

(x) *Please provide copies of all Vakalatnamas with date of their filing and No objections Certificate, if any.*

(B) *After providing the above information, please provide inspection of all records, documents, note-sheets and files relating to the information as referred to in clause (A) above. Please provide inspection of complete file(s) even if they contain part of the information. I shall undertake the inspection only if the information provided is illegible or incomplete.*

(2) That the appellant vide para 5 of his said application has also made a declaration that the information sought for is not exempted under Section 8 or 9 of the RTI Act, 2005 and also stated that to the best of the knowledge of the appellant, the information pertains to the Office of the CPIO in question.

(3) That Shri S.K. Verma, Asstt. Registrar/CPIO has deliberately and malafidely not provided complete and correct information as sought by the appellant. Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO has wrongly claimed the exemption under Section 8(1)(h) of the RTI Act to delay and deny the information. The appellant being aggrieved by the said order of the CPIO is filing the present appeal.

GROUND OF APPEAL

(1) That the order in question of the CPIO is incorrect and illegal and contrary to the provisions and spirit of the RTI Act, 2005 hence liable to be set aside.

(2) That the information sought by the appellant is not exempted under Section 8 or 9 or any other provisions of the RTI Act, 2005, therefore, there was no valid cause or reason or ground for not providing the information.

(3) That the CPIO has wrongly demanded a sum of Rs.2/- for providing information. The fee is payable only when the appellant is seeking copies of the documents thus where the information is provided the appellant is not required to pay the fee for reply to the RTI Application. Therefore, the

order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

- (4) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO have deliberately and malafidely denied the information, as sought in Point (E) of the RTI Application on the ground that the matter is sub-judice, hence exempted under Section 8(1)(h) of the RTI Act. In this regard, the Central Information Commission in the case of *Shri Nanak Chand Arora v. State Bank of India* – Case No. CIC/MA/A/2006/00018, decided on 30-6-2006 (**Annexure-5**), has held that the information cannot be denied on the ground that the matter is sub-judice because there is no provision in the RTI Act, which restricts the disclosure of information on the ground that the matter is sub-judice before the Court. Further, the Hon'ble Delhi High Court in the case of *MCD v. R.K. Jain* – WP (C) No. 14120 of 2009, decided 23-9-2010 (**Annexure-6**), has held that merely because the matter is sub-judice before a Court, is not a ground for denial of information under the RTI Act. In specific words, the Hon'ble Court held as under:

“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.”

In view of the above binding decisions, the CPIO cannot deny the information under RTI on the ground that the matter is sub-judice. Therefore, the order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

- (5) The Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO has deliberately and malafidely denied the information as sought in the RTI application by wrongly applying section 8(1)(h) of the RTI Act. The said Section 8(1)(h) of the RTI Act, 2005 reads as under:

'information which would impede the process of investigation or apprehension or prosecution of offenders'

A perusal of the above would show that disclosure of information is exempted when it would impede any of the following three:

- 1) Investigation
- 2) Apprehension of offenders
- 3) Prosecution of offenders

None of the above elements are involved in relation to the information as sought by the appellant under the present RTI application as Tribunal is neither an Investigating Agency nor Law Enforcing Agency nor a Prosecuting Authority, but is an Appellate Forum. The information sought relates to the orders passed by the quasi-judicial authority and records created by the Registry in relation to the appeals before it, thus, section 8(1)(h) has no applicability. Therefore, the order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

- (6) That the appellant has merely sought copies of the Orders, Record of Proceedings, Note Sheets of the Registry, directions for listing of the cases out of turn, date and copies of Mention Memo, copies of After Court Cause Lists, Notice of Hearings and Vakalatnamas and copy of the Compliance Report of CESTAT order and current status of the case, which are records of the quasi-judicial authority, therefore, are part of the 'public records' and are disclosable under the RTI Act and section 8(1)(h) has no applicability as there is no investigation that is pending in the matter. Moreover, these records are created by the Tribunal and not emanating from any third party, they are 'public records' created by public authorities. As per Section 74(1)(ii) of the Evidence Act, the documents confirming the records of the acts of official body or Tribunal, are treated

as public documents. The section 74(1)(ii) of the Evidence Act, 1872, reads as under :

"74. Public documents. – The following documents are public documents :-

- (1) documents forming the acts or records of the Acts -
 - (i) of the sovereign authority;
 - (ii) **of official bodies and tribunals, and**
 - (iii) of public officers, legislative, judicial and executive [of any part of India or of the Commonwealth], or of a foreign country.
- (2) public records kept in [any State] of private documents.

