

Delhi High Court
Delhi High Court
Thdc India Limited vs Smt. T. Chandra Biswas on 8 March, 2013
* THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 22.01.2013 Judgment delivered on : 08.03.2013

+ WP(C) No.2506/2010

THDC INDIA LIMITED PETITIONER

Vs

SMT. T. CHANDRA BISWAS RESPONDENT

Advocates who appeared in this case:

For the Petitioner : Mr. Neeraj Malhotra, Advocate For the Respondent: Ms. Girija Krishan Varma, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The petitioner, which is a public sector undertaking has laid a challenge to a common order dated 3.3.2010 passed by the Central Information Commission (in short CIC) to the extent it directs provision of minutes of the Departmental Promotion Committee (in short DPC), pertaining to promotions made from grade E-6 to E-7 with respect to the year 2006, and grade E-7 to E-7A, for the years 2007 and 2009.

1.1 The CIC by virtue of the impugned order disposed of two appeals of the respondent vis-à-vis her grievance of denial of information; the details with respect to which are set out hereinafter.

2. The respondent in the first instance, filed an application dated 14.7.2009, with the petitioner, seeking information with regard to two WP(C) No.2506/2010 Page 1 of 18 aspects: First part pertained to her Annual Confidential Report (in short ACR) for the period spanning from 2004 to 2008. In particular, the periods towards which the query of the respondent was directed, was as follows:-

"a) Jan-Sept'04 (part-1) and Oct-Dec'04 (part-2)

b) 2005,

c) 2006

d) Jan-July'07 (part-1), Aug-Dec'07 (part-2)

e) 2008"

2.1 The second part of the respondent's application was related to her seeking information with regard to 'rating and remarks' of the Reporting and Reviewing Officers alongwith their names. In addition, the rating and remarks made by the Accepting Authority were also sought. Furthermore, information was sought with regard to moderation, if any, being made by the Moderation Committee to the respondent's ACRs in respect of

the aforementioned periods prior to the deliberations by the DPC. As would be obvious, this application (hereinafter referred to as the 1st application) was filed under the provisions of the Right to Information Act, 2005 (in short the RTI Act).

2.2 The Chief Public Information Officer (in short CPIO) of the petitioner, vide his response dated 19.8.2009, provided the respondent with the following information:

(i) copy of her ACR for the year 2008-09;

(ii) ACR ratings (and not the ACRs) for the period in issue; and

(iii) lastly, conveyed to her that there was no moderation of ACRs in her case, as she was in grade E-7. She was also informed that the process of moderation of ACRs, by Moderation Committee, commenced in 2007, and WP(C) No.2506/2010 Page 2 of 18 that, the process of moderation of ACRs is applicable only to executives upto grade E-6.

2.3 The respondent being aggrieved with the decision of the CPIO, to the extent that, her request for being supplied with ACRs for the remaining period i.e. 2004 to 2007, having not been granted, preferred an appeal with First Appellate Authority, under Section 19 of the RTI Act. The said appeal, was filed on 20.8.2009 (in short hereinafter referred to as the August Appeal).

2.4 The First Appellate Authority, after referring to the Office Memorandum dated 14.5.2009, (reference to which was also made by the respondent) came to the conclusion that the system of communicating entries made in the ACR, which was thereafter referred to as Annual Performance Appraisal Report (in short APAR), was applicable prospectively i.e. with effect from the reporting period 2008-09. Consequently, the First Appellate Authority dismissed the appeal and sustained the decision of the CPIO.

2.5 The respondent, being aggrieved by the decision of the First Appellate Authority, preferred an appeal under Section 19(3) of the RTI Act with the CIC. The said appeal was filed on 14.10.2009.

2.5.1. It appears on this appeal, notice was issued by the CIC on 18.1.2010. There is some contest between the parties as to whether the notice was issued by the CIC only to the respondent or also to the petitioner. I will be dealing with this issue in the course of my judgment.

2.6 It appears that, while the aforementioned appeal was pending adjudication, the respondent filed yet another application dated 14.08.2009 under the RTI Act with the CPIO of the petitioner (hereinafter referred to as the 2nd application). By this application, eight (8) queries were raised by the

WP(C) No.2506/2010 Page 3 of 18 respondent. For the sake of convenience the same are extracted herein below:

"a) Attested Copy of DPC 2007 & attested copy of DPC 2008 proceedings for the post of AGMs.

b) Attested Copy of Marks allotted by DPC Members in DPC 2007 for the post of AGMs.

c) Attested Copy of Marks allotted by DPC Members in DPC 2009 for the post of AGMs.

d) What are the criteria followed for promotions from DGM to AGM.

e) Attested Copy of DPC 2006 proceedings for the post of DGM. f) Name of all eligible Senior Managers who appeared for DPC 2006 interview for the post of DGMs.

g) How many were promoted as DGM w.e.f. 01.04.2006 and their names.

h) What are the criteria followed for promotion from Sr. manager to DGM in 2006."

