

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 1510/2007, WP (C) No. 5999/2007
WP (C) No. 8626/2007, WP (C) No. 9175/2007
and WP (C) No. 9288/2007

Reserved on : March 24, 2008

Pronounced on : May 02, 2008

1. WP (C) No. 1510/2007

Ct. Barot Jignesh Kumar
through :

. . . Petitioner
Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.
through :

. . . Respondents
Ms. Barkha Babbar, Advocate

2. WP (C) No. 5999/2007

Ct. B.D. Behera
through :

. . . Petitioner
Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.
through :

. . . Respondents
Ms. Sonia Mathur with
Mr. Pankaj Prasad, Advocates

3. WP (C) No. 8626/2007

Ct/GD Rajbir Singh
through :

. . . Petitioner
Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.
through :

. . . Respondents
Ms. Saroj Bidawat, Advocate

4. WP (C) No. 9175/2007

Ct/GD Sanjay Kumar Rai
through :

. . . Petitioner
Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.
through :

. . . Respondents
Ms. Sonia Mathur with

5. WP (C) No. 9288/2007

Ct/GD Raj Kumar

through :

. . . Petitioner

Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.

through :

. . . Respondents

Ms. Jyoti Singh with

Mr. Ankur Chhibber, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The issue involved in all these writ petitions is common. These petitioners who are working as Constable/GD in Central Reserve Police Force (CRPF) are aspiring to seek further progression in their career and want to achieve the rank of Sub-Inspector/GD through the process of Limited Departmental Competitive Examination (for short, 'LDSE'). Though they all appeared in the said competitive examination conducted by the CRPF in the year 2006-07 and qualified the said examination as well, they have still been deprived of their appointment to the post of Sub-Inspector/GD. The reason is that they have not been able to get minimum qualifying marks in the interview/viva voce. They had made representation for their appointment as well, which has been turned down by the respondents. This outlining of the issue itself makes it manifest that all these petitioners are similarly situated. Their claim for

appointment to the post of Sub-Inspector/GD is also founded on identical legal submissions. It is for this reason all these cases were heard together and we propose to decide the same by this common judgment. However, to ensure that the judgment is not unnecessarily burdened, purpose would be served in taking note of factual aspects from one writ petition alone. We, accordingly, take up WP (C) No. 1510/2007.

2. WP (C) No. 1510/2007

Constable Barot Jignesh Kumar, who is the petitioner in this petition, is holding PG qualification inasmuch as he has done MA in Hindi. He was recruited as Constable/GD in CRPF on 10.10.1998. Next promotion is to the post of Sub-Inspector/GD, which is governed by the relevant recruitment rules. These recruitment rules are known as Central Reserve Police Force Group 'B', 'C', & 'D' (General Duty/Tech/Tradesmen Cadre (Non-Gazetted) (male/female) and Group 'D' (Enrolled Followers) (male/female) Recruitment Rules, 2001 (hereinafter referred to as the 'Rules'). Rule 7 of the said Rules prescribes that the persons in feeder rank shall be detailed to undergo qualifying courses before completing service eligibility period for promotion to higher rank in order of their seniority. The appointment to the post of Sub-Inspector/GD, as per the schedule attached to these Rules, prescribes the following modes :-

- (a) 33% by direct recruitment through SSC;
- (b) 50% by promotion; and

- (c) 17% by Limited Departmental Competitive Examination, failing which by promotion.

It is obvious that we are concerned with the last mentioned mode of filling the posts, namely, through LDCE. It is not in dispute that all these petitioners fulfil eligibility condition for seeking consideration of their candidature under the LDCE quota.

