

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.4062 of 2010
and
M.P.Nos.1 & 2 of 2010

United India Insurance Co.Ltd.,
Rep. by its Chief Manager,
24, Whites Road,
Chennai - 600 014. ... Petitioner

Vs

Sukhvinder Singh Bindra ... Respondent

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the Central Information Commission, (CIC) New Delhi relating to proceedings in case No.C.I.C./LS/A/2009/000470 - DS dated 2nd January 2010 and quash the same.

For Petitioner : Mr.V.Perumal

For Respondent : No appearance

ORDER

By consent of both sides, this Writ Petition is taken up for final disposal.

2.The petitioner has prayed for issuance of writ of Certiorarified Mandamus to quash the proceedings of CIC(Central Information Commission), New Delhi, in case no.C.I.C./LS/A/2009/000470 - DS, dated 02.01.2010.

3.The Petitioner company has filed this writ petition against the order of the Central Information Commission, wherein, it is directed that the petitioner company has to furnish information which were sought for by the respondent herein.

4,The learned counsel for the petitioner submitted that the respondent is a Scale I Officer of the petitioner company and on

03.12.2008, he has sought for a information from the Central Public Information Officer, (hereinafter called CPIO), United India Insurance Co.Ltd., relating to the promotion exercises for the year 2008-09(II), meant for Scale I and Scale II, which are as follows:

(i)The marks obtained by each candidate in each parameter of Seniority, Insurance Qualification, Word Record, Written Test.

(ii)The total marks obtained by the respondent in each parameter as above.

(iii)Copy of the Annual Confidential Reports relating to him which were considered in the promotion exercise.

(iv)Rank at which his position stands in promotion exercise 2008-09 and 2008-09(II).

(v)The reason why he was not promoted.

5.The said letter was received by the petitioner company and the CPIO of the Company informed the respondent that the information sought by him relating to work record, Annual Confidential Records, total marks etc., cannot be provided since it comes under the exemption provided under Section 8(1)(e), 8(1)(g) and 8(1)(j) of the Act. The CPIO of the company further informed the respondent that it was the policy of the Petitioner Company to disclose marks secured by the unsuccessful candidates in the written test on individual requests basis in a closed cover.

6.The respondent aggrieved by the order passed by the CPIO, dated 10.02.2009, preferred an appeal before the Appellate Authority, the General Manager of the petitioner company, on 26.02.2009. The Appellate Authority, on 13.03.2009, reiterated the stand of CPIO and rejected the request made by the respondent.

7.Aggrieved by the order of the Appellate Authority, dated 13.03.2009, the respondent has preferred a second appeal before the Chief Information Commission, who heard the appeal and passed an order dated 22.01.2010, directing the petitioner to issue the information sought for by the respondent. The relevant portions of the order is extracted hereunder:

"The public authority should provide the information sought. The commission holds that the reasoning of the respondents to decline disclosure of the information citing exemption u/s 8(1)(e)(g) & (j) is erroneous. The information requested by the appellant in questions 1,2,3&4 are not barred by any exemption section of the RTI ACT. Respondents are directed to provide the same to the appellant within two weeks of the receipt of this order.

Respondents, however, are permitted to apply section 10(1) of the RTI Act to sever names of evaluators/interviewers, whose disclosure would lead to identification of the persons awarding marks/grades to the employees.

In respect of question 5, the appellant may be allowed to inspect the file/records."

8.The learned counsel for the petitioner stated that the petitioner company is a Public Sector undertaking under the control of Ministry of Finance and wholly owned by Government of India, with a large number of Divisional/Branch Offices spread across the country. The petitioner company is a service organization catering to the general insurance requirements of the insuring public. There are employees in various cadres viz, Officers, Development Officers, Supervisory, Clerical and Subordinate Staff. Their service conditions including the pay scales are placed before the Parliament. Apart from the notified schemes, there are schemes/policies and guidelines governing the promotional matters of the different categories of employees.

