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

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Date of decision: 03.02.2020

+ W.P.(C) 1423/2018 & C.M. No.5879/2018 (for stay)

SENIOR SUPERINTENDENT OF POST OFFICES/ CENTRAL
PUBLIC INFORMATION OFFICER Petitioner

Through: Mr. Vikram Jetly, CGSC.

versus

SHRI VED PRAKASH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This writ petition is filed by the petitioner seeking to impugn the order dated 17.05.2017 passed by the Central Information Commission (CIC).
2. The case of the petitioner is that the respondent filed an application, received on 06.06.2016, under the RTI Act seeking information in respect of savings bank account opened in the post office on 24.10.1977 in respect of Anil Kumar Mathur, the Chemical Assistant, Archaeological Survey of India (ASI), Delhi, who now retired as Superintendent, Archaeological Chemist, ASI. A reply dated 01.07.2016 was given that the pass book and the case is not traceable as it is pertaining to the year 1997. Being dissatisfied with the aforesaid reply, the respondent preferred first appeal before the First Appellate Authority, i.e., DPS (O) who disposed of the said appeal on 08.08.2016 finding that the CPIO has provided the relevant information to

the appellant/respondent herein.

3. In the second appeal, vide impugned order dated 17.05.2017, CIC passed following directions :-

“5. The Commission directs the respondent authority to provide the response as to redressal of his grievance instead of denying his right to his own money along with interest since 1997 considering deposit as fixed deposit, and also denying the RTI on the illegal excuse of records not being available, within 30 days from this date. Disposed of.”

4. Learned counsel for the petitioner states that a direction to transfer the security deposit as fixed deposit and to direct payment accordingly to the respondent is clearly illegal and beyond the powers of the CIC. He also relies upon the judgment of the coordinate Bench of this court in ***Union of India Thr. Director, Ministry of Personnel, PG & Pension vs. Central Information Commission & P.D. Khandelwal; (2009)165 DLT 559.***

5. Essentially the facts as they appear from the impugned order are that the respondent had paid Rs.500/- as security deposit at the time of joining. In 1977, the authority returned the sum of Rs.500/- with interest. After 40 years, Mr. Ved Prakash received Rs.2,000/- The respondent requested to consider this security deposit as a fixed deposit since 1997 and to pay interest accordingly. The impugned order directs accordingly.

6. The Supreme Court in the case of ***Union of India vs. Namit Sharma; (2013) 10 SCC 359*** has set out the scope of the powers of CIC. The relevant paras read as follows:-

“24. It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to

secure information from a public authority; under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person; and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act.

25. Section 2(j) defines “right to information” conferred on all citizens under Section 3 of the Act to mean the right to information accessible under the Act, “which is held by or under the control of any public authority”. While deciding whether a citizen should or should not get a particular information “which is held by or under the control of any public authority”, the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.”

7. Similarly a coordinate Bench of this court in ***Union of India Thr. Director, Ministry of Personnel, PG & Pension vs. Central Information Commission (supra)*** had noted as follows:-

“48. Under Section 19(3) of the RTI Act, second appeal before the Central or the State Information Commissions is maintainable against the decision under Sub-section (1) of the first Appellate Authority. The scope of appeal therefore before the second Appellate Authority is restricted to subject matters that are appealable before the first Appellate Authority under Sub-section (1) of Section 19 of RTI Act. Second Appellate Authority cannot therefore go into the questions which cannot be raised and made

subject of appeal before the first Appellate Authority. As a necessary corollary, the second Appellate Authority i.e. the Central or the State Information Commissions can examine the decision of the PIO or their failure to decide under Section 7(1) or the quantum of cost under Section 7(3)(a) of the RTI Act. They can also go into third party rights and interests under Section 19(4) of the RTI Act. Central or the State Information Commissions cannot examine the correctness of the decisions/directions of the Public Authority or the competent authority or the appropriate Government under the RTI Act, unless under Section 18 the Central/State Information Commission can take cognizance. The information seeker is however not remediless and where there is a lapse by the competent authority, the public authority or the appropriate Government, writ jurisdiction can be invoked. It is always open to a citizen to make a representation to public authority, appropriate Government or the competent authority whenever required and on getting an unfavourable response, take recourse to constitutional rights under Articles 226/227 of the Constitution of India. In a given case, the Central or the State Information Commissions can recommend to the competent authority, public authority or the appropriate Government to exercise their powers but the decision of the competent authority, public authority or the appropriate Government cannot be made subject matter of appeal, unless the right has been conferred under Section 18 or 19 of the RTI Act. Central and State Information Commissions have been created under the statute and have to exercise their powers within four corners of the statute. They are not substitute or alternative adjudicators of all legal rights and cannot decide and adjudicate claims and disputes other than matters specified in Sections 18 and 19 of the RTI Act”.

8. Clearly by the impugned order, CIC has sought to become an adjudicator of legal rights, namely, directing that the security deposit be treated as a fixed deposit. This is clearly beyond the powers of the CIC.
9. I may note that none has appeared for the respondent for the last

several dates. None has appeared for the respondent today.

10. There is no merit in the petition and the same is accordingly dismissed. A sum of Rs.10,000/- was provided to the respondent as litigation expenses as directed by this court on 16.02.2018. No further orders are required in that regard.

11. Writ petition along with the pending application stands disposed of.

FEBRUARY 03, 2020
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JAYANT NATH, J.

