

CENTRAL INFORMATION COMMISSION

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

Appeal No.:-CIC/DOREV/C/2017/190210-BJ

Complainant : Mr. V. Sathyamourthy,
Respondent : 1. CPIO
Central Board of Excise & Customs,
New Delhi
2. CPIO
Department of Revenue,
New Delhi
Date of Hearing : 11.08.2017
Date of Decision : 11.08.2017

Date of filing of RTI applications	05.10.2016
CPIO's response	07.10.2016 (Transfers)
Date of filing the First appeal	Not on Record
First Appellate Authority's response	Not on Record
Date of diarised receipt of Complaint by the Commission	12.12.2016

ORDER

FACTS:

The Complainant vide his online RTI application sought information on 07 points regarding his service matter which had been referred to President via board for getting formal closure, copy of report, action taken, file noting on his service case, etc.

The Presidential Secretariat vide its reply dated 07.10.2016, transferred the RTI application to Department of Revenue. The Department of Revenue, vide its reply dated 07.10.2016, in turn transferred the RTI application to the Central Board of Excise and Customs. Dissatisfied on not receiving any response, the Complainant approached the Commission.

HEARING:

Facts emerging during the hearing:

The following were present:

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

Respondent: Mr. Piyush Bhardwaj, CPIO/Nodal Officer, CBEC, New Delhi;

The Complainant's representative reiterated the contents of RTI application and stated that adequate response had not been provided to him. In reply, the Respondent submitted that the RTI application was transferred to CPIO,

President's Secretariat on 24.10.2016 since the online application itself was addressed to the President's Secretariat and information was also sought from the President's Secretariat, only. During the hearing, the Nodal Officer of the Respondent Authority clarified that necessary steps were initiated by them to transfer the RTI application to the concerned CPIO. The Complainant was however, advised that he should be approaching DG(Vigilance) who would be concerned with the subject matter.

With regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

“ 61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a showcause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfil their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

Similarly, the following observation of the Hon'ble Delhi High Court in *Bhagat Singh v. CIC & Ors. WP(C) 3114/2007* are pertinent in this matter:

“17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public

Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued.”

Furthermore, the High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under:

“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 the request was denied malafidely.

.....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.”

The Complainant could not substantiate his claims further regarding malafide denial of information by the Respondent or for withholding it without any reasonable cause.

DECISION:

Considering the facts of the case and the submissions made both the parties, no further intervention of the Commission is required in the matter.

The Complaint stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar