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

Date of Decision: 22nd January, 2021

+ **W.P. (C) 900/2021 and CM APPL. 2395/2021**

SH RAKESH KUMAR GUPTA (ERSTWHILE CPIO) UNION
BANK OF INDIA & ORS. Petitioners

Through: Mr. O.P. Gaggar, Advocate. (M:
9810185751)

versus

CENTRAL INFORMATION COMMISSION & ANR... Respondents

Through: Mr. Gaurang Kanth, Standing
Counsel with Mr. Aman Singh
Bakhshi, Advocate. (M: 9810810005)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by two officers, who were working with the Union Bank of India as Central Public Information Officers (*hereinafter*, “CPIO”), as also the Union Bank itself, challenging the impugned order dated 14th December, 2020 passed by the Information Commissioner, Central Information Commission (*hereinafter*, “CIC”), vide which, penalties amounting to Rs. 10,000/- each have been imposed upon the Petitioners.
3. The background of this case is that an RTI application was filed on 9th January, 2018, by the Applicant/Respondent No.2 (*hereinafter*, “Applicant”) who was a Chief Manager at the Union Bank of India, seeking the following information:

“In this connection I request you to furnish me details of the Board approval along with justification for giving exemption with regard to 3 years branch head

service (which was declared vide staff circular no: 6511 dated 23.12.2016)."

4. In reply to the said RTI application, the office of the CPIO informed the Applicant that copy of the board note, being an internal document of commercial confidence and hence exempted from disclosure, cannot be furnished. The relevant extract of the said response reads as under:-

"In this connection, we have to inform you that being a staff member, you are well aware of the guidelines of the Bank issued from time to time which are easily available in UBINET, Bank's internal web portal. However, we may inform you that matter regarding completion of three years as Branch Head as eligibility criteria is clarified in Staff Circular No. 6685 dated 30.10.2017. Please note that copy of Board note cannot be furnished as the same is internal documents of the Bank and of commercial confidence which is exempted from disclosure under s. 8(1)(d) of the RTI Act. However, guidelines of the Bank in above matter, based on the Board approval, is circulated vide above Staff Circular."

5. The Applicant thereafter filed an appeal with the Appellate Authority under the RTI Act. The said Appellate Authority also disposed of the appeal stating that copy of the board approval was exempted from being disclosed under Section 8(1)(d) of the RTI Act. The relevant extract of the order by the Appellate Authority, reads as under:-

"4. I have carefully examined the RTI request, disposal by the CPIO d and appeal. I agree with the contention of CPIO that information which could be disclosed in terms of the RTI Act, has already been provided. I also agree with the contention of CPIO that copy of Board approval regarding relaxation cannot be provided as the same is exempted from

disclosure under s. 8(1)(d) of the RTI Act. Appeal is therefore rejected and disposed of accordingly.”

6. The Applicant, thereafter, filed a second appeal before the Information Commissioner, CIC. The CIC, vide order dated 29th January, 2020, after examining the responses provided, found that there was no reason why complete information was not provided to the Applicant, and held that the responses provided were rather incomplete and evasive. A showcause notice was then issued to the CPIOs of the Bank at the relevant point in time, as to why penalty should not be imposed on them for not providing complete information to the Applicant. The relevant portion of the said order reads:

*“6. The Commission after adverting to the facts and circumstances of the case, hearing both the parties and perusal of records, notes that reply given by the respondent was incomplete and evasive. It is noted that the bank had taken approval from the board for giving exemption in three year branch head service, but the same was taken before 2016 or after 2016 was not clarified by the respondent. Further, the Commission feels that proper information was not provided by the respondent even after lapse of around two years from the date of RTI application. Otherwise also, mandate of the principles of natural justice which form part of right to equality under Article 14 of the Constitution should be followed wherever, an individual is likely to be adversely affected by an act. Hence, the Registry of this Bench is directed to issue **show cause** notice to the present CPIO and the then CPIO, to explain as to why penalty should not be imposed upon him for not providing the complete information to the appellant. The present CPIO is given a responsibility to serve this show cause notice to the then CPIO and secure his written explanations.*

All the written explanations (from both the CIPOs) should reach to the Commission within 15 days. Meanwhile, the respondent is directed to provide a revised reply/information to the appellant, within 10 days from the date of receipt of this order.”

After the said show cause notice was issued, the Petitioners took a completely different stand and stated that the information sought could not be found on record. The relevant extract of the said response dated 28th February, 2020, given by the Petitioner No. 1 reads:

“8.1 In this appeal (CIC/UBIND/A/2018 /125744), appellant had sought details of the Board approval along with justification for giving exemption with regard to 3 years Branch head service (declared vide staff circular no. 6511 dated 23.12.2016). In this connection, we submit that we have once again searched for the Records could not find any such information on record, hence, as stated during the hearing the information sought is not available in records.”

