



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order: 13th September 2023**
 + W.P.(C) 12029/2023 & CM APPL. 47180/2023
 NAVEEN Petitioner

Through: Mr. Pawan Sharma, Advocate

versus

UNION OF INDIA & ANR. Respondent

Through: Mr. Jatin Singh, Mr. Keshav Sehgal,
 Mr. Shivam Gaur and Ms. Ramya
 Soni, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition has been filed on behalf of the petitioner seeking the following reliefs:

“(a.) Issue a Writ of Mandamus to other suitable Writ thereby directing the respondents to show the answer sheet of the petitioner written by the petitioner in the tier-ii trade test conducted by the respondent,

(b.) Any other or further relief/direction/order which your lordships may deem fit and proper may be also passed/issued in facts and circumstances of the matters, in favours of the petitioner, in the interest of natural justice.”

2. The relevant facts of the present petition have been recapitulated below:



- a) In the year 2022, the respondent no.2, Centre for Personal Talent Management, Defence Research & Development Organization, Ministry of Defence published notification inviting the applications for recruitment for various posts at the respondent organisation.
- b) In pursuance to the said notice, the petitioner being eligible as per the essential qualification in the notification applied for the post of Technician-A (Tech-A).
- c) On 20th April 2023, the petitioner appeared in the Tier-II Trade Test conducted for the post of Technician-A (Tech-A) by respondent no. 2 in Batch-1 however, the petitioner did not qualify for the said examination.
- d) The petitioner filed an application under Right to Information Act, 2005 (hereinafter referred to as RTI) before the respondent no. 2 for the purpose of showing his Answer-sheet of the Tier-II Trade Test. The said application of the petitioner was rejected by the respondent vide reply dated 08th June 2023.
- e) The petitioner has filed the present petition, aggrieved by the said reply of the respondent
3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was utterly shocked by the result of said examination since, since as per the result the petitioner did not qualify for the Tier- II Trade exam.
4. It is further submitted that as per the respondent no.2's website wherein the result was declared, it was merely stated "*Not Qualified in Tier-II Trade Test*" and no details regarding the marks obtained by the petitioner



or the transcript submitted by the petitioner were disclosed by respondent no. 2.

5. It is submitted that the petitioner has filed the present petition aggrieved of the arbitrary action of the respondent no.2 regarding non-production of the -answer-sheet of the petitioner written by the petitioner in Tier-II Trade Test conducted by the respondent no. 2 on 20th April 2023.

6. It is submitted that the petitioner was neither not allowed to enter the workplace of the respondent no. 2 for addressing his grievances. Pursuant to which the petitioner filed an application under RTI in this regard before the respondent no. 2 which was rejected by the respondents *vide* order dated 8th June 2023 under section 24(1) of RTI for disclosure .

7. It is submitted that the petitioner is entitled to be shown his answer sheet in the tier-II trade test and the respondent no. 2 has violated the right of the petitioner by not showing such answer sheet.

8. It is further submitted, in view of the exception carved out under Section 24 of RTI, that any organisation under Schedule -II of RTI have to disclose information in cases pertaining to the allegations of corruption and human rights violations

9. In view of the foregoing paragraphs, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs sought may be granted.

10. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the averments made by the petitioners and the present petition is nothing but an abuse of the process of law.

11. It is contended that the respondent no.2 falls within the ambit of Schedule II of RTI and is exempted from disclosure of information under



Section 24(1) of RTI with the exception of cases wherein the information pertains to the allegations of corruption and human rights violations.

12. It is submitted that respondent no.2 is exempted under Right to Information Act, 2005 under Section 24. The respondent have further placed reliance on the judgment of Division Bench of this Court in ***Dr. Neelam Bhalla v. Union of India & Ors., LPA 229/2014*** dated 11th March 2014 held as follows:

“5. We agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with any allegation of corruption or of human rights violations. Therefore, the CIC as well as the learned Single Judge were correct in holding that the information sought would not come within the purview of the Right to Information Act. It is another matter that the CIC had, as a matter of course, directed the DRDO to supply the information, which was ultimately supplied by the DRDO. The fact of the matter is that the DRDO could not have been compelled to supply the information under the said Act. That being the position, the provisions with regard to penalty under Section 20 of the said Act would also not apply.

6. Moreover, the learned counsel for the appellant/petitioner had candidly submitted that he had not prayed for imposition of penalty but for compensation, which, admittedly, is not provided for under the said Act. In any event, even if we construe the prayer for compensation as a prayer for imposing penalty under Section 20 of the said Act, the same cannot be granted in view of the fact that the information sought by the appellant/petitioner did not pertain to allegations of corruption or of human rights violations. That being the case, the Act itself does not apply to the DRDO, particularly, in the facts and circumstances of the present case.

7. Insofar as vindication of the stand of the appellant/petitioner is concerned, that aspect of the matter has already been recognized by the order dated 22.08.2013 passed by the CIC where it has been



observed that as a matter of fact Shri Bundela had provided inaccurate and incorrect information to the appellant/petitioner.

