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

Date of Decision: 13th February, 2023

+ **W.P.(C) 9263/2017**

CENTRAL PUBLIC INFORMATION OFFICER, EMPLOYEES
PROVIDENT FUND ORGANISATION, HQ Petitioner

Through: Mr. Brijesh kumar Tamber and Mr.
Yashu Rustagi, Advocates. (M:
8882149812)

versus

ALOK DUTTA JHA AND ANR Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode. None has appeared for the Respondent despite service.
2. The present petition has been filed by the CPIO, EPFO (HQ) challenging the impugned order dated 10th August, 2017 filed by the CIC. The operative portion of the impugned order reads:

“6. The Commission directs the respondent authority to furnish certified copies of the information sought and also directs Shri P.B. Bhattacharya, present CPIO and Shri Gowtham, then CPIO who is presently posted in Kolkata to show- cause why maximum penalty should not be imposed against each of them for not providing the information, within 30 days from the date of receipt of this Order.”

3. The RTI application dated 28th November, 2014 was filed by Shri Alok Dutta Jha seeking the following information.

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“1. Please provide the photocopy of vigilance clearance certificate submitted for promotion of Shri Paritosh Kumar based on the comments given on 05.03.2012 & 06.03.2012 for the post of Regional Provident Fund Commissioner.

2. The photocopy of the Charge sheet which is given to Shri Paritosh Kumar on 24.09.2010 may be furnished and give the details of its present status.

3. Shri Paritosh Kumar has been suspended by Regional Provident Fund Commissioner on 06.05.2010. In this regard, when the charge sheet was given to him and the present status.

4. Whether the entries of suspension and charge sheet are to be entered in the service book of the concerned officer?

5. Whether during the pendency of issuance of charge sheet or after the issuance of charge sheet Vigilance Clearance Certificate can be issued to any officer?

6. Due to his arrest by CBI Shri Paritosh Kumar had been suspended on 22.08.2008. Whether the charge sheet has been given to him in compliance of the directions given by CBI to impose major penalty on him? If so when it was given, furnish photo copy of the same and its present status.”

4. The request for the said information was rejected by the CPIO relying upon the judgment of the Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commissioner & Ors., (2013) 1 SCC 212.*** The CPIO held that the information sought was related to the individual's personal information and would be, therefore, invasion of the privacy of the said person, who may an employee of EPFO. The finding given by the CPIO is as under:

In respect of information at serial nos.1 to 3, the response given was as under:

“The information sought by the applicant is concerned

about the third party. On 3rd October] 2012 the Supreme Court has stated in Special Leave Petition number 27734

year 2012@CC1478/2012) (Girish Ramchandra Deshpande versus Central Information Commissioner and Others) that the copies of all the memorandums issued to the third defendant, Orders of, Show Cause Notice and condemnation/penalty etc. Are defined as personal information. Under Clause J of section 8(1) of Right to Information Act. In any organisation the performance of employee/officer mainly is the matter between Employee and Employer and in general this aspect is governed by Service rule which comes under personal information, the revelation of the same doesn't contribute to any public activity or public interest. On the other hand, by revealing such things would cause in appropriate interference into privacy of a person. If Central Public Information Officer or State Public Information Officer is satisfied in this matter that if the revelation of the information in large scale is in the interest of public welfare then, appropriate orders can be passed. In order of the above comment of Hon'ble Supreme Court, the information which is regarding complaint against a third party employee and under Clause J of section 8(1) of Right to Information Act., 2005 defined as personal information and not a matter of public interest.' Therefore, information is not being provided.”

In respect of information at serial nos.4 & 5, the response given was as under:

“The information sought is in the form of question. The Right to Information Act, doesn't give order/right to any public authority to give answer or explanation to the question in connection, with some decision. Hence, no information can be provided in the form of answer.”

5. An appeal under Section 19(1) of the RTI Act, 2005 was filed by the Petitioner before the Appellate Authority and in the said appeal, the RTI applicant stated as under:

“Sir, In this regard it is submitted that the information I have sought is in public interest, because it is apprehended that there may be irregularities in promoting this officer to the post of Regional Provident Fund Commissioner-II. There is possibility that due to unjust promotion of this officer some valid candidate might have been deprived of promotion.

If the said officer has been promoted as per rules, there should not be any problem in providing related documents and If some irregularities are found it is possible that any other eligible officer may get promotion to the post of Regional Provident Fund Commissioner-II and justice may be done to him.”

6. Vide order dated 15th May, 2015 the Appellate Authority again reiterated the CPIO's order. The Appellate Authority held that the RTI response given by the PIO i.e., the CPIO Vigilance was as per rules.

7. Thereafter, on 18th February, 2016, the Petitioner filed a second appeal under Section 19(3) of the RTI Act, 2005, bearing number CIC/BS/A/2016/QQQ735 and a hearing was given on 22nd June, 2017 in the said second appeal. The orders of the PIO and the First Appellate Authority, were set aside by the CIC, vide the impugned order dated 10th August, 2017 in the second appeal. The finding of the CIC is as under:

“5. The PIO also submitted that Shri Paritosh Kumar was charge-sheeted on administrative laps, statement of imputation of misconduct and refusal of signing cheques, pensions and BRS, lack of devotion of duty and has been suspended from

discharging his duties. The Commission finds that the CPIO could not substantiate how section 8(1)(j) attracted. Mere mention of the section of exception is not enough and it is the burden of the CPIO to prove that rejection is justified according to section 19(5) of RTI Act 2005, which explains:

S. 19(1)(5): In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

6. The Commission directs the respondent authority to furnish certified copies of the information sought and also directs Shri P.B. Bhattacharya, present CPIO and Shri Gowtham, then CPIO who is presently posted in Kolkata to show cause why maximum penalty should not be imposed against each of them for not providing the information, within 30 days from the date of receipt of this Order.”

8. Today, Id. counsel appearing for the Petitioner has once again cited the decision in ***Girish Ram Chandra (supra)***, to argue that the information sought was clearly related to a third party, who was an employee of the Petitioner and in no way concerned with the RTI applicant. Further, he argues that no public interest was being affected with the disclosure of the said information.

9. It is clear from the kind of information being sought, that the specific vigilance clearance certificate for the promotion of one employee has been sought, along with a copy of the chargesheets and the suspension order, if any. The information sought also relates to entries in the service book of the said employee. Clearly, these kinds of information would be covered under

Section 8(1)(j) of the Right to Information Act, 2005, inasmuch as these documents pertain to issues between the employer and one employee.

10. No public interest is being served by disclosure of the same. The CIC was clearly wrong in holding that the judgment in ***Girish Ramchandra Deshpande (supra)*** would not apply or that it would not be covered by Section 8(1)(j) of the Act. The reasoning of the CIC simply records that the CPIO's order could not be substantiated, which would be incorrect considering the nature of the information sought. The Supreme Court in ***Girish Ramchandra Deshpande (supra)*** has observed as under:

“11. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the above-mentioned information sought for qualifies to be “personal information” as defined in clause (j) of Section 8(1) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the

disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act. ”

11. Accordingly, the present case would be clearly covered by the said judgment. The appeal is allowed.

12. The CIC’s order dated 18th August, 2017 is set aside, with no order as to costs.

13. The writ petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 13, 2023/dk/am