

PUNJAB STATE INFORMATION COMMISSION

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Sh. Mukul Sharma, s/o Sh. R.C. Sharma,
52, Village Gulpur,
P.O. Farida Nagar,
Tehsil & District Pathankot- 145025

....Appellant

Vs

Public Information Officer,
o/o Punjab Public Service Commission,
Baradari Garden,
District Patiala

First Appellate Authority-cum-Secretary
o/o Punjab Public Service Commission,
Baradari Garden,
District Patiala

....Respondents

Appeal Case No. 1166 of 2020
(Video Conference Proceedings)

Present:- Sh. Mukul Sharma, appellant.
Sh. Avtar Singh, Sr. Asstt 9876977653 on behalf of the respondents.

ORDER

The case was heard on 28.10.2020 but RESERVED to be pronounced.

2. The brief of the case is that the appellant has appeared for the PSCSCCE Mains Examination 2015 with Roll No. 9204 and for PSCSCCE Mains Examination 2018 with Roll No. 18041. He was declared 'not qualified' by PPSC Patiala in both the attempts. In order to understand the deficiencies in his answer sheets viz a viz 5 top scorers and the instructions for evaluation of answer sheets issued by the PPSC to the examiners, the appellant had sought the certified photo copy of the information (six points) from the respondents i.e. Punjab Public Service Commission (PPSC), Patiala as follows:-

1. The instructions/directions issued by PPSC to examiners for marking/scoring the answer sheets of examinees of PSCSCCE Mains Examination 2018;
2. Answer sheets of Roll No. 18041 of PSCSCCE Mains Examination 2018 of all the seven papers;
3. Answer sheets of top 5 scores in all the seven papers of PSCSCCE Mains Examination 2018 without revealing any private/confidential information about any candidate and/or the examiner;
4. The instructions/directions issued by PPSC to examiners for marking/scoring the answer sheets of examinees of PSCSCCE Mains Examination 2015;
5. Answer sheets of Roll No. 9204 of PSCSCCE Mains Examination 2015 of all the seven papers;

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6. Answer sheets of top 5 scores in all the seven papers of PSCSCCE Mains Examination 2015 without revealing any private/confidential information about any candidate and/or the examiner;
3. That, the RTI application was filed by the appellant dated 25.4.2019 to seek the information as enumerated in his RTI application. First appeal was filed with the First Appellate Authority (hereinafter called FAA) on 8.11.2019 and second appeal was filed in the Commission on 18.3.2020 under Section 19 of the Right to Information Act, 2005 (hereinafter called RTI Act). Notice of hearing was issued to the parties concerned.
4. With regard to the information pertaining to Point No.2 i.e. answer sheets of Roll No. 18041 of PSCSCCE Mains Examination 2018 for all the seven papers, a letter dated 5.9.2019 was written to the appellant to deposit Rs.660/- (prescribed fee of the information). Since, the appellant did not deposit the requisite fee, the information was not supplied to him. As far as the appellant is concerned, he agreed with the submissions of the representative of the respondents.
5. During the hearing on 19.6.2020, the representative of the respondents stated that the information regarding Point No. 5 i.e. the photo copies of answer sheets of Roll No. 9204 of PSCSCCE Mains Examination 2015 for all the seven papers have been supplied.
6. With regard to the information pertaining to Point No. 1 and 4 i.e. the instructions/directions issued by PPSC to examiners for marking/scoring the answer sheets of examinees of PSCSCCE Mains Examination 2018 and 2015 the representative of the respondents stated that it is an internal matter of the PPSC, hence, no information can be supplied to the appellant. The representative of the respondents further stated that it is also not in the public interest to supply the instructions issued to the examiners with regard to marking/scoring. In addition, the representative of the respondents stated that in case it becomes a public document the secrecy of the PPSC, a constitutional body, will be compromised. However, the appellant stated that it is related to the guidelines issued to the examiners by the PPSC and there is nothing which should be kept secret and out of reach of the candidates. The appellant further stated that in the interest of meritocracy and transparency in the conduct of public examinations, the instructions given to the examiners

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by the PPSC must be made public. In addition to the above, the appellant also stated that there is no provision in the RTI Act, 2005 giving exemptions to the public authorities to forbid the information on the grounds of the information being an internal matter. Hence, the appellant requested that the respondents be directed to supply the information regarding Point No. 1 & 4 of his RTI application.

7. After hearing both the parties, the respondents were directed to send the instructions/directions issued by PPSC to examiners for marking/scoring the answer sheets of examinees of PSCSCCE Mains Examination 2018 and 2015 pertaining to Point No. 1 & 4 of the RTI application under sealed cover to the Commission within a week from the issue of this order to enable the Commission to form a view as to whether non-disclosure of the information by respondents is in public interest or not.

