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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7845/2013**

PARAS NATH SINGH Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA Respondent

Through: Mr Ruchir Mishra, Mr Mukesh
Kumar Tiwari and Mr Abhishek
Rao, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.02.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 04.09.2013 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC').
2. The petitioner had filed an application dated 06.11.2010 under the Right to Information Act, 2005 (hereafter 'the Act') seeking certain information including the certified copy of a report sent by the then Governor of Karnataka to the Union Home Ministry relating to the political situation in the State of Karanataka and for imposing President's Rule in that State. The petitioner had also sought information as to what action had been taken by the Government of India on the said report and also the file notings in respect of the said report.

3. The said information was declined to the petitioner. The petitioner appealed against such denial to the First Appellate Authority (FAA) under Section 19 (1) of the Act, but was not successful. Aggrieved by the order passed by the FAA, the petitioner preferred a second appeal under section 19(3) of the Act, which is stated to be pending consideration before the CIC.

4. In the meantime, the petitioner filed another application dated 07.06.2012 under the Act, *inter alia*, seeking the following information:-

- “1) Complete details of file notings made on the above said file number as on date.
- 2) Separately the daily progress made in case of above said file till date i.e. when did it reach which officer/functionary, how long did it stay with that officer/functionary and what did that officer/functionary, do during that period on the said letter together with file noting and name and designation of each officer/functionary.
- 3) List of the officers with their designation to whom before the said file is placed. Also provide me the noting made by them on the said file.
- 4) Is it true that the said file is placed before the Union Home Secretary? If yes then provide me the action taken by him thereon. Also provide me the facts and reasons to place the said file before Union Home secretary.
- 5) Provide the certified copy of the draft Special Leave Petition which is going to be filed before the Supreme Court by the MHA in the matter of Governor’s reports to Union Home Ministry.

6) Is there any correspondence made with the Union Home Minister in this matter. If yes, then provide me the certified copy of the same.”

5. The petitioner’s request for the information as sought for in his application dated 07.06.2012 was denied by the Central Public Information Officer (CPIO) by a letter dated 25.06.2012. The CPIO claimed that the information as sought by the petitioner was exempt from disclosure under Section 8(1)(e) and Section 2(f) of the Act. According to the CPIO, information pertaining to file notings are not required to be disclosed.

6. Aggrieved by the aforesaid decision of the CPIO, the petitioner preferred an appeal before the FAA, which was also rejected by an order dated 20.07.2012. The FAA held that it had not been “*found feasible to provide the notings of the relevant file under Section 8(1)(e) and Section 2(f) of the RTI Act, 2005 as the same does not includes File Notings*”.

7. Aggrieved by the said decision, the petitioner filed a second appeal under Section 19(3) of the Act (albeit, incorrectly referred to as under Section 18 of the Act). The said appeal was disposed of by the impugned order. Paragraphs 5 and 6 of the impugned order, that indicate the reasons which persuaded the CIC to reject the petitioner’s appeal, read as under:-

“5. The CPIO on the other hand submits that the file notings as sought for by the appellant at Point No.1 to 4 and 6 of the RTI application, are the part of the file in which an official records his observations and impressions meant for his immediate superiors. Especially, when the file in which the noting are contained is classified and confidential and

secret the entrustment of the file noting by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a 3rd party. This being so, any decision to disclose the information has to be completed in terms of a provision of Section 11(1) of the RTI Act. When the file noting by one officer meant for the next officer with whom he may be in hierarchical relationship, is in the nature of a fiduciary entrustment, it should not ordinarily be disclosed and surely not without any concurrence of the officer preparing that note. The file noting for a confidential and secret part would attract the provisions of Section 8(1)(e) as well as Section 11(1) of the RTI Act. In respect of Point No.5, that is SLP filed in the Supreme Court in the matters of Governor's report to the President of India/Union Ministry of Home Affairs, the same can be obtained by the appellant from the Supreme Court of India.

6. Having considered the submissions of the parties and perused the relevant documents on the file, the Commission is of the view that the file notings as sought for by the appellant at Point No.1 to 4 and 6 of his RTI application, provisions of Section (1)(e) of the RTI Act are attracted, in view of the statement of the respondent that the file in which the notings are contained is classified and confidential and secret. Moreover, no larger public interest has been established by the appellant for its disclosure. At Point No.5 the appellant has been established by the appellant for its disclosure. At Point No.5 the appellant sought copy of SLP file before the Supreme Court of India in the matter of Governor's report to the President of India/Union Ministry of Home Affairs, the Commission hereby directs the CPIO, MHA to transfer this point to the CPIO, Supreme court of India u/s 6(3) of the RTI Act **within five days** of receipt of this order."

8. It is apparent from the plain reading of the above that the respondent had argued the matter before the CIC on the footing that the

petitioner had sought notings on the file pertaining to the report of the Governor regarding the imposition of President's Rule in the State of Karnataka, which had been classified as 'confidential and secret'. Concededly, this is not the information that was sought by the petitioner in his application dated 07.06.2012. The said application was for information relating to how his earlier application dated 06.11.2010 preferred under the Act had been dealt with. The same included notings on the file pertaining to the petitioner's application under the Act. While the file relating to the Governor's report may be classified, the file concerning the petitioner's application cannot, obviously, be considered confidential/secret. Admittedly, this is also not the case of the respondents; they do not claim that the notings on the file relating to the petitioner's application dated 06.11.2010 have been classified as secret or confidential.

9. In view of the above, the impugned order, inasmuch as it holds that the information sought for by the petitioner is exempt from disclosure under Section 8(1)(e) of the Act, cannot be sustained.

10. The contention that notings made by a junior officer for use by his superiors is third party information, which requires compliance of section 11 of the Act, is unmerited. Any noting made in the official records of the Government/public authority is information belonging to the concerned Government/public authority. The question whether the information relates to a third party is to be determined by the nature of the information and not its source. The Government is not a natural person and all information contained in the official records of the Government/public

authority is generated by individuals (whether employed with the Government or not) or other entities. Thus, the reasoning, that the notings or information generated by an employee during the course of his employment is his information and thus has to be treated as relating to a third party, is flawed.

11. Section 8 of the Act provides for exemption from disclosure of certain information and none of the provisions of Section 8 provide for blanket exemption that entitles the respondent to withhold all notings on a file.

12. In view of the above, the impugned order is set aside. The matter is remanded to the CIC to consider afresh. The CIC is requested to pass a final order as expeditiously as possible and preferably within a period of three months from today.

13. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 12, 2018
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