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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th December, 2022

+ **W.P.(C) 4846/2014 & CM APPLs. 328/2016, 329/2016**

VIJAY RAJPAL

..... Petitioner

Through: Mr. Pavan Narang, Mr. Himanshu Sethi & Ms. Aishwarya Chhabra, Advs. Along with Petitioner in person (M: 9899422760)

versus

INFORMATION COMMISSIONER, CENTRAL INFORMATION COMMISSION & ORS.

..... Respondents

Through: Mr. S. Rajappa & Mr. R. Gourishanker, Advs. for R1
Mr. Anubha Bhardwaj, Mr. Dev P. Bhardwaj & Mr. Sarthak Anand, Advs. for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed on behalf of the Petitioner - Vijay Rajpal seeking the following prayers:

“(1) Quash and set aside the impugned order dated 14.06.2013 and order dated 6.08.2013 passed by the Central Information Commission in view of the information sought and supplied under the RTI Act, 2005, by the respondents that petitioner's ACR for 2001-02 was duly dispatched by the Principal, K.V. Bagafa, vide letter No.203, F.No.20, dated 21.08.2002;
(2) Quash and set aside the Presidential Order dated 21/26.11.2008, which was passed by the authority not competent to pass the order as per provision of Rule 29-A, C.C.S. (C.C.A.) Rules, 1965;
(3) Grant relief to the petitioner on the basis of

Annual Confidential Report for 2001-02 containing his signed 'self-Appraisal' and as written by the Principal of the School on his work and conduct which was the subject matter of inquiry and adjudication before the Central Information Commission which ordered the matter to be closed based on the false affidavit filed by Respondent No.4 at the behest of Respondent No.3, to the effect that ACR for 2001-02 in respect of petitioner (Shri Vijay Rajpal) does not exist in the Silchar Office of Kendriya Vidyalaya Sangathan."

3. The Petitioner is a qualified teacher in Mathematics who was appointed by the Respondent No.3 - Kendriya Vidyalaya Sangathan (*hereinafter*, "KVS") in Kendriya Vidyalaya, Bagafa as a PG teacher - Mathematics on 24th July, 2001. As per his appointment letter he had to complete a two year probation period, which could be extended. Upon successful completion of probation period, he was to be confirmed as per the KVS, Rules.
4. It is the case of the Petitioner that he served with complete devotion at Kendriya Vidyalaya, Bagafa and his probation reports were prepared. In addition his Annual Confidential Report (*hereinafter*, "ACR") is also stated to have been prepared and dispatched. However, the ACR is neither traceable nor does the KVS admit that such an ACR was prepared. Vide order dated 24th April 2003, on the basis of the probation report for the period of 11 months, the Petitioner was discharged during the period of probation and his services were not continued. As per the said probation report the quality of work of the Petitioner was not satisfactory and no improvement was observed in spite of verbal communication.
5. The Petitioner filed an RTI application on 12th November, 2008 and

sought information under the RTI Act, 2005. By the said application the Petitioner sought the following records:

- (a) Copy of 11 months probation report
- (b) Copy of the ACR for the relevant period.

6. The said RTI application was considered by the Central Information Commission (*hereinafter, "CIC"*) and the Petitioner's probation report was supplied. However, the copy of the ACR was not supplied as, according to the KVS, the same was not received from the Principal of Kendriya Vidyalaya, Bagafa. This fact was contested by the Petitioner on the ground that the KVS authorities are holding back his ACR deliberately. Vide order dated 14th June 2013, the CIC directed the representative of KVS i.e. Shri S.N. Srinivas, A.O, Regional Office, Silchar, to file an affidavit regarding the availability of the Petitioner's ACR. The said direction reads:

"Heard today dated 14.6.13. Appellant not present but has spoken to me on telephone from Doha. The Public Authority is represented by Shri S.N.Srinivas, A.O, Regional Office, Silchar.

2. Shri Srinivas submits that the appellant was appointed as PGT (Mathematics) in 2001, However, his probation was terminated due to his unsatisfactory performance. In his RTI application dated 12.11.2008, the appellant had sought the following records:

- a) copy of eleven months probation report*
- b) copy of the ACR for the relevant period.*

3. Shri Srinivas submits that information sought in para (a) has already been supplied but information sought in para (b) could not be supplied as the same was not received from the Principal concerned.

4. On the other hand, the appellant contest this fact. It is his say that the KVS authorities are telling lies and his ACR exists and should be provided to him.