3. The respondents have also issued Standing Order No. 7/2000 dated 6.12.2000, which states the detailed procedure and modalities for conducting the LDCE for the post of Sub-Inspector/GD. It *inter alia* stipulates that LDCE should be held every year for the said post under this scheme. Those constables and head constables who have completed minimum four years of service, including training period, on the last date of submission of the application and are up to the age of 32 years with graduation as educational qualification shall be eligible to take the test. Other eligibility conditions relating to physical standard, medical category, number of chances, etc. are also mentioned therein, with which we are not concerned in this petition. Those who qualified physical efficiency test are permitted to appear in the written test, which comprises of three papers, namely – (i) General Intelligence and Reasoning; (ii) General Knowledge and Awareness; and (iii) Communication and Writing Ability. All these three papers are of 200 marks each. 45% qualifying marks are prescribed in each paper and 50% in aggregate. For SC/ST candidates, the requirement is 40% in each subject and 45% in aggregate. Those who qualified the written test are required to

undertake personality test and interview. This is taken in three parameters, namely, Psychological Test, Command and Group Task and Lecture and Group Discussion. All these three tests are assigned 100 marks each. Those who qualify personality test reach the next state, i.e. the medical test and are to be medically examined as per the laid down standards in the Force. Thereafter, is the last stage of interview for which 100 marks are assigned. Interviews are to be conducted by the Board comprising of one IGP, DIG and two Addl. DIG./Commandants and the Psychologist. In order to succeed one has to get same qualifying marks which are prescribed for the written test, namely, 50% for General Category candidates and 45% for SC/ST candidates.

4. The respondent No.1 issued Circular dated 22.3.2006 for conducting the LDCE 2006-07 for appointment to 90 posts of Sub-Inspector/GD. 45 posts were meant for General Category and posts reserved for SC/ST/OBC categories were 14/7/24 respectively. Applications were invited from the eligible candidates in CRPF. The petitioner applied for consideration of his case for appointment to the said post through LDCE. He was short-listed and, thus, undertook the written test. He successfully completed the stages up to the interview, namely, written test, personality test and medical test. He also got the qualifying marks in these tests at every stage. Thereafter he appeared in the interview which was conducted on 26.6.2006. However, on the basis of the said selection process, when the list of successful candidates was issued in July 2006, name of the petitioner

did not find mention therein. He received the Result Card as per which he could not secure qualifying marks in the interview because of which reason he was declared '*Failed*' in the interview, though he had passed all other tests in the previous stages.

5. WP (C) No. 5997/2007, WP (C) No. 8626/2007, WP (C) No. 9175/2007 and WP (C) No. 9288/2007

Same is the position of all the petitioners. Some of these petitioners belong to reserved category, for whom the qualifying marks in the interview prescribed were 40%, whereas for General candidates it is 45%. Marks obtained by all the petitioners in the interview are as under :-

Name	Petitioner in	Category	Marks in Interview	Total Marks obtained
Barot Jignesh Kumar	WP 1510/07	OBC	40	685
Bidyadhar Behera	WP 5999/07	OBC	35	539
Rajbir Singh	WP 8626/07	SC	35	589
Sanjay Kumar Rai	WP 9175/07	GEN	40	730
Raj Kumar	WP 9288/07	SC	35	568

6. As per the Circular dated 31.8.2006, the candidates who are declared successful and appointed to the post of Sub-Inspector/GD through LDCE 2006-07 are 51 in number, whereas total vacancies were 90. Thus, all the vacancies could not be filled due to less number of persons succeeding in the LDCE process. The petitioner made representation against his non-selection and vide communication dated 12.10.2006 he was informed that since he has secured only 40% marks as against 45% minimum marks prescribed for the interview, he was shown to have failed in the said interview and, therefore, was not entitled to get appointment to the post of Sub-

Inspector/GD in terms of the Standing Order No. 7/2000. Similar communications were received by other petitioners challenging the said communication dated 12.10.2006. The petitioners have, thus, filed the instant petitions. The basic challenge is to the prescription of minimum marks in the interview.