In view of the above provisions read with section 76 of the Evidence Act, the records of the Tribunal being public records and are disclosable to public. On the basis of these provisions, Allahabad High Court in the case of *Alla Buksh v. Ratan* – A.I.R. 1958 (All) 829, held, that an “assessment order” passed by Sales Tax Officer to be a public document. Similarly, the Mysore High Court in the case of *Mahboob Mills Co. Ltd. v. Vittal* – A.I.R. 1959 Mys. 180 held that the records of the Labour Tribunal as public documents; likewise Patna High Court in the case of *Hira Lal v. Ramanand Chaudhury* – A.I.R. 1959 Patna 515 held that assessment order is a public documents. In these circumstances, the order of Shri S.K. Verma, Asstt. Registrar (SM) and CPIO claiming exemption under section 8(1)(h) of the RTI Act is bad in law and liable to be set aside and the CPIO be directed to provide the information.

- (7) That the Shri S.K. Verma, Asstt. Registrar (SM) and CPIO has wrongly claimed exemption u/s 8(1)(h) of the RTI Act, as the said section is applicable only when disclosure of the information would cause impediment to the on-going investigation. The information sought by the appellant does not relate to a case where any investigation is pending. Even if it is assumed that investigation in the matter is still pending, the key issue for consideration is that whether disclosure of information as sought by the appellant/complainant would, in any way, impede the process of said inquiry/investigation. The Hon'ble Delhi High Court in *Addl. Commissioner of Police (Crime) Vs CIC; W.P(C). No. 7930 of 2009* while

dealing with the provision of this section had made following observations:

“85. Mere pendency of investigation, or apprehension or prosecution of offenders is not a good ground to deny information. Information, however, can be denied when furnishing of the same would impede process of investigation, apprehension or prosecution of offenders. The word —impedell indicates that furnishing of information can be denied when disclosure would jeopardize or would hamper investigation, apprehension or prosecution of offenders. In Law Lexicon, Ramanatha Aiyar 2nd Edition 1997 it is observed that —the word —impedell is not synonymous with obstruct’. An obstacle which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. Obstruct’ means to prevent, to close up.”

86. The word —impede therefore does not mean total obstruction and compared to the word obstruction’ or prevention’, the word impede’ requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority. The Section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1)(h) necessarily is for a limited period and has a end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends. Protection from disclosure will also come to an end when disclosure of information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation.”

(8) In another matter of Bhagat Singh Vs CIC; W.P. (C) No. 3114/2007; dated 03.12.2007 the Hon'ble Delhi High Court had observed as follows:

“Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly

construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information”

The decision of Delhi High Court in Bhagat Singh's case has been approved by Division Bench in Addl. Commissioner of Income Tax Vs. UOI – LPA No. 1377/2007 decided on 17-12-2007

- (9) That Hon'ble Delhi High Court again in the case of B.S. Mathur v. Delhi High Court – W.P.(C) No. 295/2011 dated 3-6-2011 again held as under:-

“The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would ‘impede’ or even on a lesser threshold ‘hamper’ or ‘interfere with’ the investigation. This burden the Respondent has failed to discharge”

- (10) That as per the above judgments of Hon'ble Delhi High Court mere pendency of an investigation cannot be the ground for denial of information under section 8(1)(h) of the RTI Act, but the CPIO must show that the disclosure of such information would certainly impede the process of investigation. Hon'ble Court has further clarified that section 8(1)(h) does not provide for blanket exemption from providing information relating to investigation process. Even partial information wherever justified needs to be disclosed. Further, onus to prove that denial is justified is on the public authority. However, unfortunately in the present case, the CPIO has not properly examined the contents of the information in question, but just has denied the information by invoking section 8(1)(h) without giving any reason or ground. Therefore, the order of the Shri S.K. Verma, Asstt.

Registrar (SM) and CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame..

