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

+ **W.P.(C) 9051/2017 & CM APPL. 36983/2017**

V.V.B. RAJU

..... Petitioner

Through: **Mr. Vimal Wadhawan, Advocate**

versus

CENTRAL PUBLIC INFORMATION OFFICER (CPIO) & ORS

..... Respondents

Through: **Mr. Aly Mirza, Adv. for R-2**

**Mr. Rajendra Sahu, Senior Panel
Counsel for R-1 & R-3**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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15.04.2019

Vide the present petition, the petitioner has challenged para 43 of the order dated 21.09.2017 whereby the Central Information Commission (CIC) has imposed penalty of ₹25,000/- on the petitioner to be recovered in five equal monthly instalments.

The case of the petitioner is that the petitioner was neither CPIO nor First Appellate Authority, however, the penalty imposed on the petitioner is contrary to Section 20 of the Right to Information Act, 2005.

It is not in dispute that the respondent no.2 / Ms. Nammi Bano sought the information under the RTI Act and the said application was dealt with by the then CPIO. However, the CPIO had not furnished the information required, therefore, the respondent victim challenged the same before the First Appellate Authority and ultimately the matter came before the

petitioner being the First Appellate Authority. Accordingly, the petitioner on 03.02.2017 recused to hear the appeal on the ground that the victim made allegations of sexual harassment against him. Thereafter, the competent authority appointed the Joint Secretary of department to hear the first appeal.

The CIC after discussing how the CPIO deliberately and delinquently denied the information sought by the victim, has imposed the penalty upon the petitioner by declaring him deemed PIO.

The fact remains that the CPIO has not stated in his written submissions or otherwise that the petitioner had expressed orally or by intent or expressed influence due to which information sought by the respondent no.2 was not supplied to her.

Thus, I am of the considered opinion that penalty imposed on the petitioner by the CIC is not proper and contrary to section 20 of the RTI Act.

The similar issue came before this court in LPA No.369/2018 whereby this court has held as under:

“9.From the above, it is clear that Section 19(1) makes a provision for filing of an appeal if a person is aggrieved by a decision or inaction of the CPIO. The Appellate Authority in sub-section (1) of Section 19 is classified as an officer senior in rank to the CPIO meaning thereby that under the scheme of RTI Act, the CPIO is a different authority or officer different from an Appellate Authority to whom an appeal lies under sub-Section (1) of Section 19. If the legislative intent, as can be made out on a combined reading of various provisions are taken note of, it would be seen that the legislature only proposes for taking action against CPIO, and not against any other authority like the Appellate Authority or officer to whom the appeal lies. That being so, the legislative intent was

that the penal provisions are to be implemented or enforced only against the CPIO and not against any other authority like the senior ranking officer or the Appellate Authority who decides the appeal under Section 19(1). If this was not the legislative intention, the words appearing in Sections 19(1) and (2) would have been differently worded and the construction of the statutory provision would have been entirely different. If the argument canvassed by the petitioner was to be accepted then by that interpretation, we would be expanding the meaning of a CPIO and we would be adding something more into the definition of CPIO than the one as was conceived by the legislature. This is not permissible under law and when the CPIO is only indicated to be officer against whom penal action can be taken under Section 20, we cannot read LPA 369/2018 Page 7 of 7 into the said statutory provision anything more by supplying words or meaning which would enlarge the scope of the penal provisions under Section 20. That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information and in case of default or dereliction on his part, the penal action is to be invoked against him only. The Appellate Authority is not the custodian of the information or the document. It is only a statutory authority to take a decision on an appeal with regard the tenability or otherwise of the action of the CPIO and, therefore, there is a conscious omission in making the Appellate Authority liable for a penal action under Section 20 of the RTI Act and if that be the scheme of the Act and the legislative intention, we see no error in the order passed by the learned writ Court warranting reconsideration.”

In view of above, the petitioner is neither the CPIO nor the first appellate authority, therefore, I hereby set aside the order dated 21.09.2017 to the extent that the penalty of ₹25,000/- imposed upon the petitioner.

Consequently, para 43 of order dated 21.09.2017 is set aside.

Accordingly, the petition is disposed of.

Pending application, if any, stands disposed.

SURESH KUMAR KAIT, J

APRIL 15, 2019

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