission challenging the validity of the order of the Appellate Authority, dated February 05, 2010. The matter was registered in the CIC as Case No. CIC/AT/A/2010/000363. It is the case of the petitioner that the respondent No.1-CIC through its OSD and Assistant Registrar issued an intimation to the concerned parties including the petitioner herein that the hearing of the case is scheduled through video conferencing on August 24, 2010 at 12.30 pm. It is also his case that the hearing took place through video conferencing on that day in the presence of the parties. After the said date of hearing, the decision in the matter was not communicated to the petitioner for inordinately long period of time for the

reasons best known to the concerned authorities.

5. It is the case of the petitioner that he visited the website of the CIC to check the status of his Second Appeal. He found from the website that the decision in the said matter was announced on January 31, 2013. In order to obtain a copy of the decision in his second appeal, the petitioner initially wrote a letter to the Registrar, CIC requesting him to furnish him a copy of the decision announced in the second appeal. It is the case of the petitioner, despite the said request, the certified copy was not provided to him. Accordingly, he was constrained to file an application under the RTI Act on September 26, 2014 with the respondent No.1 seeking the certified copy of the decision. In reply thereto, the Deputy Registrar of CIC issued a letter dated November 05, 2014 to the petitioner informing him that the concerned File bearing No.CIC/AT/A/2010/000363 is not available with the concerned Registry as the same was dealt with by the erstwhile registry and in the absence of the file, it is not possible to furnish the required information by the Registry.

6. Being aggrieved by the reply of the Deputy Registrar (CPIO), the petitioner preferred a first appeal before the Appellate Authority on March 27, 2015 praying for a direction to the CPIO to furnish the information

sought by the petitioner. The first Appellate Authority in the appeal preferred by the petitioner had ordered the then CPIO to trace the concerned file within five days and provide the information to the petitioner herein. It is the case of the petitioner that instead of tracing the file and providing the information, the CPIO again vide letter dated August 12, 2015 stated that due to non-availability of the record, it is not possible to furnish the information. It is under these circumstances, this petition has been filed.

7. A short affidavit has been filed by the respondents, wherein in paras 1 to 4, the following has been stated:-

“1. The petitioner has filed an RTI Application dated 26.09.2014 with the Respondent Commissioner seeking certified copy of the decision passed by the Commissioner in second appeal dated 04.05.2010 bearing File No.CIC/AT/A/2010/000363. Petitioner was informed by the Respondent Commission that the said decision is not available on the website of the Commission and could not be located. Aggrieved by the said response, the Petitioner preferred a First Appeal before the First Appellate Authority, Central Information Commissioner (CIC) praying for a direction to the CPIO to furnish the information sought. The Commission vide it's letter dated 12.08.2015 informed the Petitioner that it was not possible to furnish the requested information by the Registry due to non-availability of the record.

2. Aggrieved by the aforesaid communication dated 12.08.2015 the Petitioner has filed the present writ petition bearing W.P. (C) No.342/2017.

3. The I/C Record Room, was consulted formally, who informed that the said file is not available in the record room of the Commission. An extensive exercise was undertaken by the Commission to locate the missing file and the same was found in March 2017. However, it is submitted that the copy of the decision passed in the said second appeal is not found in the case file of the Respondent Commission. The decision is also not found on the website of the Commission. Enquiry has also been made by the Commission from Mr. S.K. Srivastava, Deputy Secretary and CPIO, Ministry of Law and Justice, who had attended the hearing on 24.08.2010 in second appeal bearing No. CIC/AT/A/2010/000363, but no decision of second appeal is found in the records of the office of the Ministry of Law and Justice as well.

4. The Respondent Commission had no intention to interfere with or prejudice the Petitioner and the present unfortunate situation has arisen due to a bonafide error and mistake on part of the Commission. It is requested that an opportunity may kindly be given to conduct fresh hearing, so that the said Second Appeal dated 04.05.2010 be heard and decided as per the directions of this Hon'ble Court."

8. A perusal of the aforesaid paras would reveal that the respondents have since traced out the file. It is their case that the file does not contain the order stated to have been passed by the CIC in File bearing No.CIC/AT/A/2010/000363. It is also their case that in the peculiar facts, the Commission shall give the petitioner a fresh hearing on the second appeal dated May 04, 2010.

9. On a specific query to the learned counsel for the petitioner whether the petitioner is agreeable to this suggestion made by the respondents, the

answer was in the affirmative. It is her submission that the non-availability of file initially and also the fact that the order stated to have been passed by the CIC on January 31, 2013, is not in the file, is a very serious issue and the Commission should cause an inquiry and place a report before this Court. In support of her contention, she relied on the following judgments:-

- (i) W.P.(C) 3660/2012 Union of India v. Vishwas Bhamburkar decided on September 13, 2013;***
- (ii) 2015 SCC OnLine CIC 12080 G. Jeyakumar, 'Sri Veerabadrar Arul' vs. Central Public Information Officer;***
- (iii) 2016 SCC OnLine CIC 922 Shri Rakesh Kumar Kulsresth, Deputy Director (OL) vs. Central Public Information Officer.***

10. Having considered the record of the case and the submissions made by learned counsel for the parties, this Court is of the view that in view of a clear stand taken by the respondents that the file has since been traced out but the order dated January 31, 2013 is not available in the said file and that they are ready to give a fresh hearing to the petitioner on the second appeal dated May 04, 2010, to put quietus to the matter, it would be appropriate that the said second appeal is heard afresh by the Commission, as agreed to by the learned counsel for the petitioner as well. This Court is also of the view, in view of the peculiar facts, the plea of the learned counsel for the petitioner

for a direction to the CIC to cause an inquiry on the basis of the orders passed by this Court, more particularly when it is stated by the respondents in para 3 of the short affidavit that the said decision in the second appeal is not found in the records of the Ministry of Law & Justice as well, is unmerited. It is expected that the fresh hearing of the second appeal shall be given and decided by the respondents within two months from today, as an outer limit.

The writ petition is disposed of, in terms of the above.

V. KAMESWAR RAO, J

MARCH 15, 2019*/ak*