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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1075 OF 2016

SURESH ANANT KAMAT,
S/O LATE ANANT VAMAN KAMAT
Behind Police Qtrs, Chicalim, Goa.

... Petitioner

Versus

1. CENTRAL INFORMATION COMMISSIONER
Room No. 308, 2nd Floor,
August Kranti Bhawan,
Bhikaji Cama Place, New Delhi- 11006.

2. The CAPIO
MMTC Limited P. Bo. No. 37, Colaco Building
Swatantra Path, Vasco-da-Gama, Goa.

3. Shri A.F. Sequeira AGM, FA & CAO
Corporate office, MMTC Ltd. Core No. 01,
Scope Complex Lodi Road New Delhi 110003.

... Respondents

Petitioner present in person.

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 3rd May 2023

ORAL JUDGEMENT: (Per M.S. Sonak, J.)

1. Heard Mr Suresh Anant Kamat, who appears in person. The Respondents, though served, have not bothered to appear.
2. However, Shri Suresh Hiranandani, the Chief Manager (Incharge) with MMTC, Vasco da Gama, Goa (Respondent No.2) has filed an

affidavit in this Petition. Therefore, the same will be considered in this judgement and order.

3. The Petitioner, at the stage of instituting this Petition in 2016, was 79 years old. This means that today, he is almost 86 years old. Still, pursuant to this Court's notice, he has appeared in the Court and made submissions supporting this Petition.

4. The Petitioner had applied to the CAPIO of MMTC Limited (Respondent No.2) for information from his personal file. The Petitioner has pleaded that this information was necessary because there was a short payment of CPF and medical benefits post his retirement.

5. The Petitioner has pleaded, and there is no dispute that the CAPIO did not respond within 30 days. Neither was any information furnished nor were any reasons given for such non-furnishing of information. However, it is the Petitioner's case that, after two months, CAPIO addressed a backdated letter denying the information from the Petitioner's personal file by quoting some non-existing article from the Right to Information Act, 2005.

6. The Petitioner, therefore, appealed to the First Appellate Authority at the corporate office of MMTC Limited in New Delhi. The Appellate Authority, upon consideration of the Petitioner's Appeal, directed the CAPIO to furnish the requisite information to the Petitioner. Despite this order, the CAPIO failed to comply with the First Appellate Authority's mandate. This forced the Petitioner to file a Second Appeal with the Central Information Commission in New Delhi on 07.11.2011.

7. The Petitioner has pleaded, and there is substance to back the pleadings, that the Petitioner pursued the matter with CIC by addressing several reminders and making several telephone calls. But, ultimately, the Deputy Registrar of CIC informed the Petitioner on or about 25.07.2014 (after nearly three years) that the concerned file, which was sent to the CIC, had mysteriously gone missing.

8. Therefore, the Petitioner appealed to CIC by reconstructing the file since the CIC's office admitted that the Petitioner's appeal case papers had gone missing. This was on or about 06.07.2015. Based upon this, the Petitioner was informed that the hearing had been fixed on 18.11.2015. Respondent No.2, impleaded before the CIC, did not bother to attend the proceedings.

9. The CIC disposed of the Appeal by order dated 18.11.2015. This CIC's order is transcribed below for the convenience of reference:-

*"CENTRAL INFORMATION COMMISSION
Room No. - 308, 2nd Floor, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi - 110066.
Website: cic.gov.in*

File No. CIC/CC/A/2014/000002/KY

<i>Appellant</i>	:	<i>Shri Suresh A. Kamat Behind Police Qtrs. Chicalim, Goa-403711</i>
<i>Public Authority</i>	:	<i>The CPIO MMTC Limited, P.B. No.37, Colaco Building, Swatantrapath, Vasco-da-Gama, Goa-403802</i>
<i>Date of Hearing</i>	:	<i>18.11.2015</i>
<i>Date of Decision</i>	:	<i>18.11.2015</i>

Presence:

Appellant : Absent
CPIO : Absent

FACTS:

I. Vide RTI application dated **16.08.2011**, the appellant sought information on 4 issues.

II. CPIO, vide its response dated **26.09.2011**, denied to provided the information u/s 2(j).

III. The First Appeal (FA) was filed on **11.10.2010**, as desired information not provided.

IV. First Appellate Authority (FAA), order is not on record.

V. Grounds for the Second Appeal filed on **07.11.2011**, are contained in the Memorandum of Second Appeal.

HEARING

Appellant as well as respondent opted to be absent despite of our due notice to them.