8. With regard to the information sought by the appellant i.e. Point No. 3 & 6 in which he has sought the answer sheets of top 5 scores in all the seven papers of PSCSCCE Mains Examination 2018 & 2015 without revealing any private/confidential information about any candidate and/or the examiner, the representative of the respondents stated that in accordance with the decision given by the Punjab State Information Commission (PSIC) in CC 2737/2012, the appellant can access his own answer sheets. According to this decision, the representative of the respondents stated that the copies of his own (appellant) answer sheets as sought by him, have already been supplied. Furthermore, the representative of the respondents stated that the answer sheets of other candidates cannot be supplied being 3rd party. However, the appellant opposed the contention made by the representative of the respondents. The appellant stated that in a case Shailendra Kumar Singh Vs Public Information Officer, EPFO (CIC/EPFOG/A/2018/614958 decided on 8.6.2018), Central Information Commissioner has held that a candidate can seek answer sheets of other candidates and that this is not barred by Section 8(1)(e) and Section 8(1)(j) of the RTI Act. In addition, the appellant also referred to Kewal Singh Gautam Vs State of Chhattisgarh, AIR 2011 Chh 143, Chhattisgarh in which Hon'ble High Court held that conduct of examination by the departmental agency for promotion in Govt. department, is not a private activity, but in

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public domain and the checking and evaluation of answer sheets 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 and as such Section 8(1)(j) is not attracted. In accordance with the submissions, the appellant, therefore, requested that the PPSC be directed to supply the information pertaining to Point No. 3 & 6 of his RTI application.

9. With regard to the information pertaining to Point No. 6 of the RTI application i.e. answer sheets of top 5 scorers in all the seven papers of PSCSCCE Mains Examination 2015 without revealing any private/confidential information about any candidate and/or the examiner, the respondents have mentioned in their letter dated 16.6.2020 that the concerned record has been destroyed as per the instructions, hence, the question of providing the same does not arise. In view of the destruction of record, the respondents were directed to submit the actual date of destruction of record concerning this point of the RTI application.

As far as the information pertaining to Point No.3 of the RTI application, i.e. answer sheets of top 5 scorers in all the seven papers of PSCSCCE Mains Examination 2018 without revealing any private/confidential information about any candidate and/or the examiner is concerned, the respondents have mentioned the decision of the State Information Commission, Punjab in Appeal Case No. 2737 of 2012. The Commission adjourned the case to 21.7.2020 in order to examine the issue in detail and decide the matter.

10. During the hearing on 21.7.2020, a copy of the instructions/directions issued by the Punjab Public Service Commission (PPSC) to examiners for marking/scoring the answer sheets of examinees of PSCSCCE Mains Examination 2018 and 2015 pertaining to Point No. 1 & 4 of the RTI application was received from the PPSC under sealed cover with forwarding letter No. 815 dated 2.7.2020, which is reproduced below:-

“ਉਪਰੋਕਤ ਵਿਸ਼ੇ ਦੇ ਸਬੰਧ ਵਿੱਚ ਆਪ ਜੀ ਵੱਲੋਂ ਉਕਤ ਕੇਸ ਦੀ ਮਿਤੀ 19.6.2020 ਵੀਡੀਓ ਕਾਨਫਰੰਸ ਉਪਰੰਤ ਕੀਤੇ ਆਦੇਸ਼ਾਂ ਦੀ ਰੋਸ਼ਨੀ ਵਿੱਚ ਪੁਆਇੰਟ ਨੰਬਰ 1 ਸਬੰਧੀ ਪੰਜਾਬ ਰਾਜ ਸਿਵਲ ਸੇਵਾਵਾਂ ਸਾਂਝੇ ਮੁਕਾਬਲੇ ਦੀ ਮੈਨ ਪ੍ਰੀਖਿਆ 2018 ਦੀਆਂ ਜਵਾਬੀ ਕਾਪੀਆਂ ਦੀ ਮਾਰਕਿੰਗ/ਸਕੋਰਿੰਗ ਸਬੰਧੀ ਪ੍ਰੀਖਿਅਕਾਂ ਅਤੇ ਮੁੱਖ ਪ੍ਰੀਖਿਅਕਾਂ ਨੂੰ

