

**Upsc Vs. Major Singh**

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**Court :** Delhi

**Decided On :** Oct-29-2013

**Judge :** V. K. Jain

**Appellant :** Upsc

**Respondent :** Major Singh

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision:

29. 10.2013 + WP(C) No.6508 of 2010 UPSC ..... Petitioner Mr. Naresh Kaushik,  
Adv. Through: versus MAJOR SINGH ..... Respondent Through: CORAM:  
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

**V.K.JAIN, J.**

(ORAL) The respondent before this Court sought the following information from the petitioner:

a. Particulars (name, qualification & experience) of (eligible) applicants for appointment to 7 post of Principal (Female) reserved for SC in response to UPSC special advertisement No.52/2006. b. Criteria adopted for short listing the candidates summoned for interview by UPSC to the 7 posts at (a) above. c. List of

candidates summoned for interview by UPSC for (a) above. d. Criteria adopted by UPSC for short listing the SC candidates summoned for interview for 1 post of Principal (Directorate of Education), Delhi reserved for SC (female) candidate in August, 2006.

The CPIO provided the information at serial Nos.2 & 4 but the information at serial Nos.1 & 3 was declined on the ground that the same was exempt from disclosure under Section 8 (1) (e) of the Right to Information Act, 2005 (for short RTI Act).

2. Aggrieved from the non-supply of information, the respondent preferred an appeal before the first appellate authority which disposed of the appeal with the following order:

The personal details of the candidates are held by the Commission in a fiduciary capacity and constitute third party information and disclosure of the same is exempted under section 8 (1) (e) and (j) of the RTI Act. The CPIO has rightly declined to share the personal details of eligible candidates. As regards item (C), in my opinion, the list of names of candidates summoned for interview could have been provided to the appellant, which may be provided.

3. Being still aggrieved the respondent preferred a second appeal before the Central Information Commission, which vide impugned order dated 11.6.2010 inter alia directed as under:

From the above it will be clear that the relationship of a candidate for an examination with the examining authority is not a fiduciary relationship, although that of a pupil and teacher might be. Besides section 8 (1) (j) is specific in that it exempts from disclosure any information which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. In this case what is sought is information provided to a public organisation for appearance in a public examination. The public organisation itself goes by the name of the Union Public Service Commission. Under the circumstance this information can on account be treated as personal or held in confidence, which would warrant invasion of section 11 (1). For these reasons the appeal is allowed. CPIO, Shri P. P. Haldar, Dy. Secretary (R.V) will now provide

the information sought at point (a) to the RTI application of 27.8.2008 to appellant Shri Major Singh within fifteen working days of the date of receipt of this decision notice. We notice, however, that the CPIO has been punctilious in giving timely information to the appellant Shri Major Singh in matters that he considered accessible. There will, therefore be no cost.

4. The information at serial No.3 was supplied pursuant to the order of the first appellate authority and there is no dispute with respect to the said information. As regards information at serial No.1, the learned counsel for the petitioner states that the name of the qualified candidates were duly supplied to the respondent as would be seen from Annexure I to the communication dated 17.11.2008 which contains the roll numbers and names of all such candidates. Therefore, the only issue which needs adjudication is with respect to the qualification and experience of the eligible applicants:

5. A similar issue came up for consideration before the Honble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE656 In the aforesaid case, the respondent before the Apex Court had sought inter alia the following information:

4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?.

5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No.10(B) of Part-I of their application who are called for the interview held on 16.3.2010.

The Central Information Commission directed the petitioner UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC

also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court inter alia held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC483 One of the duties of the fiduciary is to make thorough disclosure of all the 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.

The Apex Court held that the Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest and, therefore, the case was not covered by the exception carved out in Section 8 (1) (e) of the RTI Act.

6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed disclosure of the aforesaid information to the respondent.

7. For the reasons stated hereinabove, the impugned order passed by the Central Information Commission is set aside. The writ petition stands disposed of. No orders as to costs. OCTOBER29 2013 bmesh W.P.(C) No.6508 of 2010

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