- (11) That further, as observed by the Hon'ble Delhi High Court in the above quoted judgment, the onus to prove that a denial is justified shall be on the CPIO as per section 19(5) of the RTI Act. But, in the instant case, nowhere in the order of the CPIO denial of information has been justified. He did not even indicate a single reason which made him believe that disclosure of information would impede the process of investigation/examination. Shri S.K. Verma, Asstt. Registrar (SM) and CPIO did not give any such reason in support of denial of information. Therefore, the order of the CPIO is incorrect and illegal and liable to be set aside and the CPIO be directed to provide the information in time bound frame.
- (12) That the Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO have erred in not appreciating that the information sought relates to evasion of taxes and violation of the statutory provisions adversely affecting the public revenue, therefore the information sought is in larger public interest. Therefore the CPIO should have applied section 8(2) of the RTI Act and provided the information.
- (13) That the Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO have not given any reasons or grounds as to how the information is exempted from disclosure under section 8(1)(h) of the RTI Act, therefore his order is a non-speaking order and passed in violation of the principles of natural justice, hence is liable to be set aside on this ground alone.
- (14) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO have been providing copies of similar information to the appellant till now and as the appellant has made certain complaints to the authorities against irregularities and

manipulations of Shri S.K. Verma, Asstt. Registrar, he is causing harassment and inconvenience to the appellant by denying the information which CESTAT has continuously been providing to the appellant as per the provisions of the RTI Act. Therefore, the order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

(15) That the learned Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO have deliberately and malafidely denied the copies of the documents as sought by the appellant by wrongly applying section 8(1)(h) of the RTI Act, so as to cause delay and deny the information with malafide intent and purpose therefore, he is liable for penal action under Section 20 of the RTI Act, 2005 and the appellant is also entitled to compensation for the harassment and inconvenience caused to him. The appellant reserves his right to file a direct complaint to CIC, as the First Appellate Authority has no powers to take penal action under section 20 of the RTI Act. That the CPIO has erred in not providing the information to the appellant though as per the provisions of the RTI Act, the appellant is entitled to information as sought by him. Therefore, the order of the CPIO is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

(16) That Shri S.K. Verma, Asstt. Registrar (SM) and CPIO and Shri Kripa Shanker, Asstt. Registrar and Deemed CPIO have wrongly claimed exemption under Section 8(1)(d) of the RTI Act. The said Section has no applicability to the present case, as no information is sought from the Authorities, which is emanating from any third party. Therefore, the order of the First Appellate Authority in this respect is incorrect and illegal and liable to be set aside and the CPIO be directed to provide the information in time bound frame.

(17) That the information sought is neither voluminous nor relate to older and larger period, thus could have easily been provided by the learned

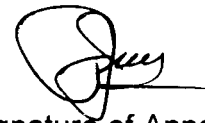
CPIO.

- (18) That as per proviso to Section 8(1) of the RTI Act, 2005, the information which can not be denied to the Parliament or the State Legislatures shall not be denied to any person. The information sought by the appellant in the subject application is the one which cannot be denied to the Parliament or the State Legislatures and hence it cannot be denied or refused to the appellant.
- (19) That a personal hearing may be granted to the appellant before deciding the present appeal.
- (20) This is without prejudice to the right of the appellant to add, alter or modify any of the grounds of this appeal and adduce oral or written evidence at the time of hearing or till the appeal is disposed of.

PRAYER

Under the circumstances, the appellant prays as under:

- (a) That the Original Records may be summoned and perused.
- (b) That the order of the CPIO may be set aside to the extent it has been appealed against and CPIO/Deemed CPIOs may be directed to provide the information in question within time bound frame.
- (c) That imposition of penalty may also be recommended against the CPIO for not providing the complete and correct information.
- (d) That any other relief as the Appellate Authority deem fit and proper may also be ordered in favour of the appellant.
- (e) That a personal hearing may be granted to the appellant before deciding the appeal.



Signature of Appellant
Telephone No. : 9810077977
24651101
Fax No. 011-24635243

Place : New Delhi
Dated : 10-11-2015

o/c

12

Annexure-1.

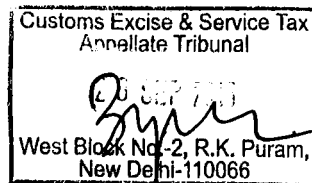
Application under Section 6 of the Right to Information Act, 2005

Ref. No. :RTI/P-195/9505/15

Dated : 25-9-2015

To

CPIO
Customs Excise & Service Tax Appellate Tribunal,
West Block 2, R.K. Puram,
New Delhi - 110066



