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

+ **W.P.(C) 6816/2023**

BHAWANA SHARMA

.....Petitioner

Through: Ms. Bhawana Sharma, Petitioner (in-Person).

versus

CENTRAL PUBLIC INFORMATION OFFICER(CIVIL)

.....Respondent

Through: Mr. Vaibhav Agnihotri and Ms. Kanika Singh, ASC with Mr. Satvik Singh and Mr. Nikhil S., Advocates for NDMC.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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14.08.2024

CM APPL. 46776/2024 (seeking early hearing)

1. Through this application, the Petitioner seeks early hearing of the present petition.
2. For the grounds and reasons stated, the application is allowed, and the writ petition is taken up on the board today itself.
3. The application is disposed of.



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4. The Petitioner filed an RTI application on 15th March, 2022 with Public Information Officer,¹ NDMC, seeking the following information:

“3. Particulars of Information:

It is humbly requested that all the informations sought herein below and copies thereof may kindly be supplied duly certified of the aforesaid employee:-

(A)Copies of salary slips for the months of May 2019, June 2019, August 2019, September 2019, October 2019, November 2019, August 2021, September 2021, October 2021, November 2021, December 2021, January 2022, February 2022.

(B)Present designation, official and residential address of the aforesaid employee

(C)What is the date of retirement of him ?

(D)What total arrears amount pertaining to 7th pay commission have been paid to him on which dates and what amount has yet been remained to be paid? Please provide me the complete and specific details in this regard with dates.

(E)Whether the salary is being paid to him per month as per the 7th pay commission recommendations or not?

If yes, what is the current total salary amount being paid to him per month alongwith all the statutory deductions and exemptions of amounts?

If not, why?”

5. The aforementioned application was considered and rejected by CPIO, NDMC, through order dated 6th April, 2022. The Petitioner did not appeal the CPIO's order but instead filed a complaint dated 18th April, 2022 under Section 18 of the Right to Information Act, 2005.² The said complaint alleges that the CPIO/Respondent No.1, with *malafide* intent, refused to provide the information requested by the Petitioner regarding her husband's official records without offering any reasonable cause or justification. She further claimed that the CPIO colluded with her husband and exhibited bias.

¹ “PIO”

² “the Act”



Additionally, in the complaint, she asserted that the refusal to provide the information was without cause and done with *malafide* intent solely to harass her. To demonstrate this allegation of bias and collusion, she placed reliance on an order dated 14th January, 2021 passed by CIC, on another RTI application, whereby Petitioner's similar request was allowed and a direction was issued to the Respondent to supply information. Pertinently, through the aforementioned complaint, in addition to requesting action under sections 18 and 20 of the RTI Act against the Respondent, the Petitioner also sought a directive for the Respondent to provide the information requested in the Petitioner's RTI application.

6. The said complaint was considered and decided by CIC through the impugned order dated 30th November, 2022 to the following effect:

“HEARING:

Facts emerging during the hearing:

The following were present:

Complainant: Present through AC

***Respondent: Ms Meena Kaushal Mr M S Latwal, Ms Meenakshi Sharma
Present in Person***

The Complainant while reiterating the contents of the RTI Application submitted that no information has been furnished to her so far. She said that her husband had left her along with her daughter 21 years before. She said after the order of the Supreme Court she started getting monthly maintenance of Rs 47000. She alleged that this maintenance amount was fixed as per the scales of 6th pay commission. She said that she had sought this information to know about the salary of her husband as per the 7th pay commission which could enhance her maintenance accordingly.

The Respondent stated that the information pertains to third party hence barred to be furnished as per Section 8(1)(j) of the RTI Act 2005.

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties, the Commission observes that when asked to furnish documentary proofs of whatever the Complainant had stated before the Commission,



she failed to do so despite repeated attempts by the Commission to get these from her. Furthermore, the Commission notes that the instant matter is a Complaint under the RTI Act where no further direction for disclosure of information can be given and it is only required to be ascertained if the information has been denied with a mala fide intention or due to an unreasonable cause. On the perusal of the documents on record and in the absence of the documentary proofs the appellant had promised in the hearing, the Commission observes that an apt reply has been furnished to the Appellant. Therefore, no further intervention of the Commission is required in the matter.

