

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

+ **WP(C) No.7313/2011**

% **Date of Decision: 03.10.2011**

Constable Maha Singh Petitioner

Through Mr.Jasbir Singh Malik, Advocate.

Versus

Delhi Police & Anr. Respondents

Through Ms.Zubeda Begum, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, a constable of the Delhi Police has challenged the order dated 19th July, 2011 passed by the Central Administrative Tribunal, Principal Bench in the original application, bearing OA No.2542/2011 titled as 'Constable Maha Singh v. Delhi Police through Commissioner of Police & Anr.' dismissing his original application wherein he sought the relief that his original answer sheet for the examination of Head Constable be re-examined under his personal supervision or under the supervision of higher ups of the department.

2. The petitioner filed the original application under Section 19 of the Administrative Tribunals Act, 1985 contending, inter-alia, that he had been appointed as a constable in Delhi Police and that he had been serving the Delhi Police with honesty and diligence. On 16th May, 2010 an 'A' List examination was conducted for the post of Head Constable for which the respondent had also appeared as roll No.705645.

3. The examination was objective type and the petitioner was given a booklet series 'A' which contained 110 questions. According to the petitioner, he had answered 102 questions and that his answers were correct.

4. The allegation of the petitioner is that despite 102 correct answers given by him he had not been selected on account of irregularities committed in the examination during the evaluation of the results.

5. The petitioner's assertion is that on 19th June, 2010 under the provisions of the Right to Information Act, 2005 he had submitted an application seeking the furnishing of the photocopy of his answer sheet; information as to the marks allotted to the petitioner in the written examination and information as to marks obtained by him in the character roll. Pursuant to his application under the Right to Information Act, 2005, he was furnished with an unsatisfactory and

incomplete reply and the copy of his answer sheet was also not supplied to him. However, later on the copy of the answer sheet was supplied to the petitioner.

6. In the original application filed before the Tribunal, the petitioner took a categorical stand that the answer sheet, the copy of which was supplied to him, did not belong to him. The petitioner had also contended that he is of the firm view that the marks made on the answer sheet had either been changed or was different from the marks which had been made by him. The petitioner, therefore, approached the Police Commissioner seeking the re-examination of his answer sheet under his direct supervision or through any other examination agency so that the irregularities committed in the examination of the answer books and the declaration of result of the 2010 examination could be brought to light. The allegations made by the petitioner in para 4.4 of his original application are as under:-

“4.4. That on 22.07.2010, in response to the aforesaid queries, the applicant was furnished the interim reply that too absolutely unsatisfactory and incomplete and the copy of the answer sheet was also not provided. However, after gap of few days, answer sheet was provided to the applicant and he came to know that answer book actually did not belong to him. From the examination of the answer sheet, the applicant is of the firm view that the marks on the answer sheet had either been changed or were different from the marks with the applicant had put. Therefore, the applicant was greatly shocked upon noticing this discrepancies in the copy of answer book supplied to him. Then the applicant approached the Police Commissioner (Joint Delhi) by means of a letter seeking re-examination of

his answer book under his direct supervision or through any other examination agency so that irregularities committed in the examination of the answer books to light. The applicant has also made oral representation in this regard time and again to various authorities but with no effect. Thus, having waited sufficiently, the applicant is approaching this Hon'ble Tribunal. True copy of the reply dated 22.07.2010 under RTI of the Respondent along with the photocopy of answer sheet are annexed herewith and marked as **Annexure-4 & A-5** respectively.”

7. The representation of the petitioner was declined on 19th February, 2011. The petitioner, thereafter, approached the Commissioner of Police and subsequently the Joint Commissioner, Delhi Police for the re-examination of his answer sheet, but since no action was taken the petitioner preferred to file an original application before the Tribunal contending, inter-alia, that he had done fairly well, as according to him 102 questions answered by him were correct and, therefore, he should have been declared qualified. The petitioner also contended that he had not been allowed to see his original answer sheet and he was merely furnished with a photocopy of the same, that too after a gap of few days and therefore there was a strong possibility for tampering with the answer sheet. He alleged that on account of illegalities and irregularities committed in the evaluation of the answer book he had been awarded less marks which did not commensurate with his performance.