9.It is further submitted by the learned counsel for the petitioner that the petitioner company has "Promotion Policy for Officers - 2006" approved by the Board of the company and the same has been formulated after discussions with the different Associations representing the officers and after review of the existing systems, changes brought into the insurance industry ie., opening of sector and resulting in creating of competitive environment. Accordingly, the policy lays down certain criteria and other conditions for promotion from Scale I to II, II to III, III to IV, IV to V, V to VI and VI to VII.

10.Further, the above said policy has been widely circulated to all the offices and the various eligibility requirements, method of selection, criteria of selection, marks for various factors of selection etc., have been elaborately disclosed in the policy. As per the provisions of the policy, the promotions to various cadres are considered based on the parameters of written test, seniority, qualification, work record and interview. The interview is applicable only for promotion from cadres in Scale IV and upwards. The promotion from Scale I to Scale II is based only on the written test, work record, seniority and qualification and the same has been spelt out in the policy. The seniority marks are determined based on the number of years of service put in by the officer and separate marks are provided for the insurance qualifications acquired by the officers aspiring for promotions. As regards work record, it is based on the assessment of the Annual Confidential Reports (ACTs). The marks for work record are determined by quantifying

the assessment made in the Annual Confidential Reports (ACRs) of the officer concerned.

11. Further it is also submitted by the learned counsel for the petitioner that the confidential report is an assessment of host of things relating to the officer such as personal traits, behavioural skills, job knowledge, managerial skills, performance, growth potential, suitability for promotion, integrity, efficiency, etc., The same are evaluated/rated by the reporting officer and further reviewed by the reviewing officers. In addition to the ratings given by them, they also make their comments in a descriptive manner in the ACRs. The promotion policy empowers the Promotion Committee to moderate the assessment made in the confidential report/work record of the officers concerned and give suitable weightage either plus minus for inconsistencies/exaggerated remarks as observed in the ACRs and ultimately take decision on selection. It is for the officers in the zone of consideration to qualify in the written test which is conducted by an independent, professional Examining Body of repute i.e., National Insurance Academy, Pune before being included in the further process of promotion. The Examining body shall conduct the examination for the four Public Section general insurance companies at four Metro Centres on a common date and the evaluation will be done by the Examining Body and the results of the evaluation shall be final and binding in terms of Para 9.2.4 of the Promotion Policy. The company does not, in any way, involve itself in the process of the written examination at any stage except providing support services for conduct of examinations. The Examining Body being an Expert Body has its own system of checks and controls in the examination system and the results are binding on the Petitioner Company and the officers appearing for the examination.

12. Thereafter, during the year 2008-09, two promotional exercises were conducted by the petitioner company for promotion from one scale to another scale within the cadre of officers. The respondent, being a Scale I Officer, appeared for promotional examination from Scale I to II. M/s National Insurance Academy, Pune has conducted the examination and the respondent has been declared passed in the said examination and he was also considered for promotion along with the other successful officers who but, due to various parameters laid down for selection including the provisions of the Promotion Policy and guidelines, his case could not be included in the published list of selected candidates for promotion released by the petitioner Company in those exercises.

13. Further, since the respondent was not successful in the promotion exercises conducted for the year 2008 - 09 (I & II), he has filed an application, under RTI Act, seeking for the marks

secured by the successful candidates in the written examination, marks for work record (ACR), seniority and qualification and total marks secured by them. The learned counsel for the petitioner further contended that the order of the CIC directing the petitioner to furnish the information sought for to the respondent is against the spirit of Section 8 of the Act. He would further add that the respondent has no locus standi or legal right to call for the entire selection process and to seek for the marks and confidential details of other candidates, which is purely for his personal interest and not for public interest.

