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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 12th December, 2022*

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W.P.(C) 1016/2021**HAVALDAR NARENDER KUMAR**

..... Petitioner

Through: Mr. Prashant Sharma, Advocate with
Petitioner in person. (M:9711964373)

versus

CPIO RTI CELL ADG MT IHQ OF MOD & ANR..... RespondentThrough: Mr. Jaswinder Singh, Advocate
(M:9811232066)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The Petitioner – Havaladar Narender Kumar vide application dated 6th June, 2018, sought information through the Right to Information Act, 2005 (*hereinafter 'RTI Act'*) from the PIO, 57 Armed BDE. The information sought in the application was:

- “1. Kindly provide the copy of the result of (Drill Test) conducted on dated 01 July, 2014 in which signatures of all the Sainiks/Soldiers of promotion Cadre and board officers are available.
2. Kindly provide the certified details of the (PPT Test) conducted on dated 03 July, 2014 in which signatures of all Sainiks/Soldiers and board officers are available.
3. Kindly provide the copy of the burnt board of (BPET Test) written Test, viva and disputed final result sheet of promotion cadre from Hawaldar to Naib Subedar.
4. Kindly provide the copy of the result of all the Sainiks/Soldiers were recruited from retest conducted on dated 04 August, 2014 and 09 August, 2014.

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5. Kindly provide the copy of the firing test of promotion cadre conducted between 26-05-2014 to 17-07-2014, in which signatures of all 34 Sainiks/Soldiers and board officers are available. ”

3. Initially, the Public Information Officer (*hereinafter ‘PIO’*) had not given any reply and the Petitioner preferred a first appeal under Section 19(1) of the RTI Act against the same. The Petitioner did not get any reply from the Respondent no.1- CPIO RTI CELL ADG MT (AE) IHQ OF MOD as well. A second appeal was preferred under Section 19(3) of the RTI Act to the Central Information Commission (*hereinafter ‘CIC’*) by the Petitioner. In the said appeal, vide order 23rd July, 2020 it was directed as under:

*“At the outset, Commission expresses grave displeasure over the omission of the CPIO in adhering to the mandate of RTI Act in as much as he failed to discharge the statutory duty cast upon him of replying on the instant RTI Application within the stipulated time frame. **CPIO is hereby warned to remain careful in future and to not rely on feeble reasons for justifying obstruction to right to information of applicants.***

Now, as regards the information sought, for paras 1,2 &5 of RTI Application, CPIO is directed to provide copy of the relevant result sheet of the Appellant as clarified by him during hearing, free of cost and under intimation to the Commission. In case the information sought at said paras is not available on record, then CPIO shall file an appropriate affidavit stating to this effect that copy of the result sheets as sought by the Appellant in respect of his Drill test, PPT test and firing test wherein his signature was appended is not available on record. The said affidavit should be

sent to the Commission by the CPIO with its copy duly endorsed to the Appellant.

While providing the available result sheet as directed above, CPIO shall ensure that if result or personal particulars of other candidates figures therein, the same will be severed by blacking out such details as per the provisions of Section 10 of RTI Act.

Further, for para 3 of the RTI Application, CPIO is directed to provide a copy of the relevant record retention schedule based on which the information sought therein has been weeded out to the Appellant, free of cost and under intimation to the Commission.

The aforesaid direction for information on paras 1,2,3 and 5 of the RTI Application should be complied within 15 days of receipt of this order.

No relief is being ordered on para 4 of the RTI Application as it seeks copy of result of other candidates, disclosure of the same may cause unwarranted invasion of their privacy and is therefore exempt under Section 8(1)(j) of RTI Act and no larger public interest has been urged by the Appellant for said disclosure. ”

4. As per the above order of the CIC, the copies of the Result Sheets were to be provided. Further, if the information sought was not available, an affidavit confirming this was to be filed. After the CIC's decision, a letter dated 9th September, 2020 was issued by the Respondent no. 1 wherein *qua* each of the information sought by the Petitioner, the following response was provided:

