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

+ **W.P.(C) 8960/2018 & CM Nos. 34438-34439/2018**

DELHI SUBORDINATE SERVICES SELECTION

BOARD GOVT. OF NCT OF DELHI

..... Petitioner

Through: Ms Avnish Ahlawat, Standing
Counsel GNCTD with Mr N. K.
Singh and Ms Palak Rohmetra,
Advocates.

versus

NAVEEN YADAV

..... Respondent

Through: Mr Tushar Sannu, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.08.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 26.04.2018 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC') directing the concerned Public Information Officer (PIO) to disclose the information as sought for by the respondent. The CIC has also rejected the petitioner's contention that the information as sought for is exempt from disclosure under Section 8(1)(h) of the Right to Information Act, 2005 (hereafter 'the RTI Act').

2. The relevant facts necessary to address the controversy are as under:-

2.1 On 03.11.2017, the respondent filed an application, *inter alia*, seeking information regarding the decision of the Deputy CM, Delhi to cancel the examination of DASS Grade-II (90/09). The relevant extract of the application seeking the said information is as follows:-

“1. Xerox of entire file including notings regarding decision making by the Deputy CM to cancel the examination of DASS Grade II (90/09).

1.1 Details of all meetings held to deliberate on cancelling the DASS Grade II Exam (90/09).

1.2 Minutes of the meeting in which the decision of cancelling this examination taken.

2. Please provide the names of the investigating agencies roped-in by the Deputy CM.

3. Whether the decision taken was on the basis of the reports submitted by these agencies.

4. Was the investigation complete.

5. Has any agency submitted incomplete report.

6. Has any of the investigating agency intimated its inability to complete the investigation. If yes, please name that agency.

7. Has Deputy CM ordered for ACB (Anti-Corruption Bureau) inquiry.”

2.2 On 10.11.2017, the petitioner denied the information as sought for by the respondent stating that the matter is under investigation with Anti Corruption Branch and the requisite information cannot be provided at that stage.

2.3 On 07.12.2017, the respondent filed an appeal under Section 19 of the RTI Act before the First Appellate Authority (FAA), which was also rejected by an order dated 28.06.2018.

2.4 Aggrieved by the aforesaid decision, on 20.03.2018, the respondent preferred a second appeal under Section 19(3) of the RTI Act before the CIC.

2.5 It was submitted by the PIO of the petitioner Board that the DASS Grade-II examination was cancelled on account of large scale mass copying, impersonation etc. An FIR was also registered by the Anti-Corruption Branch of Delhi under Section 13(1)(d) of the Prevention of Corruption Act, 1988 on 18.01.2016.

2.6 The said appeal was allowed by the impugned order. The operative part of the impugned order reads as under:-

“3. The Commission does not find force in the contention of PIO. The decision of Delhi Govt. to cancel the recruitment is a concluded decision and revelation of this basis thereof, deliberations etc. before arriving at the final decision is independent of any other investigation. No credible material has been brought on record by the PIO to establish the plea of Section 8(1)(h). The PIO is directed to furnish complete information to the appellant within 2 weeks of receipt of this decision. An intimation of compliance shall be marked to the Commission by 10.06.2018.”

Submissions

3. Ms Ahlawat, the learned counsel appearing for the petitioner contends

that the information as sought for is exempt from disclosure under Section 8(1)(h) of the RTI Act since the matter is pending investigation. She further submitted that the petitioner had provided inspection of all records yet repeated applications were being made for the same. The learned counsel appearing for the respondent contested the above submission; he submitted that although some other person had been provided such inspection, the petitioner was denied the same.

Discussion and Conclusion

4. At the outset, it is relevant to refer to Clause (h) of Section 8(1) of the RTI 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,—

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

5. The limited controversy that falls for consideration of this Court is whether the information sought for by the respondent would impede the process of investigation or apprehension or prosecution of the offender(s). It is well settled that in order to claim exemption under the aforesaid provision, it would be necessary for the public authority to briefly indicate as to how the information as sought for would impede the process of investigation or apprehension or prosecution of offenders. In the present case, the petitioner has failed to provide any material, which would even remotely indicate that the information as sought for by the respondent would impede any investigation or apprehension of any offender.

6. This Court is also of the view that the contention that the information as sought by the respondent is exempt from disclosure under Section 8(1)(h) of the RTI Act is also unmerited for yet another reason. As even according to the petitioner, inspection of the records, copies of which are sought by the respondent, has been provided to certain information seekers. Therefore, there could be no reservation in providing the same to the petitioner as well.

7. Ms Ahlawat, further submits that since the matter is under investigation with Anti Corruption Branch of GNCTD and an FIR has been registered, no information in the matter could be provided as it would impede the process of investigation. This contention is also unpersuasive. This Court in number of cases has held that the public authority denying information on the ground of Section 8(1)(h) of the RTI Act would necessarily have to briefly indicate as to how the disclosure of any information would impede the progress of any investigation. (See: ***Union of India v. Manjit Singh Bali: W.P.(C) 6341/2015, decided on 06.08.2018***).

8. The Division Bench of this Court in ***Director of Income tax (Investigation) and Anr. v. Bhagat Singh & Anr.: LPA No.1377/2007, decided on 17.12.2007***, had observed as under:-

“Under Section 8(1) (h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason.”

9. As observed by the CIC, in the present case, the petitioner is unable to indicate as to how the information as sought for by the respondent would impede the investigation. No such explanation, as to how the information as sought for by the respondent would obstruct any investigation, has been provided to this Court as well. The learned counsel appearing for the respondent, on the other hand, points out that the respondent does not seek any information with the police or the investigators but only such information on the basis of which the petitioner had taken the decision to cancel the examination in question.

10. The petition is, accordingly, dismissed as unmerited. The pending application stands disposed of.

AUGUST 27, 2018
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VIBHU BAKHRU, J

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