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

\+ **LPA 714/2010**

% **Date of decision : 9th May, 2017**

STATE BANK OF INDIA ..... Appellant
Through: Mr. Rajiv Kapur and Mr. Nishant Katariya, Advs.

versus

MOHD SAHJAHAN ..... Respondent
Through: Mr. Anuj Kr. Ranjan, Adv. with respondent in person

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The challenge in this intra-court appeal is to the order dated 9th July, 2010 passed by the learned Single Judge in a writ petition filed by the petitioner impugning the order dated 19th May, 2009 passed by the Central Information Commissioner (CIC) in the appeal filed by the respondent herein directing the Central Public Information Officer of the appellant to provide certain information. Vide the impugned order dated 9th July, 2010, the learned Single Judge has dismissed the writ petition and directed the information sought by the respondent to be disclosed by the appellant which is with regard to disaggregate marks awarded to him

in the promotion process.

2. The facts as noted by the learned Single Judge are in paras 5 and 6 to 10 of the impugned order. For expediency, we extract the same hereunder :

> *"5. The background to the present petition is that on 25th January 2007 the Respondent who is working as Special Assistant in the Chainpur Branch of SBI at Muzaffarpur in Bihar submitted an application to the Assistant General Manager under the RTI Act stating that the SBI had declined his application concerning the duration of his suspension and the disposal of certain other matters. He stated that he had sought permission to approach the competent court for redressal. In that connection he had submitted three reminders dated 6 th October 2007, 20th November 2007 and 8th November 2007 and yet received no response. He accordingly sought the following information:*
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> *"(i) What is the actual position of the application dated 25th January 2007?*
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> *(ii) What steps have been taken on the application till now?*
>
> *(iii) That when the said application was received to Bank and the said applications were pending upon what durations and on which level like branch, regional officer or local head office and at present from whom the present application is pending.*
>
> *(iv) That I may be provided the copy of the internal level correspondence.*
>
> *(v) What is the procedure to take decision on this type of applications?"*
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> *6. Apart from the above, he pointed out in his application dated 27th May 2008 that on 9th*

April 2008 he had submitted an application as regards not being promoted to the JMGS-I and for disclosure of the marks awarded in the Performance Appraisal Form („PAF"). A reminder was also sent on 8 th May 2008. In this connection, he sought the following information:

"(i) What steps have been taken from 9th April 2008 to 8th May 2008 on this application.

(ii) In case my application is not disposed of till now then by whom the said matter is pending how the said matter is pending.

(iii) In this regard if there is any correspondence or any discussion committed by corporate office or local head office or regional office or departmental level, I may be supplied the copy of the same.

(iv) That I may supplied three section wise details marks means written, interview and marks obtained in PAF of the promotion examinations of four backward OBC candidates organized on 30th December 2007, who obtained minimum marks in written examinations but on the basis of marks obtained in interview and service book, finally got success. In case there is no arrangement of reservation of other backward classes it be supplied on general category candidates and information be supplied.

(v) In my matter the supplied the section wise details of marks obtained in written, interview and PFA, also stated what was the finally cut-off for pass?"

7. The third issue raised by the Petitioner concerned the reimbursement of certain amounts and arrears of HRA and CCA.

8. By a letter dated 5th July 2008, the CPIO of the SBI informed the Petitioner that "the details of marks obtained in PAF and information concerning promotion are kept secret." The CPIO also declined to provide information as regards the appraisal of the four candidates belonging to the OBC category and that there is no provision that required the Respondent to seek permission of the SBI to approach the competent Court. The Petitioner then again wrote to the Respondent on 24th September 2008 drawing attention to the decision of the Supreme Court in Dev Dutt v. Union of India (2008) 8 SCC 725 and sought to know the reasons why the information was declined.

9. The appeal filed by the Respondent against the denial of the information by the CPIO was dismissed by the Chief General Manager on 12th September 2008. Thereafter, a second appeal was filed before the CIC. In issuing the direction in the impugned order as noticed hereinbefore, the CIC opined that the CPIO had not indicated the provision under the RTI Act under which information sought by the Respondent could be denied to him.

10. Before the CIC, the Respondent placed reliance on an order dated 8th December 2008 passed by the High Court of Punjab and Haryana in State Bank of India v. Central Information Commissioner and Another (C.W.P. No. 20566 of 2008) by which a Division Bench of that Court negatived a similar plea by the SBI declining to provide information under the RTI Act to its employee who was Respondent No. 2 in that case. The SBI on its part produced before the CIC an *order dated 20th March 2009 passed by the Supreme Court in Special Leave Petition (Civil) No. 5296 of 2009 staying the aforementioned order dated 8th December 2008. The CIC concluded that the stay order was confined to the case arising out of the C.W.P. No. 20566 of 2008 and will not automatically extend to all the cases."*

3. We may note that though, as noted in the impugned order in para 6 above, the respondent had sought information in terms of serial no.(IV) above, regarding written, interview marks and marks obtained in PAF of the Promotion Examinations of four backward OBC candidates organised on 30th December, 2007. During the course of submissions before this court, learned counsel for the respondent, on instructions from the respondent who is present in person states that the respondent confines his request to his own marks.