DECISION

*It is pertinent to mention here that the appellant, vide his RTI Application dated **16.08.2011**, sought information from the respondents on 4 issues. Respondents, vide their response dated **26.09.2011**, as **wrongly denied** the required information, against issues no. 1, 2 & 3, to the appellant by taking a plea under section **2(j) of the RTI Act 2005**. However, provided the reply against issue no. 4 to the appellant. Being aggrieved by the aforesaid response, FA was filed by the appellant on **11.10.2010** before the FAA, who **could not take up** the same for its disposal **for the reasons best known to him**. Hence, a Second Appeal before this Commission.*

*2. The Commission **perused** the case-file **thoroughly**; specifically, **nature of issues** raised by the appellant in his RTI application dated **16.08.2011**, respondent's response dated **29.09.2011** and also the grounds of memorandum of second Appeal.*

*3. The Commission is of the considered view that the appellant has been **deprived** by the respondents **deliberately** from having the benefits of the RTI Act 2005, **even after lapse of more than fifty one months period**. Thus, the respondents **have defeated***

the very purpose of the RTI Act 2005 for which it was legislated by Parliament of India. As such, the Commission feels that it would be appropriate and even justified to allow the appellant's second Appeal partly i.e. against issues no.1, 2 & 3, instead of remanding back to learned FAA for disposal of FA which is even more time consuming. Therefore, it is allowed accordingly.

4. In view of the above, the respondents are hereby directed to provide the complete and categorical information, against issues no.1, 2 & 3, to the appellant as per his RTI application, in accordance with the provisions of RTI Act 2005, within 30 days from the date of receipt of this order under intimation to this Commission. If need be, Section 5(4) of the RTI Act 2005 may also be invoked in the matter.

The Appeal is disposed of accordingly.

***Sd/-
(M.A. Khan Yusuf)
Information Commissioner***

***Authenticated true copy
sd/-
(Krishan Avtar Talwar)
Deputy Registrar***

***The CPIO
MMTC Limited, P.B. No. 37, Colaco Building,
Swatantrapath, Vasco-da-Gama, Goa-403802***

***Shri Suresh A. Kamat
Behind Police Qtrs.
Chicalim, GOA-403711"***

10. From the above, it is evident that even the CIC found substantial merit in the Petitioner's case. The CIC was constrained to observe that the Petitioner was deliberately deprived of the RTI Act 2005 benefits even after a lapse of more than 51 months. Additionally, the CIC observed that the Respondents had defeated the very purpose of the RTI

Act 2005, for which the Parliament of India legislated it. Accordingly, the Petitioner's Second Appeal was allowed rather than remanding the matter and consuming further time.

11. The Petitioner is not really aggrieved by the CIC's order dated 18.11.2015, except that the CIC order does not impose a penalty consistent with the provisions of Section 20 of RTI Act 2005 at the rate of ₹250/- per day upon the CAPIO of MMTC. Accordingly, by his application dated 07.12.2015, the Petitioner applied to the CIC to impose such a penalty. However, since no cognizance was taken, the Petitioner has instituted the present Petition.

12. The Petitioner contends that while disposing of the Petitioner's Second Appeal vide order dated 18.11.2015, the CIC was duty-bound to take cognizance of the gross facts and the provisions of Section 20 of the RTI Act 2005 and imposed a penalty as prescribed under Section 20(1) of the RTI Act.

