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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th January, 2023

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W.P.(C) 5052/2022

JAGJIT PAL SINGH VIRK

..... Petitioner

Through: Mr. Rajneesh Bhaskar, Advocate (M-8920067875)

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rishabh Sahu, Central Govt Sr. Counsel and Mr. Sameet Sharma, Advocate (M: 9910055066).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner - Jagjit Pal Singh Virk has filed the present petition challenging the order dated 24th May, 2021 passed by the Central Information Commission (*hereinafter referred as 'CIC'*) rejecting the Petitioner's RTI application dated 18th October, 2018.
3. The Petitioner is a commander in the Indian Navy, who is currently posted at Headquarters Southern Naval Command, Kochi. He was called for an interview for promotion to the post of Captain in 2014, 2015 and 2016 but was not promoted.
4. It is the case of the Petitioner that in order to know the progress report of the service, he filed an application dated 18th October, 2018 under the Right to Information Act, 2005 (*hereinafter 'RTI Act'*) seeking following information.

“Q1. Please provide the following details with respect to each promotion Board for which I was considered:

(a) ACR Marks

(b) Value judgement marks awarded.

Q2. Please provide the details of my profile (PP/PQ) from 09 years of service onwards (since commencement of PARB) till date.

Q3. Please provide the details of my profile for PARB in the year 2013, 2014, 2015, 2016 and 2017 for both, prior and post expunging of ACR for the period 24 Aug 13 to 31 Jan 14.

Q4. Please provide details of my position in merit on following occasions. Please provide certified copy of merit list for each.

(a) Sea command board 2/11

(b) Selection for Sea Command PCT- Mar 2013

(c) PB 2B/14

(d) PB 2/15

(e) PB 2/16

(f) Review PB 2/17 (Merit with changed profile w.r.t PB 2B/14, PB 2/15 and PB 2/16)”

5. The Central Public Information Officer (CPIO), Indian Navy sent a reply on 4th December, 2018 refusing to provide the desired information. The stand of the CPIO in the reply is that the copy of the Annual Confidential Reports (ACRs) of the persons in Armed Forces are confidential in nature and the same cannot be disclosed even after retirement. However, grading given by IO, RO and SRO can be only communicated after a period of 3 years from the date of retirement. The said stand is set out below:

*“2. **For Query 1 to 4** Your application dated 18 Oct 18, has been examined and it is intimated that*

*the Hon'ble CIC vide its order dated 09 Mar 10 (Encl 1) has ruled that even a retired officer need not be supplied copies of ACRs. Hence, the copies of ACRs cannot be provided as the ACRs are confidential in nature. **However, as per said CIC Order, grading given by IO, RO and SRO can be communicated to the applicant after a gap of 03 years from the date of retirement and hence you cannot be provided with the grading of IO/RO/SRO due to non-completion of mandatory gap of three years from the date of retirement.** Moreover, disclosure of the same justifies no larger public interest. DoPT&T OM No. 10/20/2016-IR is also relevant in this regard; copy of the same is placed at Encl 2.”*

6. The first appeal was preferred before the First Appellate Authority of the Ministry of Defence. The said appeal vide order dated 21st May, 2019 upheld the decision of the CPIO, Indian Navy. The Petitioner then preferred a second appeal to the CIC. The said appeal was also rejected vide order dated 24th May, 2019 with the following observations.

“From a perusal of the relevant case records and the written submissions of the CPIO dated 21.05.2021, it is noted that the CPIO was right in denying the information to the appellant. In his written submissions he had explained in detail as to why the information cannot be divulged and has stated that the sensitive nature of duties performed by the Armed Forces and in the overall security interest of the nation and the ramifications on the command and control structure of the armed forces and the specific peculiarities of the defence services, the Armed Forces have always been dealt with differently by the various courts of law including the Apex court even when dealing with issues of similar nature like merit lists, outcome of promotion and selection boards.