5. In the premises, Shri S.N. Srinivas is hereby directed to file an affidavit regarding the availability of the appellant's ACR or otherwise before this Commission in 05 weeks time."

7. Accordingly, an affidavit was filed by Shri S.N. Srinivas to the following effect:

"I, S.N.Srinivas, S/o Late SV Krishnayya, age 55 years A.O K.V.S, R.O, Silchar do hereby solemnly affirm & declare as follows.

*"1.That ACR for the year 2001-02 in respect of Sh. Vijay Rajpal PGT (Maths)Kendriya Vidyalaya Bagafa South Tripura **does not exists** in the office of Kendriya Vidyalaya Sangathan Regional Office Silchar and the same was intimated to Sh. Vijay Rajpal while disposing of his appeal by the Appellate Authority vide letter No.29011/2009/KVS/(SR)/3836-37 dated10/22.07.2009. (Copy enclosed)*

2. That Again the same status was reiterated while disposing of his appeal dt. 09.09.09 by the first Appellate Authority vide letter No.29011/2009/KVS/(SR)/12556- 57 dt.15.01.10(Copy enclosed),

3.That Sh. Vijay Rajpal PGT (Maths) Kendriya Vidyalaya Bagafa, South Tripura, again filed RTI application on 27.10.2011 on the same matter which was disposed of on 15.12.2011 by the PIO, and he made an appeal on 31.12.2011.

4. The letter No. F.1-16/KVB/2011-12/287 dated 25.08.2011 of Principal KV Bagafa where in it was t 10 ACRS of Staff, which includes the name of Sh. Vijay Rajpal were sent. In the regional office only the covering letter was received and the ACR of Sh. Vijay Rajpal was not found. But disposing the appeal dated 31.12.2011 the first Appellate Authority constituted a committee g of 4 members of officer/officials on 25.01.2012,to make sincere and rigorous search of

ACR of, Sh. Vijay Rajpal PGT (Maths) Kendriya Vidyalaya Bagafa, and the committee submitted the 06.02.2012 stating that they have searched the record room and the ACR is not found (Copy enclosed).

Accordingly the first Appellate Authority has disposed of the Appeal vide letter no.1/KVS/(SR)/28180-81 dt 29.02.2012), stating full details of the action taken.(Copy enclosed). the above information received from the section, factual position is placed before the gg”

8. On the basis of the said affidavit, the CIC vide order dated 6th August, 2013, closed the matter. The said order reads:

“This is in continuation of this Commission's proceedings dated 14.6.13. As directed, Shri S.N.Srinivas, A.O, Regional Office, Silchar has filed an affidavit dated 16.7.13 before the Commission to the effect that ACR for the year 2001-2002 in respect of Shri Vijay Rajpal does not exist in the Silchar Office of Kendriya Vidyalaya Sangathan. In view of the above, the matter is ordered to be closed.”

The orders of the CIC dated 14th June, 2013 and 6th August, 2013 are challenged in the present writ petition.

9. In the present writ petition, vide order dated 4th August, 2014, notice was issued. Thereafter, counter affidavit was called and the rejoinder affidavit was also filed. Vide order dated 1st February, 2018, the Court zeroed down on the dispute as under and directed KVS to file a further affidavit in the following terms:

“1. Mr Narang, the learned counsel, who is requested to assist this Court has examined the facts and he submits that the petitioner has placed certain documents on record along with the rejoinder. The said documents indicate that ACRs of ten employees, including the petitioner, were forwarded by the Principal under the

cover of a letter (letter no.203, F.No.20 dated 21.08.2002). He further states that the despatch of records also indicates that a report of first probation pertaining to the petitioner had been dispatched on 17.07.2002 and yet again on 05.09.2002. He states that it appears that there are three different reports, which have been dispatched and only one report has been made available to the petitioner.

2. In view of the above, the controversy is narrowed down to two questions: (i) how many probation reports/ACRs were prepared and dispatched; and (b) whether the petitioner is entitled to copies of the same.

3. The respondent shall file an affidavit clearly stating its position on the aforesaid questions, within a period of three weeks from today.”

