

CENTRAL INFORMATION COMMISSION

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Appeal No.:-CIC/CBODT/A/2017/195210-BJ

Appellant : Shri Anurag Vardhan,
Respondent : CPIO,
Central Board of Direct Taxes, New Delhi.
Date of Hearing : 17.08.2017
Date of Decision : 17.08.2017

Date of filing of RTI applications	30.08.2016
CPIO's response	04.10.2016
Date of filing the First appeal	07.10.2016
First Appellate Authority's response	19.10.2016
Date of diarised receipt of second appeal by the Commission	29.12.2016

ORDER

FACTS:

The Appellant vide his RTI application sought inspection of the file relating to the promotion of the post from DCIT to JCIT, in which the representation received in the O/o Chairperson, CBDT and JS(Admin), CBDT dated 16.12.2014 had been processed, copies of the note sheet and other relevant papers.

The CPIO vide its letter dated 04.10.2016 informed the Appellant that since the matter was sub-judice, the requisite information could not be provided to the Appellant. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA vide its order dated 19.10.2016 directed the CPIO to forward a copy of its letter dated 04.10.2016 again to the Appellant.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Anurag Vardhan alongwith Mr. P. Roychaudhuri (Advocate);

Respondent: Mr. Brij Mohan. CPIO/US and Mr. Amit Singh Rathour, SO;

The Appellant reiterated the contents of his RTI application and stated that the denial of information was ordered without application of mind. It was also stated that the reply of the CPIO was submitted beyond the stipulated time period of 30 days in accordance with the provisions under Section 7(1) of the RTI Act, 2005. It was argued by the Counsel of the Appellant that the CPIO had not examined the legal aspects of the RTI Act, 2005 before pronouncing its verdict and that the denial of information was arbitrary,

baseless and without any reason. As regards the investigation by the CBI in the matter, it was informed that the CBI had taken a decision not to appeal in the aforesaid matter and that the suspension period of the Appellant had also been regularized by the Department. In its response, the Respondent submitted that the matter was subjudice before CAT and that at this stage it was not appropriate to allow inspection of the said documents till the matter was adjudicated by the Hon'ble Court. However, it was clarified that there was no criminality involved in this matter. On the legality of the decision of the CPIO, no satisfactory answer could be provided. As regards, allegation of delay in submission of reply, it was contended that the RTI application was received in their office on 06.09.2016 and the reply was furnished within the stipulated time period.

The Appellant vide his written submission dated 04.08.2017 stated that no information had been provided to him, till date and that CPIO/FAA had wrongly denied information to him. Explaining the background, the Appellant stated that he had filed an RTI application seeking information relating to promotion from DCIT to JCIT, in which the representation seeking promotion of the Appellant had been processed. However, no response was received from the CPIO within the stipulated time period under the RTI Act, 2005. Thereafter an appeal was filed by him before the FAA, which was received at the O/o FAA on 07.10.2016. Thereafter, a letter was sent by him to the FAA on 18.10.2016 stating that he had an apprehension that the CPIO was contemplating to reject the RTI application on the ground that the matter was sub-judice and that inspection of the requisite files could not be denied to him under the provisions of Section 8 or 9 of the RTI Act, 2005. Moreover, the Appellant vide his letter had sought an opportunity of personal hearing at the First Appeal stage. However, he received a letter from the CPIO dated 04.10.2016 denying disclosure of information on the apprehended ground of matter being sub-judice. He alleged that the letter was sent by a personal messenger, quite contrary to the usual practice of sending letters under the RTI Act, 2005 via speed post and that the response of the CPIO was much beyond the stipulated time period of 30 days, as provided under the RTI Act, 2005. Thereafter, he had sent a letter to the O/o FAA (received in the O/o FAA on 20.10.2016) seeking personal hearing in his matter. However, he was in receipt of FAA order dated 19.10.2016 wherein the FAA had refused to interfere with a patently illegal response of the CPIO.

He alleged that the FAA had blatantly refused to adjudicate on the issue regarding the delay caused in the response of the CPIO and the ground of rejection claimed by the CPIO in denying information to him. He further complained to the FAA vide his letter dated 26.10.2016 regarding the non-consideration of his request made in his letters received at the O/o FAA on 18.10.2016 and 20.10.2016.

On perusal of the records and keeping in view the submissions made by both the parties, the Commission felt satisfied by the arguments raised by the Appellant and observed that mere pendency of a suit in the Court of Law could not be a sole ground for denying disclosure of information under the RTI Act, 2005. Moreover,

the Respondent could not substantiate or justify their stand on non-disclosure of information under any of the specific provisions of Section 8 or Section 9 of the RTI Act, 2005. It was further observed that denial of information merely on the ground that matter was sub-judice was not tenable. In this context the decision of the High Court of Delhi in *Municipal Corporation of Delhi v. R.K. Jain* in W.P. (C) 14120/ 2009 dated 23.09.2010 can be cited:

“5.....The matter being sub judice before a court is not one of the categories of information which is exempt from disclosure under any of the clauses of Section 8(1) of the RTI Act.”