14. The information sought for by the respondent regarding the work record of the candidates is determined by numerical quantification of the ratings made in the Annual Confidential Reports (ACRs) by the Reporting and Reviewing Officer. The report contains two parts viz., Self Appraisal which is to be filled by the candidate (Officer applying for promotion) and the second part which is an assessment by the Reporting Officer who generally is his immediate superior officer and further reviewed by Reviewing Officer. The assessments of work record of an officer is done by the superior officers at two levels i.e., Reporting and Reviewing Officers and submitted to the Petitioner Company. The said assessment is done by these officers in good faith and in a fiduciary capacity. It is the obligation of the Petitioner Company to preserve the said information and fiduciary relationship with the assessing officers. It is submitted that even assessment by the Reviewing Officer would not be known to the Reporting Officer and the entire information is treated as confidential and sensitive. It is not disclosed to the officer reported or to any other person so as to enable and facilitate superior officers to give their free, frank and unbiased opinion of the officers concerned. It is further submitted that as per the past practice and precedence existing in the Petitioner Company since inception, the ACRs are treated as confidential.

15. It is the further contention of the learned counsel for the petitioner that the disclosure of any information regarding work record, As instructed by the CIC, would tantamount to making the contents of Annual Confidential Reports (ACRs) public. This would seriously and adversely affect the administrative efficiency and may lead to breakdown of administrative machinery in the organization. The marks of other officers, if revealed, would prejudice them and the confidentiality maintained by the Petitioner Company, would be lost. As such, the Annual Confidential Report are personal information about any employee and they are protected from disclosure because such disclosure seriously harms interpersonal relationship in a given organization. The ACRs noting represent

an interaction based on trust and confidence between the officers involved in initiating, reviewing or accepting the ACRs. Hence, in the interest of public, the ACRs should be kept confidential and it may harm the public interest if revealed. The ACRs are personal information and it is needless to disclose the same as they do not contribute to any public interest.

16.The learned counsel for the petitioner referred to the case of Sri Ram Asre V/s Mahanagar Telephone Nigam Limited dated 10.10.07, Wherein the Commission has held that the 'as information sought are related to personal details of employee, the disclosure is not in public interest' and the same is the case of the petitioner herein.

17.The CIC has directed the Petitioner Company to part with the information citing that in a earlier decision relating to recruitments, the CIC directed for furnishing the evaluated answer sheets of the candidate and marks obtained in the interview. While passed the order in those decisions, the Central Information Commission has put a rider that the disclosure of information would not be a general rule but each case may have to be examined individually to see as to whether the disclosure of evaluated answer sheets would render the system unworkable in practice. In the case of Petitioner Company, the information directed to be furnished was marks in the written test, seniority, qualification and work record (ACRs) of the Internal Promotion Process. As submitted above, the CIC itself has earlier held that the ACRs need not be disclosed. He would further submit that around 258 and 360 officers have come out successful in two promotion exercises conducted in 2008-09 and it would not be practically possible for the Petitioner Company to compile from different records the various details of written test marks, seniority, qualification and work record (ACR) of these selected officers, which if revealed to the petitioner would not serve any public purpose.

18.In further, the learned counsel for the petitioner, relied on the order dated 08.12.2008, in which the Punjab & Haryana Court, Chandigarh, in C.W.P.No.20566 of 2008, in the matter of State Bank of India V/s Central Information Commission has passed an Order directing the State Bank of India to furnish the marks obtained by each candidate by holding that such information cannot be said to be personal information which would cause unwarranted invasion of privacy of an individual. Such disclosure of information is not exempted from disclosure under Section 8 of the Act and therefore, the orders passed by the CAC should be set aside.

19.There is no representation for the respondent counsel and no counter has been filed.

20.The learned counsel for the petitioner has produced a recent Supreme Court Judgment reported in (2018) 11 SCC 426 in the case of Canara Bank represented by its Deputy General Manager Vs.C.S.Shyam and Another, which was decided on 31.08.2017, wherein similar issue was being dealt with and it was held that the performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

21.In the above case, information was sought on 15 parameters with regard to various aspects of transfers of clerical staff and staff of the Bank with regard to individual employees. This information was in relation to the personal details of individual employee such as the date of his/her joining, designation, details of promotion earned, date of his/her joining to the branch where he/she is posted, the authorities who issued the transfer orders, etc., While deciding the said issue, the Apex Court has held as follows:

"11.Having heard the learned counsel for the appellant and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order and dismiss the application submitted by the first respondent under Section 6 of the Act.