2.7 The CPIO vide his response dated 14.9.2009, in sum and substance, declined to give information with regard to DPC minutes and the interview marks obtained by candidates, whose cases had been deliberated upon by the DPC. Other information like, list of all eligible Senior Managers who, had appeared before the DPC of 2006 for interview to the post of DGM, and those, who had been promoted from the post of Senior Managers to DGM for the very same year i.e. 2006, were supplied. In addition to this, information with regard to criteria followed for promotion from Senior Manager to DGM for the year 2006 was also supplied to the respondent. Pertinently, the information which was not supplied; was denied, on the ground that the petitioner held that information in its fiduciary capacity.

WP(C) No.2506/2010 Page 4 of 18 2.8 The respondent claims that, since she was aggrieved, she had preferred an appeal to the First Appellate Authority against its decision dated 14.9.2009, by filing an appeal dated 9.10.2009. According to the respondent, the appeal was dispatched by registered cover with record delivery. It is important to note at this stage that the petitioner denies having any record of the institution of the said appeal.

2.9 It is the respondent's case that, since she did not receive a response from the First Appellate Authority in respect of the decision of the CPIO on her 2nd application, she preferred an appeal with the CIC, as the prescribed period provided under Section 7 of the RTI Act, had lapsed. According to the respondent, the period between filing of her appeal with the First Appellate Authority and her moving the CIC, was forty seven (47) days.

2.10 The CIC, apparently, did not issue notice in the second appeal which emanated out of the 2nd application filed by the respondent on 14.8.2009. The CIC, however, by the impugned order which, as indicated above, is a common order, disposed of both appeals.

3. Being aggrieved, the captioned writ petition was filed by the petitioner, when on the very first date of hearing i.e. on 16.4.2010, the impugned order was stayed. The said order was made absolute on 06.7.2011.

SUBMISSIONS OF COUNSELS

4. In this background, submissions on behalf of the petitioner have been made by Mr. Neeraj Malhotra, while the respondent has been represented by Ms. Girija Krishan Varma.

5. Mr. Malhotra submitted that, the impugned decision of the CIC deserved to be set aside on the following grounds:

WP(C) No.2506/2010 Page 5 of 18 (i) The impugned order had been passed in breach of principles of natural justice in as much as no notice was issued in the second appeal dealt with by the CIC qua the 2nd application of the respondent filed on 14.8.2009. Insofar as the first appeal was concerned which arose out of the respondent's application dated 14.7.2009, notice with regard to the said appeal was received by the petitioner's office in Tehri, in the State of Utrakhhand in the afternoon, on 26.2.2010, which was the day when, the appeal was fixed for hearing. This notice was also received under the cover of the letter of the respondent dated 22/23.02.2010. The petitioner, thus, did not have an effective opportunity of representing its case.

(ii) The CIC by the impugned order had sustained the CPIO's stand to the extent that only ACR ratings/grades need be supplied to the respondent without the remarks of the Reporting and Reviewing Officer. The respondent not having challenged that part of the order in the petitioner's writ petition, no relief can be granted to her with respect to the same.

(iii) As regards the direction issued by CIC to disclose DPC minutes relating to promotion from grades E-6 to E-7 for the year 2006 and grade E-7 to E-7A for the years 2008-09; the same was erroneous in law as, it ignored the right of the petitioner to deny the information in that behalf, since it fell within the provisions of Sections 8(1) (d), (e) and (j) of the RTI Act. It was submitted that, disclosure of DPC minutes (which included the ACR ratings and the marks awarded at interview) would effect the competitive position of other employees, and thus, stood excluded under the provisions of Section 8(1)(d) of the RTI Act. That apart, it was submitted, that the petitioner held information with regard to the grade and the marks obtained at the interview in a fiduciary capacity and there being no demonstrable overweening public interest, the said information also stood excluded under Section 8(1)(e) of the WP(C) No.2506/2010 Page 6 of 18 RTI Act. Recourse was also taken to the provisions of Section 8(1)(j) of the RTI Act, to contend that the information with regard to the ratings/grades given by the DPC and/or the marks obtained in the interview by other employees of the petitioner, was personal information, the disclosure of which did not have any relationship to any public activity or interest and furthermore, disclosure could lead to invasion of privacy of such third parties i.e. the employees.

