

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(108)

CWP-14977-2023

Date of decision: - 17.07.2023

Gopal Krishan Gupta

....Petitioner

Versus

Central Information Commission, New Delhi 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.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 26.04.2022 (Annexure P-5) passed by respondent No.4, order dated 07.06.2022 (Annexure P-7) passed by respondent No.3 and order dated 28.02.2023 (Annexure P-11) passed by respondent No.2, respectively.

2. Petitioner, who is appearing in person, has submitted that he had filed an application dated 19.03.2022 (Annexure P-3) under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act') and when the necessary information was not supplied in accordance with law, he filed the first statutory appeal (Annexure P-6) before the respondent No.3.

It is further submitted by the petitioner that since the information was still

not supplied, thus, he filed the second statutory appeal (Annexure P-8) before respondent No.1-Central Information Commission seeking information as mentioned in application dated 19.03.2022 (Annexure P-3). It is submitted that a perusal of the impugned order dated 28.02.2023 (Annexure P-11) would show that observations were made to the effect that with respect to points No.(a) and (b) the CPIO had denied the information in view of Section 8(1)(e) of the RTI Act; with respect to point No.(c), information was denied in view of Section 8(1)(j) of the RTI Act; and with respect to point No.(d), information sought was stated to be not available. It is contended that after considering the said observations, it was observed that Section 8(1)(e) of the RTI Act has been wrongly applied to points No.(a) and (b) without proper justification and thereafter, the CPIO was directed to send a copy of the written submissions and a revised reply on points No.(a) and (b), explaining why the information sought was treated as exempted and the said reply was required to be filed within a period of seven days from the date of receipt of the said order. It is submitted that instead of waiting for the reply of the CPIO and thereafter taking appropriate action in accordance with law, the Information Commissioner disposed of the appeals without finally adjudicating the matter and without taking action as required under Section 20 of the RTI Act. It is stated that the appeal filed by the petitioner before the Central Information Commission was the second statutory appeal and the said authority was required to finally adjudicate the same after considering the entire matter. It is stated that a specific application was also moved before the Central Information Commission

under Section 18(1)(a) to (c) read with Section 20 of the RTI Act and the same has been disposed of alongwith the main appeal, vide order dated 28.02.2023 (Annexure P-11) without considering the averments in the same. The petitioner has submitted that at any rate, the order dated 28.02.2023 (Annexure P-11) to the extent that the appeals have been disposed of, be set aside with a direction to the Central Information Commissioner to pass a final order after considering the reply filed by the respondent in pursuance of the directions issued by the Information Commissioner to the CPIO, more so, with respect to point Nos.(a) and (b).

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) passed by respondent No.2 is reproduced herein below: -

“It is relevant to mention here that Sec 8(1)(e) was applied to points (a) and (b) without proper justification, in respect of the rest of the points the reply given was correct.

Decision:

The CPIO is accordingly directed to send a copy of the written submissions and a revised reply on points no.(a) and (b) explaining why the information sought is treated as exempted, also as to which letters were received and which were not. The reply should be sent within 7 days from the date

of receipt of this order.

The appeals are disposed of accordingly.

Vanaja N. Sarna
Information Commissioner”

7. A perusal of the above-said order would show that after observing that Section 8(1)(e) of the RTI Act has been applied to points No.(a) and (b) without proper justification, the Information Commissioner had directed the CPIO to send a copy of the written submissions and a revised reply to point No.(a) and (b) explaining as to why the information, which was sought was treated as exempted and that a reply was required to be filed by the CPIO within a period of seven days from the date of copy of order. Instead of waiting for the reply and then, finally adjudicating the matter, the Information Commissioner disposed of the appeal. The said procedure adopted is illegal and against law.

8. 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 any other 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 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 reply filed by the authorities in response to the directions given by the Commissioner 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.

July 17, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes