

**CENTRAL INFORMATION COMMISSION**

2<sup>nd</sup> Floor, August Kranti Bhawan  
Bhikaji Cama Place, New Delhi-110066  
website:cic.gov.in

Appeal No.: -CIC/CBECE/A/2017/183472-BJ

Appellant : Mr. Sathyamourthy Vinayagamurthy,

Respondent : CPIO  
Directorate of Revenue Intelligence,  
Tuticorin, Tamilnadu

Date of Hearing : 11.08.2017

Date of Decision : 11.08.2017

Date of filing of RTI applications	10.08.2016
CPIO's response	06.09.2016
Date of filing the First appeal	14.09.2016
First Appellate Authority's response	20.10.2016
Date of diarised receipt of second appeal by the Commission	02.11.2016

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information on 05 points regarding whether show cause notices had been adjudicated for decision and orders were issued, copies of such orders, if any, whether there were orders sanctioning cash rewards to informers and officers of Department, copies of reward sanction orders and issues related to the show cause notices issued to the Addl. Director of DRI, Chennai u/s 124 of Customs Act, 1962 on 19.10.2011.

The CPIO vide its letter dated 06.09.2016 informed the Appellant that information could not be furnished to him as the Respondent Public Authority was an organisation under Sl. 03 of the Second Schedule to the RTI Act, 2005 and therefore as per Section 24 of the RTI Act, 2005, the provisions of the said Act were not applicable on the Respondent Public Authority. Dissatisfied by the reply of the CPIO, the Appellant approached the FAA. The FAA vide its order dated 20.10.2016 upheld the reply of the CPIO.

**HEARING:**

**Facts emerging during the hearing:**

The following were present:

**Appellant:** Mr. Varun Bansal (Advocate) representing the Appellant present in person;

**Respondent:** Mr. Jesu Chandra Bose, CPIO/Sr. Intelligence Officer, DRI through VC;

The Appellant's representative reiterated the contents of RTI application and stated that no satisfactory information had been provided to him, till date.

He further alleged that the claim undertaken by the CPIO/FAA in their response was wrong and devoid of any merit. He further alleged that his matter did not fall under the main provision of Section 24 of the RTI Act, 2005 and emphasised that his matter fell under the proviso of the aforesaid Section, wherein it had been categorically specified that the information relating to human rights violation and corruption could be provided under the RTI Act, 2005 from the organisations listed under the II Schedule. A reference was made to the notice issued by the National Human Rights Commission to the Chief Commissioner of Customs, Customs House, Tuticorin, Tamil Nadu in the matter pertaining to non payment of terminal benefits by the Customs Department, Tuticorin. It was further argued that his matter fell under the category of human rights violations since his post retirement benefits had not been dispensed with, till date and that he had been suffering a huge financial loss. He referred to the Hon'ble Supreme Court decision in Civil Appeal no. 6770 of 2013 in the matter of State of Jharkhand vs. Jitendra Kumar Srivastava & Anrs. Dated 14.08.2013 where in it was held as under:

*“From the reading of the aforesaid Rule 43(b), following position emerges:- (i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.*

*11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office.*

***14. Article 300 A of the Constitution of India reads as under: “300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law.” Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”***

In its response, the Respondent submitted that the reply provided by the CPIO/FAA was correct and information sought by the Appellant could not be furnished keeping in view the exempted status of the Respondent Public Authority. It was articulated that the Respondent Public Authority being an Apex intelligence organization of Indian Customs, its prime responsibility was to enforce the provisions of the Customs Act, 1962. The charter of duties of the DRI includes collection, collation, analysis and dissemination of intelligence relating to smuggling. It was further explained that no information could be provided which could jeopardise the life and security of the informers. It was thus emphasised over the absolute exemption of Respondent Public Authority from the purview of the RTI Act, 2005. A reference was made to the Commission's Decision no. CIC/AT/A/2007/000526+000438+00527 dated 17.09.2007 wherein it was held as under:

*“11. I am unable to agree with the submissions of the appellant that he was entitled to inspect the file held by the respondents even if that file contained information related to an exempted organization (under Section 24) such as DRI. It would be wholly inappropriate for the Commission to allow any insubstantiated allegation of corruption and human rights violation by an applicant to deny to the DRI or any such body the exemption it enjoys from the operation of the RTI Act. If this is done, then the very exemption granted to the DRI shall be reduced to a nullity because then every single individual or organization that DRI might proceed against would come up with a plea that there was allegation of human rights violation and corruption which would entitle the affected parties to gain access to the sensitive documents held by the DRI against such individuals and organizations. It is a fact that DRI is a specialized intelligence agency charged with the responsibility of protecting the State’s revenues. The information they hold is invariably sensitive whose disclosure could jeopardize life and safety of all those who provide information to the DRI and cooperate with it in tracking down violators of laws. It would be wholly inappropriate to allow the exemption granted by the RTI Act to the DRI to fall by the wayside on nothing more than a specious plea of human rights violation and corruption taken by an interested party.”*

