

(2009) 11 DEL CK 0113
In the Delhi High Court
Case No : Writ Petition (C) 2411 of 2008

Union of India (UOI)	Vs	APPELLANT
Central Informatic Commission and Others		RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Right to Information Act, 2005 — Section 20(2)

Citation : (2009) 11 DEL CK 0113

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Geetanjali Mohan and Akanksha Gaur, for the Appellant; Shangara Singh, for R-2, for the Respondent

Judgement

Sanjiv Khanna, J.—With the consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. Mr. Sudeep Kumar Jain, the respondent No. 2 herein had filed an application under Right to Information Act, 2005 (hereinafter referred to as the Act, for short) seeking information in respect of disciplinary proceedings initiated against him.

3. The respondent No. 2 was working as Office Superintendent at Diesel Loco Modernization Works, Patiala. Departmental proceedings were initiated against him on the ground that during the period 1st May, 1992 to 10th February, 1995, he had misappropriated Rs. 52,500/- from the sale proceeds of tender documents. Accordingly, charge sheet dated 31st July, 1995, on 8 charges, was served.

4. The charge sheet itself was made subject matter of challenge before the Administrative Tribunal under the Central Administrative Tribunal Act, 1985 in O.A. No. 1027/PB/1999. This original application was disposed of vide order dated 10th October, 2000, upholding the charge sheet.

5. The disciplinary authority imposed punishment of dismissal from service vide

the order dated 6th February, 2001. The revisionary authority by the order dated 4th October, 2005, modified the penalty of dismissal to that of compulsory retirement.

6. This order passed by the revisionary authority was also made subject matter of challenge before the Central Administrative Tribunal, Chandigarh and stands disposed of vide order dated 12th December, 2008, upholding the said penalty. Learned Tribunal has noticed that the petitioner himself had admitted failure to deposit the tender sale consideration because of family reasons.

7. Not satisfied with the reply/information furnished pursuant to the application made under the Act, the respondent No. 2 had filed a second appeal before the Central Information Commission. While the appeal was pending before the Central Information Commission, on 26th February, 2007, the original file was made available for inspection to the respondent No. 2.

8. By letter dated 26th February, 2007, the respondent No. 2 made a request for supply of documents at Sr. Nos. 196, 498 to 505, 609, 624 to 636 and 552 to 663. The petitioner supplied above mentioned documents except 13 pages at Sr. Nos. 624 to 636, which were found to be missing and were not available.

9. The issue of missing pages was raised before the Central information Commission. The petitioner appointed a two member committee to examine the question of 13 missing pages and a report was submitted before the Central Information Commission. The two member committee came to the conclusion that though it could not be conclusively proved that pages went missing when the file was in custody of Mr. Sanghara Singh, CLA but there were circumstances which indicated that these papers went missing when the file changed hands between Mr. Sanghara Singh, CLA and the Railway Advocate. It was also noticed that Mr. Sanghara Singh did not check page numbers when the file was received back from the office of the Railway Advocate.

10. Learned member of the Central Information Commission was not satisfied with the said enquiry and, therefore, directed Advisor (Vigilance), Railway Board to conduct an enquiry to fix responsibility for destruction of the particular information so that penalty could be imposed upon the erring official. It was also observed that enquiry would be monitored by the Information Commission.

11. Counsel for the petitioner submits that the Railway Board, Vigilance Department has now conducted an enquiry and the enquiry report will be made available to the Central Information Commission. Copy of the enquiry report has been filed with the rejoinder. As per the enquiry conducted by the Railway Board, Vigilance Department, the papers were missing from the file as on 5th August, 2006. This fact was recorded on 5th August, 2006. Reference is made to the letter dated 8th August, 2006, whereby a report was sent to office of the CLA and reply was received from CLA on 22nd August, 2006, about non-availability of papers.

12. The report by the Railway Board, Vigilance Department is fairly detailed. Central Information Commission did not have benefit of the said report when the impugned order was passed. The matter is accordingly remanded back to the Central Information Commission. The Central Information Commission will also examine the question of penalty; whether any penalty should be imposed, and on whom the penalty, if any, should be imposed. As per proviso 20 of the Act, penalty may be imposed after giving reasonable opportunity of hearing. Directions imposing penalty are set aside.

13. In view of the aforesaid facts, the directions given by the Central Information Commission in paragraph 9, directing Member (Mechanical), Railway Board to initiate disciplinary action against R.K. Sangar, PIO and Dy.CME/Monitoring/DMW under the service rules is also set aside. This question will be examined by the Central Information Commission. The petitioner will also be entitled to raise contention that the Central Information Commission cannot direct initiation of disciplinary proceedings but can only recommend initiation of disciplinary proceedings u/s 20(2) of the Act. At this stage, this Court is not examining and interpreting Section 20(2) of the Act.

14. The parties will appear before the Registrar, Central Information Commission on 8th December, 2009, when further date of hearing will be fixed. It is made clear that the observations made above are for the purpose of deciding of the writ petition and the Central Information Commission will independently apply their mind without being influenced by the observations made above and in their earlier order dated 6th November, 2007.

Writ Petition is accordingly disposed of. No costs.