

CENTRAL INFORMATION COMMISSION

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Appeal No.:-CIC/SB/A/2016/000935-BJ

Appellant : Mr. R K Jain
1512-B, Bhishm Pitamah Marg
Wazir Nagar, New Delhi-110003
M: 9810077977

Respondent : Under Secretary & CPIO (Ad.II)
M/o. Finance, Dept. Of Revenue, Central
Board of Excise & Customs, North Block
New Delhi-110001

Date of Hearing : 23.02.2017
Date of Decision : 01.03.2017

Date of filing of RTI applications	25.04.2016
CPIO's response	05.05.2016/ 06.05.2016
Date of filing the First appeal	13.05.2016
First Appellate Authority's response	17.05.2016
Date of diarised receipt of second appeal by the Commission	06.06.2016

ORDER

FACTS:

The appellant vide his RTI application on 09 points (A to I) sought information regarding the detail of files held by CBEC, Hon'ble Supreme Court, High Court and CAT in relation to one Mr. Anup Srivastava, IRS Commissioner, number of vigilance inquiries conducted against him since 1995 and its current status, date wise details of the station leave applied by him from 01.01.1990 till date, history of his posting profile, etc.

The CPIO, Department of Revenue vide its letter dated 05.05.2016 provided information on some points and transferred the RTI application to deemed CPIOs under Section 6(3) of the RTI Act, 2005 to provide requisite information to the appellant. The CPIO, North Block vide its letter dated 06.05.2016 provided a response on point (H). Dissatisfied by the reply of the CPIOs, the appellant approached the FAA. The FAA vide its order dated 17.05.2016 directed the concerned CPIOs to provide information within two weeks from the day of its order.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. R. K. Jain (M. 9810077977);

Respondent: Mr. S. A. Ansari, CPIO & US (M: 9868971654) and Mr. J. P. Sharma, CPIO & US (AD-II) (M:9810885569);

The appellant reiterated the contents of RTI application and stated that no satisfactory response was provided to him till date. It was submitted that he had inter alia sought details of files held by CBEC, Hon'ble Supreme Court, High Court and CAT in relation to one Mr. Anup Srivastava, IRS Commissioner, number of vigilance inquiries conducted against him since the day of joining of his service, date wise details of the station leave applied by him from 01.01.1990 till date, etc. It was stated that the RTI application was initially addressed to CPIO, Member (P and V), CBEC, New Delhi, subsequent to several transfers within the public authority, a response was provided to him by the CPIO and US, AD-II vide letter dated 05.05.2016, wherein it was stated that matters pertaining to Shri Anup Srivastava were sub-judice. The appellant drew reference to the decision of the High Court of Delhi in *Municipal Corporation of Delhi v. R.K. Jain* in W.P. (C) 14120/ 2009 dated 23.09.2010 and the decision of the Commission in *Shri Nanak Chand Arora v. State Bank of India* in CIC/MA/A/2006/00018 dated 30.06.2006 to submit that mere claim of a matter being sub-judice could not be a valid ground for denial of information.

In reply, the respondent submitted that point (g) of the RTI application pertained to them and the RTI application with reference to other points was transferred to CPIO and US- AD-V, CPIO and US, AD-IIA and CPIO and US-II (AD-II) for furnishing the information. It was further stated that the first appeal was also transferred to US, AD-V section vide letter dated 05.05.2016. During the course of hearing, the respondent assured that the information available with them shall be provided to the appellant expeditiously. The Commission observed that the RTI application kept shuttling between various sections in the public authority without actually furnishing any substantial information sought by the appellant. It is a matter of concern that the RTI application dated April, 2016 had not yet been actioned by public authority officials which is highly objectionable and condemnable.

It was noted with utter dismay and disappointment the manner in which this RTI application had been dealt with by the public authority officials. Merely, shuttling the application from one department to another reflects the casual approach of the respondent in dealing with RTI applications, where the intent is to carry out an utterly useless paper exercise by filling in the gaps rather than focusing on the public interest. As per the documents available on record it is observed that the respondent did not respond to the RTI Application within the time frame prescribed under section 7 (1) of the RTI Act, 2005.

Moreover, it was observed that as per the provisions of section 8 (1) of the RTI Act, 2005, no specific exemption is codified which allows non-disclosure of information on the ground that the matter on which information is sought

is sub-judice. In this context, the following extract of the decision of the High Court of Delhi in *Municipal Corporation of Delhi v. R.K. Jain* in W.P. (C) 14120/ 2009 dated 23.09.2010 can be cited:

“5.....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.”

The Commission in its decision in *Mr. Ashu v. CPIO/ Sr. Supdt of Posts, Department of Posts* in CIC/BS/A/2015/001578/11769 dated 28.11.2016 had held as under:

“At the outset it is clarified that the RTI Act provides no exemption from disclosure requirements of sub-judice matters. The only exemption for sub-judice matters is regarding what has been expressly forbidden disclosure by a court or a tribunal and what may constitute contempt of court.”

Furthermore, the Commission in CIC/SM/A/2011/000343/SG/13645 can be cited wherein it was held as under:

“The stay order(s) of the High Court of Delhi do not appear to have framed a specific issue for determination and have granted a stay specifically only on the operation of the order of the Commission dated 24/08/2009. No claim for the exemption has been made by the PIO as per the RTI Act. However, the Commission assumes that the PIO is claiming that disclosure of information is exempt since the matter is sub-judice. The only exemption which may relate to matters in court is Section 8(1)(b) of the RTI Act. Section 8(1) (b) of the RTI Act exempts from disclosure “information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court”. From a plain reading of Section 8(1)(b) of the RTI Act, it is clear that it does not include sub-judice matters. As mentioned above, information may be exempted from disclosure in accordance with Section 8 and 9 only and no other exemptions can be claimed while rejecting a demand for disclosure. Hence, disclosing information on matters which are sub-judice cannot constitute contempt of Court, unless there is a specific order forbidding its disclosure. The mere claim that a matter is sub-judice cannot be used as a reason for denying information under the RTI Act. In view of the same, the Commission rules that the denial of information by the PIO on queries 36 and 38 of the RTI application is legally untenable. Moreover, in view of the observations laid down above, the decisions cited by the PIO are not relevant to the present matter.”

The Commission in the matter of *Shri Nanak Chand Arora v. State Bank of India* in CIC/MA/A/2006/00018 dated 30.06.2006 had also held as under:

“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). 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.”

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties, the Commission observes that RTI application kept shuffling from one authority to another without attending to the substantive aspect of the information sought. Therefore, the Commission directs the Chairman, CBEC to depute an officer not below the rank of Joint Secretary to conduct a detailed enquiry into the matter and fix responsibility and accountability besides providing information to the appellant, within a period of 15 days from the date of receipt of this order under intimation to the Commission.

Furthermore, the CPIO is instructed to furnish information held by them within a period of 10 days from the date of receipt of this order, failing which action under Section 20(1) of the RTI Act, 2005 shall be initiated.

The appeal stands disposed with the above direction.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar

Copy to:

- 1- Chairman, CBEC, Department of Revenue, M/o Finance, North Block, New Delhi – 110001;