1.	Name of the Applicant	R.K. Jain
2.	Address	1512-B, Bhishm Pitamah Marg Wazir Nagar New Delhi-110003
	(b) Phone Nos.	09810077977, 011-24651101, 011-24690707
	(c) Fax No.	011-24635243
3.	Whether a Citizen of India	Yes
4.	Particulars of Information	
	Details of information required	(A) Please provide the following information in relation to Appeal No. AD/13/2012 (Huawei Technologies Co. Ltd.) (i) Please provide certified copies of all orders, order sheets, records of proceedings (except Final Order) (ii) Please provide certified copies of all note sheets put up by the Registry and the Court Master and Orders thereon. (iii) Please provide certified copies of all Notes/Observations made by the Hon'ble Member and the President's order thereon. (iv) Please provide certified copies of all Supplementary Cause Lists issued for listing of these appeals. (v) Please provide details of all mention made along with copy of the Mention Memo and endorsements and orders thereon. (vi) Please provide certified copies of all applications made by the appellants and departments except the Stay application and copies of the orders passed thereon. (vii) Please provide copies of all orders or directions received from High Court or Supreme Court in relation to this case. (viii) Please provide certified copies of all communications made by the appellant/their counsel.

		<p>(ix) Please provide certified copies of all Hearing Notices</p> <p>(x) Please provide copies of all Vakalatnamas with date of their filing and No objections Certificate, if any.</p> <p>(B) After providing the above information, please provide inspection of all records, documents, note-sheets and files relating to the information as referred to in clause (A) above. Please provide inspection of complete file(s) even if they contain part of the information. I shall undertake the inspection only if the information provided is illegible or incomplete.</p> <p>Note:-Please provide point-wise information/ response for each of above points.</p>
5.	I state that the information sought is covered under RTI Act and does not fall within the exemptions contained in sections 8 or 9 or any other provisions of the Right to Information Act, 2005 and to the best of my knowledge it pertains to your office. Information is being sought in larger public interest.	
6.	A Postal Order No. 32F 040324 for Rs. 10 towards payment of fee is enclosed herewith. You are requested to filling the name in which the Postal Order is payable.	
7.	As per Section 7 of the RTI Act, 2005 information is to be provided within 30 days of the Application.	

Signature of Applicant
 Telephone No. : 9810077977
 011-24651101, 24690707
 Fax No. 011-24635243

Place : New Delhi
 Encl. : as above
 HR/HR
 HR

F.No. 10181...../CESTAT/CPIO-ND/RP/2015,
 Customs, Excise and Service Tax, Appellate Tribunal,
 West block No.2, R.K.Puram, New Delhi-110066.

Dated 30/9/15

ID No. 10181/2015

Subject: Information sought under RTI Act 2005.

Sir,

Please refer to RTI application of
 Shri R.K. Jain
 Under RTI Act 2005 vide No. 9005/15 dated
25/9/15 (copy enclosed) wherein certain information are sought
 as mentioned therein is related to your section.

Therefore, in terms of the provisions of Section 6(3) and Section
 5(4) read with Section 5(5) of RTI Act, 2005, the RTI application
 No. 9005/15 dated 25/9/15 CPIO ID No 10181/2015 is
 forwarded herewith to the following officers as deemed CPIO with the
 request to provide correct and para-wise information/inspection on or
 before 16/10/15 directly to the applicant and intimate the
 undersigned within the stipulated time, failing which you are
 personally responsible for delay and penalty if any, under section 20 of
 RTI Act. You are, further requested to follow OM No.12/31/2013-IR
 dated 12-02-2013 circulated on 23-05-2013

Encl: as above


 (Rajender Prasad)
 Accounts Officer/CPIO

To

1. AR, Customs, ST&AD, CESTAT, New Delhi.

2. _____

3. _____

4. AC/IT, Computer P/c for uploading on website

Copy for information to:-

Sh R.K. Jain,
1512-B BHISHAM PITAMAH MARG,
HAZIR NAGAR

Handwritten
10.30

o/c

Annexure-3

15

R.K. JAIN M.Com., LL.B.
President, Excise and Customs Bar Association
Editor of
EXCISE LAW TIMES & SERVICE TAX REVIEW
and author of

Customs Excise & Service Tax
Appellate Tribunal
13 OCT 2015
West Block No.-2, R.K. Puram,
New Delhi-110066

[Handwritten signature]
13/10/2015

**1512-B, Bhishm Pitamah Marg,
Wazir Nagar,
NEW DELHI - 110 003.
PHONE : 24693001-3004
MOBILE : 9810077977
Fax No. 011-24635243**

Central Excise Law Guide; Central Excise Tariff of India;
Central Excise Law Manual; Customs Tariff of India;
Customs Law Manual; Excise & Customs Circulars
& Clarifications; Excise & Customs Case Referencer;
Service Tax Law Guide; Service Tax Handbook;
Handbook of Duty Drawback on Goods &
Services; Valuation under Central Excise; Hand-
book of Foreign Trade Policy & Procedures