<i>S. No.</i>	<i>Point No.</i>	<i>Information Requested</i>	<i>Reply</i>
<i>a.</i>	<i>1.</i>	<i>Please provide a copy of the result of the drill test held on 01 July 2014 in which all the soldiers of the profession cadre and the board officers were signed.</i>	<i>No result signed by soldiers and board officers, but the certified extract copy of your result was provided through 21 Mac Infantry letter No. 14922367/NK/A dated 15th October 2014. An extract copy of your result is being given again.</i>
<i>b.</i>	<i>2.</i>	<i>Please provide the certified details of the PPT test held on 3 July 2014 in which all the soldiers and the board have the signature.</i>	
<i>c.</i>	<i>3.</i>	<i>Please provide the copy of the burning board of Havilder Naib Subedar Promotion Cadre of BPET Test, Written Test, Viva and disputed final result sheet.</i>	<i>Havildar to Naib subedar Promotion Cadre (26 May to 17 July 2014) BPET Test Written and Viva tests were rejected by the Court of Inquiry, the burning certificate whereof was provided to you by the 21Mac infantry letter no. 14922367/NK/A dated 14 May 2018 attested by a notary. The copy of the same is given again.</i>

d.	4.	<i>Please provide the copy of the result of all the soldiers prepared from the re-test dated 08 August 2014 and 09 August 2014.</i>	<i>The result of dated 08 and 09 August 2014 is not related to you. Due to not having the right to get information about the privacy of any soldier, this result cannot be given.</i>
e.	5.	<i>Please make available the firing test of promotion cadre held between 26 May 2014 to 17 July 2014, in which all 34 soldiers and board officers have their signature.</i>	<i>This type of firing result which is signed by 34 soldiers and board of officers is not available. But your firing result was provided by 21 Mac Infantry letter No. 14922367/NK/A dated 15 October 2014. A copy of the extract copy of your firing result is given again.</i>

5. In addition, the stand of the Respondent no. 1 is that the record of the drill test, PPT test and the practice firing is not available as the same was destroyed by burning post the court of enquiry which was held in this regard. This was recorded in order dated 18th July, 2022 whereafter this Court directed the Respondent to place on record the affidavit filed with the CIC to the effect that the record has been destroyed. The copy of the said affidavit has been filed before this Court, which reads as under:

“1. Result of Drill test held on 01.07.2014 was declared null and void as per decision of Court of Inquiry dated 28 July 2014 held at 21 MECH INF and same was destroyed by burning and hence not available on record.

2. Result of PPT test held on 03.07.2014 was declared null and void as per decision of Court of

Inquiry dated 28 July 2014 at 21 MECH INF and same was destroyed by burning and hence not available on record.

3. The board had not in records of all firing test between 26.05.2014 to 17.07.2014 due to practice firing. However, result of final firing test was declared null and void as per decision of Court of Inquiry dated 28 Jul 2014 at 21 MECH INF and same was destroyed by burning and hence not available on record. ”

6. The destruction certificate dated 14th May, 2018 has also been filed, which reads as under:

“It is certified that the board proceedings and result sheet of BPET, PPT, Firing and written test of Havildar to Naib Subedar promotion cadre held from 26.05.2014 to 17.07.2014 at 21 MECH INF was declared null and void and all documents pertaining to the above test were destroyed by burning. ”

7. A perusal of the above shows that the appropriate division of the army has taken a position that the results of drill test, PPT test, firing test etc. have all been destroyed. A court of enquiry was also held against the Petitioner to investigate the allegations against the conduct of tests, after which warning letter was issued by the Commanding Officer on 28th July, 2014. Thereafter on 29th July, 2014, orders and directions were passed for re-test to be conducted.

8. The CIC's order dated 23rd July, 2020 had directed the disclosure of the required information within 15 days. However, there has been a considerable delay in the filing of the affidavit which was finally filed in January, 2022.

9. It cannot be disputed that Respondent no. 1 had a duty to comply with

the order of the CIC. However, since the record has itself been destroyed and the confirmation of the same has been handed over to the Petitioner today, no further orders can be passed in respect of the prayers in the petition.

10. The findings of the court of enquiry have been set out in the counter affidavit filed by the Respondents. Since the court of enquiry has been concluded and the information, as available, in terms of the orders of the CIC has been furnished, no further directions are called for in this petition.

11. The petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 12, 2022/dk/hh