Therefore, if the merit lists are divulged after every Promotion Board (PB) or Selection Board (SB), the officer who is amongst the last to make it in the said PB shall be demotivated as he/ she will come to know that it is unlikely for them to get promoted to the next higher rank. Therefore, it is in the interest of the Armed Forces and in turn the Nation that the merit list is not known to an individual officer and they continue to give his/ her best effort until the next PB or SB. He relied on various High Court and Supreme Court judgments to substantiate the fact that the desired information cannot be disclosed to any officer. He has also informed that the records which the appellant is seeking now were perused by both the legal forums and his case was dismissed. In both the cases, the courts did not divulge details as being sought by the officer in their respective orders and maintained the confidentiality of the PBs of the officer. The Commission accepts the submissions of the CPIO and does not find any flaw in the reply, hence, no relief can be given to the appellant.

Decision:

In view of the above, the Commission upholds the submissions of the CPIO and does not find any scope for further intervention in the matter.”

7. Mr. Rajneesh Bhaskar, Id. Counsel for the Petitioner submits that the Petitioner is entitled to know his own marks, which were awarded to him as he was not promoted. The same cannot be deprived to the Petitioner.
8. On the other hand, Id. Counsel for the Respondent submits that the Petitioner had already challenged by way of the petition before the Armed Forces Tribunal (*hereinafter referred as 'AFT'*) the decision of non-grant of promotion to him. The same was upheld by the AFT, Principal Bench vide order dated 11th May, 2017 in *OA 635/2017* titled *Commander JPS Virk*

(04642-Z) v. UOI & Ors. as also by the Hon'ble Supreme Court in **Commander JPS Virk (04642-z) v. Union of India & Ors.** on 7th December, 2018. Ld. counsel for the Respondent also relies upon the order of this Court in **W.P.(C) 5952/2014** titled **Union of India v. A.K. Sinha**, where in similar circumstances, the writ petition was dismissed.

9. A perusal of the information sought by the Petitioner shows that it relates to various aspects of the Promotion Board, details of the profiles and the Petitioner's position on the merit list. Thus, the data, which is sought is relating to the promotion, appraisals to the Petitioner could include the ACRs and other sensitive information relating to the other candidates, who were considered for promotion. These records, as per the CIC, have been held to be sensitive information and could have various ramifications in the security interest of the country. Moreover, a perusal of the AFT order dated 11th May, 2017 in **OA 635/2017** titled **Commander JPS Virk (04642-Z) v. UOI & Ors.** shows that the records relating to the promotion of the Petitioner were shown to the AFT, which observed as under:

“7. We have considered the submissions made by the learned counsel for the parties and have gone through the relevant records of Review Promotion Board furnished by the respondents in which the case of the applicant was dealt with afresh expunging the ACR for the aforesaid period. We are of the considered view that so far as the contention of the applicant that his 9 ACRs after the ACR which was expunged, deserve to be deleted or not considered or to be re-written, is concerned, this is an argument of desperation. The reason for saying so is that, it was never the case of the applicant in earlier round of litigation in OA 99/2016 that his 9 ACRs got effected because of ACR for the period 24.08.2013 to

31.01.2014. If at all this was an argument to be taken, it should have been done by the applicant in the earlier round of litigation and not in the present case. The reason for this is that such a plea which is sought to be raised by the learned counsel for the applicant, is barred by order 2 Rule 2 and Exp. IV of Section 11 of CPC. The contention of learned counsel for the applicant with regard to 9 ACRs are biased, is not correct and is without any merit.

8 The only thing which the Tribunal has to see, is the Board Proceedings where the case of the applicant for empanelment to the rank of Captain has been dealt with.

