

CENTRAL INFORMATION COMMISSION

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F.No.CIC/AT/A/2007/00301

Dated, the 31st May, 2007.

Appellant : Shri Rasiklal Shantilal Mardia, 183 Manekbaug Society, Ambawadi, Ahmedabad-380 015.

Respondents : Shri K.K. Sharma, CPIO, Central Excise Customs Service Tax, Commissionerate, Raigad, 4th Floor, Plot No.1, Sector-17, Khandeshwar, New Panvel, Navi Mumbai.

Smt. Prem V.P. Singh, Chief Commissioner Central Excise, Mumbai Zone-II, 9th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012.

This appeal by Shri Rasiklal Shantilal Mardia is against the order of the Appellate Authority (AA), dated 9.2.2007. The Appellate Authority had held that the order of the CPIO, Shri K.K. Sharma, Commissioner (Central Excise) Raigad was without jurisdiction in so far as Shri K.K. Sharma was only holding additional charge of the functions of the Commissioner, Central Excise, Raigad. In the judgement of the Appellate Authority, only an officer properly appointed to discharge the functions of the CPIO could dispose of RTI-applications and not another officer, who may be in-charge of the post of the former during the former's absence from duty. Shri K.K. Sharma, was holding the additional charge of the functions of the Commissioner, Central Excise, Raigad, on that date, viz. 15.12.2006. According to the Appellate Authority, "*this additional charge of administration of the Central Excise Commissionerate, Raigad entrusted to him does not make him a de-facto CPIO under the RTI Act, 2005.*"

2. In the light of the above reasoning, the AA remanded the matter back to the CPIO and Commissioner, Central Excise, Raigad, for fresh consideration and orders. In pursuance of the AA's directions, the CPIO, Shri Mahender Singh, Commissioner, Central Excise, Raigad considered the matter afresh and passed another order dated 28.2.2007, in which contrary to the position taken by Shri K.K. Sharma, he rejected the RTI-request of the appellant.

3. Now, the appellant has called in question the legality of the order of the Appellate Authority. He has critiqued the assumptions made by the Appellate Authority that in terms of Section 5(1), the functions of the CPIO can be discharged only by officers so designated by a given public authority. Inferentially, therefore, an officer holding additional charge of the post held by another officer, who was designated as CPIO, does not automatically step into the shoes of that officer for discharge of the CPIO's functions.

4. I would not say that the AA was wrong in coming to the conclusion which she did. But her conclusion / interpretation of Section 5(1) of the RTI Act was overtly technical and narrow. Section 5(1), no doubt, states "*every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers.....in all administrative units or offices under it as may be*

necessary to provide information to persons requesting for the information under this Act”.. Three expressions used in this sub-section are of crucial importance; these are “designate as many officers”, “in all administrative units or offices”, and “provide information to persons...”. A close reading of this sub-section reveals that a public authority may designate officers to act as CPIOs in all its administrative units or offices to sub-serve the main purpose of providing information to the citizens. It is important to note that the purpose of designating so many different officers as CPIOs is to provide information to the citizen. In other words, the designation of officers as CPIOs is to facilitate provision of information to the citizens. In the face of it, to hold that an officer placed in charge of another officer could not become automatically the CPIO for that latter office, is to overlook the fact that the purpose of the arrangement under sub-section 5(1) is to serve the larger cause of facilitating information transmission to the citizen, which cannot be allowed to be defeated by some technicality about designation of an officer as CPIO. Unfortunately, the Appellate Authority has done just that. In counting trees she has lost sight of the woods.

5. Even to take the narrower interpretation of the subsection 5(1), when an officer, who has been designated by the public authority as the CPIO for an administrative unit or office, goes on leave or, is away from the office on some work, the person placed in charge of that office temporarily to perform the functions of the office, steps into the shoes of its original incumbent in all aspects of functions. I am aware that there are statutes under which a temporary successor to an officer cannot perform certain statutory functions unless specifically authorized to do so. That analogy, in my judgement, does not apply in the present case. Here, the arrangement made by the public authority is more in the nature of a facilitating arrangement rather than a statutory one. Its focus is more on the administrative unit or office, than on the officer. In other words, when an officer is designated as a CPIO in a given unit or office, unless otherwise provided, any incumbent of that particular office should be construed to be CPIO for that specific office. This would include the temporary/ in-charge incumbent as well.

6. In the light of the above, it is my considered view that the Appellate Authority erred in failing to appreciate the true intent and purpose of sub-section 5(1) of the RTI Act. It shall be necessary to remember in interpreting the provisions of the RTI Act that this Act has been made for the citizen and not the citizen for the Act. In case of any doubt, the provisions of the Act must be tested against a single touch-stone — does it serve the interest of the citizen? If the answer is yes, that interpretation should prevail.

7. Now that there are two orders in the same matter by two officers who held the same post and were seemingly acting as CPIOs, the matter must be again examined by the Appellate Authority. It is directed that the Appellate Authority shall examine both orders given by the CPIOs, give a hearing to all the parties involved, and give her finding on the merits of the appellant’s RTI-application. This will be finalized by the AA, within four weeks from the date of the receipt of this order.

8. Appeal is disposed of with these directions.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

Address of parties:

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3. Smt. Prem V.P. Singh, Chief Commissioner Central Excise, Mumbai Zone-II, 9th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012.