8. The petitioner categorically contended that his answer book reflects certain answers which in fact had not actually been put by him. The grievance of the petitioner was that in the garb of supplying a copy of the answer book either he has been given a copy of some other answer book or that his own answer book has been tampered with to show the marks being in sync with the marks actually awarded to him as per the declaration of the results.

9. The Tribunal, after considering the allegations of the petitioner, held that the pleadings made by him in the original application appears to be contradictory, as on the one hand the petitioner has contended that the answer book, copy of which was supplied to him, did not belong to him and at the same time he has also alleged that the marks on the answer sheet had either been changed or were different from the marks which the applicant had put. The Tribunal also noticed that the allegation that the answers marked by him by darkening the circles were not the answers marked by him is not correct as he had admitted before the respondents that the options were marked by the petitioner by darkening the circles by pen and not by pencil. The Tribunal referred to the order passed by the respondents, the operative part of which is as under:

“ His application/representation has been examined in this headquarter. He was also heard in O.R. by DCP/ Establishment. When inquired he confirmed that blank circle in answers sheet is encircled by pen and not by

pencil. Moreover, his own signature exist on his answer sheet are also verified by him. All the examination of promotion list 'A' as well as the recruitment are conducted in a fair and transparent manner and utmost secrecy is maintained in evaluating the OMR answer sheets. The allegations levelled by Constable Maha Singh, No.1271/W are baseless."

The respondents had also pointed out that the petitioner has verified his signatures on the answer sheet and that the answer sheets were evaluated by the process of OMR (Optical Marks Reader) and that the allegations made by him has not been substantiated in any manner and in any case there is no provision for re-evaluation of his answer book in his presence. According to the respondents, the OMR technology uses a scanning device that shines a beam of light upon an OMR form which is nothing but a blank form and a definition of entry zones. The OMR detects marks on the OMR form and evaluates them accordingly. OMR thus automates evaluation of answer sheets and ensures quick declaration of results for any type of examination. However, to work correctly during evaluation of answer sheets, OMR requires that the question paper must contain only objective type questions.

10. The Tribunal held that once the petitioner had admitted his signatures on the answer sheet, then no scope for any other allegation remains and also that it could not be inferred logically that the answer sheet did not belong to him. It was also held that the petitioner cannot

be the judge of his own cause to state that he had answered 102 questions correctly out of the total number of 110 that were put to him.

11. The petitioner has impugned the order of the Tribunal raising similar grounds which were raised in his original application contending, inter-alia, that the original answer book was not produced before him and that the Tribunal ought to have called for the original answer sheet for its evaluation. The petitioner contended that his original application should not have been dismissed on the admission of signatures that too on the photocopy. The petitioner re-emphasised that he had done well and that he had answered 102 questions correctly out of the 110 questions put to him in the booklet 'A' for the examination. The plea of the petitioner is also that he has been awarded a less mark than what he deserves and that the photocopy of his answer book shows marks on circles which had not been put by him.

12. The pleas and contentions of the petitioner are refuted by the learned counsel for the respondents, Ms. Zubeda Begum, contending inter-alia that the petitioner is not entitled for re-evaluation of his answer book in his presence as there is no provision for re-evaluation of the answer book. In any case, the petitioner cannot contend that he had answered 102 questions correctly out of the 110 questions put to him, hence consequently he should have been awarded marks

correspondingly. The learned counsel, while relying on H.P.Public Service Commission v. Mukesh Thakur & Anr, MANU/SC/0401/2010, contended that in the absence of any provision under the statute or statutory rules/regulation, this Court should not direct re-evaluation of the answer book. The learned counsel also relied on The Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das & Ors, AIR 2007 SC 3098; Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkurmar Sheth & Ors., AIR 1984 SC 1543 and Central Board of Secondary Education v. Ms. Manisha Surana & Anr. AIR 1998 Delhi 406 to contend that the Court should not normally direct the production of answer scripts for the inspection of the petitioner and that it is in public interest that the results of public examinations when published should have some finality attached to them. If any inspection or verification in the presence of the candidates and re-evaluation is to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