7. The case of the petitioners, in nutshell, is that for the post of Sub-Inspector/GD when all these petitioners have successfully passed every test, their appointment to the said post cannot be blocked by prescribing minimum marks which a candidate has to obtain in the interview. The challenge to this provision is predicated on the following :-

- (a) there are no such marks prescribed for filling up of the posts by way of direct recruitment/open selection for which 50% posts are earmarked;
- (b) the Government has issued an amendment in the scheme for recruitment of Sub-Inspector/GD in the Central Police Organisation (CPO) on 19.4.2006 vide circular of that date and as per this amendment no minimum marks are to be prescribed as qualifying standard in the interview;
- (c) the Ministry of Home Affairs vide UO dated 17.8.2005 directed conducting of combined LDCE for all the central para-military forces to facilitate selection of suitable candidates for appointment to the post of Assistant Commandant in the forces. Procedure set out in the scheme/modalities for selection

clearly stipulates that there are no minimum qualifying marks in the interview, but the attendance is mandatory.

It is, thus, argued that keeping in view the aforesaid thought process of the Government relating to all central para-military forces and CPO, the CRPF should also have amended its procedure by deleting the condition of prescription of minimum qualifying marks to be obtained by a candidate in the interview. By not doing so, the CRPF has allowed disparity to continue, which is discriminatory in nature and is violative of Articles 14 & 16 of the Constitution of India. It is also submitted that only the interview marks cannot and should not be the sole criteria for rejecting the candidate who has otherwise fared exceedingly well in all the stages prior to interview, for selection through LDCE, since awarding the marks in the interview solely depends upon the whims and fancies of the members constituting the Interview Board, as it is the settled position of law laid down by various courts. It is also apprehended and believed that non-filling of the 39 posts out of 90 vacancies available for the post of Sub-Inspector/GD through LDCE for the year 2006-07 is indicative of the intentions of the appropriate authorities for accommodating/ensuring promotions for the subordinates to the post of Sub-Inspector/GD from the feeder posts, as the unfilled vacancies cannot be carried forward in accordance with the Revised Recruitment Rules, 2001. Also, non-utilisation of available vacancies for appointment through LDCE not only adversely affects the morale of the subordinates, as it gives a tool in the hands of the authorities

to effect manipulations but also curbs the initiative of the young, talented, hardworking, sincere and educated subordinates.

8. Mr. Bareja, learned counsel appearing for the petitioners, while making the aforesaid submissions, also took support from the judgments of the Supreme Court in the following cases :-

- a) *Praveen Singh v. State of Punjab & Ors.*
(2000) 8 SCC 633
- b) *Harigovind Yadav v. Rewa Sidhi Gramin Bank & Ors.*
(2006) 6 SCC 145

9. On behalf of the respondents, matter was argued by Ms. Barkha Babbar, Ms. Sonia Mathur and Mr. Pankaj Prasad. They defended the aforesaid rule in the promotion policy as per which minimum marks are to be secured by a candidate in the interview. It was submitted that prescription of obtaining such minimum marks in the interview is upheld by the Supreme Court in *K.H. Siraj v. High Court of Kerala & Ors.*, (2006) 6 SCC 395; *Jasvinder Singh & Ors. v. State of J&K & Ors.*, (2003) 2 SCC 132; and *Chandra Prakash Tiwari & Ors v. Shakuntala Shukla & Ors.*, (2002) 6 SCC 127 and, thus, there was no question of any discrimination. It was also argued that the petitioners participated in the selection process, including interview, knowing fully well the aforesaid rule position and, therefore, they were estopped from challenging the same after they were unsuccessful in their selection on the principle of estoppel. Relying upon the judgment of the Apex Court in *Vijay Syal & Anr. v. State of Punjab & Ors.*, (2003) 9 SCC 401, it was argued that where the marks secured in the interview and written test were not grossly

disproportionate, the case of arbitrariness would not be made out and the Court would not interfere with the assessment made by the Interview Committee in the absence of any *mala fides* or extraneous considerations. Fervent plea was made that the scope of judicial review in such matters was very limited and this Court would not sit as appellate authority to decide as to whether the Selection Committee, which interviewed the petitioners, made right assessment about these candidates or not as that was the job of the Selection Committee and not the Court, as held in *Vijay Syal* (supra); *State of Punjab v. Ajaib Singh*, (1995) 2 SCC 486; and *Kuldip Chand v. State of H.P. & Ors.*, (1997) 5 SCC 60.