7. This was reiterated by Petitioner No. 2 on 29th February, 2020 in the following manner:-

SI	Information sought	Reply
1	<i>Details of the Board approval along with justification for giving exemption with regard to 3 years Branch Head service, declared vide Staff Circular No. 6511 dated 23.12.2016.</i>	<i>In this respect, HRD, Central Office has informed that as per direction of Hon'ble CIC, they have searched the records but the desired information could not be found from the available records. Hence, they plead their inability to provide the desired information.</i>

8. In view of this complete change in stand by the Petitioners, the CIC

vide final order dated 14th December, 2020, imposed penalty of Rs.10,000/- each, on both the CPIOs. The relevant portion of the CIC order reads as under:-

“6. The Commission after adverting to the facts and circumstances of the case, hearing both the parties and perusal of records, observes that the appellant sought information regarding details of the Board approval along with justification for giving exemption with regards to 3 years Branch head service. The respondent during the course of hearing inter alia submitted that information sought by the appellant was not available on their records hence, the same could not be provided to the appellant. However, they failed to explain as to why such information was not available with them. It is noted that copy of Board notes as sought was initially denied by the then CPIO on the ground of internal documents of the bank and the same was exempted under section 8(1)(d) of the RTI Act. Subsequently after show cause notice the respondent claimed that no such document was available with them. Perusal of the records reveals that the promotion process was challenged before the High Court and documents relating to the same must have been preserved by the respondent. In view of this the respondent is directed to search the records once again and provide the information to the appellant. If the information was not found, then they have to file an affidavit before this Commission deposing that information sought was not available with them. The aforesaid direction has to be complied with by the respondent within three weeks from the date of receipt of this order. Further the explanations given in respect to the show-cause notice was also not satisfactory. It is noted that there was difference in the replies given by the present CPIO and the then CPIO. The Commission feels that proper reply/information has not been provided to the appellant even after lapse of around more than two and half years from the date of filing of

this RTI application. The delay caused in this matter was attributable on part of both the CPIOs. In view of this, mala fide on part of the CPIOs is established and the Commission feels that it is a fit case to impose penalty upon both the CPIOs.

6.1 In view of the aforementioned reasons and observations, Shri K. C. Chaudhary, the then CPIO, (H.R. Division) and Shri Rakesh Kumar Gupta, the present CPIO, Union Bank of India, Nariman Point Mumbai, are found liable as per section 20 (1) of RTI Act. Hence, a penalty of Rs.10,000/- each (Rupees Ten Thousand only) may be imposed on each of them and a total 20000/- (Rs.10,000/- each)- shall be deducted from the salaries of S/Shri K. C. Chaudhary, the then CPIO and Rakesh Kumar Gupta, the present CPIO (in two equal instalments) by the Public Authority and paid by way of demand drafts drawn in favour of "PAO, CAT", New Delhi, forward the demand drafts addressed to the Deputy Registrar (CR-II), email: dyregcr2-cic@gov.in Room No. 106, First Floor, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi 110067. The first instalment of penalty amount should reach to the Commission by 27.01.2021 and the final instalment should reach the Commission by 27.02.2021. With aforesaid observation and directions, the appeal is disposed of.

Copy of the decision be provided free of cost to the parties."

The CIC came to the conclusion that there was variance in the replies given by the CPIOs and despite lapse of more than two and a half years, the information has not been provided. Thus, it concludes that there was *mala fides* on behalf of the Petitioners, resulting in imposition of penalty against them under section 20 of the RTI Act.

9. Mr. Gaggar, ld. counsel appearing for the Petitioners, submits that the board notes were not available in the records and under such circumstances,

the said CPIOs cannot be held responsible for not furnishing information. It is his submission that even when the matter was before the CIC, the CPIO made an effort to trace and provide the said documents, however the same were not traceable. Accordingly, in his submission, individual officers of the Bank cannot be blamed for the same.

10. Mr. Gaurang Kanth, Id. counsel appearing for the CIC, submits that there was a complete change in the stand of the Petitioners, from the initial position as against the position upon the issuance of the showcause notice by the CIC. According to him, initially, a defence was taken that the documents cannot be disclosed in view of Section 8(1)(d) of the RTI Act, however thereafter, a completely unrelated ground, that the documents were not traceable, was taken. Thus, in his submission, the penalty of Rs. 10,000/- which has been imposed upon the CPIOs is completely justified.

11. Heard Id. counsels for the parties. The Id. Division bench of this court in ***R.K Jain v. Union of India (LPA 369/2018, decided on 29th August, 2019)*** has recognised that the CPIO, being the custodian of information or documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information, and in cases of default, the penal action is to be invoked against the CPIO only.

