

\$~11

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 20th February, 2023

+

W.P.(C) 7611/2015 and CM APPL. 14775/2015

NATIONAL GREEN TRIBUNAL

..... Petitioner

Through: Mr. Aniruddha Deshmukh, Advocate
(M-8376011490)

versus

ALOK KUMAR GHOSH

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - National Green Tribunal (NGT) seeking quashing of the impugned order dated 8th July, 2015 passed by the Central Information Commission (CIC) in file no. CIC/SA/C/2014/001610 titled *Alok Kumar Ghosh v. PIO, NGT*.
3. The RTI Applicant - Alok Kumar Ghosh who is the Respondent in the present case filed an RTI application dated 18th March, 2014 seeking disclosure of following information from the NGT:

- “1. How many candidates appeared for the said post ?*
- 2. Marks obtained by me in the said examination ?*
- 3. What is my rank in the said examination?*
- 4. What is my rank as an OBC reservation quota ?*
- 5. Name of the selected candidates and their marks respectively.*
- 6. At present what numbers regular Group - D (MTS) employee engaged in your organization?*
- 7. Is there any contractual employee engaged in your organization (including all Regional Benches) in the*

post of Group - D (MTS), if any, how many contractual Group - D (MTS) employees are there at present ?”

4. No reply was received to the said RTI Application. Thereafter, first appeal was filed. However, the same also did not get any consideration by the Appellate authority at the NGT and the matter reached the CIC.

5. The CIC, treated the RTI Application as a second appeal and simultaneously considered the same as a complaint on the ground that the NGT failed to give any reply to the RTI Application.

6. The RTI Applicant/ Respondent was not present before the CIC. However, vide the impugned order dated 8th July, 2015 the CIC noted that the ground on which the NGT failed to respond to the RTI Application was the non-payment of Rs.10/- as per the RTI Rules, 2012. The RTI Applicant/ Respondent had attached a court fee stamp of Rs.10/- instead of payment by cash, demand draft or electronic payment as required under the RTI Rules, 2012. The CIC vide the impugned order came to the conclusion that the NGT's stand was completely incorrect and it observed as under:

“6. If the appellant, as asked pays Rs 10 by IPO/DD, NGT would spend another Rs 50 to send back information. If appellant paid Rs 10, NGT's loss still remains Rs 40. If information is dispatched, cost will go up to Rs 100. Supposing appellant did not dispatch Rs 10 by postal order, the public authority has already lost Rs 50. Instead of all this spending CPIO should have sent the information sought. The learned council said if not the audit would object why money due to Government is not collected.”

7. It was in this background that the CIC converted the matter into a complaint under Section 18 of the Right to Information Act, 2005 (*hereinafter, “RTI Act”*) and went into the issue of the NGT's stand of

defending the second appeal by engaging a legal counsel/ advocate. The CIC, vide the impugned order came to the conclusion that the information asked for in the RTI Application is liable to be disclosed and directed as under:

- “a) furnish point-wise information to the appellant along with certified copies of relevant documents, free of cost,*
- b) give a complete report on the process, criteria adopted to select D-MTS staff challenged by applicant considering his RTI application as complaint, with the reasons for rejecting candidates including appellant, marks obtained by candidates.*
- c) give details of expenditure incurred in dealing this RTI application up to the level of second appeal, including the cost of litigation, and*
- d) make it a policy to place all results of recruitment test or interview, minutes of committee selecting candidates for different posts, with, reasons for rejection, besides informing that to every candidate.*
- e) explain why public authority should not be directed to pay compensation which is equivalent to amount spent by public authority so far, fighting against him to deny.”*

8. Mr. Deshmukh, Id. Counsel for the Petitioner submits that after the passing of the impugned order dated 8th July, 2015, the information requested for in the RTI Application has already been disclosed on 21st July, 2015. Id. Counsel has handed over to the Court a copy of the compliance letter sent by the APIO dated 21st July, 2015 which reads as under:

“COMPLIANCE REPORT IN THE CASE OF ALOK KUMAR GHOSE VS PIO, NGT

It is respectfully submitted that the order passed in the above mentioned case has been complied with.

