

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 5469/2008

**COL. RAJENDRA SINGH Petitioner
Through: Mr. Sanjay Kr. Singh, Advocate.**

versus

**THE CENTRAL INFORMATION COMMISSIONER
and ANR Respondents
Through: Nemo.**

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**ORDER
20.03.2009**

Heard the petitioners counsel.

In view of the order recorded on 18.12.2008, the Court is of the view that the matter can be decided in the absence of the second respondent. On that day, second respondent had pointed to a letter written by the CIC on 16.3.207 stating that he had no objection to the dropping of proceedings by the CIC. The petitioner is aggrieved by an order dated 2.7.207 whereby CIC directed recovery of penalty of Rs.25,000/- in two installments for delayed supply of information to the second respondent (hereinafter called the applicant).

Briefly the facts are that the applicant sought for some information in August, 2006 before the Ministry of Human Resources and Development. Since the information was not held primarily by the said Department, the application was forwarded under Section 6 to the Indian Institute of Technology (IIT). The petitioner who was the designated Public Information Officer (PIO), contends having received the application on 9.10.2007 and duly forwarded it to the various agencies. He has produced a copy of the application; it runs into ten pages and pertains to various categories of information relating to the service records and issues concerning voluntary retirement of the applicant. The applicant was aggrieved by what he perceived to be withholding of relevant information and eventually appealed to the Central Information Commission. By the order dated 5.3.2007, the CIC disposed of the appeal. It recorded, inter

alia, that there were some delay in furnishing of information and that it showed the callous attitude of the department concerned. The Commission granted time up to 31.3.2007 to the IIT by which time other records were to be produced or a certificate given to the effect that the records have been weeded out. It may be mentioned that the IIT has stated that some of the information and documents sought were weeded out pursuant to the policy decision taken on 28.1.2000. It is a matter of record evidenced by the letter dated 15.7.2007 issued by the petitioner as PIO to the applicant that information was in fact furnished. The petitioner has also relied upon a copy of another letter dated 20.3.2007 for the purpose.

In these circumstances, the applicant addressed a letter to the Chief Information Commissioner on 16.3.2007; the same reads as follows: - Appreciating the difficulty of the Registrar IIT Delhi, the Commission may kindly drop the show cause notice in view of the assurance given by the Registrar/PIO of IIT Delhi that he will supply rest of the information in due course.

By the impugned order, the CIC negated the petitioner's contentions in relation to the show cause notice issued earlier proposing penal action under Section 20. The Commission held that the desire of the applicant to have the proceedings dropped would not bind it and that the penalty order issued on 31.5.2007 would bind the petitioner.

This Court has considered the materials and submissions.

Primarily the order by which the applicant's appeal was disposed of dated 5.3.2007 proceeds on assumption that the information application was made on 25.7.2006 and followed up by remainders. This assumption facially was incorrect, since the application though forwarded to the IIT by the Central Government was received by the petitioner on 9.10.2006. Furthermore, the petitioner clearly relied upon the weeding out of records policy decision taken on 28.1.2000. The applicant's request runs into ten pages. In these circumstances, after the primary order of 5.3.2007, the applicant was satisfied that the information furnished to him was adequate. He has in fact said so in the letter dated 16.3.2007.

Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or that there the refusal to receive application or the request was denied malfidely.

This much is evident from the provision itself. The provision within Section 20

(1) reads as follows: -

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(1)

Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the

opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it. Furthermore, the applicant was satisfied about the information furnished to him in March, 2007, it is within time frame granted by the CIC, i.e., before 31.3.2007. The applicant appeared before this Court and also supported this version as recorded in the order dated 18.12.2008.

In view of the above, this Court is satisfied that the petition is entitled to succeed. It is accordingly allowed. The impugned orders dated 31.5.2007 and 2.7.2007 are hereby quashed. Consequentially, the petitioner is entitled to refund of the amount; the CIC shall ensure that same is repaid or reimbursed within four weeks from today.

**S. RAVINDRA BHAT, J
MARCH 20, 2009
/vd/**