(iv) It was also contended that, the CIC could not have directed disclosure of the impugned information without following the procedure prescribed under Section 11 of the RTI Act.

(v) In support of his submissions, the learned counsel relied upon the judgment of the Single Judge of this Court in RK Jain v. UOI & Anr., 2012 (279) ELT 16 (Del.) as also the judgment of the Division Bench of this Court in the very same case titled as RK Jain v. UOI & Anr., 2012 VAD (Del) 443. This apart, reliance was also placed on the judgment of the Supreme Court in the case of Girish Ramachandra Deshpande v. CIC and Anr. 2012 (9) Scale

700.

6. On the other hand, Ms. Girija Krishan Varma made the following submissions:

(i) Respondent has been waiting far too long for receipt of information sought under the two applications filed by her. The petitioners on one pretext or the other had been declining disclosure of information. It was submitted that the information sought by the respondent was relevant in order to demonstrate the discrimination which had been meted out to her post 2004 when, she had made a complaint of sexual harassment against the Senior Manager (Personnel) working with the petitioner. It was contended that the WP(C) No.2506/2010 Page 7 of 18 respondent was down-graded, in 2006 and 2007, precisely for this reason. Therefore, the request made by the respondent, for being furnished her own ACRs for the period 2004 to 2007.

(ii) The petitioner had notice of the appeals pending before the CIC. For this purpose, reliance was placed on communication dated 18.1.2010 issued to the respondent. It was sought to be contended that, since notice had been issued to the respondent by the CIC, a similar notice would have been issued to the petitioner as well. In any event, since the CIC by the said communication dated 18.1.2010 had required the respondent to submit a copy of the notice along with a copy of the second appeal to the petitioner, the needful was done by dispatching the notice alongwith the appeal to the petitioner, on 22.2.2010. Therefore, the plea of the petitioner that, it had no notice, and thus, the principles of natural justice were breached, is not made out.

(iii) The submission on merits made by the petitioner was untenable for the reason that there was overarching the public interest in the disclosure of the information. The information was being sought to prove victimization and harassment of the respondent by the officers of the petitioner; which is a public authority. The minutes of the DPC are being sought to demonstrate the iniquitous manner in which performance of the respondent has been adjudged as against those who were promoted. The disclosure of gradings/ratings of other employees would enable the respondent to compare her position qua the others and thus establish the discrimination meted out to her.

(iv) The information sought could not be excluded under Section 8(1)(d) as the information was not of the nature which involved commercial confidence,

WP(C) No.2506/2010 Page 8 of 18 trade secret or intellectual property. Similarly, the information could not be declined under Section 8(1)(e) as the relationship between the employer and the employee was not a fiduciary relationship, as say, between a lawyer and his client or between a doctor and his patient. The attempt to invoke the provisions of Section 8(1)(j) should also fail as the CPIO was required to determine as to whether the information sought was firstly personal in nature; secondly, could cause unwarranted invasion of privacy of the individual; and thirdly, and more importantly, weigh whether disclosure of the information was in public interest. The public interest element was sought to be stressed based on her charge of sexual harassment by a Senior Manager (Personnel) employed with the petitioner, who since then, according to the learned counsel, had been promoted to the post of DGM.

(v) It was submitted that Section 11 would not have any application in the present case as the said section applies, where information relates to or is supplied by a third party and has been treated as confidential by such third party. In other words, that unless information is titled as "confidential" when, it is handed over to the recipient, the provisions of Section 11 do not get triggered. It is contended that, on receipt of a query pertaining to a third party, the CPIO has to give notice within five (5) days of a request being received and it is only then that Section 11 comes into play. Both the CPIO and the First Appellate Authority having failed to invoke provisions of Section 11, the petitioner is estopped from taking recourse to the same.

(vi) Since the petitioner had delayed in supplying the information, it should be visited with penalty under Section 20(1) of the RTI Act.