4. It is the submission of Mr. Rajiv Kapur, learned counsel for the appellant that the information that was required to be given to the respondent was with respect to the detailed marks in the written examination, interview and the marks obtained in PAF of the promotion examination to the Officer Cadre. He states that the said information could not have been supplied to the respondent as the disclosure of the information would result in violation of Section 5 of the Official Secrets Act, 1923 by the appellant.

5. It is further submitted that this information is exempted under Section 8(e) of the Right to Information Act which *inter alia* contemplates that there is no obligation to give information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. In other words, it is his submission that the disclosure of the marks would breach the fiduciary relationship the SBI has with the superior officer.

6. Having heard learned counsel for the parties, in so far as the plea of Mr. Kapur that the disclosure of the marks shall breach Section 5 of the Official Secrets Act is concerned, suffice to state that such a plea was not taken by the appellant before the learned Single Judge and as such there was no occasion for the learned Single Judge to give a finding in that regard.

7. In this regard, our attention stands drawn to a prior decision dated 19th July, 2013 in ***W.P.(C) 9057/2011 SBI v. Mohd. Shahjahan*** (between the same parties) of this court wherein this very objection of the present appellant was rejected. Mohd. Shahjahan was seeking the marks of the same evaluation as has been sought by him in this case. While dismissing the writ petition of the present appellant, in his decision the learned Single Judge has observed thus:

> *"6. As regards the **alleged contravention of the provisions of Section 5(1)(a) & (b) of***

> ***Official Secrets Act, I do not find any merit in the contention. No offence under the said Section is committed by conveying the Annual Confidential Report of an employee to him.***"
>
> (Emphasis by us)

8. This position was accepted by the present appellant which, in compliance with the decision dated 19th July, 2013, has admittedly disclosed the full marks secured by the respondent during his evaluation in 2009.

9. We are, therefore, unable to agree with the said submission of Mr. Kapur that the disclosure of the marks obtained in the written test, interview and marks of PAF would involve an offence under Section 5(i)(a) of the Official Secrets Act. We are of the view that the same principles as enunciated by this court in ***W.P.(C) No. 9057/2011 SBI v. Mohd. Shahjahan*** which has been implemented in favour of the respondent, would also be applicable in the case in hand.

10. In so far as the second plea of Mr. Kapur, that the disclosure of marks would breach the fiduciary relationship that SBI has with the superior officer, is concerned, the same does not appeal to us, for more than one reason. Firstly, the Supreme Court in the case of ***Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors. (2011) 8 SCC 497*** has held as under :

> *"41. In a philosophical and very wide sense, examining bodies can be said to act in a*

*fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "**information available to a person in his fiduciary relationship**" are used in Section **8(1)(e) of the RTI Act** in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. **We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body**.*

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*48. This takes us to the **crucial issue of evaluation by the examiner**. The examining body engages or employs hundreds of* *examiners to do the evaluation of thousands of answer books. The question is:* ***whether the information relating to the "evaluation" (that is, assigning of marks) is held by the examining body in a fiduciary relationship? The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer books. On a careful examination we find that this contention has no merit****.*

49. The examining body entrusts the answer books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer book is an assignment given by the examining body to the examiner which he discharges for a consideration. ***Sometimes, an examiner may assess answer books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words, the examining body is the "principal" and the examiner is the "agent" entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner****.*

50. ***On the other hand****, when an answer book is entrusted to the examiner for the purpose of evaluation,* ***for the period the answer book is in his custody and to the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer book or the result of evaluation of the answer book to anyone other than the examining body****. Once the examiner has* *evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copyright or proprietary right, or confidentiality right in regard to the evaluation.* ***Therefore, it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner****.*

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53. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, ***if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act****."*

(Emphasis by us)

11. In the case in hand, the examiner has returned the

answer books to the SBI after completion of the examination. In the light of the principles laid down in ***Central Board of Secondary Education v Aditya Bandopadhyay*** the examining body (the SBI in this case) does not hold the evaluated answer sheets (in the written exam) or the assessment sheet of the interview in a fiduciary relationship, qua the examiner/member of the interview board.

12. Secondly, such a plea would be tenable if the identity of the officer who is part of the DPC and making the evaluation of the officer is disclosed to the person seeking the marks. There is no difficulty in keeping the identity confidential while giving the information to the person who has made the application seeking information about the evaluation. If this procedure is evolved, this plea of the appellant that the disclosure of the marks shall be breach of fiduciary relationship would also be unsustainable.

