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

+ W.P.(C) 8413/2017

UNION OF INDIA

..... Petitioner

Through: Ms Anjana Gosain adn Ms Shalini
Nair, Advocates.

versus

MAJ. RANJIT H S & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.09.2017**

CM No. 34659/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 27.07.2017 (hereinafter 'the impugned order'), passed by the Chief Information Commission (hereinafter 'the CIC') allowing the respondent no 1's appeal preferred under Section 19(3) of the Right to Information Act, 2005 (hereinafter 'the Act'), against the order passed by the First Appellate Authority (hereinafter 'FAA') on 23.06.2016. By the aforesaid order dated 23.06.2016, the FAA partly allowed the respondent no. 1's appeal against the response of the Central Public Information Officer (hereinafter 'CPIO') dated 22.04.2016, to the petitioner's request for

information submitted on 21.03.2016.

4. The controversy in the present petition relates to the request of the respondent no.1 for an authenticated and legible copy of his complete answer sheet in the subject “Military History” of Promotion Exam Part-D held in October, 2015. According to the petitioner the said information is exempt under Section 8(1)(a) and 8(1)(b) of the Act. It is further contended that the said information cannot be provided in view of the Army Orders.

5. Ms Gosain, learned counsel for the petitioner earnestly contended that a large number of officers take the said exam and the petitioner would not have wherewithal to respond to RTI queries in regard to the said examination. She also drew the attention of this Court to the Officer Order issued by the Chief of Army Staff; the relevant extract of which reads as under:-

“17. Personal examination and revaluation of the answer books is not allowed. No queries related to the marks scored by the candidates will be entertained by Army Headquarters.”

6. On the strength of the aforesaid order, Ms Gogna contended that the provision of information as sought by respondent no.1 was barred by law. The CIC had considered the petitioner’s objection for provision of the copy of the answer sheet and had rejected the contention that the disclosure of the information sought was exempt under Section 8(1)(a) of the Act.

7. Before proceeding further it would be necessary to refer to Section 8(1) of the Act, which reads as under:-

“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;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(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;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the

basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(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.”

8. It is relevant to note that the information sought by the respondent no.1 is relating to his answer sheets alone; that is, the answers provided by him. Plainly, the information available in the answer sheet is already available with respondent no.1 and it is not possible to accept that the disclosure of the answer sheet written by the respondent would in any manner affect (i) the sovereignty and integrity of India; (ii) the security of the State; (iii) the strategic, scientific or economic interests of the State; relation with foreign State; or lead to incitement of an offence.

9. The CIC after considering the said objection had rejected the same by holding that “*the arguments of the respondents (petitioner herein) for invoking Section 8(1)(a) is also untenable and rather it appears laboured*”. This Court finds no infirmity with the aforesaid view.

10. The petitioner also submitted that the information sought by

respondent no.1 is exempt from disclosure under Section 8(1)(b) of the Act.
The said clause reads as under:-

“8. Exemption from disclosure of information.- (1)
Notwithstanding anything contained in this Act, there shall be
no obligation to give any citizen,—

X X X X X X X X

(b) information which has been expressly forbidden to be
published by any court of law or tribunal or the disclosure of
which may constitute contempt of court.

X X X X X X X X”

11. It is apparent from the plain language of Section 8(1)(b) of the Act that the same is wholly inapplicable to the information sought by the petitioner. The information sought by respondent no.1 is neither forbidden to be published by any Court of law or Tribunal and it is nobody’s case that the disclosure of the same would constitute Contempt of Court.

12. The contention that the petitioner does not have wherewithal to provide the information is also wholly unacceptable. The petitioner is a public authority and since it has the wherewithal to conduct the examination, it would necessarily have to make arrangements to provide the information sought under the Act.

13. The contention that the Office Order issued by the Chief of Army Staff has proscribed disclosure of such information and, therefore, the information cannot be disclosed, also cannot be accepted. Plainly, an Office Order would not override the statutory provisions of the Act.

14. In view of the above, this Court finds no reason to interfere with the impugned order. The petition is, accordingly, dismissed.

15. It is clarified that in the event, the information as sought for by respondent no.1 is provided to him on or before 22.09.2017, no penal action would be instituted against the CPIO.

16. Order *dasti* under signature of Court Master.

SEPTEMBER 20, 2017
MK

VIBHU BAKHRU, J