

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

File No.CIC/SA/A/2014/000135

Appellant : **Ms.Harpreet Kaur**

Respondent : **Delhi Subordinate Services
Selection Board, Delhi**

Date of hearing : **13-10-2014**

Date of decision : **21-1-2015**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 3, 19(3) of the RTI
Act**

Result : **Appeal allowed/
disposed of**

The appellant is present The Public Authority is represented by Mr. Subhash Chand, PIO and Mr. Gopal, Delhi Subordinate Services Selection Board, GNCTD, Delhi.

FACTS

2. The appellant filed RTI application on 23.5.2013 seeking photocopy of her answer sheet of Descriptive exam/mains exam conducted for the post of TGT Punjabi(Female) and also of two other candidates. PIO replied on 21.6.2013 that copy of her answer sheet cannot be provided as Board has obtained stay in W.P (C) 4048/2012 in this regard from Delhi High Court and claim the exemption of section 8(1)(j) of the RTI Act, 2005 for providing copy of

other candidates. The appellant preferred First Appeal on 28.6.2013. FAA on 2.9.2013, directed the CPIO to provide revised point wise information within 15 days. Being unsatisfied the appellant preferred Second Appeal before the Commission.

Decision:

3. Both the parties made their submissions. The respondent authority submitted that they had allowed the inspection of the appellant's answer sheet as per the FAA order. As far as furnishing of copies of answer sheets of other candidates is concerned, they claimed exemption under Sec 8(1)(j) of RTI Act.

4. Before going into the question of whether the answersheet of third party can be furnished to the appellant, it is relevant to go through the case law on the subject. Hon'ble Supreme Court of India in **CBSE Vs. Aditya Bandoupyay [2011(8)SCALE645]** with regard to obtaining individuals own answersheet had while interpreting Sec 8 (1)(e) had stated as follows :

“13. The examining bodies (Universities, Examination Boards, CBSC etc.) are neither security nor intelligence organizations and therefore the exemption under Section 24 will not apply to them. The disclosure of information with reference to answer-books does not also involve infringement of any copyright and therefore Section 9 will not apply. Resultantly, unless the examining bodies are able to demonstrate that the evaluated answer-books fall under any of the categories of exempted 'information' enumerated in Clauses (a) to (j) of Sub-section (1) Section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof.

14. The examining bodies contend that the evaluated answer-books are exempted from disclosure under Section 8(1)(e) of the RTI Act, as they are 'information' held in its fiduciary relationship. They fairly conceded that evaluated answer-books will not fall under any other exemptions in Sub-section (1) of Section 8. **Every examinee will have the right to access his**

evaluated answer-books, by either inspecting them or take certified copies thereof, unless the evaluated answer-books are found to be exempted under Section [8\(1\)\(e\)](#) of the RTI Act.”

.....

18. ...As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in Clause (e) of Section [8\(1\)](#) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in *Maharashtra State Board* (supra) and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.

....

24. We may next consider whether an examining body would be entitled to claim exemption under Section [8\(1\)\(e\)](#) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any *citizen information available to a person in his fiduciary relationship*. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself. One of the duties of the fiduciary is to make thorough disclosure of all relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer-books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer-books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. **Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer-book, Section [8\(1\)\(e\)](#) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer-book, seeking inspection or disclosure of it.**

27. We, therefore, hold that an examining body does not hold the evaluated answer-books 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.”

5. Hon’ble High Court of Chhattisgarh in **Kewal Singh Gautam Vs. State of Chandigarh** [[AIR2011Chh143](#)] had also interpreted Sec 8 (1)(e) & (J) with regard to individual own answer sheet as follows :

“11. Fiduciary relationship is one where a party stands in a relationship of trust to another party. The said relationship gives rise to an obligation to protect the interest of other party. Present is not a case where the petitioners are seeking disclosure of an information with regard to the valuation done by the examiner in respect of any other departmental candidate who appeared in the examination. The petitioners are only seeking disclosure of information which would also include supply of certified copies of the answer sheet of their own. It is neither the case of the respondents nor any material has been placed before this Court either in the form of any provision having the force of law applicable in the matter of departmental examination or any other agreement between the examiner and the public authority that the work of examination done by the examiner shall be kept secret and confidential and will not be open to scrutiny by any other person including the examiners. In almost similar situation, where an examinee sought inspection of his answer sheet in an university examination, replying to the plea of fiduciary relationship seeking exemption from disclosure of information by taking recourse to provision contained in Section [8\(1\)\(e\)](#) of the Act of 2005, Division Bench of the High Court of Calcutta in the case of University of Calcutta (supra), held as under:

