

04

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 782/2010**

CENTRAL INFORMATION COMMISSION Appellant
Through Mr. Pranav Sachdeva, Advocate.

versus

DEPARTMENT OF POSTS & ORS Respondent
Through Mr. Jatan Singh, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **06.01.2011**

C.M.Appl.No.19453/2010

Exemption allowed subject to all just exceptions.

The application stands disposed of.

C.M.Appl.No.19454/2010

This is an application for condonation of delay of 39 days. We have heard Mr. Pranav Sachdeva, learned counsel for the appellant and Mr. Jatan Singh, learned counsel for the respondent. Mr. Jatan Singh, learned counsel for the respondent has no objection for condonation of delay and accordingly the delay is condoned.

The application stands disposed of.

LPA 782/2010

As we have condoned the delay, we are inclined to take up the appeal

for final disposal. On consent of the learned counsel for the parties, it is finally heard.

2. The present intra-court appeal is directed against the order dated 19th August, 2010 passed by the learned single Judge in W.P.(C) No.11576/2009 whereby the learned single Judge has modified the order dated 3rd August, 2009 passed by the Central Information Commission ('CIC' for short) wherein a penalty of Rs.25,000/- was levied on the Central Public Information Officer(CPIO) and reduced the same to Rs.5,000/-.

3. While dealing with the application for condonation of delay on 1st November, 2010, the following order was passed:-

“This is an application for condonation of delay in filing the appeal. Before issuing notice on the question of limitation, we would like to hear Mr. Prashant Bhushan, learned counsel for the appellant and Mr. Jantan Singh, learned standing counsel for the Union of India whether the Central Information Commission under the RTI Act, 2005 can prefer an appeal against the order passed by the learned Single Judge under Article 226 of the Constitution of India.

Let the matter be set out for hearing on this preliminary issue on 6th January, 2011.”

4. Mr. Pranav Sachdeva, learned counsel for the appellant has commended us to certain decisions, namely, **Aidal Singh and Ors. Vs. Karan Singh and Ors** *AIR 1957 Allahabad 414*, **Poornaprajna House Building Cooperative Society Ltd. Vs. Karnataka Information**

Commission AIR 2007 Kant 136 and Udit Narain Singh Malpaharia Vs. Additional member, Board of Revenue, Bihar and Another AIR 1963 SC 786. Learned counsel for the respondent has placed reliance on **Savitri Devi Vs. District Judge, Gorakhpur and Others (1999) 2 Supreme Court Cases 577 and **Union Public Service Commission Vs. Shiv Shambhu and Others 2008 IX AD (Delhi) 289**.**

5. Keeping apart the locus standi of the CIC to challenge the order, we have thought it appropriate to advert to the merits of the case. It is submitted by Mr. Pranav Sachdeva, learned counsel for the appellant that in obtaining factual matrix, the learned single Judge should not have reduced the penalty. He had drawn our attention to Section 20 of the Right to Information Act, 2005 (for brevity ‘the Act’). The said provision is as follows:-

“20. Penalties.-(1) 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, 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.”

6. Learned counsel has drawn our attention to Section 23 of the Act. We reproduce the same herein below:-

“23. Bar of jurisdiction of courts.- No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.”

7. It is urged by Mr. Sachdeva that when there is unexplained delay, it is obligatory on the part of the commission to impose penalty and in the case at hand when delay was not explained, it was the statutory duty of the CIC to impose such penalty and the learned single Judge in a cryptic manner should not have reduced the penalty in exercise of power under Article 226 of the Constitution of India.

8. Mr. Jatan Singh, learned counsel for the respondent has submitted that learned single Judge though has not stated any reason for reduction of the amount yet the factual scenario is so clearly demonstrable, which really warrant reduction of the penalty amount.

9. To appreciate the controversy in the proper spectrum, we have perused the application in which following information was sought:-

- “i) the working strength of officers as on 31.03.98 and 31.3.08 (Category wise).
- ii) the reasons for increasing and decreasing the working strength (category wise).
- iii) As on date, number of officers working in other departments on deputation (Group A & B).
- iv) Number of new services which have been introduced from 1.4.98 to till date (Category wise). (eg. IMO, e, payment, Logistics, Retails Post etc).
- v) For the new services, any new posts which have been created in Administrative, Accounting & Operative cadre.
- vi) If yes, the details in cadre wise.

vii) If no, to explain how the new services are being run?”

10. Be it noted that information was supplied in respect of (i), (ii) and (iii) within the requisite period. As far information pertaining to other items are concerned, there is some delay. On a perusal of the information sought and the time consumed, we find that reasonable period has been spent and hence, that would tantamount to an explanation for delay caused by the officer concerned. .

11. In view of the aforesaid, the reduction of the penalty by the learned single Judge is justified. Before parting with the case, we may hasten to add that the issue that was raised on the initial occasion with regard to locus standi of the CIC to prefer an appeal is kept open. The appeal is accordingly disposed of without any order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

JANUARY 06, 2011
NA/VKR