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ਜਾਰੀ ਕੀਤੀਆਂ ਹਦਾਇਤਾਂ ਦੀ ਕਾਪੀ ਸੀਲਡ ਕਵਰ ਵਿੱਚ ਆਪ ਜੀ ਦੀ ਸੂਚਨਾਂ ਅਤੇ ਅਗਲੇਰੀ ਕਾਰਵਾਈ ਹਿੱਤ ਨਾਲ ਨੱਥੀ ਹੈ। ਇਥੇ ਇਹ ਵੀ ਦੱਸਿਆ ਜਾਂਦਾ ਹੈ ਕਿ ਇਨ੍ਹਾਂ ਹਦਾਇਤਾਂ ਵਿੱਚ ਪ੍ਰੀਖਿਅਕਾਂ ਅਤੇ ਮੁੱਖ ਪ੍ਰੀਖਿਅਕਾਂ ਦਾ ਨਿਜੀ ਵੇਰਵਾ ਜਿਵੇਂ ਕਿ ਨਾਂ, ਅਹੁਦਾ, ਪਤਾ, ਤਜਰਬਾ ਆਦਿ ਅੰਕਿਤ ਹੋਣ ਕਾਰਨ ਇਹ ਕਮਿਸ਼ਨ ਦਾ ਅੰਦਰੂਨੀ ਅਤੇ ਗੁਪਤ ਮਾਮਲਾ ਹੋਣ ਕਰਕੇ ਐਪੀਲੇਟ (ਸ਼੍ਰੀ ਮੁਕਲ ਸ਼ਰਮਾ) ਨੂੰ ਦੇਣਯੋਗ ਨਹੀਂ ਹੈ।

ਪੁਆਇੰਟ ਨੰ: 4 ਸਬੰਧੀ ਸੂਚਨਾਂ ਬਾਰੇ ਆਪ ਜੀ ਨੂੰ ਪਹਿਲਾਂ ਹੀ ਇਸ ਦਫਤਰ ਦੇ ਪੱਤਰ ਨੰ: 546 ਮਿੱਤੀ 16.6.2020 ਰਾਹੀਂ ਸੂਚਿਤ ਕਰ ਦਿੱਤਾ ਗਿਆ ਸੀ ਕਿ ਪੰਜਾਬ ਰਾਜ ਸਿਵਲ ਸੇਵਾਵਾਂ ਸਾਝੇ ਮੁਕਾਬਲੇ ਦੀ ਮੇਨ ਪ੍ਰੀਖਿਆ 2015 ਨਾਲ ਸਬੰਧਤ ਹਦਾਇਤਾਂ/ਜਵਾਬੀ ਕਾਪੀਆਂ/ਰਿਕਾਰਡ ਪੰਜਾਬ ਲੋਕ ਸੇਵਾ ਕਮਿਸ਼ਨ ਦੀਆਂ ਰਿਕਾਰਡ ਨਸ਼ਟ ਕਰਨ ਦੀਆਂ ਹਦਾਇਤਾਂ ਦੀ ਰੋਸ਼ਨੀ ਵਿੱਚ ਨਸ਼ਟ ਕਰਵਾਇਆ ਜਾ ਚੁੱਕਾ ਹੈ। ਉਕਤ ਦਰਸਾਈ ਸਥਿਤੀ ਦੀ ਰੋਸ਼ਨੀ ਵਿੱਚ ਇਹ ਅਪੀਲ ਖਾਰਜ ਕਰਨ ਦੀ ਕ੍ਰਿਪਾਲਤਾ ਕੀਤੀ ਜਾਵੇ ਜੀ”

The representative of the respondents reiterated the same as has been mentioned in the letter dated 2.7.2020 of the PPSC.

11. The appellant stated that he has sent the submissions through email, which was taken on record. He further stated that he has not sought any confidential information i.e. the name of the examiner etc. but has just sought the copy of instructions issued to the examiner(s) i.e. Point No. 1 of the RTI application. The appellant stated that the respondents have supplied the photocopies of answer sheets of Roll No. 9204 of PSCSCCE Mains Examination 2015 of all the seven papers (Point No. 5 of the RTI application) whereas now the PPSC has deliberately and willfully destroyed the record pertaining to year 2015 (Point No. 4 of the RTI application) i.e. after he filed the RTI application. Furthermore, the appellant stated that the PPSC may also be directed not to destroy the record pertaining to year 2018 till the disposal of this case. With regard to the other Points No.3 and 6 of the RTI application the appellant requested that the respondent-Public Information Officer may be directed to supply the complete information i.e. answer sheets of top 5 scorers in all the seven papers of PSCSCCE Mains Examination 2018 and 2015 without revealing any private/confidential information about any candidate and/or the examiner.