The Complaint stands disposed accordingly.”

7. The Petitioner assails the said order through the present petition arguing that CPIO has with *mala fide* intent refused the information sought by her. She places reliance on the earlier order of the CIC dated 14th January, 2021 where the Information Commissioner had allowed Petitioner’s request by directing Respondent to provide certain information relating to salary of her husband. She also places reliance on the decision of the Madhya Pradesh High Court in the case titled as ***Smt. Sunita Jain vs. Pawan Kumar Jain & Ors.***³ and ***Sunita Jain vs. Bharat Sanchar Nigam Limited & Ors.***⁴ to argue that the Petitioner as ‘spouse’ is entitled to the information pertaining to her husband and the exemption under Section 8(1)(j) of the RTI act cannot apply. Respondent’s actions are not only contrary to law but also obstruct her rightful access to information that is crucial for her legal and personal interests. She also argues that the refusal of the information sought is against the provisions, objects and spirit of the RTI Act. She further argues that the CPIO’s persistent refusal to comply with the CIC’s directions and relevant high court decisions warrants action under Section 20 of the RTI Act.

³ W.A. No. 168/2015



8. The Court has carefully considered the aforementioned contentions but remains unconvinced. An information seeker can also file a complaint under Section 18 of the Act, in respect of matters set out in clauses (a) to (f) of section 18 (1) of the Act, which includes a case where access to any information has been refused. In terms of Section 18(2) of the Act, if the CIC is satisfied that there is a reasonable ground to enquire into the matter, the CIC may initiate an inquiry with respect thereof. There is no provision in Section 18 of the Act, which enables the CIC to direct disclosure of information. However, the CIC has the power to commence proceedings for imposition of penalty in case of proceedings under Section 19(3) of the Act as is apparent from the plain language of Section 20(1) of the Act.

9. The Supreme Court in ***Chief Information Commr. and Ors. v. State of Manipur and Ors.***⁵ has clearly delineated the powers of the Information Commissions' and the scope of their jurisdiction while adjudicating complaint proceedings under Section 18 of the Act. It has been held that under the afore-noted provision, Central Information Commission or State Information Commission, as the case may be, has no power to provide access to information which has been denied to the applicant. The observations to that effect, are as follows:

“30. It has been contended before us by the Respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

⁴ W.A. No. 170/2015

⁵ MANU/SC/1484/2011



31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.”

10. In the instant case, the Petitioner instead of filing an appeal against the alleged denial of information, preferred a complaint under Section 18 of the RTI Act. The said complaint apart from seeking strict action against the CPIO under section 20 of the Act also sought a direction to the Respondent to provide her the information sought in her RTI Application. For this reason, the Petitioner’s invocation of Section 18 *per se*, in the opinion of the Court, was not the appropriate remedy. The Petitioner should have pursued an appeal under Section 19 of the RTI Act against the denial of her request for information.

11. Section 18 and Section 19 of the RTI Act serve two distinct purposes. The procedure outlined under Section 19 of the Act, in comparison to Section 18 includes several safeguards for protecting the interest of the persons who has been refused the information, they had sought. Section 19(5) explicitly shifts the burden of justification for denying access to information onto the concerned Information Officer. There is no such safeguard under Section 18 of the Act. Thus, this provision can be resorted to where the refusal is with a *malafide* intent or there are manifest unreasonable grounds or deliberate refusal on the part of public authority. However, invoking section 18 of the Act to circumvent the appeal process outlined in Section 19 of the Act undermines the efficacy of the structured remedy envisioned by the legislature and can render the appellate provisions of Section 19 redundant.



12. The denial of information by the Respondent is premised on Section 8(1)(j) of the Act which relates to exemption of personal information. The basis for refusal cannot inherently be construed as a *malafide* that warranted CIC to proceed under Section 18 and 20 of the Act. Furthermore, the CIC has observed that “*On the perusal of the documents on record and in the absence of the documentary proofs the appellant had promised in the hearing, the Commission observes that an apt reply has been furnished to the Appellant.*” In such circumstances, the court is unable to find any *malafide* or infirmity in the view taken by the CIC.

13. In light of the above, the Court finds no merit in the present petition.

14. Dismissed.

SANJEEV NARULA, J

AUGUST 14, 2024

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