RTI/P-195/9505/15/R16908
12-10-2015

Assistant Registrar,
Customs, ST & AD
Customs Excise & Service Tax Appellate Tribunal,
West Block 2, R.K.Puram,
New Delhi - 110066

Sub: My RTI Application No. RTI/9505/15, dated 25/9/2015

Dear Sir,

This refers to the letter F. No. 10-181/CESTAT/CPIO-ND/RP/2015 dated 30-9-2015 of Shri Rajender Prasad, Accounts Officer/CPIO, CESTAT, New Delhi, transferring my aforesaid RTI application to you under section 6(3) and Section 5(4) read with Section 5(5) of the RTI Act, 2005, for providing the information to me. You are requested to kindly provide the information at the earliest as under section 7(1) of the RTI Act, information is to be provided within 30 days of the RTI Application.

Thanking you,

Yours faithfully,



[R.K. Jain]

16

o/c

R.K. JAIN M.Com., LL.B.

President, Excise and Customs Bar Association

Editor of

EXCISE LAW TIMES & SERVICE TAX REVIEW

and author of

Central Excise Law Guide; Central Excise Tariff of India;
Central Excise Law Manual; Customs Tariff of India;
Customs Law Manual; Excise & Customs Circulars
& Clarifications; Excise & Customs Case Referencer;
Service Tax Law Guide; Service Tax Handbook;
Handbook of Duty Drawback on Goods &
Services; Valuation under Central Excise; Hand-
book of Foreign Trade Policy & Procedures

RTI
Customs Excise & Service Tax
Appellate Tribunal
13 OCT 2015
West Block No. 2, R.K. Puram,
New Delhi - 110066

1512-B, Bhishm Pitamah Marg,

Wazir Nagar,

NEW DELHI - 110 003.

PHONE : 24693001-3004

MOBILE : 9810077977

Fax No. 011-24635243

13/10/2015

RTI/P-195/9505/15/R16909

12-10-2015

A.R./T.O.

Computer Section

Customs Excise & Service Tax Appellate Tribunal,

West Block 2, R.K.Puram,

New Delhi - 110066

Sub: My RTI Application No. RTI/9505/15, dated 25/9/2015

Dear Sir,

This refers to the letter F. No. 10-181/CESTAT/CPIO-ND/RP/2015 dated 30-9-2015 of Shri Rajender Prasad, Accounts Officer/CPIO, CESTAT, New Delhi, transferring my aforesaid RTI application to you under section 6(3) and Section 5(4) read with Section 5(5) of the RTI Act, 2005, for providing the information to me. You are requested to kindly provide the information at the earliest as under section 7(1) of the RTI Act, information is to be provided within 30 days of the RTI Application.

Thanking you,

Yours faithfully,



[R.K. Jain]

(17)

F.No.10-181/ CESTAT/CPIO-ND/RP/2015
 Customs Excise and Service Tax Appellate Tribunal
 West Block No 2, R.K.Puram, New Delhi-110 066

Dated---25/11/15

ID No. 10-181/15

To,

Shri R.K. Jain
 15 D-B- Bhishma Pitamaha
 Marg, Wazir Nager,
 New Delhi - 110003.

Subject: Information under Right to Information Act 2005.

Sir,

Please refer to your RTI application No. 9505/15 Dt. 25/09/15
 and our ID No. 10-181/15... the information received from at Customs
 containing 1 pages is enclosed herewith for your reference
 please.

You are, Therefore, requested to please acknowledge the
 receipt and deposit Rs. 2 (@2/- per page) to this Tribunal by
 cash or DD in favour of Accounts Officer, CESTAT, New Delhi. If the

applicant is aggrieved, he may file an appeal under section 19
 of RTI Act within 30 days before Hon'ble FAA, CESTAT, N. Delhi

[Signature]
 (S.K. Verma) 27/11/15
 Asstt. Registrar/CPIO

Encl:- As above

Copy to:- Computer Section for website

Encl. Pde

v-16/103

18

CUSTOMS, SERVICE TAX & ANTIDUMPING BRANCH

I.D.No.10-181/2015

With reference to I.D.No.10-181/2015 dated 30.9.2015 , the information sought by you, in the A.No.AD/13/2012.In this regard it is submitted that the above matters are sub-judice before the Hon'ble Tribunal.Therefore information sought by is exempted under section 8(1)(h) &8(1)(d) of the RTI Act, therefore the information can not be provided.