9. We have seen the records meticulously and are fully satisfied that the case of the applicant for promotion to the rank of Captain from the rank of Commander has been duly considered dispassionately and he has not been found to be fit for empanelment. The reason for this is that the merit of the last officer who has been empaneled is at SL No.26 while the applicant stands at Sl. No.52, which is far behind the name of the officer who has been empaneled. We, therefore, feel that there is no merit in the contention of learned counsel for the applicant and all other prayers of the applicant regarding grant of compensation or making other enquiries etc. have been rejected by the Tribunal.

10. For the aforesaid reasons, we are satisfied that the present OA is without any merit and the same is, accordingly, dismissed in limine.”

10. The challenge to the said order of the AFT was also considered by the Hon’ble Supreme Court in **Commander JPS Virk (04642-z) v. Union of India & Ors.**, which passed the following order dated 7th December, 2018.

“Pursuant to our direction given on the last date of

hearing the respondents had produced personal records/dossiers of the appellant as well as records of the Promotion Board whereby the case of the appellant for initial promotion and thereafter for review promotion was considered. After perusing the same, we are of the opinion that the Tribunal has come to a right conclusion in the impugned judgment which does not call for any interference. The appeal is, accordingly, dismissed.”

11. A perusal of both of the orders of AFT and the Supreme Court shows that relevant records of the Review Promotion Board have been produced before both AFT as also the Supreme Court. Further, the CPIO has clearly taken the stand that the copies of the ACR cannot be provided and only grading given by IO, RO and SRO can be provided only 3 after the retirement in regard of DoP&T OM No. 10/202016-IR as also in the larger public interest.

12. The Supreme Court in case of *Dev Dutt v. Union of India [Civil Appeal No.7631/2002, decided on 12th May, 2008]* has held that the entries of ACR need not be communicated to military officers as their position is different from civil, judicial, police or any other State service. The relevant portion of the said judgment reads as under:

“39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal

position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India v. Major Bahadur Singh MANU/SC/1961/2005: (2006) 1 SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).

13. This decision of the Supreme Court has been followed by this Court in *Union of India v. A.K. Sinha [W.P.(C) 5952/2014 date of order 30th March, 2016]* wherein the Court has held as under:

“The present writ petition has been filed challenging the two orders dated 04th July, 2014 passed by the Central Information Commission (for short ‘CIC’).

Learned counsel for the petitioner submits that reliance placed by the CIC in the impugned orders on the judgment of the Apex Court in Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and Another, (2012) 13 SCC 61 as well as on its own order dated 14th May, 2010 in file no. CIC/WB/A/2009/000420, 582 and 602, is misconceived. He states that both the aforesaid cases do not pertain to Defence personnel. He refers and relies upon a judgment of the Apex Court in Dev Dutt v. Union of India, (2008) 8 SCC 725, wherein it has been held as under.....:

“36.....”

A perusal of the file reveals that on 08th September, 2014, this Court had stayed the operation of the impugned orders. On 24th September, 2015, this Court had clarified that if the Armed Forces Tribunal (for short ‘AFT’) which was hearing the petition being OA 407/2014 filed by the respondent is of the opinion that the information sought in the present writ petition is relevant, it would be entitled to ask for its production. Subsequently, AFT dismissed the petition filed by the respondent.

Though the respondent filed a statutory appeal before the Supreme Court challenging the order of AFT, yet the same has been dismissed.

Keeping in view the aforesaid mandate of law as well as the subsequent events that have transpired including the fact that the respondent has now retired, this Court is of the opinion that the impugned orders need to be set aside. Accordingly, the present writ petition is allowed. Pending application also stand disposed of.

14. This Court, having perused the stand of the CPIO, observations of the CIC and the case laws highlighted above as also the fact that the records were produced before the AFT and the Supreme Court, does not find any legal ground to interfere with the orders passed by the CIC

15. In the opinion of this Court, the information sought in the present petition would not be liable to be disclosed, owing to the nature of the information i.e., relating to senior personnel in the Navy. The CIC's order does not warrant any interference.

16. The writ petition, along with all pending applications, is dismissed.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 11, 2023/dk/hh