8. Be that as it may, there is no merit in this appeal. The same is dismissed, however, there is no order as to costs.”

13. Hence, in view of the foregoing submissions, the respondent seeks that this Court may be pleased to dismiss the instant petition thereby, upholding the impugned order.

14. Heard both the parties at length.

15. This Court has perused the material on record including the pleadings.

16. The counsel for the respondent has submitted that in lieu of the judgment of Division Bench of this Court in ***Dr. Neelam Bhalla (Supra)*** wherein it was held that respondent No. 2 falls under Second Schedule of RTI hence, is not entitled to disclose any information under RTI.

17. This Court has observed that the said judgment has been overruled by the judgment of Division Bench of this Court in the aspect of non-disclosure of information related to service record is violation of human right in the context of employee by the judgment of Division Bench of this Court in ***Union of India v. Central Information Commission & Anr ,LPA 734/2018 dated 22nd March 2022*** wherein it was held as follows:

"COURT'S REASONING

THE APPELLANT IS AN INTELLIGENCE AND SECURITY ORGANIZATION SPECIFIED IN SECOND SCHEDULE OF THE RTI ACT AND IS EXEMPT FROM THE PURVIEW OF THE RTI ACT EXCEPT WHEN THE INFORMATION PERTAINS TO ALLEGATION OF CORRUPTION AND HUMAN RIGHTS VIOLATION.

12. *Since the present case primarily involves interpretation of Section 24 of the RTI Act, the said Section is reproduced hereinbelow:—*



“24. Act not to apply to certain organizations-

*(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government : **Provided***

that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within fort-five days from the date of the receipt of request.”

(emphasis supplied)

13. A Division Bench of this Court in Esab India Limited v. Special Director of Enforcement, 2011 SCC OnLine Del 1212 has upheld the Constitutional validity of Section 24 of the RTI Act. The relevant portion of the said judgment is reproduced hereinbelow:

“27. In the case at hand, as far as Section 24 is concerned, it is evincible that the said provision excludes the intelligence and security organizations specified in the Second Schedule. We have already reproduced the Second Schedule. The Petitioner is concerned with the Directorate of Enforcement which comes at Serial No. 5 in the Second Schedule. What has been denied in first part of Section 24 is the intelligence and security organizations. The first proviso adds a rider by stating that an information pertaining to allegations of corruption and human right violations shall not be excluded under the Sub-section. Thus, it is understood that information relating to corruption and information pertaining to human rights are not protected. In our considered opinion, the restriction on security and intelligence aspect cannot be scuttled as the same has paramountancy as far as the sovereignty and economic order is concerned. Article 19(1) (2), which deals with reasonable restriction, mentions a



reasonable restriction which pertains to security of the State, integrity of India and public order.

28. In our considered opinion, the restrictions imposed are absolutely reasonable and in the name of right to freedom of speech and expression and right to information, the same cannot be claimed as a matter of absolute right. Thus, the submissions advanced on this score are untenable and accordingly we repel the same.”

14. Undoubtedly, the Appellant is an intelligence and security organization specified in Second Schedule of RTI Act and is exempt from the purview of RTI Act except when the information pertains to allegation of corruption and human rights violation. Consequently, the submission made by Mr. Amit Mahajan is correct that the Appellant cannot be called upon to disclose information under the provisions of RTI Act except when the information sought pertains to the allegations of corruption and human rights violation.

THE EXPRESSION ‘HUMAN RIGHTS’ CANNOT BE GIVEN A NARROW OR PEDANTIC MEANING. HUMAN RIGHTS ARE BOTH PROGRESSIVE AND TRANSFORMATIVE.

15. Accordingly, the issue that arises for consideration in the present case is whether the information sought for by the respondent falls within the expression ‘human rights’.

16. Though, the term ‘human rights’ has not been defined in the RTI Act, yet it has been defined in the Protection of Human Right Act, 1993 (in short ‘1993 Act’). Section 2(1)(d) of the 1993 Act provides for definition of the term ‘human rights’ which reads as under:

‘2. Definitions - (1) In this Act, unless the context otherwise requires-

xxxx xxxx xxxx

(d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.
.....”

17. This Court is of the opinion that the expression ‘human rights’ cannot be given a narrow or pedantic meaning. It does not refer to the rights of the accused alone. Human rights have been used for a



variety of purposes, from resisting torture and arbitrary incarceration to determining the end of hunger and of medical neglect. In fact, the human rights are both progressive and transformative.

IN THE PRESENT CASE, NON-SUPPLY OF THE INFORMATION/DOCUMENTS IS A HUMAN RIGHTS VIOLATION AS IN THE ABSENCE OF THE SAME RESPONDENT NO. 2 WOULD NOT BE ABLE TO AGITATE HER RIGHT TO PROMOTION.

18. It is settled law that employees have a legitimate expectation of promotion. It is not the case of the Appellant that its employees and officers cannot file legal proceedings to air their grievances with regard to service conditions and wrongful denial of promotions. The intent of service jurisprudence at the level of any establishment/organization is to promote peace and harmony and at the level of the society, the objective is to promote human rights. If employees of an establishment cannot agitate their grievances before judicial forums, these organizations/establishments may become autocratic.