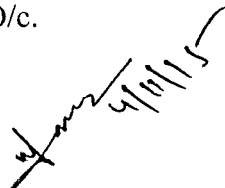
Dated:04.11.2015


Asstt. Registrar.

Copy to:-

✓ 1.CPIO.

2.O/c.


4/11/15

A.R.

Matter being Subjective is no ground to reject RTI

Central Information Commission

Decision No. 80/IC(A)/2006
F.No.CIC/MA/A/2006/00018

Dated, the 30th June, 2006

Name of the Appellant : Shri Nanak Chand Aiora, R/o 1111, Rani Bagh, New Delhi-110034.
Name of the Public Authority : State Bank of India, Shakur Basti, Delhi-110034.

(Complaint u/s 18 of Right to Information Act)

DECISION

Facts of the Case:

1. The complainant was sanctioned a loan of Rs. 3 lakhs in 1997 for purchase of Truck Chassis and fabrication of its body. He has alleged that due to the negligence of the Bank, the sanctioned loan was not disbursed. The respondent has however mentioned that for the release of loan amount he was required to deposit the required margin money, which he could not do. Therefore, on his request the Bank returned all the papers and the amount deposited by him. The Bank accordingly complied with his request.
2. The Complainant was however aggrieved by the manner in which his case was dealt with by the officials of Shakur Basti Branch of the State Bank of India. He lodged a complaint with the Head Office of the SBI, in which he stated that he was harassed and forced to withdraw his application for loan. As per the direction of the Chief General Manager, SBI, Sansad Marg, New Delhi, the matter was enquired by the Vigilance Department of the Bank.
3. In his complaint to the Commission, the appellant has mentioned that the Bank informed him that his complaint was investigated and on the basis of its findings the concerned officers have been cautioned. Subsequently, the appellant asked for 'a copy of the investigation report' under RTI Act on 21.10.2005. He also requested for inspection of records pertaining to investigations of his complaint. The Chief Manager, SBI, Shakur Basti Branch informed him on 31.12.2005 that:

"The matter is under consideration and we shall advise you accordingly very soon on the matter".

Subsequently, on 19.1.2006, he was informed as under:

20

"We advise that we are not in position to accede to your request for supply of copies under RTI Act, as the matter is su-judice. It is also informed that under the said Act there is no provision for inspection of the record".

4. On the petition received from the complainant, the respondent was asked by the Commission to furnish a detailed reply on the petition filed by the complainant.

5. The respondent has mentioned that there is a dispute between the Bank and the complainant and the matter is pending before the State Consumer Disputes Redressal Commission (SCDRC), New Delhi. The complainant has already filed an appeal before the SCDRC for redressal of his grievances and for providing access to the complete file.

6. The respondent Bank has also mentioned that the request for information by the complainant could not be accepted "due to the exemptions provided under section 8(1) and not covered under section 8(2) of the Right to Information Act, 2005 and was informed accordingly that the matter being sub-judice at the time as well as now".

7. The case was heard on 29.6.2006. The complainant was represented by his Counsel, Shri Chandu Ram and the Bank was represented by its Counsel Shri S.N. Relan along with the official of the Bank.

8. Both the parties were heard. The complainant mentioned that under the RTI Act he has the right to acquire a copy of the Investigation Report, which was conducted on his complaint against the erring officials, who did not disburse him the sanctioned loan.

9. The respondent contended that the matter was sub-judice and, therefore, the report in question should not be disclosed till the SCDRC has finally adjudicated on the matter of appeal filed by the complainant. He has however not mentioned the specific section of the Act under which exemption from disclosure was sought.

Commission's Decision:

10. The CPIO and the Chief Manager of the Bank has not responded to the information seeker in the spirit in which the Act seeks to promote transparency in functioning of the Bank. He has mis-interpreted the provision of the Act and informed that there was no provision for inspection of the record in the Act. This is contrary to the provision u/s 2(f) (i). He has also not indicated as to why the report could not be disclosed, except that the matter was sub-judice. There is no provision in the Act which restricts the disclosure of information merely on the ground of the fact that matter is pending with the Consumer Court. In the instant case, the Court has not forbidden the disclosure of investigation report or inspection of record.

11. The CPIO has also not mentioned the name of the appellate authority of the Bank to whom the appellant would have filed his 1st appeal.

12. In view of the above, the CPIO and the Chief Manager is directed to furnish a certified copy of the information sought within 15 working days of issuance of this decision and provide access to the relevant file for inspection u/s 2(f) (i) of the Act.

