

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15500-2023

Date of decision: - 21.07.2023

Gopal Krishan Gupta

....Petitioner

Versus

Central Information Commission and others

....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Gopal Krishan Gupta, petitioner in person.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel,
for UOI-respondents.

VIKAS BAHL, J. (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 28.02.2023 passed by respondent no.2 (Annexure P-11) whereby second appeal under Section 19(3) read with Section 20 of the Right to Information Act, 2005 (in short "RTI Act") and complaint under Section 18(1)(a) to (c) read with Section 20 of the RTI Act, 2005 has been disposed of. Challenge has also been made to the order dated 22.06.2022 (Annexure P-8) and order dated 07.03.2023 (Annexure P-12).
2. Petitioner, who is appearing in person, has submitted that he had filed an application dated 07.02.2022 (Annexure P-1) before the CPIO and after the reply was received from the CPIO, the petitioner being

dissatisfied had filed first appeal dated 19.03.2022 (Annexure P-3). It is further submitted that since the entire information as sought by the petitioner had not been provided, thus, the petitioner preferred a second appeal dated 21.05.2022 under Section 19(3) read with Section 20 of the RTI Act and copy of the same has been annexed as Annexure P-7 in which several prayers were made by the petitioner including the prayer to direct the CPIO to supply the requisite information and also to impose a penalty of Rs.25,000/- on the concerned CPIO under Section 20(1) of the Act. It is stated that the Central Information Commission, vide order dated 28.02.2023 (Annexure P-11) disposed of the appeal filed by the petitioner after observing that no final pointwise reply was provided to the petitioner and directing the CPIO to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of the order. It is further stated that the Information Commissioner should have kept the appeal pending and after seeking response from the CPIO and after hearing the petitioner as well as all the concerned parties, the Information Commissioner should have then finally adjudicated the matter. It is submitted that after the said appeal was disposed of, the CPIO vide letter dated 07.03.2023 (Annexure P-12) has filed a reply which also does not satisfy the claim of the petitioner. It is submitted that since the appeal has been disposed of by the Information Commissioner, thus, the petitioner does not have any statutory forum under the 2005 Act to pursue his case. It is further submitted that since the appeal filed before the Central Information Commission was the statutory second appeal, thus, it was incumbent upon the Information Commissioner to have considered the entire matter after calling for the

reply from the CPIO and after hearing all the concerned parties. It is stated that in case the Information Commissioner is of the opinion that certain information cannot be provided, in accordance with law, then the reasons for the same are required to be mentioned in the order itself and that in case the Information Commissioner is of the opinion that the petitioner is entitled to the said information and the same is not being provided by the concerned officer, then appropriate action, in accordance with law, is required to be taken. It is further submitted that at any rate, the impugned order dated 28.02.2023 deserves to be set aside to the extent that the appeal has been disposed of without final adjudication of the matter.

3. Learned counsel appearing on behalf of respondents No.1 to 4 has submitted that they have no objection to the said course of action, but has submitted that their pleas be also considered before any final order is passed by the Information Commissioner.

4. This Court has heard learned counsel for the parties and has perused the paper-book.

5. Relevant portion of the order dated 28.02.2023 (Annexure P-11) is reproduced herein below: -

“The fact is that no final point-wise reply was provided on any of the points to the appellant as per the record.

In view of the same, the CPIO is directed to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order.

The appeals are disposed of accordingly.”

6. A perusal of the above-said order would show that after considering the entire matter, the Information Commissioner was of the opinion that no final point-wise reply has been provided to the appellant as per the record and thus, had directed the CPIO to provide a final

consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order. However, instead of waiting for the reply, the Information Commissioner disposed of the appeal without final adjudication of the matter and that the said procedure is not in accordance with law.

7. A perusal of Section 19 of the RTI Act would show that under sub-Section 3, an aggrieved person has a right to file the second appeal before the Central Information Commission or the State Information Commission and that, under sub-section (8), the Central Information Commission has been given several powers including the power requiring the public authority to compensate the complainant for any loss or detriment suffered or to impose any of the penalties provided under the Act. Section 19 of the RTI Act, is reproduced herein below: -

***“19. Appeal.—**(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:*

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information

Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(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) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

8. Section 20 of the RTI Act provides that in case, the Central Information Commission at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer has, without any reasonable cause, not furnished information within the time specified under subsection (1) of Section 7 or has malafidely denied the request for information etc., then, it is empowered to impose a penalty of two hundred and fifty rupees each day till the information is furnished. Section 20 of the RTI Act is reproduced as under: -

“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 16 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.”

9. A conjoint reading of the above reproduced provisions would show that once a second appeal has been filed by an aggrieved person, then, after considering all the aspects, the matter is required to be finally adjudicated. In case, the Information Commissioner is of the opinion that the ingredients, as specified in Section 20 of the RTI Act are met, appropriate action is also required to be taken. In the present case, after prima facie holding in favour of the petitioner with respect to points No. (a) and (b) and after directing the CPIO to file a revised reply, the appeals have been disposed of by respondent No.2 without waiting for the said reply and without finally adjudicating the matter and thus, to the said extent, the impugned order deserves to be set aside

10. Keeping in view the above said facts and circumstances, the present petition is partly allowed and the order dated 28.02.2023 (Annexure P-11) to the extent that the statutory second appeal filed by the

petitioner has been disposed of, is set aside and a direction is issued to the Central Information Commission to finally adjudicate the said appeal after taking into consideration the final consolidated reply filed by the CPIO as directed by the Information Commissioner in the impugned order and after considering the pleas raised by both the parties in accordance with law.

11. It is made clear that this Court has not opined on the merits of the case and the concerned authority would decide the matter independently, in accordance with law.

(VIKAS BAHL)
JUDGE

July 21, 2023

Davinder Kumar

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No