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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12048/2018 & CM APPL. 46658/2018-STAY**
CPIO, THROUGH PRINICIPAL ATMA RAM SANTAN DHARMA
COLLEGE

.....Petitioner
Through: Mr. Girindra Kumar Pathak, Mr. Shiv
Ram Singh, Mr. KA Nitin,
Advocates.

versus

CENTRAL INFORMATION COMMISSIONER AND ANR.
.....Respondent
Through: Mr. Dibyanshu Pandey, Mr. Radhe
Shyam Sharma, Mr. Nilesh Tiwari,
Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
11.07.2024

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1. Respondent No. 2/ Ms. Aruna Kumar, was working as PA to the Principal of the Petitioner/ Atma Ram Sanatan Dharma College, University of Delhi. On 28th April 2017, Respondent No. 2 filed an application under the Right to Information Act, 2005¹, requesting her year-wise Confidential Reports ('CRs') for the period from 2005 till 2016. The CPIO received the response from the concerned department and forwarded the same to the Respondent No.2 *vide* letter dated 5th June, 2017. The operative portion of the response of the concerned department is as follows:

¹ "the Act"



“Dear Sir,

The information sought by the applicant Ms. Aruna Kumar relates to Annual Confidential Reports (ACRs) of the employee which was later re-nomenclatured Annual Performance Appraisal Report (APAR).

On an appeal filed by activist R.K. Jain, Challenging High Court's Order, the Hon'ble Supreme Court on 16.04.2013 has passed the order that APARs (ACRs) of a Public servant were personal information and exempted from disclosure under the transparency Law. (copy enclosed)

It is also informed that as per records of the College the Applicant has not submitted her APARs for the years 2012-13, 2013-14, 2014-15 and 2015-16.”

2. From the above, it appears that as per the records of the College, the applicant had not submitted the APARs for the years 2012 to 2016. Thereafter, Respondent No. 2, aggrieved by the non-disclosure of the information preferred a first appeal before the appellate authority of the Petitioner college, which was decided on 22nd September, 2017. The appellate authority partly provided the requested documents and included the confidential report for the year 2005-06. Furthermore, they supplied a detailed year-wise status of Respondent No. 2's Confidential Reports (CRs)/APARs as follows:

Sir,

I am giving below the year wise status of CR's/APAR's of the applicant Mrs. Aruna Kumar from 2005-06 to 2015-16:-

Sr. No.	Years	Name of Principal	Status
1	2005-06	Dr. B.L. Arora	In Personal File
2	2006-07	Dr. B.L. Arora	Not traceable
3	2007-08	Dr. Kavita Bhatia	The APAR forms for these three years were given to Mrs. Aruna Kumar herself, in good faith, in a file cover to get them signed by the former Officiating Principals. They were however, not returned. This was sometime in the later half of year 2010.
4	2008-09	Dr. Kavita Bhatia	
5	2009-10	Dr. A.K. Rishi	
6	2010-11	Dr. Rajesh Mohan	Not traceable
7	2011-12	Dr. Sandeep Kr. Sharma	APAR not submitted by the employee as per the office record.
8	2012-13	Dr. Sandeep Kr. Sharma	
9	2013-14	Present Principal	
10	2014-15	Present Principal	
11	2015-16	Present Principal	



3. The response from the appellate authority clearly establishes Respondent No. 2's entitlement to the information requested from the Petitioner. Despite this, the requested information was not fully provided. Consequently, faced with this deficiency, Respondent No. 2 was compelled to file a second appeal dated 28th July, 2017, before Respondent No. 1/ Central Information Commissioner², under Section 19 of the Act. This second appeal has been decided by way of order dated 28th September, 2018³, which has been impugned in the instant writ petition.

4. As noted in the Impugned Order, the Petitioner remained absent during the hearing before the CIC. Accordingly, the CIC heard Respondent No. 2 at length and, after perusal of the records, placed reliance on the judgment of the Supreme Court in *Dev Dutt vs. Union of India & Ors.*⁴ and other case law to render the following decision:

“DECISION:

Keeping in view the facts of the case and the submissions made by the Appellant, the Commission instructs the Vice Chancellor, University of Delhi to nominate a suitable officer of an appropriate level to enquire into the matter and submit its report to the Appellant under intimation to the Commission, within a period of 30 days from the date of receipt of this order.

The Appeal stands disposed with the above direction.”

5. According to the Petitioner, the current status of the CRs/APARs sought by Respondent No. 2 remains the same as per the intimation issued by the first appellate authority. A perusal of the said status reveals that certain documents are not traceable. In the opinion of the Court, this amounts to a clear denial of the information which the Petitioner is

² “CIC”

³ “Impugned Order”

⁴ Judgment dated 12th May, 2008, in Civil Appeal No. 7631 of 2002.



otherwise required to furnish. This Court considers such unavailability as a *de facto* denial of access to information that the Petitioner is legally obligated to supply. Given these circumstances, the continued failure to provide the requested information, coupled with the delay in its disclosure, justifies the imposition of penalties as stipulated under Section 20 of the Act.

6. However, it must be noted that the CIC could not have directed an enquiry into the matter by the Vice Chancellor, University of Delhi. In this regard, it would be apposite to refer to the observations contained in this Court's judgment in ***Delhi Development Authority vs. Central Information Commission and Anr.***⁵, which are extracted as follows:

*"19. It is clear that there is no provision under the RTI Act which empowers the Central Information Commission or, for that matter, the State Information Commission, to appoint a committee for conducting an inquiry for and on its behalf. The power of inquiry under Section 18, which has been given to the Central and the State Information Commissions is confined to an inquiry by the concerned Information Commission itself. There can be no delegation of this power to any other committee or person. —Delegatus non potest delegare" is a well-known maxim which means – in the absence of any power, a delegate cannot sub-delegate its power to another person (See: **Pramod K. Pankaj v. State of Bihar & Others**; 2004 (3) SCC 723).*

20. As we have seen, there is nothing in the Act which empowers the Central Information Commission to appoint a committee to conduct an inquiry on its behalf, the only rules that have been framed under Section 27 of the RTI Act, are the following:-

- i) The Right to Information (Regulation of Fee and Cost) Rules, 2005; and
- ii) The Central Information Commission (Appeal Procedure) Rules, 2005.

None of these rules deal with the powers of inquiry of the Central Information Commission. Therefore, there is nothing prescribed either in the Act or the Rules made thereunder, whereby the Central Information Commission could be said to have been empowered to delegate its power of inquiry under Section 18 to some other person or a committee of persons.

21. Consequently, this question has to be answered in the negative. The

⁵ Judgment dated 21st May, 2010, in W.P.(C) 12714/2009.



Central Information Commission did not have the power to appoint the committee that it did by virtue of its order dated 22.09.2009 and, therefore, to this extent, the impugned order is liable to be set aside and it is so set aside.”

7. In light of the above, the directions issued by CIC in Impugned Order are set aside.
8. However, as noted above, since the information has been denied by the Petitioner, they must be penalised for the same in terms of Section 20 of the Act. Accordingly, penalty of INR 25,000/- is imposed on them to be deposited within a period of four weeks from today.
9. It is further made clear that Respondent No. 2 shall be free to take recourse to all remedies as available in accordance with law in relation to the non-preparation of the CRs/APARs by the Petitioner.
10. With the above directions, the present writ petition is disposed of along with pending applications.

SANJEEV NARULA, J

JULY 11, 2024/ab