

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

Reserved on: 26th March, 2015
% **Date of Decision: 30th April, 2015**

+ W.P.(C) 4735/2011

UOI Petitioner
Through: Mr. Rajinder Nischal, Advocate.

versus
D.S. MEENA Respondent
Through: Mr. Inderjit Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. The present Writ Petition (Civil) has been filed under Article 226 of the Constitution of India, assailing the order dated 28.02.2011 passed by the Central Information Commission, New Delhi (hereinafter referred to as 'CIC') in appeal No. CIC/AD/A/2009/001513. Through the said order CIC directed the petitioner to show the Annual Confidential Reports (ACRs) of third party to the respondent.

2. The facts as borne out from the present petition are that on 01.02.2009, respondent resorted to the Right to information Act (hereinafter referred to as 'the Act') and requested the petitioner for the following information:

- (a) Supply of certified copies of ACRs of Shri N. Jayaram, O.P. Kala, Vijaykumar IRTS officers for the previous 5 years which were taken into consideration during promotion of SAG and his ACRs of the same period.

- (b) Copy of approved panel in which these three officers were placed.

3. On 27.02.2009, the petitioner rejected the request of the respondent on the following grounds:

- (a) That ACRs are confidential documents and their disclosure does not serve any public interest or public activity and is, therefore, exempted under Section 8(1) (j) of the Act from public disclosure.
- (b) Panel proceedings are confidential documents and their perusal does not serve any public interest or public activity and exempted from public disclosure under Section 8(1) (j) of the Act.

4. Aggrieved by the denial of this information, the respondent preferred an appeal dated 09.03.2009 before the Appellate Authority, Chief Information Officer (CIC), New Delhi. On 03.07.2009, the Appellate Authority rejected the appeal on the following grounds:

“It is reiterated that ACRs and Panel Proceedings are confidential documents and their disclosure does not serve any public interest or activity. Therefore, exemption is sought from public disclosure under Section 8(1) (j) of the RTI Act 2005.”

5. On 03.10.2009, the respondent filed a second appeal under Section 19 of the Act before the Central Information Commission, who on 28.02.2011, allowed the appeal of the respondent and directed the petitioner to furnish the requisite information to the respondent, while observing as under:

“.... Copies of the original relative assessment in the present case will, therefore, be provided to the appellant. With regard to the supply of ACRs of three officers the information sought by the applicant can be denied to the complainant by the third party only if the reason for denial cited by the third party falls within one of the exemptions as guaranteed by Section 8(1) of the RTI Act....”

6. Aggrieved by the said order dated 28.02.2011 passed by CIC the petitioner has preferred the present petition.

7. Learned counsel for the petitioner contended that the impugned order is bad in law and on facts. CIC while passing the impugned order never considered Section 8 (1) (j) of the Act. CIC cannot substitute their findings qua the settled position of law, as well as rules and regulations which have been provided under the relevant law for agitating against and redressal of a grievance. The transparency in conducting of the DPC is always open to challenge before a competent court. Respondent's grievance has already been adjudicated by judiciary as the respondent has already challenged his non-promotion to SAG before the Court of law which was dismissed. Against that the respondent filed an SLP No.10899/2005 before the Supreme Court and the same was also dismissed on 15.11.2007 and therefore, at this juncture the respondent cannot resort to the Act as a forum to redress his grievance which already stands adjudicated.

8. It was lastly contended by the learned counsel for the petitioner that there is an apparent contradiction in the order passed by the CIC. On one hand, directions have been given to supply copies of the DPC proceedings containing the relative assessment of the officers concerned, and on the other hand, the provisions laid down in Section 11(1) of the Act (third party) have been directed to be complied with for providing copies of ACRs of

Shri N Jayaram, Shri O P Kala, and Vijay Kumar. The relative assessment which has been directed to be given to the respondent contains the ACR grading not only of these three officers but also of all the other officers considered by the DPC. If this is disclosed, then the application of Section 11(1) of the Act in relation to supply of ACRs in respect of the aforesaid three officers becomes redundant. Therefore, the self contradictory nature of the orders passed by the CIC renders it incapable of being implemented.

9. *Per Contra*, learned counsel for the respondent contended that the respondent wants the ACRs of the three officers since these three officers were initially not considered along with him for empanelment. However, three months later they were promoted while he was not promoted.

10. I have heard the learned counsel for the parties and have also perused the material on record.

11. The point for consideration before this Court is whether disclosure of ACRs of the said three persons and approved panels in which the said three persons were placed falls within the purview of exceptions provided under Section 8 of the RTI Act?

12. The Indian Railway Traffic Service (for short 'IRTS') is one of the nine services managing the Indian Railways and is thereby a 'public authority' within the meaning of Section 2(h) of the Act. Section 4 of the Act places an obligation upon the public authorities to maintain records and provide prescribed information. Once an application seeking information is made as per the requirements of Section 6 of the Act, the same has to be disposed of in terms of Section 7 of the Act within prescribed time.

