

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

201

CWP No.17851 of 2012
Decided on : 08.08.2016

Public Information Officer and another

... Petitioners

Versus

State Information Commission, Pb. CHD. and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present : Ms.Lavanya Paul, Assistant Advocate General, Punjab
for the petitioners.

Mr.Rajesh Punj, Advocate
for respondent No.2.

Mr.Atul Goyal, Advocate
for respondent No.3.

G.S.Sandhawalia, J. (Oral)

The petitioner-State challenges the order dated 30.7.2012 (Annexure P/3) and the order dated 21.08.2012 (Annexure P/4), whereby the respondent-State Information Commission had directed to supply requisite information to the applicant-respondent No.2, Shri Daljit Singh Grewal. The reasoning given by the respondent-Commission was that information as sought by the said applicant was already *in public domain* and it by no stretch of imagination could be denied.

It is not disputed that in pursuance of the directions issued on 30.07.2012 (Annexure P/3), the State had sought time before the Commission to provide the said information since it had already provided partial information. Thereafter, the present writ petition was filed challenging the above said orders.

Learned State counsel has argued that the said orders are not

sustainable on the ground that respondent No.2, Daljit Singh Grewal was a chronic litigant and had sought information time and again and therefore, the information pertaining to the third party, namely, K.S.Ghumman, respondent No.3, could not have been supplied as respondent No.3 had objected to the same. Due to this, the same was rightly denied under Section 8(1)(j) of the Right to Information Act, 2005 (for short the 'Act').

Mr.Atul Goyal, learned counsel for respondent No.3 has also supported the said order as well as the stand of the State.

Mr.Rajesh Punj, Advocate, appearing for the applicant-respondent No.2 however submits that the information, which was sought by the applicant was pertaining to the service record of respondent No.3 with whom the petitioner was having a service dispute of seniority, therefore, the information sought for, was not such as it could be said to be unwarranted.

A perusal of the application (Annexure P/1) filed by respondent No.2, applicant would go on to show that petitioner sought the information on the ground that he was senior to respondent No.3 and his case for promotion was pending in the Apex Court and various other cases were still going on. It was in such a background that he sought the necessary information under the Act. The same reads as under:-

1. *Certified copies of all the representations submitted by Shri K.S.Ghuman to the Govt. for counting benefits of his previous service of BSF towards present service.*
2. *Certified copies of new seniority list of Gazetted Officers of Home Guards department issued after 2000, if any.*
3. *Certified copy of the application submitted by Shri K.S.Ghuman to the PPSC for appointment to the post of District Commander to his parent department (BSF) because Commission after his appointment had sent original application to the Govt.*
4. *Complete certified copy of the writ petition filed by Shri K.S.Ghuman in the Hon'ble Punjab and Haryana High Court claiming benefits of his past service.*

5. *Certified copy of the reply filed by the Govt. to his writ petition.*
6. *Copy of orders issued by the Hon'ble court in this petition.*
7. *Copy of the orders of the govt. which has been challenged by Shri Ghumman in the court.*
8. *Certified copy of the entire file along with documents and notings of the Govt. on which Shri Ghumman's case for grant of service benefits of BSF service has been dealt with.*
9. *Following details of all the officials and officers who have dealt the aforesaid case on the file:-*
 - a) *Name and rank of the official/officer*
 - b) *Place of present posting*
 - c) *If retired, complete address of their residence.*
10. *Copy of final orders issued by the Govt. in this matter.*
11. *Certified copies of those orders, if Govt. has allowed similar benefits to any other officer on the basis of which these benefits have been granted to Shri Ghumman.*
12. *Certified copies of Govt. instructions on the basis of which Shri Ghumman has been granted service benefits.*
13. *Certified copies of the comments sent by the office of Commandant General, Home Guards, Chandigarh, with regard to the aforesaid case of Shri K.S.Ghumman.*
14. *Certified copies of all the orders vide which benefits of deemed date of BSF service have been allowed to Shri K.S.Ghumman in the rank of Battalion Commander and Divisional Commandant.*
15. *Certified copies of all the instructions vide which benefits of deemed date of BSF service have been allowed to Shri Ghumman.*
16. *Copy of the resignation submitted by Shri Ghumman to BSF before joining as District Commander.*
17. *Certified copies of the orders if benefit of deemed date has been allowed to Shri B.S. Tigar, Divisional Commandant, Punjab Home Guards.*
18. *Certified copies of total benefits of ACP granted to Shri Ghumman by the Govt."*

The said information was sought to be denied by Superintendent-cum-Assistant Public Information Officer on 21.05.2012 (Annexure P/2/T) on the ground that third party-respondent No.3 had objected to the supply of information. Resultantly, applicant-respondent No.2 had approached respondent No.1- Commission by filing the appeal wherein the Commission came to the conclusion that information sought was already in public domain and it by no stretch of imagination could be denied on the ground that third party had objected to it. Resultantly,

necessary direction has been issued which is now the subject matter of the present writ petition.