13. Section 20 of the RTI Act 2005 reads as follows:-

"20. Penalties. —(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or Appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is

furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees;

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or Appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

14. In the affidavit filed by Shri Suresh Hiranandani, he admitted that he has no personal knowledge of the facts of the matter, and the affidavit was filed based on records available in the office and information of his subordinates. Apart from raising some hypertechnical objections, which are in any case frivolous, the deponent, in paragraphs 9, 10 and 11, states as follows:-

"9. I say that from the records of my office and from information of the previous person in office of the CAPIO and the subordinate staff, I have to state that within the 30 days window, the

information as sought for by the Petitioner is queries 1, 2 & 3 were of his old service records and the same was not traceable and could not be ascertained and therefore information only as regards query No. 4 was furnished and the Petitioner was informed that information in respect of the other queries were not available.

10. I say that all the while the efforts of the department were on to trace the records and by the time the same were traced the Petitioner had preferred his appeals and therefore without it being contested, the information was thereafter furnished.

11. I say that the Respondent No.1 probably in his discretion, awarded no costs."

15. Thus, even the deponent, Shri Suresh Hiranandani, has accepted the lapse on the part of the CAPIO. Service records of retired employees can neither vanish nor can the information from such records be denied to such employees on the specious plea that they were not traceable. There is virtually no explanation for the inordinate delay. The statement that Respondent No.1 "*probably in his discretion, awarded no cost*" is entirely misconceived.

16. In the gross facts of the present case, not exercising the powers under Section 20 of the RTI Act 2005 virtually amounts to a refusal to exercise the discretion vested in the CIC. In any case, considering the gross facts found by the CIC itself, discretion could not have been exercised against the imposition of penalty and award of costs. Accordingly, even based on the return filed on behalf and on behalf of Respondent No.2, this Petition deserves to be allowed.

17. The CIC, in this case, has already recorded findings that the Petitioner was deliberately denied information which ought to have been furnished to him for more than 51 months. The Respondents did not even

bother to appear before the CIC and offer any explanation for this inordinate delay or how they have treated the Petitioner. Instead, the Petitioner pointed out that because of this delay, there was a corresponding delay in obtaining the appropriate retiral benefits due and payable to the Petitioner. The Petitioner explained that this information was vital for production before the authorities and the Court so that the Petitioner could obtain the retiral benefits in their entirety.

18. In our judgement, there is merit in the Petitioner's submissions. This is indeed a gross case where information clearly due to the Petitioner was deliberately denied, as held by the CIC for almost 51 months. In such circumstances, even the CIC was duty-bound to impose a penalty upon the Respondents as provided under Section 20(1) of the RTI Act 2005.

19. Section 20(1) provides for a stringent financial penalty at the rate of ₹250/- per day for each day during which information is denied. However, there is a cap of ₹25,000/-.

20. Accordingly, in the present case, regarding the cap provided by Section 20(1) of RTI Act 2005, we direct Respondent No.2 to pay the Petitioner a penalty of ₹25,000/- within four weeks from today. Since this is a penalty amount, an award of interest on the same may not be appropriate. However, considering the Petitioner's age, the troubles he was made to face and how he has pursued this matter despite his old age, we think that Respondent No.2 should pay the cost, which we quantify at ₹15,000/- to the Petitioner within four weeks from today.

21. Thus, we dispose of this Petition by modifying the CIC's impugned order to include therein the direction for payment of a penalty of ₹25,000/- and cost of ₹15,000/-. Respondent No.2 must pay a total amount of ₹40,000/- to the Petitioner within four weeks from today. After this amount is paid, Respondent No.2 can recover this amount from the CAPIO or Respondent No.3.

22. The Registry must send an authenticated copy of this order to Respondent Nos.2 and 3 and correspond with Respondent Nos.2 and 3 about compliance with our directions. This is necessary because it would be unjust to require the Petitioner, at the age of 86 years, to pursue this matter with Respondent Nos.2 and 3.

23. The Registrar (Judicial) and the Member Secretary of GSLSA should assist the Petitioner, a senior citizen, in recovering the amounts referred to in this order.

24. This Petition is allowed with costs.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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FRANCISCO DSOUZA
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