

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

CIC/EPFOG/A/2018/614958

Shailendra Kumar Singh v. PIO, EPFO

Order Sheet: RTI filed on 10.01.2018, CPIO replied on 29.01.2018, FAO - Nil, Second appeal filed on 23.03.2018, Hearing on 06.06.2018;

Proceedings on 06.06.2018: Appellant present from NIC Ranchi, Public Authority represented by CPIO Mr. Mhonthung Ngullie at CIC;

Date of Decision-08.06.2018: Disposed of with directions.

ORDER

FACTS:

1. The appellant sought copies of evaluated copy of English paper (Paper-I) in respect of EO/AO departmental exam which was held on 13.11.2017. The CPIO on 29.01.2018 stated that as per the EPF Enforcement Officer/Accounts Officer Limited Departmental Competitive Examination Scheme, 2016, there is no provision to provide the answer sheet to the applicant or any other person and he can apply for re-totalling of marks as provided under the scheme and hence the requisite information could not be provided. Being dissatisfied, the appellant approached this Commission.

Decision:

2. The officer submitted that the departmental examination for the post of EO/AO comprised of four papers, out of which three were objective and one was descriptive in nature. The key answers of the objective type papers were sent to the candidates for providing reviews/objections and since the fourth paper was descriptive, no model answers were prepared. He further submitted that around 3,000 candidates appeared in the exam out of which only 5 candidates were selected and this appellant was qualified but was not in the final list of four selected candidates as there were only four vacancies while the appellant stood at Number 5. Model answers were given for three papers, while Appellant wanted model answers for the Fourth Question paper also. As the public authority has not created a model answer for fourth paper hence does not have

it. The public authority has disclosed the questions and answers of all the candidates regarding three papers, but refused to give four answer-sheets of four qualified candidates to the appellant. The appellant claimed that he wanted to check the answers given by four who topped above him and where he lacked in. This examination is conducted to decide the promotion in job. Appellant contended that if the answers given by four qualified candidates are not superior to his answers, they should not be eligible to secure promotion, or if his answer-sheet is comparatively superior to any one of the four, he would be eligible to get promoted. He also demanded that the CPIO should justify the denial of this part of his RTI application with reasons and provisions of law, which was not done.

3. The legality of demanding answer sheet in examination is in principle upheld by Supreme Court in **CBSE v Aditya Bandhopadhyay** (2011) 8 SCC 497. The apex court held that the examinee has right to access those scripts provided that the request is made during a reasonable time in which the authorities are expected to retain the answer scripts. Statement of object as reflected in preamble of RTI Act says:

'right of a citizen to secure the access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority'.

4. The roots of RTI are found in Article 19 of Constitution of India that guaranteed the Freedom of Speech and Expression. The Supreme Court reiterated that right to information has constitutional validity as that is enshrined right under Art 19(1)(a) in three cases: State of UP v. Raj Narain, (1975) 4 SCC 428, Dinesh Trivedi v. Union of India, (1997) 4 SCC 306 and People's Union for Civil Liberties v. the Union of India, (2004) 2 SCC 476.

5. Aditya Bandopadhyay, who appeared in CBSE examination, claimed that in spite of performing well in examination, he got a low result and applied to CBSE for permitting his request of revaluation and inspection of his answer sheets. His request has been rejected by CBSE who contended that inspection of answer book was not permissible under bye-laws of CBSE examination. The CBSE claimed that every year 12 to 13 lakh students across the country appeared for

the examination and it will lead to chaos and huge inconvenience if inspection and/or revaluation is provided to these students. CBSE cited the judgement of SC in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Seth***, (1984) 4 SCC 27. The CBSE contended that they held the answer book of its students in a fiduciary relationship and thus it is exempted from disclosure for being fiduciary in nature as per S. 8(1)(e) of RTI Act.

6. R.V. Ravindran J who authored the landmark order (Aditya Bandhopadhyay) held that answer book written by a candidate and submitted to examining body for evaluation is a '**document or record**' and the evaluated answer book by the examiner appointed by examining body is the '**opinion**' of the examiner. Thus, the evaluated answer book is an '**information**' under RTI Act. And this answer book also does not fall under any of the exemption provided under (a) to (j) of subsection 1 of Section 8 of RTI Act. Thus, every examinee has a right to inspect the evaluated answer book and if needed can take certified copies thereof under RTI Act.

7. The Supreme Court held that an examining body does not hold the evaluated answerbooks in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under Section 8(1)(e) is not available to the examining bodies with reference to evaluated answer- books. As no other exemption under Section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.