In addition, a reference was also drawn to the decision of the Commission in F.No. CIC/AT/A/2007/00435 & 440 (2 Appeals) Dated, the 7th September, 2007 wherein it had held as under:

*“In view of the position stated, the appellant has no right to access information pertaining to the DRI. The exemption enjoyed by DRI under Section 24 read with Schedule- II is absolute and cannot be compromised unless it is proved that this involves corruption or violations of human rights. In spite of the appellant’s vociferous assertion that matter is one of corruption, there is not even a shred of evidence to support his contention. I, therefore, hold that the information pertaining to the DRI, which is an organization exempted under Section 24, shall not be disclosed to the appellant.”*

Furthermore, it was contended that the decision of the Commission in File no. CIC/AT/A/2008/000291 dated 08.08.2008 by the Appellant in his Second Appeal did not support the facts and circumstances of the present case. It was further contended that the subject matter of the instant RTI application pertained to his grievance of non-payment of his retirement benefits and therefore the Commissionerate of Customs, Trichy would be the appropriate authority to provide relevant information to the Appellant.

The Appellant strongly objected to the submission made by the Respondent in this regard that stated that though DRI was an exempted organisation u/s 24 of the RTI Act, 2005, however, the Commission had the power to decide the Appeal placed before it and direct the Respondent public Authority to provide information to the Appellant under its proviso and therefore the absolute exemption claimed by the Respondent was incorrect. With regard to the concerned Public Authority in this matter, it was alleged

that the Appellant had suitably filed an online RTI application to the Central Board of Customs and Excise which had transferred the RTI application to CPIO, DRI, Chennai Zonal Unit and thereafter the RTI application was again transferred to CPIO, DRI, Tuticorin Regional Unit which was clearly elaborated in the FAA order dated 20.10.2016. It was alleged that the Board should have transferred the instant RTI application to the Commissionerate of Customs, Trichy instead of transferring it to Respondent Public Authority.

Furthermore, a reference was drawn to decision of the Commission in Decision no. CIC/SB/A/2015/000121 dated 02.11.2016 and Decision no. CIC/SB/A/2015/000679 dated 30.11.2016 wherein the Commission had advised the Respondent Public Authority to consider the RTI applications of the Appellants and provide them information.

Having heard both the parties and on perusal of records, the Commission noted that the matter placed before it pertained to the non-receipt of retirement benefits by the Appellant and that the Respondent Public Authority was not the appropriate Authority to respond or provide information to the Appellant. Moreover, the contention raised by the Appellant that his matter fell under the human rights violation could not be sustained keeping in view the nature of information sought by the Appellant in his RTI application wherein the queries were of a different nature. Moreover, the Appellant could not substantiate/justify or establish the aspect relating to violation of human rights in the present matter.

Moreover, a reference was made to the matter of Esab India Limited v. Special Director of Enforcement, WP (C) No. 1138/2010 dated 08.03.2011, wherein the Hon'ble High Court of Delhi while dealing with a petition challenging the validity of Section 24 read with Second Schedule to the RTI Act, 2005 had held as under:

*“27. In the case at hand, as far as Section 24 is concerned, it is evincible that the said provision excludes the intelligence and security organizations specified in the Second Schedule. We have already reproduced the Second Schedule. The petitioner is concerned with the Directorate of Enforcement which comes at serial No. 5 in the Second Schedule. What has been denied in first part of Section 24 is the intelligence and security organizations. The first proviso adds a rider by stating that an information pertaining to allegations of corruption and human right violations shall not be excluded under the sub-section. **Thus, it is understood that information relating to corruption and information pertaining to human rights are not protected. In our considered opinion, the restriction on security and intelligence aspect cannot be scuttled as the same has paramountancy as far as the sovereignty and economic order is concerned. Article 19(1)(2), which deals with reasonable restriction, mentions a reasonable restriction which pertains to security of the State, integrity of India and public order.***

***28. In our considered opinion, the restrictions imposed are absolutely reasonable and in the name of right to freedom of speech and expression and right to information, the same cannot be claimed as a matter of absolute right. Thus, the***

***submissions advanced on this score are untenable and accordingly we repel the same.”***

**DECISION:**

Keeping in view the facts of the case and submission made by both the parties, the Commission felt satisfied with the submission of the Respondent. No further intervention of the Commission is warranted in this matter. For redressal of his grievance pertaining to retirement benefits, the Appellant is advised to approach an appropriate Forum.

The Appeal stands disposed accordingly.

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

Authenticated True Copy:

(K.L.Das)  
Deputy Registrar