13. However, Section 8 enumerates the cases under which the public authorities are exempted from disclosure of confidential information. It provides a much-needed limitation to the uncontrolled power vested within the ambit of the 'Fundamental Right of Information'. Furthermore, the only information that can be sought by an applicant and that can be provided to him should fall within the ambit of Section 2 (f) and Section 2 (j) of the Act respectively.

14. Relevant provision of Section 8 of the RTI Act are reproduced herein under:

“Section 8 - Exemption from disclosure of information

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

xxx

xxx

xxx

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923(19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.....”

15. Prior to the enactment of the Act, access to any information pertaining to public authorities was correlated to the *locus standi* of the requestor. In other words, it was necessary for the information-seeker to show why he/she wanted the information before a decision could be made to give or not to give the information sought by him. With the enactment of the Act this requirement has been changed drastically. The present Act abolishes the concept of *locus standi* as under section 6(2) of the Act no reasons need to be given for seeking information. However, this restriction on disclosure of reasons cannot be misconstrued to mean that any information pertaining to a public authority or its employees is public information.

16. It is a settled law that for seeking personal information regarding any employee of the public authority the applicant must disclose a 'sustainable public interest'. Section 8(1) (j) of the Act was enacted to ensure that all information furnished to public authorities including personal information is not given free access to. As per this Section unless the Central Public Information Officer ('CPIO' for short) or the State PIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies, the disclosure of any such information that invades the privacy of an individual is not permissible.

17. Further an individual or citizen's fundamental rights, which include the right to privacy are not subsumed or extinguished if he accepts or holds public office. The Hon'ble Supreme Court in '**Kameshwar Prasad v. State of Bihar**' AIR 1962 SC 1166, speaking in this context observed:

“(11) We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class

from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

(12) In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article selects two of the Services under the State-members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them - from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19(1)(e) and (g).”

(emphasis supplied)

18. Similar view was taken by the Apex Court in ‘**O.K. Ghosh v. E.X. Joseph**’ *AIR 1963 SC 812*. Section 8 (1) (j) of the Act is an affirmation of this. It ensures that all information pertaining to public authorities, including personal information (such as ACR) are not given blanket access to the public at large. Before any such information is sought the information seeker has to disclose a reason for ‘sustainable public interest’ that would permit its disclosure.

19. Annual Confidential Reports are essentially performance appraisal by higher officials which along with other things constitute the basis for promotions and other service benefits. It is a settled law that the performance of an employee in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest. It is a normal rule that the disclosure of such information would cause an unwarranted invasion of privacy of an individual, however once the CPIO/SPIO reaches the conclusion that disclosure of such information is in larger public interest, appropriate order can be passed in this regard.

20. The Hon'ble Supreme Court in '**Girish Ramchandra Deshpande v. Central Information Commissioner and Ors.**' (2013) 1 SCC 212, held:

"13. We are in agreement with the CIC and the courts below that the details called for by the Petitioner i.e. copies of all memos issued to the third Respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in Clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the Petitioner cannot claim those details as a matter of right."

The Supreme Court was of the similar view in '**R.K. Jain v. Union of India (UOI) and Anr.**' (2013) 14 SCC 794.

21. This Court is further of the view that the comments made by the reporting and the reviewing officers in the ACR of a public servant stand on the same footing as the ACR itself. Any such information relating to ACR relates to the personal information and may cause unwarranted invasion of privacy of the individual. In '**Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Anr.**', (2012) 13 SCC 61 the Supreme Court with regard to disclosure of personal information opined as under:

“22.Another very significant provision of the Act is 8(1)(j). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.”

22. So far as the respondent sought the information regarding the Departmental Promotion Committee proceedings ('DPC' for short) and the minutes of such proceedings this Court is further of the opinion that the same cannot be disclosed except for in public interest. This Court in, **'THDC India Ltd.Vs. R.K. Raturi'** W.P. (C) 903/2013 decided on 08.07.2014 has observed as under:

"13. Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed if a finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed."

23. In the instant case, the information sought by the respondent pertains to the ACRs of Shri N. Jayaram, O.P. Kala, Vijaykumar who are government servants and the DPC proceedings so conducted. As I have already observed that ACRs of these employees are confidential documents. The reasons provided by the respondent are not convincing enough to establish before this court that disclosure of ACR details of the said three persons and the DPC proceedings is important for larger public interest. Learned counsel for the respondent has established no grounds for the same. Merely because the respondent wants to avail such information, does not form a substantial reason so as to why this Court should allow disclosure of such information. In the absence of any cogent reasons brought on record to establish the necessity of disclosure of the information sought by the respondent in the interest of public this Court is not inclined to violate the

right to privacy of the said three public officers which is a Fundamental Right embedded in our Constitution.

24. Perusal of the order dated 28.02.2011, suggests that the learned CIC allowed the disclosure of the DPC proceedings and asked the respondent to give reasons for denial of the ACRs. This court is not in agreement with the observations of the learned CIC for the reasons aforesaid.

25. In the light of the above discussion the petition is allowed. The impugned order dated 29.04.2013 passed by Central Information Commissioner, New Delhi is set aside. No order as to costs.

C.M. Appl. No.9591/2011

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

APRIL 30th, 2015
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