Similarly, the Commission in its decision in F. No.CIC/AT/A/2009/00705 dated 27.11.2008 had held as under:

“4.None of the exemption sub-sections under Section 8 (1) (h) of the RTI Act forbid disclosure of information which is subject matter of a court proceeding. In no case, it can be held that section 8 (1) (h) could be said to apply to sub-judice matters.”

In another similar case a reference was made to the CIC decision in case no. CIC/MA/A/2006/00018 dated 30/06/2006 it was decided that *“there was no provision in the Act which restricts the disclosure of information merely on the ground that the matter is pending in the Court. Moreover, in the instant case, the Court had not forbidden the disclosure of investigation report or inspection of record.”*

Also, the Commission in its decision in Mr. Ashu v. CPIO/ Sr. Supdt of Posts, Department of Posts in CIC/BS/A/2015/001578/11769 dated 28.11.2016 had held as under:

“At the outset it is clarified that the RTI Act provides no exemption from disclosure requirements of sub-judice matters. The only exemption for sub-judice matters is regarding what has been expressly forbidden disclosure by a court or a tribunal and what may constitute contempt of court.”

Similarly, the Commission in CIC/SM/A/2011/000343/SG/13645 can be cited wherein it was held as under:

“The stay order(s) of the High Court of Delhi do not appear to have framed a specific issue for determination and have granted a stay specifically only on the operation of the order of the Commission dated 24/08/2009. No claim for the exemption has been made by the PIO as per the RTI Act. However, the Commission assumes that the PIO is claiming that disclosure of information is exempt since the matter is sub-judice. The only exemption which may relate to matters in court is Section 8(1)(b) of the RTI Act. Section 8(1) (b) of the RTI Act exempts from disclosure “information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court”. From a plain reading of Section 8(1)(b) of the RTI Act, it is clear that it does not include sub-judice matters. As mentioned above, information may be exempted from disclosure in accordance with Section 8 and 9 only and no other exemptions can be claimed while rejecting a

demand for disclosure. **Hence, disclosing information on matters which are sub-judice cannot constitute contempt of Court, unless there is a specific order forbidding its disclosure. The mere claim that a matter is sub-judice cannot be used as a reason for denying information under the RTI Act. In view of the same, the Commission rules that the denial of information by the PIO on queries 36 and 38 of the RTI application is legally untenable.** Moreover, in view of the observations laid down above, the decisions cited by the PIO are not relevant to the present matter.”

Furthermore, the Commission observed that the FAA vide its order dated 19.10.2016 had merely concurred with the response of the CPIO denying disclosure of information but no proper findings had been made by the FAA while adjudicating the matter. Moreover, the Respondent present at the hearing could not substantiate or justify the claim undertaken by him for non-disclosure of information.

It was therefore noted that in order to deny information under any of the exemptions mentioned under the RTI Act, 2005, the Respondent is required to provide justification or establish the reason why such exemption was claimed. In this context, the decision of the Hon'ble High Court of Delhi in the matter of Dy. Commissioner of Police v. D.K. Sharma, WP (C) No. 12428 of 2009 dated 15.12.2010 can be cited, wherein it was held as under:

“6. This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case.”

Moreover, as per the provisions of Section 7 (8) (i) of the RTI Act, 2005, where a request for disclosure of information is rejected, the CPIO shall communicate the reasons for such rejection. But, in the present matter, the CPIO/FAA had neither taken the recourse of Section 8 or 9 of the RTI Act, 2005 nor had provided reasons justifying denial of information.

The Commission expressed its displeasure on the casual and callous approach adopted by the Respondent in responding to the RTI application. It was felt that the conduct of Respondent was against the spirit of the RTI Act, 2005 which was enacted to ensure greater transparency and effective access to the information. It is also appalling to note that the FAA had also not acted in accordance with the provisions of the RTI Act, 2005 and therefore is advised to be alert and cautious in the implementation of the RTI Act, 2005 with due diligence and care.

However, with regard to the issue raised regarding the delay caused in furnishing a response to the RTI application, it was observed that as per the provision of Section 7(1) of the RTI Act, 2005, it has been clearly stated that “ Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-

*section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under section 6 shall, **as expeditiously as possible, and in any case within thirty days of the receipt of the request**, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9...".* Therefore, considering the present matter, the Respondent was in receipt of the RTI application only on 06.09.2016 and the response to the said Application was provided vide its letter dated 04.10.2016, much within the prescribed time limit mentioned in the relevant provision of the RTI Act, 2005.

DECISION:

Keeping in view the facts of the case and submissions made by both the parties, the Commission directs the Respondent to provide a suitable response to the Appellant in accordance with the provisions of the RTI Act, 2005 within a period of 15 days from the date of receipt of this order.

The Commission also instructs the Respondent to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

The Appeal stands disposed with the above direction.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar