



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

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Reserved on: 26th July, 2024

Pronounced on: 8th August, 2024

+ **LPA 253/2022 & CMs 17612-13-14/2022**

R S TANWAR

.....Appellant

Through: Mr. Abhishek, Advocate.

versus

JOINT SECRETARY AND ADDL. REGISTRAR, CENTRAL
INFORMATION COMMISSION & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.

CM APPL. 17614/2022

1. Allowed, subject to just exceptions.

CM APPL. 17612/2022 and CM APPL. 17613/2022

2. These applications have been filed on behalf of the Appellant seeking condonation of delay in filing and re-filing the present appeal.

3. According to the Appellant, there is a delay of 280 days in filing and a delay of 715 days in re-filing the present appeal.

4. Despite notice being issued, no reply has been filed by the Respondents.

5. Accordingly, having regard to the reasons articulated in the applications, we are inclined to condone the delay.

6. It is ordered accordingly.

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7. The applications are disposed of.

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8. The present appeal impugns the judgment dated 25th April 2019 passed by the learned Single Judge in W.P.(C) 6148/2018, whereby the writ petition filed on behalf of the Appellant challenging the order dated 13th April 2018, passed by the Central Information Commission ('CIC') imposing a penalty of Rs.25,000/- on the Appellant, has been dismissed.

BRIEF FACTS

9. Brief facts relevant for deciding the present appeal are set out hereinafter:

9.1. A complaint dated 11th April 2016 was filed by the Respondent No.2 (*hereinafter referred to as the 'Complainant'*) alleging that the Complainant's employer *i.e.*, INS e-Solutions Ltd., has not deposited his share of the Provident Fund and therefore, action should be taken to recover the said amount along with penal interest and damages.

9.2. On 31st May 2017, the Complainant filed an application under the Right to Information Act, 2005 ('RTI Act') seeking information regarding the action taken on the aforesaid complaint. This application was marked to the Central Public Information Officer ('CPIO') in the office of Additional Central Provident Fund Commissioner ('ACPFC'), New Delhi.

9.3. The aforesaid application under the RTI Act was transferred to the Public Information Officer ('PIO'), Delhi (South), Dwarka, New Delhi since at that point in time, Delhi (South) was the concerned office for providing the requisite information.

9.4. In the absence of a PIO in the Regional Office ('R.O.'), Delhi (South),



the Appellant was acting as the link officer from mid-June 2017 to 19th August 2017. Hence, on 8th June 2017, the Appellant was marked the RTI application of the Complainant.

- 9.5. On 6th July 2017, the Appellant sent a reply to the RTI application of the Complainant informing him that, an enforcement officer has been deputed to verify the facts of the complaint and accordingly, the Complainant would be informed of further developments.
- 9.6. Not satisfied with the aforesaid response, the Complainant filed an appeal under Section 19(1) of the RTI Act alleging that the information sought by him has not been provided.
- 9.7. *Vide* order dated 7th September 2017, the First Appellate Authority directed the concerned CPIO to collect detailed information regarding the Complainant's RTI application from the concerned authority and provide the same within 10 days.
- 9.8. On 7th December 2017, the Complainant filed a Second Appeal under Section 19(3) of the RTI Act before the CIC, alleging that despite the order of the First Appellate Authority, no accurate information has been provided.
- 9.9. The CIC, *vide* interim order dated 31st January 2018, directed the concerned CPIO to provide complete information sought by the Complainant within 15 days, along with the status of his Provident Fund payment. By the same order, a Show Cause Notice was also issued to the Appellant as to why a penalty should not be imposed on him for not responding to the RTI application within 30 days.
- 9.10. Pursuant to the aforesaid interim order, a response was sent on behalf of the Assistant Provident Fund Commissioner/CPIO to the CIC on 5th

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March 2018 wherein it was stated that due to the reallocation of work within the Delhi region, the RTI application of the Complainant has been transferred to R.O., Delhi (East), whereas previously it was dealt with R.O., Delhi (South).

9.11 On the same day, i.e., 5th March 2018, a detailed response was sent on behalf of the concerned CPIO to the Complainant in response to his RTI application.

10. On 13th April 2018, the CIC disposed of the Second Appeal filed by the Complainant holding that the Appellant had not complied with the direction of the CIC dated 31st January 2018. Accordingly, a penalty of Rs.25,000/- was imposed on the appellant in terms of Section 20 of the RTI Act. The relevant observations of the CIC are extracted herein below:

“4. Mr. R.S. Tanwar, CPIO, from South Delhi Division agreed that the information and documents sought could not be provided due to shifting of their office. There was a delay of nine months. However, he stated that on his complaint in June 2017, a 7-A proceedings under Employees' Provident Funds & Miscellaneous Provisions Act, 1952 had been initiated against the establishment, which is pending.

