

**CENTRAL INFORMATION COMMISSION**

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Appeal No.:-CIC/CBECE/A/2017/182212-BJ

Appellant : Mr. Prabhu Dayal Beniwal,  
Respondent : CPIO  
O/o. the Commissioner of Central Excise,  
Customs & Service Tax,  
Jaipur, Rajasthan  
Date of Hearing : 11.08.2017  
Date of Decision : 11.08.2017

Date of filing of RTI applications	08.07.2016
CPIO's response	21.07.2016
Date of filing the First appeal	02.08.2016
First Appellate Authority's response	17.08.2016
Date of diarised receipt of second appeal by the Commission	27.10.2016

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information regarding the details of the action taken by the Anti-corruption wing of the Respondent Public Authority against him, the date on which the sanction for prosecution was sought and issues related thereto.

The CPIO vide its letter dated 21.07.2016 informed the Appellant that a departmental inquiry was pending against him in the relevant matter and therefore information could not be disclosed to him u/s 8(1)(h) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA vide its order dated 17.08.2016 while concurring with the response of the CPIO, provided the date on which sanction for prosecution was sought by the Anti-corruption wing.

The Commission is in receipt of a letter from the Respondent (O/o Pr. Commissioner, CG&ST Commissionerate, Jaipur) wherein it had been informed that notice for hearing of the Appeal in the same matter had been transferred to CPIO (CGST Commissionerate Jaipur).

**HEARING:**

**Facts emerging during the hearing:**

The following were present:

**Appellant:** Mr. Prabhu Dayal Beniwal (Superintendent Central Excise) through VC;

**Respondent:** Mr. Hemant Hingonia, Dy. Commissioner CG&ST Commissionerate, Jaipur and Mr. Vipin Gupta, Superintendent through VC;

The Appellant reiterated the contents of his RTI application and stated that the information sought by him had not been provided. It was argued that investigation in the matter had been completed and that the sanction for prosecution was required to defend his case before the competent authority. In his defence he relied upon the judgment of CIC in Appeal no. CIC/BS/A/2016/000486 dated 06.04.2017. It was submitted that the Respondent had wrongly claimed exemption under Section 8(1)(h) of the RTI Act, 2005. In its reply, the Respondent reiterated the response given by the CPIO/FAA and submitted that the information sought by the Appellant could not be provided at this stage as the matter was subjudice with the Anti-corruption Branch of the State Government besides disciplinary proceedings underway against him. It was articulated that the information sought by the Appellant could be contested before the relevant Court as the prosecution could also get an opportunity to express their views in the matter keeping in view the gravity of the case. The Respondent referred to the CIC decision in Appeal No. CIC/WB/A/2009/000750 dated 30.12.2009 in its defence. It was acknowledged by the Appellant that the departmental proceedings were under progress and that the IO had been appointed but contested that these proceedings had no relevance to his demand for seeking information.

The Commission in its decision in Shankar Sharma & Others Vs. DGIT CIC/AT/A/2007/0007, 10 & 11 observed that the term 'investigation' used in section 8(1)(h) of the Act should be interpreted broadly and liberally and that no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that decision is taken.

Furthermore, the Commission in the decision of *K.S. Prasad vs SEBI* CIC/AT/A/2007/007/00234 had held as under:

*"...as soon as an investigation or an enquiry by a subordinate Enquiry Officer in Civil and Administrative matters comes to an end and, the investigation report is submitted to a higher authority, it cannot be said to be the end of investigation. ... which can be truly said to be concluded only with the decision by the competent authority."*

The Commission in case nos. CIC/AT/A/2007/00007, CIC/AT/A/2007/00010 and CIC/AT/A/2007/00011 dated 10.07.2007 has held as follows:

*“17. .... the term ‘investigation’ used in Section 8(1)(h), in the context of this Act should be interpreted broadly and liberally. We cannot import into RTI Act the technical definition of ‘investigation’ one finds in Criminal Law. Here, investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In that sense, an investigation can be an extended investigation.....The respondents are, therefore, right in holding that it would be a misnomer to hold that investigation in matters such as this, the moment the Investigating Officer submits his report to the competent authority spells the end of investigation.”*

In view of the above ratio, it is clear that the term “investigation” used in Section 8(1)(h) of the RTI Act has to be given a wider interpretation and will also include an enquiry conducted during disciplinary proceedings. Hence, the exemption of Section 8(1)(h) of the RTI Act would apply to the present case.

The Commission further observes that in the case of Govind Jha v. Army HQs, CIC/AT/A/2006/00039 dated 01.06.2006, the Commission had held as under:

*“although the rules of disciplinary proceedings provide for disclosure of all documents and information which constitute the basis for the disciplinary action against an employee, yet such employees demand additional information pertaining to them through the RTI Act. These demands are mostly about disclosure of file-notings and other materials which otherwise would not be available to the employee under the Disciplinary Proceedings Rules. It has been the consistent position of the Commission that a disciplinary enquiry assumes the characteristics of an ongoing investigation and the material thereof cannot be disclosed under Section 8(1)(h) of the RTI Act.”*

The Commission in another case of Shri P.K. Saha v. Shri D.B. Janotkar, General Manager (A&EE) & PIO, Mahanadi Coalfields Limited, CIC/AT/A/2007/00333 dated 17.08.2007 had observed as under:

*“When a specific law lays down the scope and the range of information to be disclosed to a person facing specified action at the hands of a public authority, it will be a sure interference with the process of investigation under that specific law if the affected person, or anybody else in his place, is allowed under the RTI Act to access a larger range of information than would be otherwise authorized.”* The Commission had also observed that information pertaining to the disciplinary proceedings should not be disclosed and the reason why such disclosures should not be encouraged is governance.

The Commission, in accordance with the above-mentioned precedents, is of the view that the information sought by the Appellant cannot be disclosed as it is exempted from disclosure as per Section 8(1)(h) of the RTI Act, since the proceedings in the disciplinary case initiated against him have not reached a logical conclusion.

**DECISION:**

Keeping in view the facts of the case and the submissions made by the Respondent, no further intervention of the Commission is warranted in the matter.

The Appeal stands disposed accordingly.

**(Bimal Julka)**  
**Information Commissioner**

Authenticated True Copy:

(K.L.Das)  
Deputy Registrar