12. The role of CPIOs under the RTI Act has been elaborately dealt with in ***Registrar of Companies v. Dharmendra Kumar Garg (WP(C) 11271/2009, decided on 1st June, 2012)***. The court has held that:

“Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. 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 fulfill 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. Thereafter, in **Union of India v. Vishwas Bhamburkar (WP(C) 3660/2012, decided on 13th September, 2013)**, it was held:

“It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be

traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

7. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of

the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.”

14. In **J.P. Agrawal v. Union of India (WP(C) 7232/2009, decided on 4th August, 2011)** the Id. Single Judge has recognised that CPIOs/PIOs are not merely “post offices” and have a crucial responsibility in facilitating the purpose of the RTI Act. The court has held that:

*“7.The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted, and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a*

remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyze the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.

9. This Court in *Mujibur Rehman v. Central Information Commission* held that information seekers are to be furnished what they ask for and are not to be driven away through filibustering tactics and it is to ensure a culture of information disclosure that penalty provisions have been provided in the RTI Act. The Act has conferred the duty to ensure compliance on the

PIO. This Court in Vivek Mittal v. B.P. Srivastava 2009 held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information; that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied. Even otherwise, the settled position in law is that an officer entrusted with the duty is not to act mechanically. The Supreme Court as far back as in Secretary, Haila Kandi Bar Association v. State of Assam 1995 Supp. (3) SCC 736 reminded the high-ranking officers generally, not to mechanically forward the information collected through subordinates. The RTI Act has placed confidence in the objectivity of a person appointed as the PIO and when the PIO mechanically forwards the report of his subordinates, he betrays a casual approach shaking the confidence placed in him and duties the probative value of his position and the report.”

15. On the basis of the above judgments, the following principles can be clearly gleaned:

- i) CPIO/PIOs cannot withhold information without reasonable cause;
- ii) A PIO/CPIO cannot be held responsible if they have genuinely rejected the information sought on valid grounds permissible under the Act. Mere difference of opinion on the part of CIC cannot lead to an imposition of penalty under section 20 of the RTI Act;
- iii) Government departments ought not to be permitted to evade disclosure of information. Diligence has to be exercised by the said departments, by conducting a thorough search and enquiry, before concluding that

the information is not available or traceable;

- iv) Every effort should be made to locate information, and the fear of disciplinary action would work as a deterrent against suppression of information for vested interests;
- v) PIO/CPIO cannot function merely as “*post offices*” but instead are responsible to ensure that the information sought under the RTI Act is provided;
- vi) A PIO/CPIO has to apply their mind, analyze the material, and then direct disclosure or give reasons for non-disclosure. The PIO cannot rely upon subordinate officers;
- vii) Duty of compliance lies upon the PIO/CPIO. The exercise of power by the PIO/CPIO has to be with objectivity and seriousness the PIO/CPIO cannot be casual in their approach.
- viii) Information cannot be refused without reasonable cause.

16. Thus, under the RTI Act, the CPIOs have a solemn responsibility. Section 5(3) requires that every CPIO or SPIO shall deal with requests for information and ‘*render reasonable assistance*’ to the persons seeking information. CPIOs or SPIOs can seek assistance from higher/other officials in the organisation in order to enable them to furnish the information sought for the ‘*proper discharge*’ of their duties, as per Section 5(4). Such other officers from whom assistance may be sought would also be treated as CPIOs, under Section 5(5). CPIOs are thus expected to look into queries raised by the Applicants under the RTI Act, and fulfil an important responsibility while furnishing the said required information, in a fair, non-arbitrary and truthful manner. The organisation, as a whole, also has to cooperate in the functioning of the CPIOs.

17. In the present case, the CPIO initially took a stand that the documents and the information are not liable to be disclosed as the same are exempted under section 8(1)(d) of the RTI Act, due to them being of commercial confidence for the Bank. However, when the CIC served them with a showcause notice, there was a complete change in their position and they stated that the required documents were not traceable. This clearly does not hold well for the Bank or the CPIOs or even for the Applicant. Such a change in stand would go on to show that there was an intention to withhold certain important documents or information, leading to the finding of *mala fides* and unreasonable conduct. It is under these circumstances that the CIC has held the CPIOs responsible and imposed a penalty amounting to Rs. 10,000/- each. In the opinion of this Court, the impugned order passed by the CIC does not warrant any interference.

18. Considering the overall facts, this Court is of the opinion that the penalty imposed cannot be faulted with. However, considering the fact that both the CPIOs have since retired from the service of the Bank, the penalty is reduced to Rs.5,000/- each. The same shall be forwarded in the manner as contained in paragraph 6.1 of the order dated 14th December, 2020 passed by the CIC, as extracted above. The said payments shall be deposited within 6 weeks from today.

19. The present petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 22, 2021

MR/Ak

(corrected and uploaded on 27th January, 2021)