(vii) Learned counsel for the respondent placed reliance on the decisions of the CIC in the case of PK Saha v. Coal India Ltd. dated 23.10.2008, whereby

WP(C) No.2506/2010 Page 9 of 18 the CIC has taken a similar position vis-a-vis the DPC proceedings. Reliance was also placed by the learned counsel on the following judgments:

(i). Bhagat Singh v. CIC & Ors., 146 (2008) DLT 385; (ii). Dev Dutt v. UOI, AIR 2008 SC 2513; (iii). M.K. Tyagi v. K.L. Ahuja & Ors., 2010 VII AD (Delhi) 125; and (iv.) Mujibhur Rehman v. CIC, 2011 (273) ELT 216 (Del).

REASONS

7. After hearing counsels for parties and perusal of the record, what emerges is as follows:

7.1. The respondent preferred two applications with the CPIO, the first one is dated 14.7.2009, while the second application is dated 14.8.2009.

7.2. By virtue of the 1st application, information was broadly sought by the respondent with regard to her ACRs spanning the period 2004 to 2009. In response to this application, the petitioner supplied information with regard to : the gradings/ratings which, the respondent received between the period 2004 to 2007. In addition, the ACR for the year 2008- 2009 was also supplied, which obviously contained the rating for the said year as well. The ACR for 2008-2009 was supplied on account of the directive contained in the DOPT OM of 14.5.2009, which apparently the petitioner applied to itself.

7.3 The denial of ACRs for the period 2004 to 2007, was challenged by the respondent with the First Appellate Authority. Since, the challenge was repelled by the First Appellate Authority, an appeal was preferred with the CIC. By the impugned order, insofar as this decision of the CPIO was concerned, the CIC found no fault with it, and thus, sustained the decision taken to deny the ACRs to the respondent for the

period 2004 to 2007. WP(C) No.2506/2010 Page 10 of 18 7.4 As regards the 2nd application of the respondent dated 14.8.2009, which concerned disclosure of information broadly qua minutes of the DPC proceedings, the CIC by the very same impugned order directed the petitioner to provide to the respondent, DPC minutes for the year 2006 with regard to promotions made by the petitioner from grade E-6 to E-7, and those made, in grade E-7 to E-7A, albeit for the years 2007 and 2009,

7.5 The petitioner claims that, it received no notice of the appeals from the CIC. The petitioner in its rejoinder, however, has conceded that it did receive intimation of the appeals having been fixed for hearing before the CIC in the afternoon of 26.2.2010, albeit via a communication dated 22/23.02.2010, sent by the respondent. According to the petitioner, the intimation was received at its office located in Tehri, in the State of Uttarakhand and, therefore, sufficient time was not available to make arrangements for its representation before the CIC.

7.6 In addition, it is argued that the respondent, insofar as a 2nd application dated 14.8.2009 was concerned, had bypassed the First Appellate Authority and hence, the appeal qua the second application, filed before the CIC, was not maintainable.

7.7 In regard to the above, the respondent, on the other hand, has filed a copy of her appeal dated 9.10.2009, preferred with the First Appellate Authority along with the registered AD card. It is the respondent's contention that since there was no response of the First Appellate Authority, an appeal was preferred with the CIC even vis-à-vis the 2nd application.

7.8 Therefore, the question, with regard to the alleged breach of the principles of natural justice would boil down to whether the petitioner had

WP(C) No.2506/2010 Page 11 of 18 notice of the appeal and if it had notice of the appeals preferred by the respondent, could it then have brought these facts to the notice of the CIC.

7.9 A perusal of the communication dated 8.1.2010, which is filed both by the petitioner as well as respondent, would show that it was addressed by the CIC to the respondent. The said communication was a notice of hearing, which referred to the respondent's appeal dated 14.10.2009. Admittedly, this was the appeal preferred by the respondent qua the decision rendered on the 1st application, by the CPIO. However, in the body of this communication the office of the CIC advised the respondent to serve a copy of the said notice along with a copy of her second appeal which, obviously pertained to the decision of the CPIO in the 2nd application. It is not denied by the petitioner, as noticed above, that it did receive a communication in that behalf from the respondent, though on the date of hearing i.e. 26.2.2010 and, that too, at its office at Tehri in the State of Uttarakhand.

7.10 Therefore, while the petitioner obtained knowledge of the fact that there were two appeals which the respondent had filed, the knowledge was received rather late. The petitioner, however, on its part, it appears took no steps to approach the CIC between the afternoon of 26.2.2010 and 3.3.2010 when, the impugned order was passed. The petitioner being a public sector undertaking had the necessary wherewithal to take steps to apprise the CIC that it had received a notice with respect to the appeals, though rather late in the day.