10. As per the aforementioned order, the KVS was to file an affidavit explaining the questions as captured in paragraph 2 of the said order. Accordingly, an affidavit dated 13th August, 2018 was filed by Dr. V. Vijayalakshmi working as a Joint Commissioner, (Admn.) KVS. The same has been placed on record. The relevant part of the said affidavit is as under:

“Please refer to your office letter No. F.29067/177/14-KVS(L&C) dated 06.02.2016 (received in this office on 26.02.2018) forwarding therewith an e-mail letter dated 02.02.2018 of Shri S.Rajappa, Advocate seeking some information related to the abovementioned case. The information sought is as under:

S. No.	Information required	Reply
(i)	<i>How many probation report/ACRs were prepared.</i>	<i>As per record, only one 11 monthly probation report in respect of Shri Vijay Rajpal, Ex-PGT(Maths), KV, Bagafa, is available in this office. Copy of 11 monthly probation report dated 16.7.2002 is enclosed.</i>

		(Annexure-I)
(ii)	<i>In reference to letter dated 25.8.2011 written by the Principal to Sunita Rani under RTI that names of ten employees whose ACRs were despatched vide letter No.203 F.No dated 21.8.2002 by Shri S.R. Gupta the then Principal in which petitioner's name was mentioned.</i>	<i>As already informed, no ACR in repsec of Shri Vijay Rajpal, Ex-PGT(Maths), KV, Bagafa, is available in this office. Committee constituted for the purpose of searching the same submitted its report dated 06.02.2012 stating that no ACR in respect of Shri Vijay Rajpal, ex-PGT(Maths), KV, Bagafa, is available in this office. Copy of the report dated 06.02.2012 is enclosed (Annexure-II)</i>
(iii)	<i>How many reports have actually been supplied to the petitioner under RTI.</i>	<i>11 monthly probation dated 16.7.2002 report has been supplied to the petitioner under RTI vide this office letters dated 10/22.7.2009 & 15.12.2011 (Annexure-III & IV). Moreover, the copy of the said 11 monthly report was also sent to the Asstt. Commissioner (Admn. & Fin.) & CPIO, I KV5(HQ) for further necessary action vide this office letters dated 29.12.2008 & 15.01.2009 (Annexure-V & VI.)</i>

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11. Thus, the stand of KVS is that no such ACR exists on their record and the probation report has already been supplied to the Petitioner.

12. Mr. Pawan Narang, Id. Counsel was earlier requested to assist the Court. Today, Id. Counsel has made his submissions. Id. Counsel relies on

the dispatch register of Kendriya Vidyalaya, Bagafa which reflects dispatch of several ACRs including that of the Petitioner on 17th July, 2002. In addition, he relies upon letter dated 25th August, 2011 given by Mr. Santosh Kumar N., Principal, Kendriya Vidyalaya, Bagafa which categorically states that he had prepared the ACR of the Petitioner which has still not been handed over to the Petitioner. The said letter reads:

“Ref.F.No. 1-16/KVB/2011-12/287 Date: 25-08-2011

*To
Smt. Sunita Rani
C/O Smt. Kanta Rani
Near Dr. Tikariya's Nursing Home
Malviya Ganj,
Itarsi (MR) 461111*

*Sub: Information under RTI -reg.
Madam*

With reference to your letter dated 30-07-2011. Received by this office on 08-08-2011 in the above subject, I am to inform you that following are the names (Ten) of employees whose ACRs were dispatched Vide letter no. 203. FNo. 20 dated 21-08-2002.by Sh S.R Gupta, then Principal.

- 1. Sh AmarNath, PGT Hindi*
- 2. **Sh. Vijay Rajpal, PGT Maths***
- 3. Sh. Ashok Kumar, TGT CBZ.*
- 4. Sh R C Mahto, TGT SSt.*
- 5. Sh. .laiswal, TGT SKT,*
- 6. Sh. ManoJ Kumar. TGT Eng*
- 7. Sh. V Pratap, PRT*
- 8. Sh. KS Jeet, PRT*
- 9. Sh. S L Mahara, WET*
- 10. Smt Bagdevi Sen Music Tr.”*

13. On the other hand, Mr. S. Rajappa, Id. Counsel for the Respondents

relies upon the affidavit filed by Shri S.N. Srinivas before the CIC, wherein he had submitted that a Committee of four members was constituted to make a sincere effort to trace the ACR, however, the same could not be found.

14. The issue in this petition which has been pending since 2014, boils down to the question as to whether the Petitioner's ACR was in fact prepared or not and whether the copy of the same was made available to the Petitioner or not. Insofar as the first question is concerned, the letter of Mr. Santosh Kumar N., Principal, Kendriya Vidyalaya, Bagafa dated 25th August, 2011 is clear and categorical to the effect that the ACR was prepared and was dispatched. The genuineness of this letter is not doubted by KVS. In fact in the affidavit filed before the CIC by Shri S.N. Srinivas, the receipt of this letter is admitted but it is claimed that the ACR of the Petitioner was not attached thereto. A perusal of the dispatch register also confirms that certain ACRs were dispatched including that of the Petitioner, however, strangely the Petitioner's ACR is clearly not traceable and it has been 20 years since. Insofar as the second question is concerned, clearly no ACR has been provided to the Petitioner and only the probation report has been provided.

