

Delhi High Court
Delhi High Court
Unknown vs Pk Srivastava on 9 April, 2013
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* IN THE HIGH COURT OF DELHI AT NEW DELHI + LPA 195/2011

UNION OF INDIA

..... Appellant

Through: Mr. S.K. Dubey, Advocate

versus

PK SRIVASTAVA

..... Respondent

Through: respondent in person

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

ORDER

% 09.04.2013

Vide application dated 26.3.2008, the respondent Dr. P.K. Srivastava sought certain information under Right to Information Act, 2005. On not receiving any response, he made a complaint in this regard to the Central Information Commission. The desired information, however, came to be supplied to the respondent vide letter dated 9.10.2009. It was complained by the respondent that had the desired information been supplied to him in time, he would have convinced the Ministry of Textile and Central Silk Board to induct and give him in situ promotion to him to the post of Scientist-D with effect from 30.8.2006 and the delay in furnishing of the said information by CPIO, DoPT, Government of India had caused irreversible loss of status, dignity, mental peace and recurrent financial loss. After hearing the respondent/complainant and the concerned CPIO, the Central Information Commission vide order dated 31.12.2009, awarded compensation amounting

to Rs.43,240/- to the complainant/ respondent, comprising Rs.23,240/- for LPA 195/2011 Page 1 of 6 ten visits to and fro Allahabad to pursue the case before the Central Administrative Tribunal and Rs.20,000/- for staying for at least two nights per visit. The aforesaid order was passed in exercise of the powers conferred upon the Commission under Section 19(8)(b) of the Right to Information Act. Being aggrieved from the order of the Commission, the appellant file W.P(C) No.4847/2010. The aforesaid writ petition have been dismissed vide impugned order dated 22.7.2010, the appellant is before us by way of this appeal.

2. It has been contended by Mr. S.K. Dubey, learned counsel for the appellant that since no appeal before the Commission was filed by the respondent, it had no power to award compensation in terms of Section 19(8)(b) of the said Act and consequently the order passed by the Commission was without jurisdiction.

3. Section 19 of the Right to Information Act, to the extent it is relevant for our purpose reads as under:

"19. Appeal.-

(1) Any person who, does not receive a decision within the time specified in sub- section (1) or clause (a) of sub- section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

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(3) A second appeal against the decision under sub- section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Xxxx

8. In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to-

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; (iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; (v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub- section (1) of section 4; (b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act; (d) reject the application.

(9) The Central Information Commission or State

LPA 195/2011 Page 3 of 6 Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority."

4. Section 20 of the aforesaid Act which is relevant for our purpose, reads as under:

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,

LPA 195/2011 Page 4 of 6 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. CHAPTER VI MISCELLANEOUS CHAPTER VI MISCELLANEOUS."

5. It is quite evident from a perusal of the above referred provisions contained in Section 19 of the Act that compensation to the complainant for any loss or other detriment suffered by him can be awarded by the Commission only while deciding an appeal filed before it. Similar power can also be exercised by the State Information Commission, while passing an order in appeal preferred before it. The aforesaid Section does not provide for grant of compensation merely on the basis of a complaint made to the

Commission, without an appeal having been preferred to it.

6. We find from a perusal of Section 20 of the Act that in case the Commission, while deciding a complaint received by it is of the view that the Central Public Information Officer or the State Public Information Officer had, inter alia, not furnished the information within the time specified in sub-section (1) of Section 7, it is required to impose penalty of Rs.250/- each per day till the information was furnished, but in no case, the amount of penalty can exceed Rs.25,000/-. Therefore, while deciding a

LPA 195/2011 Page 5 of 6 complaint received from the respondent, the Commission could only have imposed penalty prescribed in sub-section (1) of Section 20 of the Act, but could not have awarded any compensation to him in exercise of the powers conferred upon it by Section 19(8)(b) of the Act. The order passed by the Commission, therefore, was clearly without jurisdiction and is therefore liable to be set aside.

7. For the reasons stated hereinabove, we set aside the impugned order dated 22.7.2010 as well as the order dated 31.12.2009. We remit the matter back to the Commission for passing appropriate order under Section 20(1) of the Act after hearing both the parties. We direct the parties to appear before the Commission on 06.05.2013. The Commission shall pass an appropriate order in terms of this direction within three months of the parties appearing before it.

The appeal stands disposed of accordingly.

CHIEF JUSTICE

V.K. JAIN, J

APRIL 09, 2013

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