12. After hearing both the parties and carefully considering the various orders of the Commission and judicial pronouncements, the respondents were directed to comply with the following so as to take the matter to its logical end:-

- (a) The Commission deems it appropriate that the aspect regarding the certified copy of the top 5 scorers as per the RTI request of the appellant may also be

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re-considered in terms of the instructions issued by the DOPT vide No. 11/2/2008-IR dated 10th July, 2008, which provides :-

“The Act, however, does not require the Public Information Officer to deduce some conclusion from the ‘material’ and supply the ‘conclusion’ so deduced to the appellant. The Public Information Officer is required to supply the ‘material’ in the form as held by the public authority and is not required to do research on behalf of the citizen to deduce anything from the material and then supply it to him.”

Therefore, in view of the above mentioned instructions, PPSC was directed to submit whether the subject wise list of candidates is maintained mentioning the marks obtained by each candidate in order of merit.

(b) After the detailed examination of the instructions sent by the PPSC in sealed cover, the Commission had directed the PPSC to re-consider in public interest its earlier decision of non-disclosure of instructions due to its confidentiality in accordance with Section 10 of the RTI Act, 2005 which provides

“that where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then access may be provided to that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information”

(c) That, the appellant had not sought any information regarding destruction of record in his original RTI application. But the Commission would like to settle this issue being in larger public interest since PPSC has conveyed to the Commission regarding destruction of record pertaining to PSCSCCE Mains Examination 2015 whereas the appellant has raised the issue that record was destroyed while his appeal was pending. Accordingly, The PPSC was directed to provide the following before the next date of hearing:-

- (i) the copy of rules/instructions regarding destruction of record of the exams conducted by PPSC;
- (ii) actual date of destruction of record pertaining to PSCSCCE Mains Examination 2015 of all the seven papers;
- (iii) the certificate by the concerned authority that the RTI application of the appellant was not pending on the date of destruction of record.

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13. In addition the directions were also issued to the PPSC to ensure that the record pertaining to PSCSCCE Mains Examination 2018 should not be destroyed till the conclusion of this case and the case was adjourned to 19.8.2020 and according to the request of the respondents, the case was further adjourned to 28.9.2020.

14. During the hearing on 28.9.2020, the representative of the respondents stated that the information has already been supplied vide No. 1764 dated 22.9.2020 addressed to the Commission with a copy to the appellant, copy of which was taken on record. The relevant portion of the information supplied is reproduced below:-

“5(a) Subject wise merit lists are not generated. The staff of PPSC feeds the marks into computer system subject wise on fictitious Roll Nos. and in the end merit list is generated (on original Roll No.) on the basis of aggregate marks only. Hence, no separate subject wise merit lists are maintained.

5(b) Barring the sensitive instructions related to the evaluation process, rest of the instructions i.e. Sr. No. 1,2,4,5,6,7,8,9,10,17,18,19 has been provided.

5(c) (i) The copy of rules regarding destruction of record is enclosed.

5(c)(ii) The record was destroyed based on the official orders of 28.1.2019. The orders for the destruction of the record had been passed much before the receipt of the RTI application on 25.4.2019.

6. It would be ensured that the record pertaining to PSCSCCE Mains Examination 2018 will not be destroyed till the conclusion of this case.

7. Information about top 5 scores can't be provided being third party information. The matter of written evaluation is very subjective, as also quoted in Supreme Court of India in Central Board of Secondary Education & anr. Vs Aditya Bandopadhyay & ors. In Civil Appeal No. 6454 of 2011 (arising out of SLP © No. 7526/2009) on 9.8.2011, PPSC has observed that in the competitive exam, the left out candidates have a tendency to go to the Courts on one pretext or the other. Hence providing third party information would compromise the interests of other candidates.”

15. However, the appellant submitted that he has not received the same. Furthermore, the appellant stated that the copy of the same may be sent to him to file the rejoinder. Accordingly, the case was adjourned to file the rejoinder, if any, by the appellant to the respondent-Public Information Officer with a copy to the Commission before the next date of hearing. A copy of the reply submitted by the respondent-Public Information Officer was sent with the order and the case was adjourned to 28.10.2020.

16. The PPSC has sent the submissions, which are reproduced below:-

“This is to inform you that Former Chairman approved to destroy the record of

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PSCSCC Mains Exam 2015 on 28.1.2019 but due to administrative reasons and busy schedule of Examinations conducted during the year 2019, record of Answer Sheets of PSCSCC Mains Exam 2015 were actually destroyed on 13.8.2019. So when the Commission received RTI application on 25.4.2019, the Commission in the interest of the Candidate provided him his answer sheets even though the order had been passed to destroy the said record.

By the time the candidate went in appeal to the State Information commission to get third party information, the whole record had physically been destroyed.