The applicant-respondent No.2 in his response to the writ petition, has taken the plea that he was ignored promotion by the State despite being senior to Sh.K.S.Ghumman and that a dispute was pending before the Apex Court. It is further his case that respondent No.3 was given various benefits which the said applicant was asking for, and his ACR was also spoiled. It is thus his stand that if there is a service dispute inter se the applicant and respondent No.3 and matter has been adjudicated by the Apex Court, the State has thus no *locus standi* to file the present writ petition and challenge the order of the Commission. He has further contended that on account of the benefit of the previous service with the B.S.F., the said respondent would steal a march over him.

It is not disputed that the Hon'ble Apex Court in the appeal filed by respondent No.2 granted the benefit of promotion to the post of Battalion Commander from the year 2001-2002 while noticing that injustice had been done to the said applicant/appellant. His ACR had been written by one Mr.Tejinder Singh, who was reporting authority as Divisional Commandant. It was held that non-filing of the written statement by the said respondent No.4 proved a mala fide intention on his part and therefore the said appellant had been wrongly denied the promotional benefits. It was further noted that respondent No.3 herein (respondent No.7 therein) had filed the written statement before the High Court and he happened to be a officer junior to the appellant and had been promoted to the post in question. The said judgment has been reported as “***Daljit Singh Grewal***

Vs. State of Punjab and others, (2015) 9 SCC 680. The relevant portion

reads as under:-

“The strong reliance placed upon the adverse remarks made by the respondent No.4, who has made the same without assigning any reasons, has resulted in the appellant being denied of the promotional benefit, even though the order of the respondent No.4 was set aside by the judgment and decree in Civil Suit No.70 of 2001. The action of respondent No.4 in denying the promotional benefit to the appellant is tainted with malafides. It can further be observed from the record that it was respondent No.7 who had filed the reply on behalf of all the respondents in the writ petition proceedings before the High Court. It is important to note at this stage that respondent No.7 happens to be an officer junior to the appellant, who was promoted to the post in question. The non-filing of written statement by respondent No.4 traversing the allegations of malafide against him proves the the malafide intention on part of the respondent No.4. Therefore, there was no justification for the respondent No.4 in denying the promotional benefit to the post of Battalion Commander to the appellant. The learned senior counsel on behalf of the appellant has rightly placed reliance on the case of Sukhdev Singh (supra), wherein this Court has lucidly laid down the law pertaining to communication of ACR. It was held that if the ACR of the officer concerned is to be used for the purpose of denying promotion, then all such ACRs were required to be communicated to him, to enable him to make a representation against his adverse entries made in the ACRs.”

The locus standi of the petitioner thus in seeking the said information under the Act cannot be disputed. A perusal of the order would also go on to show that the record in question has rightly been held to be already in public domain pertaining to seniority list and other service benefits pertaining to the respondent No.3 and the information as sought on what basis the state-respondent has given necessary promotion.

The *inter se* service dispute of the applicant and respondent No.3 has now sought to be adjudicated upon by the State by filing the present writ petition, who would in no manner be prejudiced by supplying the same to the applicant. Reliance upon Section 8(1)(j) of the Act, would not be applicable in the facts and circumstances of case and even otherwise, the larger public interest would justify the disclosure of information sought in view of the finding recorded by the Apex Court now inter-se parties.

Argument of counsel for respondent No.3 that on earlier occasion also, Commission had denied to supply the information sought by the applicant which was also upheld by this Court by imposing cost is without any basis. Perusal of the order dated 09.10.2014 (Annexure R-2/2) would go on to show that the Court did not have the benefit of judgment of the Hon'ble Apex Court which was pronounced on 21.08.2015, wherein it has been held that the stand of respondent No.2 has been vindicated. Even otherwise, an appeal is pending against the subsequent order dated 16.12.2014 declining the review, before a Division Bench of this Court.

Resultantly, keeping in view the above discussion, this Court is of the opinion that State has no locus standi to challenge the orders as it would not in any manner be prejudiced by the decision of the respondent-commission directing supply of the balance of the information.

Accordingly, there is no merit in the writ petition, the same is dismissed.

08.08.2016
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[**G.S.Sandhawalia**]
Judge

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No