IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2791 OF 2016

Union of India through
The Secretary.
Department of Atomic Energy,
Having office at Anushakti Bhavan,
C.S.M. Marg, Mumbai 400 001. ..Petitioner.
Vs.
Shri Sanjiban De.
Scientific Officer/G,
Research Reactor Design and
Projects Division,
Bhabha Atomic Research Centre,
Trombay, Mumbai 400 085. ..Respondent.

Mr. Rajiv Chavan, Senior. Advocate i/b. Mr. A.O. Singh, for the Petitioner.

Mr. A.M. Kulkarni a/w. Mr. A.A. Kulkarni, Advocates for the Respondent.

CORAM :R. M. SAVANT &
SMT.SADHANA S. JADHAV,JJ
DATE : 29th JUNE, 2017

<u>ORAL JUDGMENT : (PER R.M. SAVANT, J)</u>

1 Rule. Considering the nature of the challenge raised, made returnable forthwith and heard.

2 The Writ jurisdiction of this Court is invoked against the order dated 26/2/2016 passed by the Central Information Commissioner by which Order the Second Appeal filed by the Respondent No. 1 herein under the Right

to Information Act(for short the RTI Act) came to be allowed and resultantly, the Central Information Commission directed the Petitioner herein to furnish the complete Annual Performance Appraisal Report(APAR for short) for the relevant years to the Respondent No. 1 within the time stipulated in the said order.

3 It is not necessary to burden this order with unnecessary details Suffice it would be to state that the Respondent No. 1 is working as a Scientific Officer/G Research Reactor Design and Projects Division in the Bhabha Atomic Research Centre(BARC for short), Trombay. The Respondent No. 1 has applied to the Central Public Information Officer of the BARC for being furnished his APARs for the years 2008 to 2014. The PIO did not furnish the Respondent No. 1 his complete APARs. Since the Respondent was not furnished with his complete APARS for the period 2008 to 2014 by the Central Public Information Officer, the Respondent No. 1 had filed an Appeal before the First Appellate Authority. The First Appellate Authority upheld the decision of the Central Public Information Officer denying the complete APARs to the Respondent No. 1. Aggrieved by the order dated 10th November, 2014 passed by the First Appellate Authority, the Respondent No. 1 filed a Second Appeal before the Central Information Commission. As indicated above, the

Central Information Commissioner by the impugned Order dated 26/2/2016 has, allowed the Appeal and directed the Petitioner herein to furnish the complete APARs for the period in question to the Respondent No. 1.

4 The learned Senior Counsel appearing on behalf of the Petitioners Shri Rajiv Chavan would contend that the Respondent No. 1 has been furnished with the gradings given to him for the relevant years in respect of which he had sought information. However, what has been not given to him and masked is the information which the Respondent considers to be sensitive and therefore, covered by Section 8(1)(a) of the RTI Act.

5 The learned Counsel produced for our perusal the files consisting of the complete APARs of the of the Respondent No. 1 for the relevant years. The portion, which has been masked, is the portion where the Respondent No. 1 has carried out his self-assessment, as also the portion, wherein the Reporting Officer has made his assessment of the Respondent No. 1.

6 We have perused with the assistance of the learned Senior Counsel appearing for the Petitioner the file produced for our perusal. In so far as the self-assessment is concerned, the Respondent No. 1 has mentioned

the project and places at which he has been working during the relevant years. In so far as the assessment of the Reporting Officer is concerned, the Reporting Officer can be said to have made an overall assessment of the performance of the Respondent No. 1. The assessment of the Reporting officer in our view does not contain any information, which can be said to be sensitive or is such if revealed would prejudicially affect the interests of the State. In our view, the Reporting Officer has in a very subtle manner i.e. without mentioning the details of the projects or the names of the places where the Respondent No. 1 was working, has carried out the assessment of the performance of the Respondent No. 1

7 In so far as Section 8 of the RTI Act is concerned, the said provision carves out an exception in so far as the information to be provided under the RTI Act is concerned. In the instant case, since reliance is sought to be placed on behalf of the Petitioner on clause (a) of sub-section (1) of the said provision, the same is reproduced hereinunder for the sake of ready reference.

> **"8. Exemption from disclosure of information.** –(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
>
> (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State,

relation with foreign State or lead to incitement of an offence;"

Hence, one of the information which is exempted under the said provision is the information, disclosure of which would prejudicially affect the security, strategic, scientific or economic interests of the State. The information therefore hasto be such which has the potential to affect the interest of the State. The said information has therefore to be something higher that the appraisal carried out of an employee by the Reporting Officer.

8 The issue has to be looked at from another perspective. As indicated above the Respondent No. 1 has been provided his gradings, but what has been masked, and thereby not provided is the assessment of the Reporting Officer. It is well settled that the process of appraising an employee's performance and communicating the same is with a view to give an opportunity to the employee to correct himself or improve himself and also to enable him to take recourse against the adverse remarks which are appearing in his confidential reports. Hence, the information which has not been furnished to the Respondent No. 1 would be such information which would only enable the Respondent No. 1 to improve or correct himself. However, depriving an employee of the appraisal of the Reporting Officer would

tantamount to denying the employee an opportunity to correct or improve himself or to represent against what has been recorded in his annual confidential reports.

9 In the said context, a useful reference can be made to the Judgment of the Apex Court reported in **(2013) 9 Supreme Court Cases 566 in the case of Sukhdev Singh v/s. Union of India and ors.** on which reliance was placed by the learned Counsel appearing for the Respondent No. 1 in support of his contention that the complete APARs have to be provided to the Respondent No. 1. The Apex Court in the said Judgment held that every entry in the ACR – poor, fair, average, good or very good- must be communicated to him/her within a reasonable period. The Apex Court has held that communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. It has also been observed by the Apex Court that an employee after being made aware of the entries in the ACR may feel dissatisfied with the same and the communication of the entry therefore, enables him/her to make representation for up-gradation of the remarks made in the ACR. Hence, the principle underlying the communication of the entries in the ACR has been expounded by the Apex Court in the judgment

(supra).

10 As indicated above, we have gone through the portion which was masked and thereby not provided to the Respondent No. 1, we do not find anything in the report of the Reporting Officer to be sensitive or which could prejudicially affect the scientific or economic interest of the State, so as to be covered by Section 8(1)(a) of the RTI Act. Since we have come to the said conclusion in our view depriving the Respondent No. 1 of the said information would result in going against the objects behind the RTI Act. The order passed by the Central Information Commissioner therefore, does not merit any interference. For the reasons aforestated, we do not find any merit in the above Petition. However, we make it clear that the Respondent No. 1 would be entitled to only the assessment of the Reporting Officer for the relevant years in question and that he would not be entitled to the self-assessment appraisal which was masked. The Writ Petition is accordingly dismissed. Rule discharged, with parties to bear their respective costs.

[SMT.SADHANA S. JADHAV,J] **[R.M.SAVANT, J]**