13. This Court has heard the learned counsel for the parties in detail. The petitioner himself has filed a photocopy of his answer book where the answers have been given by choosing one of the options by

blackening one of the circles out of the four circles denoting the options. This has not been disputed by the learned counsel for the petitioner and could not be disputed that he had darkened the circles by using a pen and not a pencil. If the petitioner had answered by blackening the circles by pen, the allegation that his answers have been changed or his answers are not the same as had been done or marked by him cannot be accepted. The learned counsel for the petitioner is unable to substantiate his allegation that the answers given by the petitioner had been changed. No malafide has been alleged by the petitioner against any person who would change the answers given by the petitioner by darkening one of the circles for answers by a pen. From the photocopy of the answer book bearing No.203591 booklet Series 'A', it is apparent that every answer was marked by darkening only one of the circles and perusal of the other circles do not show in any manner that any tampering could have been done. The learned counsel for the petitioner is unable to explain as to how a circle darkened with pen could be completely erased without leaving any mark or fudging.

14. This also cannot be disputed that the objective answer book of booklet Series 'A' was evaluated by using the process of OMR (Optical Marks Reader). In the circumstances, the learned counsel for the petitioner is even unable to explain as to how the answer book of the petitioner could have been manipulated and the answers not evaluated

correctly. The photocopy of the answer book produced by the petitioner bears the signatures of the petitioner which was admitted by him before the respondents. Despite the queries raised by this Court, the learned counsel for the applicant has not been able to deny categorically that the answer book does not bear the signatures of the applicant. In the circumstances, it is inevitable to infer that the photocopy of the answer book which was provided to the petitioner belongs to him and that there was no tampering with it.

15. There is no provision for re-evaluation of the answer book in the presence of the petitioner or even in presence of other authorities as has been contended by the petitioner. In LPA No.595/2010 decided on 25th August, 2010 a Division Bench of this Court had declined the request for re-evaluation in absence of any provision under the Statute or statutory rules and regulation by relying on H.P.Public Service Commission v. Mukesh Thakur & Anr, MANU/SC/0401/2010; Pramod Kumar Srivastava v. Chairman, B.P.S.C.Patna, AIR 2004 SC 4116 and Maharashtra State Board of Secondary and Higher Secondary Education & Anr.v. Paritosh Bhupeshkurmar Sheth & Ors., AIR 1984 SC 1543. In any case, an answer book being evaluated by the process of OMR, even on re-evaluation of the answer book, the result would be the same. The petitioner has not been able to establish that his answer

book had been tampered with or that his answers had been changed or modified.

16. The learned counsel for the petitioner has also not been able to give any satisfactory rationale for the correctness of the self assessment allegedly done by the petitioner stating that out of the 110 questions put to him, 102 of his answers were correct. Except making a bald allegation that 102 of his answers were correct, no basis has been disclosed by the petitioner to substantiate the fact that he had answered 102 questions out of the 110 questions correctly. The plea of the petitioner is based on his own conjectures which could not be the basis for obtaining the relief as has been prayed by him. In the circumstances, the petitioner is not entitled for re-evaluation of his original answer sheet under his personal supervision or under the supervision of higher ups of the department as has been claimed by him on the allegations that his answer book has not been evaluated correctly.

17. In the totality of facts and circumstances, there is no illegality or irregularity or any such perversity in the order of the Tribunal which will require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is

without any merit. The writ petition is, therefore, dismissed. Parties are, however, left to bear their own cost.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

October 03, 2011
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