15. The Petitioner, had also challenged his discharge before the Central Administrative Authority which was also considered by the Division Bench of this Court. The discharge has, however, not been interfered with by the Division Bench of this Court in its judgment dated 6th December, 2005 in **WP (C) No.18599/2005** titled **Vijay Rajpal v. Union of India & Anr.** The observations of the Division Bench are as under:

“7. The offer of appointment of the petitioner makes it crystal clear that during the period of probation the

*services of the petitioner could be terminated at any time with one month's notice on either side but even without any reason being assigned thereto. The order of termination issued on 24th April, 2003 and, therefore, the said action was taken within the period of probation of two years which is stipulated in the offer of appointment itself. In the termination order also the respondents have said that action of termination of services of the petitioner has been taken in accordance with the provisions of paragraph-5 of the offer of appointment. **Nothing is stated in the order regarding performance and suitability of the petitioner.** But in the counter affidavit filed before the Tribunal it was stated that the performance of the petitioner was found to be not satisfactory and he was found not suitable and fit for confirmation. The employer has the right to consider the suitability of a person and in order, to come to the aforesaid conclusion his efficiency and service records would and could be considered by the respondents so as to ascertain as to whether or not his services could be confirmed."*

16. The above judgment clearly records that insofar as the discharge is concerned, nothing has been stated in the order of discharge recording the performance and suitability of the Petitioner.

17. The said judgement of the Division Bench was challenged by way of an SLP before the Hon'ble Supreme Court. The SLP being ***SLP (C)3263/2007*** titled ***Vijay Rajpal v. Union of India & Anr.*** was dismissed by the Hon'ble Supreme Court on 5th February, 2007. Thereafter, a review petition being ***Review Petition (C) No. 820/2007*** arising out of the said SLP was also dismissed by the Supreme Court vide order dated 21st August 2007.

18. The only issue now in the present case is whether the CIC's order of

closing the case is valid and justified or not. The Court has perused the RTI application, the affidavit filed by the KVS as also the two documents relied upon by the Petitioners i.e., the dispatch register and the letter of the Principal. There is no doubt in the mind of the Court that the two documents relied upon by the Petitioner do create a haze on the question of preparation of the ACR. As per the judgment of the Division Bench, the discharge is without any taint, though the Petitioner feels that if the ACR was made available, he could have proved that the comments in the Probation report regarding his performance could have been disproved by him. The Petitioner, suspects that the ACR of the Principal has been deliberately withheld as the same would have disproved the contents of the Probation report relied upon by KVS to discharge him. This suspicion becomes credible as the dispatch register and the Principal's letter – both confirm that the ACR was prepared and dispatched but the same, curiously is not traceable. Both these documents are not disputed but are in fact admitted by KVS.

19. However, this Court cannot direct any further enquiry in the matter as a committee is already stated to have been appointed by the KVS and the said committee has already arrived at a conclusion. The ACR, for whatever reason is untraceable and at this stage, the Court has no reason to disbelieve the Committee which was formed by the KVS.

20. It is noted by the Court that the Petitioner has been made to pursue these proceedings for a long period and there is some documentary evidence on record to show that the ACR did exist. The KVS being the ultimate managing organization of the Kendriya Vidyalaya in question, there is an issue of governance if such important documents relating to employees can

go missing in this manner. Being an educational establishment, there is a duty on the organisation to have better systems for preservation of records. Therefore, the Court is of the opinion that that the Petitioner is entitled to costs in this matter of Rs.2,00,000/-.

21. It is clarified that the said costs are being granted owing to the documents including the dispatch register and the letter of the Principal which shows that the ACR has been prepared as also the negligence in preservation and non-production of the ACR by the KVS. The costs shall be paid to the Petitioner, by KVS within eight weeks.

22. Insofar as the concern of the Petitioner *qua* his performance is concerned, the order dated 6th December, 2005 passed by the Division Bench of this Court, has already made it clear that the order of discharge does not comment on the performance of the Petitioner. Thus, nothing further needs to be said on this score.

23. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH, J

DECEMBER 19, 2022

dj/kt