

Delhi High Court

Delhi High Court

State Bank Of India vs Md.Shahjahan on 19 July, 2013

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: 19.07.2013 + W.P.(C) 9057/2011 and CM No.20367/2011

STATE BANK OF INDIA ..... Petitioners Through:Mr.Rajiv Kapur, Advocate

versus

MD.SHAHJAHAN ..... Respondent Through:Mr.Anuj Kumar Ranjan with Mr.Sunil

Kumar Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent before this Court applied to CPIO of the petitioner State Bank of India, seeking information with respect to the marks obtained by him in the written departmental examination, Performance Appraisal Form(PAF) and interview for the promotional examination held on 5 th July, 2009 along with the marks of the last successful candidate. The Central Information Commission, vide impugned order dated 7th September, 2011, directed the petitioner to disclose the marks awarded to the respondent in the written examination, PAF and interview for the promotion examination held on 5th July, 2009 along with marks awarded to the last selected candidate in 2009 examination. The challenge in the present writ W.P.(C) 9057.11 Page 1 of 5 petition is confined to the extent the petitioner has been directed to disclose to the respondent, marks obtained by him in the interview and his ACR.

2. The learned counsel for the respondent has drawn my attention to the decision of the Supreme Court in *Sukhdev Singh vs. Union of India and Ors.* 2013(6) SCALE 490 where the Apex Court referring to its earlier decision in *Dev Dutt v. Union of India and Ors.* (2008) 8 SCC 7, inter alia, held as under:- "9. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same, Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."

3. It would thus be seen that not only the grading given to a public servant, but also every entry in his ACR is required to be communicated to the concerned public servant. Considering the view taken by Supreme Court in the above- referred case, there can hardly be any scope for refusing to disclose the said W.P.(C) 9057.11 Page 2 of 5 information under RTI Act when information seeker is none other than the public servant concerned himself.

4. The learned counsel for the petitioner submits that the information sought by the respondent is exempt from disclosure under Section 8(1)(e)(g) and (j) of RTI Act and that this aspect of the matter was not under consideration of the Supreme Court in the case of Sukhdev Singh (supra). The second contention of the learned counsel is that the disclosure of the ACR of the respondent would contravene the provisions of Section 5(1)(a) & (b) of Official Secrets Act. The next contention of the learned counsel for the petitioner in this regard is that the order passed by the Commission being a non-speaking order, the matter needs to be remitted back to the Commission for passing a speaking order. The learned counsel also points out that the whole issue related to disclosure of the ACR has now been referred to a Larger Bench of the Supreme Court by virtue of an order dated 29.03.2012 passed in SLP(C) No. 15770 of 2009 which now stands converted into Civil Appeal No. 2872 of 2010 and, therefore the Court should await for the decision of the Larger Bench of the Supreme Court. He also says that the issue has also been raised by the petitioner-bank in SLP(C) No. 5296 of 2009 and the said SLP has been admitted on 06.07.2012.

5. So long as the view taken by Supreme Court in Sukhdev Singh (supra), which is a judgment by a Three Judges Bench of the Apex Court is not modified by W.P.(C) 9057.11 Page 3 of 5 the Apex Court, this Court is required to follow the ratio laid down in the aforesaid decision and consequently, cannot refuse disclosure of the Annual Confidential Report/Appraisal Report to the public servant concerned, irrespective of whether the disclosure is sought under RTI Act or otherwise directly from the employer. The plea seeking exemption under Section 8(1)(e)(g) and (j) of the Right To Information Act cannot be accepted by this Court considering the view taken in the case of Sukhdev Singh (supra). An information, to which a public servant is entitled as a matter of right, from his employer does not stand exempted under Section 8(1) of the RTI Act, 2005, irrespective of the nature of such information. One needs to keep in mind that even dehors the provisions of RTI Act, a public servant is entitled to a copy of his entire ACR/PAF. Right to Information Act does not curtail or restrict any such right. The said Act was enacted to provide information, which otherwise was being denied to the citizens, and not to deny the information, otherwise required to be provided to a person.

6. As regards the alleged contravention of the provisions of Section 5(1)(a) & (b) of Official Secrets Act, I do not find any merit in the contention. No offence under the said Section is committed by conveying the Annual Confidential Report of an employee to him. As regards the contention that the order passed by the Commission is a non-speaking order, considering that the matter stands covered by the decision of the Apex Court, remanding the matter back to the Commission W.P.(C) 9057.11 Page 4 of 5 would only be an exercise in futility. Though the issue involved stands referred to a Larger Bench that would make no difference since the view taken by the Apex Court, so long as it is not modified, is binding upon this Court. As regards disclosure of marks obtained in the interview, no exception can be taken to the direction issued by the Commission, and no exemption clause contained in Section 8(1) of the RTI Act applies to such information. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. There shall be no order as to costs. V.K. JAIN, J

JULY 19, 2013

bg/ks

W.P.(C) 9057.11 Page 5 of 5