10. We may say at the outset that there cannot be quarrel about the scope of judicial review, as projected by learned counsel for the respondents on the basis of judgments of the Supreme Court cited above. It is the Selection/Interviewing Committee which, after interviewing the candidates, awarded marks and this Court cannot substitute its own judgment for that of the Selection Committee. In fact, in a matter like this, no such question arises as the Court has no mechanism to award any marks and, therefore, to see whether the marks awarded by the Interviewing Committee were proper or not. The marks are awarded on the basis of interaction with the candidates and no such exercise is undertaken by the Court nor such an exercise can be done by the Court. The scope of judicial review is limited to finding the propriety of the decision making process and to ensure that there is no perversity in the exercise undertaken. The

question here is as to whether the petitioners, who had otherwise done well in the written examination, could be declared unsuccessful only because they could not secure minimum marks in the interview.

11. Before we deal with this issue, which is the central issue, it would be necessary to point out the marks obtained by some candidates who were successful :-

Name	Category	Marks in Interview	Total Marks obtained
Dilip Kumar Das	Gen	55	543
Ram Pravesh	SC	55	555
Mani Singh Kushwah	Gen	50	547

The aforesaid examples demonstrate that these candidates had secured much lesser marks than the petitioners herein (except the petitioner in WP 5999/2007), but still could get the promotion as the Interviewing Committee assigned them more than minimum marks required in the interview. We may hasten to add that it is possible that a candidate secures lesser marks in the written test but more marks in the interview and only on this basis it cannot be said that the marks assigned by the Interviewing Committee in the interview were not proper. However, we have highlighted the aforesaid fact from altogether different angle, namely, whether the rule in question, which prescribes that a candidate is to secure minimum marks in the interview, would be proper or not. It would also be noticed that all these candidates have secured exactly 5 marks less than the required marks. The petitioner who belongs to General Category has secured 40 marks and those who belong to the

Reserved Category have secured 35 marks as against 45 and 40 marks respectively.

12. The post in question to which the promotions are made is that of Sub-Inspector/GD. This is not a post where judging a candidate by viva voce (when the process of selection is LDCE) may be very important. Interestingly, all these candidates are departmental candidates as they are already in the service of CRPF. Viva voce may be more important for the candidate who are outsiders and seeking recruitment under the quota meant for direct recruits. However, strangely, in the recruitment rules no such marks are prescribed for filling up of the post by way of direct recruitment/open selection for which 50% posts are earmarked. Thus, for those candidates who are outsiders and appearing in the selection process and are strangers to the organization, the rule makers have not given much importance to the marks in the interview by not prescribing any such minimum marks to be obtained by them. In these circumstances, the rational for fixing the minimum marks for interview under LDCE is to be seen. However, in the counter affidavit no such rational is provided. It is not at all stated as to why such a departure was necessary for appointment through LDCE though it was not treated as essential for appointment by direct recruitment/open selection. The only answer given is that requirement for obtaining minimum qualifying marks in the interview is perfectly valid and not violative of Articles 14 and 16 of the Constitution of India. It is the prerogative of the employer to prescribe the method of selection in the recruitment rules and,

therefore, it is to be left to the Government to frame the rules making such a provision. However, when it is shown in the same rules that there is no such condition of obtaining minimum marks in the interview for the same post when it is filled by direct recruitment, but in the LDCE process such condition is prescribed, the list that was accepted was to give a rational for filling up of the same post on different yardsticks with two methods of recruitments. This assumes more importance when we notice that in the Central Police Organization (CPO), for recruitment to the same post, namely Sub-Inspector/GD, a specific amendment was made in the recruitment rules vide amendment dated 19.4.2006 whereby the condition of prescribing minimum marks in the interview was done away with. The nature of duties to be performed in CPOs by these Sub-Inspectors/GD would be almost the same as in the respondent organization, i.e. CRPF. If in spite of the said amendment carried out by the Government in the recruitment rules for the post of Sub-Inspector/GD in the CPOs, it was necessary for the respondents to justify retention of this rule in CRPF. No such justification is coming forthwith. Therefore, it is only in CRPF that such a provision is retained.