The plea of fiduciary relationship, advanced by the CBSE has not impressed us. Fiduciary relationship is not to be equated with privacy and confidentiality . It is one where a party stands in a relationship of trust to another party and is generally obliged to protect the interest of the other party. While entrusting an examiner with the work of assessment/evaluation of an answer script there is no agreement between the examiner and the public authority that the work performed by the examiner shall be kept close to the chest of the public authority and shall be immune from scrutiny/ inspection by anyone. At least nothing in this respect has been placed before us. Since the RTI Act has been

enacted to promote transparency and accountability in the working of every public authority and for containing corruption, even if there be such a clause in the agreement between the examiner and the public authority the same would be contrary to public policy and thus void. We have no hesitation to hold that even if there be any agreement between the public authority and the examiner that the assessment/evaluation made by the latter would be withheld on the ground that it is confidential and an assurance is given in this respect, the same cannot be used as a shield to counter a request from an examinee to have access to his assessed/evaluated answer scripts and the RTI Act would obviously override such assurance. Having regard to our understanding of the meaning of the word 'fiduciary', there is little scope to hold that the etchings/markings made on answer scripts by an examiner are held in trust by the public authority immune from disclosure under the RTI Act. We find no force in the contention which, accordingly, stands overruled.

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13. In the present case, the argument advanced that disclosure of information is exempted in view of the provision contained in Section [8\(1\)\(e\)](#) of the Act of 2005, therefore, appears to be clearly misconceived in law and is liable to be rejected.

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. In the present case, the petitioner has sought supply of certified copy of answer sheets written by they themselves. None of the petitioners in the two writ petitions have sought any personal information relating to any third party or personal information either of the examiner or the person who has conducted examination or any other candidate who appeared in the examination. 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. **Therefore, where a candidate asked for information regarding his own performance in a departmental competitive examination and in that connection demands copy of his own answer sheets which are assessed/ evaluated by the examiner, without asking for any personal information of any other person concerning with the process and conduct of examination, provision of Section [8\(1\)\(j\)](#) of the Act of 2005 are not at all attracted. It also cannot be said that said disclosure of information would cause unwarranted invasion of the privacy of some individual.** There are no factual foundations laid in the pleading of the respondents nor borne-out from the records of the case. 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. In the case of Dr. Mrs. Anson Sebastian (supra), 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.

15. The submission of learned counsel for the respondents that as the petitioners have been allowed inspection of their answer sheet, there is no further obligation to provide certified copies of the answer sheet, is liable to be rejected in view of the provision contained in Section [3](#) of the Act of 2005 and the definition of the words "right to information" under Section [2\(j\)](#) of the Act. Section [3](#) of the Act of 2005 clearly states that subject to the provisions of the Act, all citizens shall have right to information. What "right to information" is meant, for the purposes of the Act, is crystal clear from its definition under clause (j), which is extracted as below:

(2) (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to -

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

16. Therefore, right to information would include right to take certified copies of documents or records and mere inspection does not discharge the respondents of their obligation nor can it be said that the petitioner has been given complete information.

Present is not a case where the petitioners, after inspection of their answer sheet, felt satisfied. The application of the petitioners clearly shows that they demanded certified copies of their answer sheet in concerned subjects. Therefore, the petitioners right to information includes right to take certified copies of the answer sheets also, which cannot be denied by the respondents.

6. In View of the above decisions, it is clear that the candidate with regard to his/her own answer sheet can obtain the copy of the same as a matter of right, but with regard to the answer sheet of third party, unless the candidate is able to show that large public interest is involved, the same cannot be furnished unless the candidate from whom it is sought for permits the same. The Commission, therefore, **directs** the respondent authority to follow the procedure for supplying third party information U/S 11 of RTI Act, by seeking the opinion of the third party and taking a final decision by the PIO in this respect. This direction shall be complied within 20 from the date of receipt of this order. The appeal is **disposed** of.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Address of the parties:

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