8. This, of course, is based on assumption that the petitioner received no notice from the CIC; since the CIC is not before the Court, there is no way by which this fact can be ascertained. What, however, does come through is that, the petitioner took no steps after receipt of notice as it ought to have, to

WP(C) No.2506/2010 Page 12 of 18 defend its position before the CIC. Therefore, in a sense the petitioner is to blame itself. There is no way of knowing whether, the CIC examined its record with regard to service being effected on the petitioner as, the only person who was heard on 26.2.2012 was, evidently the respondent.

8.1 As regards the submission made on behalf of the petitioner that the respondent had bypassed the First Appellate Authority qua the decision reached by the CPIO on the 2nd application - the respondent, in my view, has placed on record material which prima facie establishes that an appeal was filed with the First Appellate Authority, on 9.10.2009, by means of recorded delivery. The objection, if any, with regard to the same could have been taken by the petitioner, if it was represented at the hearing held by the CIC on 26.2.2010.

9. While the learned counsel for the respondent has contended before me that the respondent ought to have been supplied with the ACRs for the period 2004 to 2007, the respondent has not assailed that part of the order of the CIC. In my view, while the contention of the respondent has merit, which is that she cannot be denied information with regard to her own ACRs and that information cannot fall in the realm of any of the exclusionary provisions cited before me by the learned counsel for the petitioner i.e. Section 8(1)(d), (e) and (j), there is a procedural impediment, in as much as, there is no petition filed to assail that part of the order passed by the CIC.

9.1. In my view, the right to obtain her own ACRs inheres in the respondent which cannot be denied to the respondent under the provisions of Section 8(1)(d), (e) and (j) of the RTI Act. The ACRs are meant to inform an employee as to the manner in which he has performed in the given period and

WP(C) No.2506/2010 Page 13 of 18 the areas which require his attention, so that he may improve his performance qua his work.

9.2 That every entry in the ACR of an employee requires to be disclosed whether or not an executive instruction is issued in that behalf - is based on the premise that disclosure of the contents of ACR results in fairness in action and transparency in public administration. See Dev Dutt vs Union of India (2008) 8 SCC 725 at page 732, paragraph 13; page 733, paragraph 17; and at page 737, paragraphs 36, 37 and 38.

9.3 Mr Malhotra sought to argue that, in Dev Dutt's case, the emphasis was in providing information with regard to gradings and not the narrative. Thus a submission cannot be accepted for more than one reason.

9.4 First, providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must. [See State of U.P. Vs. Yamuna Shankar Misra and Anr., (1997) 4 SCC 7]. The narrative would fashion the decision of the employee as to whether he ought to challenge the grading set out in the ACR.

9.5 Second, the fact that provision of ACRs is a necessary concomitant of a transparent, fair and efficient administration is now recognized by the DOPT in its OM dated 14.05.2009. The fact that the OM is prospective would not, in my view, impinge upon the underlying principle the OM seeks to establish. The only caveat one would have to enter, is that, while providing the contents

WP(C) No.2506/2010 Page 14 of 18 of the ACR the names of the Reviewing, Reporting and the Accepting Officer will have to be redacted.

9.6 In the present case, as noticed above, while the respondent has been furnished her ACRs for the year 2008-2009 she has been denied her ACRs for 2004-2007. Both under service jurisprudence and having regard to the provisions of the RTI Act, I am of the view that this information ought to have been supplied to the respondent. The CIC has, in my view, wrongly appreciated the law on the subject.

9.7 As a matter of fact, this aspect had been put to the learned counsel for the petitioner, who in his usual fairness had agreed to consider the ACRs being supplied for the remaining period to the respondent provided she did not insist on information being supplied with regard to the DPC proceedings.

9.8 Since there was no consensus arrived at between the counsel for the parties, I proceeded to hear the matter on both aspects. As indicated above, while the CIC in my view has erred in law in denying ACRs for the period in issue to the respondent in the petitioner's action, no relief in that behalf, can be granted to the respondent, in the present writ petition. The respondent, in my view, would be free to take recourse to a proper proceeding in that behalf, in case the petitioner decides to adhere to its stand of not furnishing the ACRs for the period 2004-2007.