13. In this regard, we may note the learned Single Judge in para 24 of the impugned order has held as under :

> *"24. It was urged by Mr. Kapur that marks given in the PAF by the Superior Officer of the Respondent was information held by the SBI in a fiduciary capacity and that disclosure of such information, even to the Respondent, would be in breach of the fiduciary relationship that the SBI has with the superior officer. In the considered view of this court, this is a misreading of Sections 8(1)(e) and (j) of the RTI Act."*

14. It is further submitted by Mr. Rajiv Kapur, learned counsel for the appellant that the learned Single Judge has erroneously placed reliance on the pronouncement in ***Devdutt v. UOI & Ors. (2008) 8 SCC 725*** and ***Sukhdev Singh v. UOI & Ors. (2013) 9 SCC 566***. It is submitted that these judgments related to disclosure of the remarks in the annual confidential reports and therefore, can have no bearing on the present case which relates to disclosure of the disaggregate marks awarded to him in the promotion process.

15. This submission is to be noted only for the purpose of rejection. The appellant is seeking exemption from disclosure of the disaggregate marks obtained by the respondent in the promotion process. The very same plea has been taken by employers for refusing the disclosed marks awarded to the employee in his annual confidential reports. It was in this context that in ***Devdutt v. UOI & Ors.***, the Supreme Court stated thus :

> *"**17**. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in*

future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution."

16. On this very aspect in ***Sukhdev Singh v. UOI & Ors.***, the Supreme Court has held as follows :

> *"**8**. In our opinion, the view taken in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, 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. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good—must be communicated to him/her within a reasonable period."*

17. The disclosure of the marks in the annual confidential reports has been thus directed in as much as it has been held that the knowledge thereof would enable the person concerned to improve his performance in future. It cannot be denied that the disclosure of the disaggregate marks to a person in the promotion process would enable the person concerned to make efforts and further improve his performance. Therefore, it cannot be denied that the principles laid down by the Supreme Court directing disclosure of adverse remarks or below bench mark remarks in the ACRs in ***Devdutt*** and ***Sukhdev*** would apply on all fours to the issue under consideration before us. The application of these principles by the learned Single Judge in the present case, therefore, cannot be faulted.

18. The last submission pressed in support of the appeal is that the information which was sought by the respondent was exempted under the provisions of Section 8(1)(j) of the RTI Act. For expediency, we extract hereunder these statutory provisions which read as follows :

> *"8. Exemption from disclosure of information.—*
> *(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
> *xxx*
> *(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public*

interest warrants the disclosure of such information;
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."
(Emphasis supplied)

19. We find that the appellant has made bald assertions of public interest being impacted in order to support the argument that the information is exempted from disclosure under Section 8(1)(j) of the Right to Information Act. No element of public interest which would be adversely impacted has been placed before us.

20. The learned Single Judge has discussed at length that the disclosure to the respondent of information concerning himself can hardly be termed as unwarranted invasion of his privacy.

21. The respondent has obviously sought information about himself and he needs this information in order to enable him to know the reason as to why he was not

considered for promotion.

22. The learned Single Judge has noted that the information which was directed to be disclosed by the SBI to the respondent was "*only disaggregate marks awarded to him in the promotion process*". No information regarding any other person has been directed to be disclosed. The particulars of the examiner shall not be revealed. Nothing has been pointed out which would enable us to take a view different from that taken by the learned Single Judge who has returned the finding that such information would not stated to be covered under Section 8(i)(j) of the RTI Act.

23. Mr. Rajiv Kapur, learned counsel for the appellant would further state that hearing in this case be postponed as the issue which falls for consideration in this appeal is pending consideration before the Supreme Court in ***Civil Appeal No. CA 5736/2012 State Bank of India v. Captain K.K. Shoree & Anr.*** wherein the Supreme Court has granted interim order of stay of operation of the impugned judgment of the High Court of Punjab & Haryana in W.P.(C) No.20566/2008.

24. It appears that a similar argument was made before the learned Single Judge who has discussed the same in paras 16 to 18 of the impugned judgment dated 9th July, 2010.

25. We find that the learned Single Judge has taken a view uninfluenced by the pronouncement of the Punjab & Haryana High Court. We have also considered the present

matter uninfluenced by the decision of the Punjab & Haryana High Court which is pending consideration.

26. In any case, there is no parity on facts with the case before the Punjab & Haryana High Court in as much as in the present case, the appellant has itself accepted the view of the learned Single Judge in the decision dated 19th July, 2013 in W.P.(C) 9057/2011 so far as the present respondent is concerned.

For all these reasons, we find no merit in this appeal which is hereby dismissed with costs which are assessed at ₹10,000/- which shall be paid to the respondent within four weeks from today.

ACTING CHIEF JUSTICE

V. KAMESWAR RAO, J

MAY 09, 2017/kr