13. The CPIO is also required to Show Cause as to why penalty u/s 20 (1) of the Act should not be imposed for not complying with provisions of the Act. He is therefore directed to appear before the Commission at 2.30 pm on July 14, 2006 to give his explanation in this regard.

14. The appeal is accordingly disposed of.

Sd/-
(Prof. M.M. Ansari)
Information Commissioner

Authenticated true copy :

(L.C. Singhi)
Additional Registrar

Cc:

1. Shri Nanak Chand Arora, R/o 1111, Rani Bagh, New Delhi-110034.
2. Shri R. S. Schrawat, Chief manager & CPIO, State Bank of India, Shakur Basti, Delhi-110034.
3. The Chief General Manager, State Bank of India, Sansad Marg, New Delhi.

IN THE HIGH COURT OF DELHI AT NEW DELHI
R-29

W.P.(C) 14120/2009

MUNICIPAL CORPORATION OF DELHI Petitioner
Through : Mr. Gaurang Kanth, Advocate.

versus

SHRI R.K. JAIN
Respondent
Through : None.

CORAM: JUSTICE S. MURALIDHAR

ORDER
23.09.2010

1. There are two principal grounds urged by the petitioner, Municipal Corporation of Delhi (?MCD?), to assail the impugned order dated 30th October, 2009 passed earlier by the Central Information Commission (?CIC?) levying a penalty of `10,750/- on Mr. A Karthikeyan, Head Clerk of MCD and `19,000/- to be recovered from Mr. Ravinder Kumar, Public Information Officer (?PIO?) for their respective roles in the delay in furnishing to the Respondent the information sought by him.

2. On 27th April, 2009, the Respondent filed an application under the Right to Information Act, 2005 (?RTI Act?) before the PIO seeking a complete set of attested copies of the file notings as well as the correspondence side of the file wherein a note which had been moved by the Central Vigilance officer (?CVO?) suggesting that MCD should appeal against the judgment dated 26th March, 2009 of the Central Administrative Tribunal (?CAT?). By the said judgment the CAT had set aside an order dated 7th April, 2006 of the MCD dismissing the Respondent and 16 other Executive Engineers (Civil). The CAT ordered their reinstatement. It appears that although the stand taken by the Head Clerk was

that he had forwarded the application for information under the RTI Act to Mr. Anil Kumar Gupta who was supposed to provide the information, on the same date i.e. 27th April, 2009, he was unable to produce before the CIC any documentary proof to that effect. The records showed that the RTI application was eventually received by Mr. Anil Kumar Gupta only on 10th July, 2009 by which

time 43 days had already elapsed. Since the date of seeking the information in terms of Section 7(1), the information should be provided to the Respondent within thirty days from 27th April, 2009.

3. It may be noticed at this stage that neither before the CIC nor before this Court the Petitioner has been able to provide any justification for the above delay of 43 days in forwarding the Respondent's RTI application to the concerned officer of the MCD which had to provide the information. It is also stated that the penalty of ₹ 10,750/- levied on Mr. Karthikeyan already stands deducted from his salary. Accordingly, that part of the impugned order of the CIC calls for no interference.

4. As far as the PIO was concerned, by the time request reached him, the respondent herein had already filed an appeal before the CIC. On 7th July, 2009, the CIC issued notice to the PIO asking him to provide information to the Respondent before 1st August, 2009. In response thereto the PIO wrote to the Respondent on 31st July, 2009 stating that the order of the CAT had been challenged in this Court by means of a writ petition which was pending. A stay had been granted against the judgment of the CAT. It was accordingly contended by the PIO that since the petition was sub-judice, the copies of the notings side of the file as well as the correspondence side could not be provided. It was stated by the PIO that the information sought was exempt from disclosure under Section 8(1)(d) of the RTI Act.

5. As the CIC has rightly noted, there was no explanation why Section 8(1)(d) would apply. That exemption applies only to matters relating to commercial confidence, trade secrets or intellectual property. 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.

6. It may be noted that as regards the above finding of the CIC, there is again no defence of the MCD. The disclosure of the information sought could not have been withheld only on the ground that the matter was sub judice before this Court.

7. The first point put forth by the learned counsel for the Petitioner is that the Respondent could not have, without first exercising the remedy of going before the Appellate Authority of the MCD, filed an appeal directly before the CIC. Reliance is placed on the decision of the CIC passed in *Shri Milap Choraria v. Shri Jai Raj Singh, Commissioner of Income Tax* (decided on 9th April, 2007). This Court does not find any merit in this contention. The Appellate Authority in this case would have been an officer of the MCD. It is unlikely he would have decided the appeal contrary to the stand of the MCD that since the matter was sub judice, the information could not be provided to the Respondent. Moreover, no such plea questioning the non- exhaustion of the remedy of first appeal appears to have been raised before the CIC.