9.9 On the other aspect with which the petitioner is aggrieved, I am not persuaded by the argument of the petitioner that the information with regard to the DPC proceedings would fall within the exception provided under Section 8(1)(d) of the RTI Act. In my view, information with regard to DPC proceedings cannot come within the ambit and scope of any of three exclusions i.e. commercial confidence, trade secret and intellectual property WP(C) No.2506/2010 Page 15 of 18 rights. Though, I am conscious of the fact that the information referred to in Section 8(1)(d) of the RTI Act is not confined to the three types of information referred to above - no amount of liberality adopted in that behalf would bring ACRs within its ambit. Section 8(1)(d) would, in my view, include such information which takes colour from the expression commercial confidence, trade secrets and intellectual property.

9.10 The information regarding assessment of employees by a DPC is neither commercial in nature nor is it a trade secret or intellectual property which could harm the competitive position of another employee i.e. a third party. The expression competitive position of a third party i.e. other employees of the petitioner has to be read in consonance with the nature and the kind of information to which the said expression applies. None of the expressions used i.e. commercial secrets, trade secret and intellectual property would envelop the assessment of a DPC carried out in a service environment.

10. As to whether DPC proceeding is an information which is made available to the petitioner in its fiduciary relationship or is an information which is personal to the employees is an aspect which is not dealt with, in the CIC's order. As regards invocation of Section 8(1)(e) is concerned, which deals with the aspect of fiduciary relationship, the petitioner had sown the seed of objection as it was, the ground taken, by the CPIO in its order of 14.9.2009 and, therefore, perhaps ought to have been dealt with CIC.

10.1 The same, however, cannot be said with regard to the objection taken on the ground that the information was "personal information" which, had no relationship with any public activity or interest or that it would cause unwanted invasion into the privacy of other employees as envisaged under Section 8(1)(j) of the RTI Act. The order of the CIC is cryptic and sans

WP(C) No.2506/2010 Page 16 of 18 reasons. The impugned direction contained in the CIC's order in paragraph 6 only adverts to the fact that such a directive had been issued in other cases and, therefore, the petitioner ought to be supplied information with regard to DPC proceedings. Reasons are a link between the material placed before a judicial/quasi-judicial authorities and the conclusions it arrives at. (See Union of India vs Mohan Lal Capoor, 1974 (1) SCR 797 at page 819(H) and 820 (B, C & D)]. The failure to supply reasons infuses illegality in the order, and thus deprives it of legal efficacy. This is exactly what emerges on a bare reading of the impugned order.

10.2 I must, however, note, at this stage, the contention of Mr. Malhotra that the information contained in the DPC minutes would advert to the ACR gradings of the other employees who may wish to object to the said information being disclosed to the respondent, and if, the CIC was of the view that such information ought to be disclosed in public interest, notwithstanding the intrusion into the private domain of other employees, the procedure prescribed under Section 11 of the RTI Act ought to have been followed. The argument being:

notice ought to have been issued to the employees who would then, have taken a call, as to whether or not they would want to oppose the disclosure of information pertaining to them, contained in the DPC proceedings.

11. Having regard to the contentions raised before me by learned counsel for the parties, I am of the view that the interest of justice would be served if the direction of the CIC contained in paragraph 6 of the impugned order is set aside and the matter remanded for a denovo hearing by the CIC. It is ordered accordingly. The CIC shall hear and dispose of the appeal of the respondent which arises from her 2nd application dated 14.8.2009 after giving due notice to the petitioner to file a reply and put forth its stand before it through its WP(C) No.2506/2010 Page 17 of 18 representative or counsel. The petitioner would be free to raise objections, amongst others, with regard to provisions of Section 8(1)(j) and Section 11 of the RTI Act as they are only an issue of law, which are based on the very same set of facts, on the basis of which, objection under Section 8(1)(e) is taken by the petitioner. The CIC would also have regard to the judgments cited by the parties including the judgment of the Supreme Court in the case of Girish Ramchander Deshpande Vs. CIC and Anr., (2012) 9 SCALE 700, and the judgment of this Court in Arvind Kejriwal vs CPIO Officer & Anr. 183 (2011) DLT 662 and RK Jain vs UOI, 2012 V AD (DEL) 443 as affirmed by the Division Bench Judgments of this Court.

12. For this purpose, parties will appear before the CIC on 15.03.2013. CIC will expeditiously dispose of the matter, though not later than eight (8) weeks from the first date of appearance.

13. The respondent shall also be free to take recourse to an appropriate remedy as may be available to her, in accordance with law if, she wishes to assail that part of the judgment of the CIC, whereby it sustained the decision of the CPIO to decline her request for being supplied her own ACRs for the period 2004 to 2007.

14. The writ petition is disposed of with the aforesaid direction.

RAJIV SHAKDHER, J

MARCH 08, 2013

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