13. In *Jasvinder Singh* (supra) cited by the respondents, allocation of marks for viva voce in excess of 12.2% was held to be valid. That is not the issue before us. However, what is of importance for us is to note that the Supreme Court was of the view that allocation of marks as such should not be with an oblique intention or so arbitrary

as capable of being abused and misused in its exercise. However, in the present case, difficulty in the way of the petitioners is that they appeared in the interview with open eyes knowing the aforesaid rule position. It is only after they were declared unsuccessful that they approached this Court. In view thereof, we do not intend to interfere with the selection process, more particularly when no *mala fides* are imputed on the members of the Selection Committee. At the same time, we are of the view that whether it is necessary to retain the provision of obtaining minimum marks in the interview or not needs reconsideration by the authorities, particularly when there is no such requirement for direct recruitment nor any such requirement for recruitment to this post in the CPOs even under LDCE Scheme.

14. The position which emerges is this: On the one hand, we find that *prima facie* there is no justification for retaining such a provision and on the other hand, we are not interfering with the selection process only because of the reason that the petitioners participated in the selection process without any demur and/or protest. In these circumstances, while we dispose of these writ petitions, we are of the view that we can balance the equities by giving the following directions :-

- (a) direction is issued to the respondents to reconsider whether the aforesaid provision of obtaining minimum marks in the interview is to be retained or not and decision thereon should

be taken within a period of four months from the date of receipt of copy of this judgment; and

- (b) if it is decided to dispense with this provision, the cases of the petitioners for promotion to the rank of Sub-Inspector/GD shall be examined again on the basis of the written test and interview marks obtained by them in the LDCE 2006-07. We are giving this direction because of the reason that though there were 90 vacancies for that year, only 51 candidates were appointed to the post of Sub-Inspector/GD and, thus, many posts remained unfilled for that year. Had there been no such provision of getting minimum marks in the interview, the petitioners would have made their way through.

15. In the peculiar facts of this case, we do not pass any orders relating to costs and direct that the parties shall bear their respective costs.

(A.K. SIKRI)
JUDGE

(J.M. MALIK)
JUDGE

May 02, 2008
nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 5999/2007

Reserved on : March 24, 2008

Pronounced on : May 02, 2008

Ct. B.D. Behera

through :

. . . Petitioner

Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.

through :

. . . Respondents

Ms. Sonia Mathur with

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CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
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A.K. SIKRI, J.

For orders, see WP (C) No. 1510/2007.

(A.K. SIKRI)
JUDGE

(J.M. MALIK)
JUDGE

May 02, 2008

nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 8626/2007

Reserved on : March 24, 2008

Pronounced on : May 02, 2008

Ct/GD Rajbir Singh

through :

. . . Petitioner

Mr. N.L. Bareja, Advocate

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(A.K. SIKRI)
JUDGE

(J.M. MALIK)
JUDGE

May 02, 2008

nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 9175/2007

Reserved on : March 24, 2008

Pronounced on : May 02, 2008

Ct/GD Sanjay Kumar Rai
through :

. . . Petitioner
Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.
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Ms. Sonia Mathur with
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A.K. SIKRI, J.

For orders, see WP (C) No. 1510/2007.

**(A.K. SIKRI)
JUDGE**

**(J.M. MALIK)
JUDGE**

**May 02, 2008
nsk**

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

WP (C) No. 9288/2007

Reserved on : March 24, 2008

Pronounced on : May 02, 2008

Ct/GD Raj Kumar

through :

. . . Petitioner

Mr. N.L. Bareja, Advocate

VERSUS

Union of India & Ors.

through :

. . . Respondents

Ms. Jyoti Singh with

Mr. Ankur Chhibber, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

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A.K. SIKRI, J.

For orders, see WP (C) No. 1510/2007.

**(A.K. SIKRI)
JUDGE**

**(J.M. MALIK)
JUDGE**

May 02, 2008

nsk