19. In fact, RTI Act is a tool which facilitates the employees and officers in airing their grievances systematically.

According to Statement of Objects and Reasons, the intent and purpose of RTI Act is to secure access to information in order to promote transparency and accountability in the working of every public authority. It is said that 'Sunlight is the best disinfectant' and RTI Act promotes the said concept. Consequently, both service and RTI laws 'act like a safety valve in the society'.

20. In the opinion of this

Court, the employees of a security establishment cannot be deprived of their fundamental and legal rights just because they work in an intelligence and security establishment. To hold so would amount to holding that those who serve in these organizations have no human rights.

21. Though, the Division Bench in Dr. Neelam Bhalla (supra) has stated that "...we agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with



any allegation of corruption or of human rights violations...”, yet upon a perusal of the judgment passed by learned Single Judge (which was authored by one of us i.e., Manmohan, J), it is apparent ‘that the Appellant-petitioner in that case had sought compensation and disciplinary action against certain Government officials for furnishing inaccurate and incomplete information. Consequently, the observations in the said judgment have to be read in the light of the issue that arose for consideration. Further, in Dr.

Neelam Bhalla (supra), the concept of human rights was neither argued nor dealt with. Accordingly, the aforesaid judgment offers no assistance to the Appellant.

22. This Court is also not in agreement with the submission of learned counsel for the Appellant that only such information that is furnished by the exempted organization to the Government pertaining to allegations of corruption and human rights violation is to be provided.

23. It is also pertinent to mention that the respondent by way of RTI application in question is not seeking information with regard to any investigation or intelligence or covert operations carried out nationally or internationally. This Court clarifies that the respondents may be well entitled to deny information under the RTI Act, if the facts of a case so warrant.

24. Consequently in the present case, non-supply of the information/documents is a human rights violation as in the absence of the same respondent No. 2 would not be able to agitate her right to promotion.

INFORMATION PERTAINING TO PROPOSALS FOR PROMOTION OF THIRD PARTIES CANNOT BE PROVIDED TO THE RESPONDENT IN VIEW OF SECTION 11 OF THE RTI ACT

25. However, this Court is of the view that information pertaining to proposals for promotion of third parties cannot be provided to the respondent in view of Sections 8(1)(j) and 11 of the RTI Act.

26. Consequently, this Court directs the Appellant to provide



copies of all the seniority list in respect of LDCs for the period of 1991 till date as well as copies of the proposal for promotion of respondent (LDC) placed before the DPC together with copies of the Minutes of the Meetings and copy of the promotion/rejection order issued on the recommendations of DPC from time to time. 27. Accordingly, the present appeal stands disposed of with the above directions.”

18. In the light of the aforementioned, the RTI applicant cannot seek information with regard to any investigation or intelligence or covert operations carried out nationally or internationally. It was held that in cases of non-supply of the information/documents is a human rights violation in cases of employee seeking information regarding his own performance as in the absence in of such information, he would not be able to seek a promotion.

19. Now the question that falls for adjudication in the instant petition is whether this Court may entertain writ if there is an alternative remedy available to the petitioner.

20. The case of the petitioner is that petitioner was not shown the transcript he wrote for the Tier- II Trade Test by the respondent no. 2. Pursuant to which, the petitioner filed its RTI application for disclosing his answer sheet, the said application was rejected by the respondent no.2, in lieu of falling under ambit of IInd Schedule and Section 24 of RTI vide its reply dated 08th June 2023.

21. The petitioner had an alternative remedy of filing first appeal under Section 19 of RTI. Under Section 19 of the RTI, the application may file an appeal to the aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, within a



period of 30 days from the date of the decision.

22. In the present case, the petitioner as per the pleadings has not exhausted the remedy of filing instead has straightway approached this Court under Article 226.

23. It is a settled law, that the party who is aggrieved by any public authority must exhaust all the alternative remedies before approaching the High Court under Article 226. The High Court should abstain from entertaining such writ petition, where there is an efficacious alternate remedy available to the aggrieved party.

24. When an Act is enacted by the Parliament granting certain rights, then the said Act also prescribes a remedy or a procedure for the purpose of enforcement of such rights. Therefore, the party may first resort to the remedy as prescribed by the statute and pursuant to which the aggrieved party may approach the Courts under writ jurisdiction.

25. The Courts, if by way of exercising its power under writ jurisdiction, starts entertaining writs wherein the parties have not exhausted their statutory remedies, it will lead to the malpractice of litigants directly invoking the writ jurisdiction, thus, defeating the motive for which the particular statute was enacted.

26. This Court is of the view that the present petition may not be entertained by this Court since; there is an alternative efficacious remedy available to the petitioner by filing an appeal to the impugned order dated 8th June 2023 of the respondent no. 2. The petitioner is at liberty to avail the alternative remedy under the law.

27. In view of the above discussion of facts and law, this Court finds no infirmity in the writ petition.



28. For all the aforesaid reasons, no merit is found in the writ petition and the same is accordingly dismissed along with the pending applications.
29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 13, 2023

pa/db/ds

Click here to check corrigendum, if any