

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.14715 of 2015
Decided on :04.10.2016**

Kuldeep Singh

... Petitioner

Versus

The Central Information Commission and others

... Respondents

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

Present : Mr. Pardeep Kumar Rapria, Advocate
for the petitioner.

Mr. Pankaj Jain, Advocate
for respondents No.2 to 4..

G.S. Sandhawalia, J. (Oral)

The petitioner seeks direction to provide the complete information sought vide application dated 27.10.2014 (Annexure P-1) and to impose penalty etc. under the Right to Information Act, 2005 (for short 'RTI Act'). The information which the petitioner is seeking vide the abovesaid application is on account of the fact that he had appeared in the written test for the post of clerk conducted by the Army Recruiting Office by the Zonal Recruiting Office, Ambala Cantt, Ambala (Haryana). The information which is sought vide the abovesaid application reads as under:-

“1 Please provide the certified copy of the Answer Sheet of the undersigned.

2 Please provide the Model Answer Key, relating to the aforesaid answer sheet.

3 Please provide the certified copy of the complete Merit List, in reference to the selection of the aforesaid trade.”

It is a matter of record that on 31.10.2014 (Annexure P-2), the evaluated answer sheet was denied on account of the fact that the Central

Information Commission had decided at that point of time that the photocopy is not liable to be provided. It is not disputed that the answer key has already been provided to the petitioner vide communication dated 27.01.2015 (Annexure R-2/1) and thus there is no dispute regarding the said demand. Regarding the certified copy of the complete merit list, the information still remains to be provided.

The Apex Court in '**Central Board of Secondary Education and another Vs. Aditya Bandopadhyay and others'** 2011 (11) SCR 1028 has held that the supply of answer books do not fall under the category of exemption under Clause 8 (1) (e) of the RTI Act. The relevant part of the judgment reads as under:-

“Therefore the question whether re- evaluation should be permitted or not, does not arise for our consideration. What arises for consideration is the question whether the examinee is entitled to inspect his evaluated answer-books or take certified copies thereof. This right is claimed by the students, not with reference to the rules or bye-laws of examining bodies, but under the RTI Act which enables them and entitles them to have access to the answer-books as 'information' and inspect them and take certified copies thereof. Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8 (1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body

governing the examinations. Therefore, the decision of this Court in Maharashtra State Board (supra) and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.

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“27. We, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under section 8 (1) (e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.”

Counsel is well justified to rely upon the subsequent judgment passed in '**Kerala Public Service Commission and others Vs. State Information Commission and another'** 2016 (1) SCT 597. In the said case also the Apex Court held that the candidates are entitled with regard to the scanned copies of the answer sheet, tabulation-sheet containing interview marks. However, the name of the examiner was not to be revealed. The relevant part of the judgment reads as under:-

“10. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not

be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.”

Keeping in view the above the information which is sought at Sr. No.1 is necessarily to be provided, in view of the settled principle of law.

Regarding the information sought at Sr. No.3, the certified copy of the merit list in reference to the selection to the clerks has been asked for. The information was sought to be denied on the ground that it could not be provided under Section 8 (1) (d) vide order dated 31.10.2014 (Annexure P-3). A perusal of the abovesaid Section 8 (1) (d) would go on to show that it pertains to information including commercial confidence, trade secrets or intellectual property etc. which is not the case in the present circumstances. Therefore, the information has been wrongly denied without any valid justification.

The factum of the pendency of the second appeal before the respondent-commission need not detain this court. It is a matter of record that the petitioner has been fighting for his right since the last two years

and the information has been denied on technicalities. It is to be noticed that the information is being sought on account of the fact that the petitioner had not made the cut in the recruitment process and, therefore, any further delay in the facts and circumstances would seriously prejudice him as such and he might become overage for further selection.

It is in such circumstances, this Court does not feel that pendency of the second appeal before the respondent No.1 would be sufficient ground to deny necessary relief to the petitioner in the peculiar facts and circumstances. Accordingly, the necessary information be supplied to the petitioner within a period of 30 days from the receipt of the certified copy of this order.

With the above observations, the writ petition stands disposed of.

OCTOBER 04, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No