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

+ **W.P.(C) 7652/2023 & CM APPL. 6017/2024**

WG. CDR KUNAL KUMRA (RETD.)Petitioner

Through: **Mr. Ankit Negi, Advocate.**

versus

UNION OF INDIA AND ORSRespondents

Through: **Mr. Sandeep Kr. Mahapatra, CGSC**
with **Mrs. Mrinmayee Sahu, Advocate**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.08.2024

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1. At the outset, it would be apposite to take note of the factual background leading to the filing of the present petition:

1.1. The Petitioner, a retired Indian Air Force Officer, filed an application under the Right to Information Act, 2005¹ on 12th October, 2021, seeking information regarding contents (including all Notes, Memos, Letters, Drafts, etc.) of file bearing reference No. Air HQ/21641/27958/PO-I(F) and its part case files and related files, if applicable, as well as copy of documents of the same file.

1.2. The Petitioner's application was rejected *vide* order dated 25th November, 2021² of the Central Public Information Officer (CPIO), stating that the information sought under the Petitioner's RTI application "*is confidential in nature and contains confidential notes and deliberations*",

¹ "RTI Act"

² "CPIO Order"



and therefore, is exempted from disclosure under Section 8(1)(a) of the RTI Act.³

1.3. The Petitioner's first appeal against the CPIO Order was rejected through Office Order dated 25th January, 2022, wherein the Appellate Authority stated that the information sought by the Petitioner is held with the public authority in a fiduciary capacity, and no larger public interest would be served by disclosure of such information. Since the information is sensitive in nature and there is no larger public interest involved, disclosing such information may have a direct bearing on the security and strategic interest of the State. Accordingly, the information was denied under Sections 8(1)(a) and 8(1)(e) of the RTI Act.

1.4. The Petitioner further escalated the matter by filing a second appeal before the Central Information Commission (CIC). However, the same has also been rejected through the impugned order dated 24th March, 2023⁴, whereby the CIC has concurred with the submissions advanced by the Respondents and held that the information cannot be disclosed under Section 8(1)(a) of the RTI Act.

2. The Petitioner, being aggrieved by the aforementioned decisions, submits that the sought information has wrongly been categorised as confidential to be exempted under Section 8(1)(a) of the Act. The Petitioner was only seeking information pertaining to his statutory complaint dated 1st October, 2018, made under Section 27 of the Air Force Act, 1950, pertaining to non-grant of his promotion. Thus, it is submitted that such information cannot be exempted under Section 8(1)(a) of the RTI Act, and disclosure of such

³ Counsel for Respondents points out that the ground for rejection has been inadvertently mentioned in the order dated 25th November, 2021 as Section 8(1)(i) of the RTI Act.

⁴ "Impugned Order"



information cannot be held to have a prejudicial effect on the sovereignty and integrity of India or any security concern of the state.

3. The Court has considered the aforementioned contentions. The Impugned Order takes note of the factual background and makes the following observations:

“Observations:

Keeping in view the facts of the case, the Commission observed that the appellant was seeking copies of notes, memos, letters, drafts, etc. w.r.t. a file bearing No, Air HQ/21641/27958/PO-1(F). The CPIO and the officer accompanying him have sufficiently established that the said file contained sensitive information in the form of comments/remarks/reasons, of higher authorities, inputs from security agencies, etc. for posting and transferring the appellant. The CPIO has satisfactorily explained the reasons for denial under Section- 8(1)(a) of the RTI Act, 2005 vide his written submissions dated 20.03.2023 and a copy of the same was also handed over to the legal counsel of the appellant during the hearing. On being queried if the sensitive contents of the documents concerned can be severed using Section-10 of the RTI Act, 2005, the CPIO expressed his inability. Since the CPIO averred in great detail that the sought for information was sensitive in nature, disclosure of which may harm the security and strategical interests of the nation, the Commission upholds the denial of information.

However, the Commission concurred with the submissions advanced by the legal counsel of the appellant that the disclosure of the sought for information was not barred under Section-8(1)(e) of the RTI Act, 2005. Therefore, the denial under this exemption clause was improper. The Commission noted that the decision and the observations of the previous cases of ClC relied upon by the legal counsel of the appellant were not applicable to the facts of the present case as the information sought for was squarely different.

The Commission noted that the legal counsel of the appellant was repeatedly seeking the status and details of a statutory complaint filed by the appellant during the hearing. However, the Commission did not find any mention of the said complaint in the RTI application of the appellant. Under the circumstances, the Commission cannot allow disclosure of addition/new information at the appellant stage. Therefore, the appellant was advised to file a fresh RTI application for seeking the status of the said complaint.



Decision:

For the reasons recorded above, the Commission concluded that the information sought for by the appellant was barred from disclosure under Section 8(1)(a) of the RTI Act, 2005.

With the aforesaid observations, the instant second appeal is disposed of accordingly.”

4. The CIC has carefully examined the facts of the case and observed that the Petitioner had sought copies of notes, memos, letters, drafts of a file of the Airforce Headquarters, which contains sensitive information including sensitive remarks of the higher authorities, inputs from security agencies, etc. for the posting and transferring of the Petitioner. Such information is therefore found to be exempted under Section 8(1)(a) of the RTI Act. Further, it is noticed that CIC has also proceeded to consider whether such information could be severed under Section 10 of the RTI Act, however, that was found to not be feasible in light of the submissions made by the CPIO. In such circumstances, in the opinion of the Court, no interference can be called for in the Impugned Order.

5. At this juncture, it must also noted that CIC also considered the Petitioner’s contentions regarding the requested information pertaining to statutory complaint. It is noted that RTI application clearly specifies the information sought as being “*Perusal of the contents (including all Notes, Memos, Letters, Drafts, etc ..) of file reference number Air HQ/21641/27958/PO-l(F) and its part case files and related files if applicable.*” Thus, as has been rightly observed by the CIC, the Petitioner’s RTI application, as framed, made no mention of the said statutory complaint. The CIC accordingly commented that in such circumstances, the Petitioner can, if so advised, file a fresh RTI application for seeking information pertaining to the status of the statutory complaint.



6. In light of the above, the Court does not find any infirmity in the Impugned Order, and accordingly, finds no occasion to intervene in exercise of its jurisdiction under Article 226 of the Constitution of India, 1950.

7. It is however clarified that, in terms of the aforementioned comment of the CIC contained in the Impugned Order, the Petitioner shall be free, if they so desire, to file a fresh RTI application seeking information pertaining to the status of the statutory complaint.

8. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

AUGUST 2, 2024

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