8. The Chandigarh High Court in ***Kewal Singh Gautam v State of Chhattisgarh & ors***, AIR 2011 Chh 143, examined whether this information could be personal information of anybody and held:

14. In for far as the other reason for rejection of the application, invoking the provision contained in Section 8(1)(j) of the Act of 2005, that the information sought relates to personal information, the disclosure of which has no relationship to any public activity or interest or would cause unwarranted invasion of the privacy of the individual is concerned, the same is equally misconceived in law and deserves rejection. In a case where such personal information has

relationship to any public activity or interest, exemption could not be claimed. Moreover, this Court has no hesitation in saying that the conduct of examination in the present case by the departmental agency for the purposes of promotion from lower rank to higher rank in Govt. department, are not private activities, but in public domain.... It also cannot be said that said disclosure of information would cause unwarranted invasion of the privacy of some individual. ...The checking and evaluation of answer sheet by an examiner and the marks given by him upon assessment of performance has nothing to do with the privacy of either the examiner or those who are responsible for conducting the examination.

9. In the case of **Dr. Mrs. Anson Sebastian** (<https://indiankanoon.org/doc/916458/>), where one employee sought information pertaining to documents relating to domestic enquiry against another employee and also for getting entries in confidential report of six other employees of the appellant, repelling the claim of exemption under Section 8(1)(j) of the Act of 2005, the Division Bench of High Court of Kerala held that provision of Section 8(1)(j) are not attracted. It was held that the confidential reports of employees managed by the employer cannot be treated to be records pertaining to personal information of an employee, disclosure of which can be said to be exempted under Section 8(1)(j) of the Act. The case of the petitioners in the two petitions in hand, stands on a much better footing. Therefore, I am of the considered opinion that the rejection of petitioners application for supply of certified copies of their assessed/evaluated answer sheet is illegal as no exemption could be claimed under Section 8(1)(e) and Section 8(1)(j) of the Act of 2005.

10. A question remains is whether a candidate could seek the answersheet of other candidates? In **CBSE case** [2011(8) SCALE 645] the SC said no, but on certain practical issues. The CBSE pleaded that if it has to share certified copies of answer-sheets of other to each and every candidate seeking under RTI, it would lead to chaos and divert substantial resources. In **Union Public Service Commission vs Angesh Kumar** the Supreme Court Bench of UU Lalit and AK Goel, JJ held on 20 February, 2018, <https://indiankanoon.org/doc/153104514/>, the appellant sought information in the form of cut-off marks for every subject,

scaling methodology, model answers and complete result of all candidates. Its huge information and difficult for anybody to cull out and give. Hence it was refused. It reached the apex court. The Supreme Court based on purposive interpretation said: In interpreting the scheme of the Act, this Court has read inherent limitation in Sections 3 and 6 based on the Third Recital in the Preamble to the Act, i.e.,

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

While balancing the right to information, public interest including efficient working of the Government, optimum use of fiscal resources and preservation of confidentiality of sensitive information has to be balanced and can be a guiding factor to deal with a given situation de hors Sections 8, 9 and 11.

11. The SC referred to the problems in showing evaluated answer sheets in the UPSC Civil Services Examination that are recorded in judgment of Delhi High Court dated 5.10.2010 in **Prashant Ramesh Chakkarwar v. UPSC** (<https://indiankanoon.org/doc/14592858/>). Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, the SC was of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. If a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. Even in CBSE case, the SC followed same logic and based on the practical difficulties in showing answer-sheets of lakhs of other candidates, and allowed the CBSE not to share the other's answer-sheets. Most important point to be noted is that the rejection is not based on any exception under Section 8(1) including (e) & (j). Several orders of Delhi High Court and CIC show that examination related information of the competing candidates cannot be withheld.

12. The Commission rejects the contention of the respondent authority as the information sought is neither personal nor held in fiduciary capacity by the respondent authority. Any information relating to transfer, recruitment, promotion and placement falls under the category of official activities and as per the Office Memorandum no. 1/34/2013-IR dated 29.06.2015 by Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, such information should be published on the official website under section 4(1)(b) of RTI Act.

13. Answer-sheets of four co-employees who qualified for promotion while the appellant remained at number 5, are not their personal information, nor do they qualify to be their confidential reports, nor that they could be treated as information relating to fiduciary relationship. The defences put forward by UPSC and CBSE that disclosure of such information would result in chocking system etc are not available to this respondent authority because, the candidates who appeared for this promotion qualification examination were around 3000 and answer-sheets sought were about four qualified candidates who got promotion.

14. The Commission upon perusal of records, hearing the submissions of both the parties, directs the respondent authority to provide the certified copies of answer booklets of selected candidates, within 7 days from the date of receipt of this Order. Disposed of.

SD/-
(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(T. K. Mohapatra)
Deputy Secretary & Dy. Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

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