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.

(2) 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 and persistently, failed 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.?



11. This Court is unable to accept the contention of the Petitioner that unless the information was deliberately withheld a penalty should not be levied. The mere fact that the information was not disclosed in the time specified under Section 7(1) of the Act, is enough to attract the penalty already fixed under Section 20(1). There is also no discretion but to award penalty of `250/- for every day of delay subject however to a maximum of `25,000/- . In this case, the mere fact that the information was provided to the Respondents after a delay of 76 days attracted Section 20(1). It may be noticed that there is no denial by the MCD that the information sought was ultimately provided only on 15th October, 2009 with a delay of 76 days.

12. Secondly, since this Court accepts the submission that the total amount of penalty leviable was `25,000/- and since learned counsel for the MCD informed the Court that the penalty of `10,750/- levied on Mr. Karthikeyan had already been recovered, the penalty levied on Mr. Ravinder Kumar is reduced from `19,000/- to `14,250/- in terms of Section 20(1) of the RTI Act.

13. Only to this limited extent, the impugned order of the CIC dated 30th October, 2009 and subsequent order dated 1st December, 2009 rejecting the review petition of Mr. Ravinder Kumar will stand modified. ✓

14. In compliance of the CIC's order, the extent of the penalty amount of `14,250/- that is to be recovered from Mr. Ravinder Kumar, would be by way of three installments of `5,000/-, `5,000/- and `4,250/- to be deducted from the salary of Mr. Ravinder Kumar beginning from October, 2010. The necessary compliance be filed before the Joint Registrar of the CIC as directed in the impugned order.

15. The writ petition is disposed of in the above terms without any order as to costs.

S. MURALIDHAR, J
SEPTEMBER 23, 2010
AK

W.P.(C) 14120/2009
Page 1 of 7

APPELLATE AUTHORITY

UNDER RIGHT TO INFORMATION ACT, 2005
Customs, Excise & Service Tax Appellate Tribunal
West Block-2, R.K. Puram, New Delhi-66.

Appeal No.10-123(A)/2015
CPIO ID NO. 10-181/CESTAT/CPIO-ND/RP/2015

Appeal No.10-126(A)/2015
CPIO ID NO. 10-223/CESTAT/CPIO-ND/SKV/2015

Shri R.K.Jain

...Appellant

Vs.

CPIO,CESTAT

...Respondent

Date of Hearing/decision: 08.04.2016

ORDER 73/2016

The grievance of appellant in these appeals are that the information sought for has been denied by the CPIO on the ground that the matter is sub-judice before the Tribunal. In this context, the appellant brought to the notice of the First Appellate Authority, the order No.69/2015 dated 26.11.2015 passed in the case of Appeal No.10-115(A)/2015 in CPIO ID No.10-139/2015 on an identical issue. I have heard both sides and perused the records. The relevant paragraphs of the cited order are extracted herein below:-

"7. I find from the above judgements of the judicial forum that the matter which are sub-judice before the Court or Tribunal is not falling in the category of exempted information in terms of any of the clauses of Section 8 (1) of the RTI Act, 2005.

8. In view of the foregoing, I do not find any sustenance in the submission of the CPIO that information cannot be furnished by the Tribunal, when a particular case matter is sub-judice before it, in as much as, Tribunal is a judicial body, which decides the appeals in the open Court. Hence, there is no question of maintaining any secrecy with regard to case file.

o/c ✓
ISSUED ON
21/4/16
SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI-110066

[Signature]

9. *In view of the above, I am of the considered opinion that information sought for by the appellant can be furnished under the statute. Therefore, the CPIO is directed to furnish all the information to the appellant preferably within a period of 4 weeks from the date of receipt of this order."*

2. In view of the fact that the information can be furnished under the statute, I direct the CPIO to collect the information from the concerned section and forward the same to the appellant preferably within a period of 3 weeks from the date of receipt of the order. The appeal is disposed of in the above terms.


(S.K. MOHANTY)
APPELLATE AUTHORITY

Copy to:-

1. Shri.R.K.Jain, 1512-B, Bhishm Pitamah Marg, Wazir Nagar, New Delhi-110003, w.r.t. letter No. RTI/10-102(A)/CESTAT/FAA-SKM/2015.
2. CPIO, CESTAT, New Delhi.
3. Office Copy