12.In our considered opinion, the issue involved herein remains no more res integra and stands settled by two decisions of this Court in Girish Ramchandra Deshpande v. CIC and R.K.Jain v.Union of India, it may not be necessary to re-examine any legal issue urged in this appeal.

13.In Girish Ramchandra Deshpande case, the petitioner therein (Girish) had sought some personal information of one employee working in Sub-Regional Office(Provident Fund), Akola. All the authorities, exercising their respective powers under the Act, declined the prayer for furnishing the information sought by the petitioner. The High Court in the writ petition filed by the petitioner upheld the orders.

Aggrieved by all the order, he filed special leave to appeal in this Court. Thier Lordships dismissed the appeal and upholding the orders, passed by the High Court held as under(Girish Ramchandra case, SCC p.217, paras 12-13)

"12.We are in agreement with the CIC and the courts below that the details called for by the petitioner ie. copes of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Sectio 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that th larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13.The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Infomation Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. "

14.In our considered opinion, the aforementioned principle of law applies to th facts of this case on all force. It is for the reasons that, firstly, the information sought by Respondent 1 of of individual employees working in the Bank was personal in nature; secondly, it was exempted from being disclosed under Section 8(1)(j) of the Act and lastly, neither Respondent 1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee nor

was any finding recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to Respondent 1. "

22.It was also held in the said judgment that the application made by the first respondent under Section 6 of the Act was wholly misconceived and was, therefore, rightly rejected by the Public Information Officer and Chief Public Information Officer whereas wrongly allowed by the Central Information Commission and the High Court. The Apex Court has allowed the said writ petition and set aside the orders of the High Court and Central Information Commission and restored the orders passed by the Public Information Officer and the Chief Public Information Officer.

23.It can be seen the petitioner who is an unsuccessful candidate in the said examination for promotion from Scale I to Scale II has sought for information regarding the marks obtained by each selected candidate in each parameter of Seniority, Insurance Qualification, Word Record, Written Test and total marks obtained in each parameter and copy of the Annual Confidential Report relating to him which were considered in the promotion exercise; rank at which his position stands in promotion exercise 2008-09 and 2008-09(II) and the reason why he was not promoted. The information sought for by the petitioner cannot be revealed to him as a matter of right. In this regard, Section 8(1)(e) and (j) of the Right to Information Act, 2005 is extracted hereunder:

"(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;

(j)information which relates to personal information the disclosure of which has no 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."

24.As per the above Section, this Court is of the view that the information which has been sought for by the petitioner with regard to the marks obtained by each selected candidate in each

parameter of Seniority, Insurance Qualification, Word Record, Written Test are personal in nature and the same cannot be issued. In the same way, the information sought for by the petitioner with regard to the marks obtained by the respondent in each parameter and the copy of the Annual Confidential Reports relating to the petitioner which were considered in the promotion exercise cannot be issued. However, the information sought for by the petitioner with regard to the rank at which his position stands in promotion exercise 2008-09 and 2008-09 (II) and the reason why he was not promoted can be issued.

25. Thus, the order passed by the Central Information Commission, New Delhi with regard to the proceedings in Case No.CIC./LS/A/2009/00470-DS dated 02.01.2010 is quashed and set aside. It was also informed to this Court that already the petitioner has been permitted to peruse the information which he has sought for.

26. The Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsg
To

The Central Information Commission (CIC),
New Delhi.

+1 cc to M/s.V.Perumal, Advocate Sr.No. 26967

W.P.No.4062 of 2010

and M.P.Nos.1 & 2 of 2010

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