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*** IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6211/2015**

Date of judgment: 13th August, 2015

KULDEEP KUMAR AND ORS. Petitioner
Through : Mr. Harpreet Singh, Advocate.

Versus

COMMISSIONER OF POLICE AND ANR. Respondents
Through : Mr. Raman Duggal, Standing
Counsel with Ms. Aayushi Gupta
and Mr. Arun Panwar,
Advocates for respondent Nos.
1& 2.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

G.S.SISTANI, J.

1. Aggrieved by the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi dated 19.05.2015 in Original Application No. 4269/2014 with 4475/2014, the petitioners have filed the present writ petition under Article 226 of the Constitution of India for setting aside the aforesaid order and for issuing necessary directions to the respondents.
2. The brief facts of the case are that the applications were invited by the respondents for the recruitment to the post of Temporary Constable (Executive) (Male) 2013. As per the notification the marking scheme for each subject was to be as follows:

General Knowledge/Current Affairs	: 50 marks
Numerical Ability	: 15 marks
Reasoning	: 35 marks

The grievance of the petitioners is that the marking scheme of the question paper was found to be different from what was stated in the notification. Resultantly, the petitioners were not able to attempt the question paper in the manner they had expected.

3. Mr. Harpreet Singh, Counsel for the petitioners submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and against the principles of natural justice. It is further contended that the Tribunal has failed to appreciate the arguments put forth by the petitioners, in the light of the above submission the order passed by the Tribunal is bad in law.
4. It is further submitted by Mr. Harpreet Singh, counsel for the petitioner that the respondents are under a legal obligation to inform the candidates appearing in the test if there is any alteration in the marking scheme of the examination. However, in the absence of any such intimation the result published is liable to be set-aside.
5. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court *N.T. Devin Katti and others. Vs. Karnataka Public Service Commission and others*. reported as (1990) 3 SCC 157,
6. On the contrary, Mr. Raman Duggal referred to the reply filed before the Tribunal where it has been stated that while the Rules prescribed the ratio of 50:15:35 marks to be followed for the three categories, it had nowhere been mentioned in the advertisement as to the number of questions which will be put under the respective categories, and, therefore, the respondents have not deviated from the total marks allocated to a specific subject, and to harm and injustice has been caused to any of the applicants, who had appeared in the said written examination. In their counter reply, they had declared that the

respondents are intent on evaluating all the Answer Sheets/OMRs of all candidates by adopting a method of scaling, by allocating marks to each subjects/topics as per the advertisement, as well as the Standing Orders, and had submitted that the evaluation of all Answer Sheets will be conducted in the following manner giving the proportionality or ratio prescribed for each subject:-

Sl. No.	Subject	Actual Questions given	Total marks	Method of Scaling	Total marks after method of scaling
1.	GK	66	50	$50/66=0.75$ each question	50
2.	Reasoning	20	35	$35/20= 1.75$ for each question	35
3.	Numerical ability	14	15	$15/14= 1.0714285$ for each question	15
	Total	100	100	-	100

7. Further, Mr. Raman Duggal, learned counsel appearing for the respondents denied the allegation of any bias or discrimination in applying the scaling method in the present examination of 2013 and justified the application of scaling method uniformly to all the candidates to undo the effect of 'subject variability'.
8. The counsel for the respondents clarifies that the adoption of such norms of scaling would cause no harm to the appearing candidates and such scaling of marks will have a homogenous effect on all the candidates. The counsel further submits that after applying the scaling no candidate will be able to take advantage of, or be at a disadvantage

by the actual number of questions of a subject asked in the question paper.

9. We have heard the learned counsel for the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal dated 19.05.2015. It is the case of the petitioners that the respondents have failed to follow the scheme of the examination and due to change in the scheme of the examination, the selection process stood vitiated. The short point which comes up for consideration before this Court is with respect to the sustainability of exam conducted on 16.11.2014 for recruitment for the post of Temporary Constable(Executive) Male in the Delhi Police-2013. It would be useful to reproduce para 15 of the judgment of the Central Administrative Tribunal, which read as under:

“15. However, as we have highlighted while reproducing the prayer portion as made out by the applicants in their OAs, the alternative prayer of the applicants themselves in Para-8(ii) of their OAs is that in the alternative, instead of cancellation of the written examination in its entirety, the respondents should adopt the marking scheme as notified by themselves earlier. Now that the respondents are willing to do so, we do not find the proposed scaling method to be far away from the alternative prayer of the applicants, as made by them in Para-8(ii) of their OAs. By adopting the scaling method, there will be no prejudice caused to anybody, as even though the respondents have submitted that against the applicant’s claim of 67 questions being from the General Knowledge, there were only 66 questions, and as against the claim of 11 questions relating to numerical ability, there were 14 questions, and as against the claim of 22 questions in respect of reasoning, there were actually only 20 questions, which were re-arranged differently in the question paper series ‘A’, ‘B’, ‘C’ and ‘D’, we do not

find any legal or procedural hindrance in the respondents adopting the proposed scaling method.”

10. The Apex Court in ***Sanjay Singh and Anr. v. U.P. Public Service Commission, Allahabad and Anr. (2007) 3 SCC 720*** has also discussed that the scaling process whereby raw marks in different subjects are adjusted to a common scale, is a recognized method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects. The Apex Court, in *Sanjay Singh* (supra) has laid down thus:

“25. A. Edwin Harper Jr. & v. Vidya Sagar Misra in their publication "Research on Examinations in India" have tried to explain and define scaling. We may usefully borrow the same. A degree 'Fahrenheit' is different from a degree 'Centigrade'. Though both express temperature in degrees, the 'degree' is different for the two scales. What is 40 Degrees in Centigrade scale is 104 Degrees in Fahrenheit scale. Similarly, when marks are assigned to answer-scripts in different papers, say by Examiner 'A' in Geometry and Examiner 'B' in History, the meaning or value of the 'marks' is different. Scaling is the process which brings the mark awarded by Examiner 'A' in regard to Geometry scale and the marks awarded by Examiner 'B' in regard to History scale, to a common scale. Scaling is the exercise of putting the marks which are the results of different scales adopted in different subjects by different examiners into a common scale so as to permit comparison of inter se merit. By this exercise, the raw marks awarded by the examiner in different subjects are converted to a 'score' on a common scale by applying a statistical formula. The 'raw marks' when converted to a common scale are known as the 'scaled marks'. Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognized method of ensuring uniformity inter se among the candidates who have taken examinations in different

subjects, as, for example, the Civil Services Examination.”

11. Mr. Harpreet Singh at this stage submits that the observations made by the Central Administrative Tribunal in para 18 of the impugned order should be deleted as it would amount to granting licence to the respondents to introduce the concept of scaling in the Rules of the Examination itself.
12. We find force in the submission of Mr. Harpreet Singh. We modify Para 18 of the Central Administrative Tribunal. Instead of a direction, it should read ‘*as a suggestion*’ as this aspect is purely in the domain of the respondents. We may also add that in fact respondents should make every endeavour to ensure that there is no discrepancy in the question paper.
13. We find no infirmity in the judgment of the Central Administrative Tribunal; resultantly the writ petition is dismissed.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 13, 2015

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