Since, Commission had disposed off his applications asking for third party information, therefore, the record was physically destroyed as no application was pending before the Commission.

Therefore, the Commission had in fact, acted in the interest of the candidate to provide him with his answer sheets that had not been physically destroyed due to the administrative delays despite the orders being passed for the same even when his application was received."

During the hearing the appellant sent the rejoinder which has been diarized in the Commission vide No. 14880 dated 26.10.2020 and also through email, which is taken on record.

17. After going through the facts of the case, hearing the parties concerned, verbal/written submissions of the parties and going through the judicial pronouncements the following decision is taken:-

(i) With regard to the information pertaining to Point No. 1 and 4 of the RTI application regarding the instructions/directions issued by the PPSC to examiners for marking/scoring the answer sheets of examinees of PSCSCCE Mains Examination 2018 and 2015, the copy of instructions barring the sensitive instructions related to the evaluation process of PSCSCCE Mains Examination has been sent to the appellant by PPSC, Patiala. But as per the submissions of the appellant, the copy so sent is neither dated, signed nor certified and contains no information as to which examination year the instructions relate to, thus nullifying its utility as an official

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document and the appellant requested to remove the deficiency and resend the same. Accordingly, the respondent-Public Information Officer is directed to resend the same as requested by the appellant under intimation to the Commission within four weeks from the issue of this order.

(ii) Regarding Point No. 2 of the RTI application the respondents have demanded the fee amounting to Rs.660/- from the appellant but he has not deposited the said fees. Since, the respondents have raised the demand on 5.9.2019 vide No. 2847 whereas the respondent authority has to demand the fees within 30 days from the date of RTI application i.e. 25.4.2019 as per the provisions of the RTI Act, 2005. Therefore, the respondent-Public Information Officer is directed to supply the same free of cost to the appellant within 30 days from the issue of this order. However, a liberty is granted to the appellant to approach the Commission if he does not receive the same within 45 days from the issue of this order.

(iii) With regard to Point No. 3 and 6 of the RTI application the contention of the respondent authority PPSC, Patiala is accepted that the subject wise merit lists are not generated as enumerated in para 14 above and hence information about the subject wise toppers sought by the appellant in his RTI application dated 25.4.2019 cannot be made available by PPSC, Patiala.

It is pertinent to mention the instructions issued by the Ministry of Personnel, Public Grievances & pension, Department of Personnel & Training dated 16.9.2011 in which it has mentioned that “.....the Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to an application.”

However, regarding the destruction of the record pertaining to PSCSCCE Mains Examination 2015, the reply of the PPSC Patiala sent to the Commission is that the Former Chairman approved to destroy the record of PSCSCC Mains Exam 2015 on 28.1.2019 when no RTI application was pending but due to administrative reasons and busy schedule of Examinations conducted during the year 2019, record of Answer Sheets of PSCSCC Mains Exam 2015 were actually destroyed on 13.8.2019.

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The policy regarding the weeding out of written answer sheets of the candidates as has been provided by the respondent-Public Information Officer and the relevant portion of the same is reproduced below:-

“...After due deliberations, the Commission decided that as per instructions of the Punjab Govt. the written answer sheets of the candidates to be kept in record for two years from the date of declaration of final result of concerned exam declared by the PPSC or in case of litigation up to one year after the final disposal of the case.....”

According to the policy of destruction of record as mentioned above, the respondent department should have retained the record in view of the RTI application filed by the appellant as it had not attained finality by that time. Since, the respondents have physically destroyed the concerned record, no directions can be passed in this regard. However, it is recommended that the PPSC would take necessary steps to prevent such recurrence in future.

As the specific reply has been filed by the respondent-Public Information Officer that the answer sheets of top 5 scores in all the seven papers of PSCSCCE Mains Examination 2018 and 2015 is not maintained in the office. Therefore, no directions can be passed in accordance with the provisions of the RTI Act, 2005 and judicial pronouncements in this regard. But it is recommended to the respondent organization that the policy of destruction of record especially related to the exams may be uploaded on the website being in public interest.

(iv) With regard to the information related to Point no. 5 of the RTI application i.e. answer sheets of Roll No. 9204 of PSCSCCE Mains Examination 2015, all the seven papers have already been provided to the appellant.

18. In view of the above, the Commission observes that no further action is required in this case. Hence, the case is disposed of and closed.

Dated: 4.12.2020

(Suresh Arora)
Chief Information Commissioner,
Punjab.

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CC

Ms Jasleen Kaur Sandhu, PCS,

(Registered)

Secretary,

Punjab Public Service Commission,

Patiala.