5. It is clear that Mr. R.S. Tanwar has not complied with this Commission's order dated 31.01.2018. The CPIO was directed, to provide the status of settlement and about payment of Rs.51,000 of PF amount due to him. Neither he was intimated the status nor told about the time within which his issue would be settled. The CPIO has only been able to produce the account of Rs.27000 whereas the claim of the appellant stands at Rs. 51,000. The inaction of the CPIO is evident. The CPIO has also failed to explain the reasons for delay in assessment of arrears apart the exact status of recovery from the establishment. The information provided to the appellant both in response to RTI application on 06.07.2017 and after CIC's directions dated 05.03.2018, is found incomplete.

6. In view of the above, the Commission finds Mr. R.S. Tanwar, liable under section 20 of RTI Act for giving insufficient information and imposes maximum penalty of Rs. 25,000 upon him. The Appellate Authority is directed to recover the amount of Rs.25,000/- from the salary payable to, Shri R.S. Tanwar, CPIO by way of Demand Draft

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drawn in favour of 'PAO CAT' New Delhi in 5 equal monthly instalments. The first instalment should reach the Commission by 12.06.2018 and the second instalment should reach by 12.10.2018. The Demand Draft should be sent to Shri S.P. Beck, Joint Secretary & Addl. Registrar, Room No. 50S, Central Information Commission, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067."

11. The order dated 13th April 2018 passed by the CIC was challenged by the Appellant by way of a writ petition *i.e.*, W.P.(C) 6148/2018 before this Court.

12. By way of the impugned order dated 25th April 2019, the learned Single Judge held that on two occasions *i.e.*, 6th July 2017 and 5th March 2018, the Appellant had not furnished the information sought by the Complainant, as directed by the CIC. It was held that since the Appellant was the link officer of CPIO when the communication dated 6th July 2017 was sent, the penalty imposed on the Appellant was justified. Accordingly, the writ petition was dismissed.

13. Assailing the impugned order passed by the learned Single Judge, the Appellant has approached this Court by way of the present appeal.

14. Notice in the present appeal was issued on 8th April 2022. Despite service being effected, none has appeared on behalf of the Respondents.

SUBMISSIONS OF THE APPELLANT

15. Learned counsel appearing on behalf of the Appellant submits that the CIC and the learned Single Judge have failed to appreciate that the Appellant was the PIO only for a short duration of two months *i.e.*, from mid-June 2017 to 19th August 2017. The Appellant furnished the best information available to him within 30 days of the RTI application of the Complainant being marked to him. Before the Appellant could get further information, he was divested of the charge PIO.

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16. It is further submitted that the Appellant was not the PIO at the time of passing of the order of the First Appellate Authority or at the time of disposal of the Second Appeal by the CIC. Hence, the penalty imposed on the Appellant was unjustified.

ANALYSIS AND FINDINGS

17. Since none has appeared on behalf of the Respondents, we proceed to decide the appeal on the basis of submissions made on behalf of the Appellant and the material on record.

18. It is an undisputed position that the Appellant acted as the PIO, Delhi (South) only for a short duration of two months *i.e.*, from mid-June 2017 to 19th August 2017. It was at that point of time that the copy of the RTI query filed by the Complainant was marked to him. The Appellant promptly replied to the said query within the statutory period of 30 days.

19. Not satisfied with the said information, the Complainant preferred an appeal before the First Appellate Authority. The appeal was decided by the First Appellate Authority on 7th September 2017 directing the concerned CPIO to provide detailed information in respect of the action taken on the complaint.

20. Pertinently, at that point of time, on account of redistribution of work, the establishment relating to the RTI complaint stood transferred to the R.O., Delhi (East). Since the Appellant continued to remain posted in R.O., Delhi (South) and also, he was no longer the link of CPIO, he was not in a position to comply with the directions of the First Appellate Authority.

21. On 7th December 2017, the Complainant filed a Second Appeal before the CIC. The CIC, *vide* an interim order dated 31st January 2018 directed the concerned CPIO to provide complete information sought by the

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Complainant within 15 days and also issued a 'Show Cause Notice' to the Appellant with regard to the imposition of penalty.

22. The CIC was duly informed by the CPIO, R.O., Delhi (East) *vide* communication dated 5th March 2018 that the RTI application of the Complainant stood transferred to R.O., Delhi (East). Further, on the same date, the requisite information was supplied by CPIO, R.O., Delhi (East) to the Complainant.

23. The Coordinate Bench of this Court in *Ankur Mutreja v. Delhi University*, 2012 SCC OnLine Del 154 has held that the imposition of penalty under Section 20(1) of the RTI Act can only be *qua* violations that are deemed to be intentional, without reasonable cause, and *malafide*.

24. In view of the facts narrated above, it is evident the Appellant had no role concerning the RTI query of the Complainant either at the time of passing of the order of the First Appellate Authority or by the CIC. In fact, the Appellant was not even the PIO at that point of time.

25. Therefore, the levy of the penalty on the appellant was completely unjustified.

26. Accordingly, the present appeal is allowed and the impugned order dated 25th April, 2019 passed by the learned Single Judge in W.P.(C) 6148/2018 is set aside.

AMIT BANSAL
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

AUGUST 08, 2024/PB