- a) Point wise information has been sent to the*

*appellant alongwith the copies of relevant documents.
 b) Process adopted to select D-MTS Staff is enclosed.
 Reasons for rejecting candidates cannot be asked under the RTI Act. Marks obtained by the candidates have been sent to the applicant.
 c) Till the date of filing of this report no expenditure has been incurred by the NGT for the cost of litigation.
 d) NGT has been following due procedure and Law for placing the result of recruitment on their website.
 e) The detailed reasons for denying the information to the applicant are enclosed.”*

9. Thereafter, vide order dated 11th August, 2015, this Court stayed the directions (c) to (e) of the impugned order dated 8th July, 2015.

10. It is the submission of Id. Counsel for the Petitioner that the directions in paragraphs (c) to (e) are far reaching inasmuch as the CIC has converted a second appeal under Section 19 of RTI Act into a *suo-moto* complaint under Section 18 of RTI Act. It is submitted that the CIC lacks the power to do the same in the present case. He further submits that the CIC also seems to have been completely carried away by the fact that the legal counsel/ advocate would have been engaged by the NGT to defend the second appeal with a fee structure as recorded in paragraphs 7 and 8 of the impugned order which reads as under:

“7. The Commission got, in another Second Appeal a certified copy of a document regarding engaging an advocate for their RTI cases. As per this rate the Advocate is paid Rs 31,000 as retainer per month, Rs 700 for conveyance for conference, Rs 11,000 for conducting first appeal and Rs 21,000 for second appeal plus 10 per cent clerkage charges besides miscellaneous expenses.

8. The NGT pays Rs 31,000 as retainer, Rs.11,000 plus Rs 21,000 for first and second appeals asking its

advocate to present 'expert argument' how absence IPO for Rs 10 is stumbling block to furnish information about selection and rejection of candidates for same posts. This reflects lack of concern for transparency and also for public money and leaves common man wondering reasonability of this attitude. Is it worth spending Rs 33050 plus to deny information? Because of such attitude, doubts raise about 'fairness' of process for recruitment for Group D-Multi Task Staff. This also indicates a dire need for to sensitize personnel in NGT to break this kind of mindset of denying the RTI at the huge cost of state exchequer."

11. It is noticed that the RTI Applicant/ Respondent has been served. However, there is no appearance. It is also noted that the RTI Applicant/ Respondent did not appear before the CIC.

12. After perusing the record as also the impugned order, there can be no manner of doubt that the NGT was at fault in the present case. When the initial RTI application was filed, even though the same may have been filed with a court fee stamp of Rs.10/- so long as the said amount was deposited, the non-reply by the NGT to the RTI Application, is not an acceptable position. Thus, the CIC was right in observing that as against the Rs.10/- which was to be paid by the RTI Applicant/ Respondent, the notices sent by the NGT would have incurred more expenditure.

13. Be that as it may, the CIC has thereafter gone ahead and, apart from directing disclosure of the information, given some broad directions. In the facts of this case, such directions could not have been issued as the case before the CIC was primarily an appeal under Section 19 of the RTI Act. Thus, the directions to disclose the details of expenditure in respect of litigation expenditure as also the policy level decisions which are directed by

the CIC are unsustainable.

14. Ld. Counsel for the Petitioner submits that in 2013, the NGT did not have a proper full time staff. Now, the NGT has created a proper RTI Cell and the First Appellate Authority.

15. In view of the fact that the NGT is a national tribunal, the RTI cell of the NGT ought to function properly. The Court accepts the explanations given by the Petitioner and is of the opinion that directions in (c) to (e) of the impugned order are liable to be set aside in the facts of this case.

16. Needless to add, the RTI applications received by the NGT in future shall be dealt with strictly in accordance with the timelines and rules prescribed under the RTI Act and RTI Rules.

17. The petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 20, 2023
Rahul/KT