

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 16217 of 2016 (O&M)

Date of Decision: 29.08.2016.

Navdeep Singh Suhag & others

--Petitioners

Versus

State of Haryana and another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. K.S. Khehar, Advocate for the petitioners.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. B.R. Mahajan, A.G., Haryana with
Mr. H.N. Mehtani, Advocate for H.P.S.C.

TEJINDER SINGH DHINDSA.J

Result of the Haryana Civil Services (Executive Branch) and Other Allied Services, Main Examination, 2014 was declared by the Haryana Public Service Commission (herein after to be referred to as the Commission) on 5.7.2016. Instant petition has been filed seeking a Writ of Mandamus directing the Commission to prepare afresh/revise the result of the examination.

Mr. K.S. Khehar, learned counsel appearing for the petitioners would submit that the Main Examination consisted of three compulsory papers i.e. (i) Hindi and Hindi Essay (ii) English and English Essay (iii) General Studies and two more papers to be opted by the candidates out of 23 options available. Prayer in the present petition is founded on the premise that the Commission has failed to apply any standard statistical scaling and moderation procedure while evaluating the answer scripts so as to ensure parity amongst various optional subjects offered to the candidates.

It has been vehemently argued that it was imperative for the Commission to

have applied such standard tools of evaluation as the candidates had opted for different subjects and each subject had its own peculiarities. A level playing field could have been ensured between 23 optional subjects ranging from Mathematics to Hindi and Sanskrit Literature only if the marks obtained in each subject were to be adjusted to a common scale i.e. by way of scaling. It has also been argued that to achieve a fair and uniform evaluation the concept of moderation in evaluation should have been strictly followed so as to eliminate any chances of “**examiner variability**”. Mr. Khehar contends that by not adopting the system of moderation and scaling there has been an infringement of Article 16 of the Constitution of India which otherwise guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Action of the Commission is also stated to be in violation of the dictum laid down by the Hon'ble Supreme Court in *Sanjay Singh and another Vs. U.P. Public Service Commission, Allahabad and another, 2007 (1) S.C.T., 754*. Reliance has also been placed upon a Division Bench judgement dated 26.8.2011, passed by the Hon'ble Patna High Court in *C.W.J.C No.3892 of 2011 (53rd to 55th Combined Competitive Examination Candidates Association and others Vs. B.P.S.C and others*.

On behalf of the Commission Mr. B.R. Mahajan, learned Advocate General, Haryana duly assisted by Mr. H.N. Mehtani, Advocate have put in appearance. A short written statement on behalf of the Secretary, Haryana Public Service Commission has been filed. It is stated that the Commission had issued the advertisement for filling up 55 number of vacancies of Haryana Civil Services (Executive Branch) and Other Allied Services on 20.2.2014. The Preliminary Examination was held on 3.8.2014

and in which 12464 candidates appeared and the result was declared on 29.8.2014. 837 candidates i.e. 15 times the number of the advertised posts including bracketed candidates were declared qualified to appear in the Main Examination. The Main Examination was conducted by the Commission between 14.4.2016 to 20.4.2016 and 677 candidates appeared in such Examination. Result of the Main Examination was declared on 5.7.2016 and 166 candidates i.e. three times of the number of advertised posts including the bracketed candidates have been declared qualified for the Viva-voce/Personality Test, which has been scheduled between 22.8.2016 to 2.9.2016. Court has been apprised that question papers for the Main Examination were subjective in nature and set in bilingual i.e. in English and Hindi except the Language Paper. Each of the question paper set in bilingual was framed/drawn by a single paper setter. The candidate could attempt a paper in one language only i.e. either in Hindi or in English. As regards evaluation of answer scripts, it has been submitted that the answer scripts of respective papers were evaluated by one Examiner for each subject. The same Examiner evaluated the answer scripts attempted in both the languages i.e. in Hindi and English including the paper of General Studies. It was emphatically submitted that it was the paper setter who evaluated the answer scripts of the particular subject and thus was the Examiner as well. Learned Advocate General would contend that since the answer scripts of each paper i.e. compulsory as well as optional papers of the Main Examination have been got evaluated from one Examiner only and who also happened to be the paper setter, there has been no resort to the method of moderation or scaling. It has been contended that the Main Examination was held from 14.4.2016 to 20.4.2016 and there was ample

time for evaluation of the answer scripts of the 677 candidates who had appeared in the Examination as the result was declared after a period of six weeks i.e. on 5.7.2016. There is stated to be no infringement of any legal or fundamental rights of the petitioners. Learned Advocate General prays for dismissal of the writ petition by submitting that the petitioners had duly participated in the process of selection and having been declared unsuccessful in the Main Examination, they cannot be permitted to turn around and to raise a challenge to any evaluation procedure having been adopted by the Commission. Court has also been informed that the method of scaling has not been adopted in any previous Haryana Civil Services (Executive Branch) and Other Allied Services Examination. Learned Advocate General submits that the present petition has been filed only with the objective to put a hurdle in the selection process which has reached at the final stage and out of a total of 509 candidates declared unqualified for the Viva-voce/Personality Test, it is only the present petitioners, nine in number, who have raised a grievance.

Learned counsel for the parties have been heard at length and the pleadings on record have been perused.

The concept of moderation was delineated by the Hon'ble Apex Court in *Sanjay Singh's* case (supra). The Court was dealing with the examination conducted by the Uttar Pradesh Public Service Commission for recruitment to the posts of Civil Judge (Jr. Division). It was observed that where a large number of candidates take the examination it would not be possible to get the answer scripts evaluated by the same Examiner and as such, it becomes necessary to distribute the answer scripts amongst several Examiners for evaluation. Under such situation, the subjectivity of the

respective Examiner is bound to creep into the marks awarded by him. There is a distinct possibility of a **“reduced valuation”** by a strict Examiner and **“enhanced valuation”** by a liberal Examiner. This was described as **“Examiner Variability”** or **“Hawk-Dove Effect”**. It was towards ensuring uniformity *inter se* the Examiners so that the effect of Examiner subjectivity or Examiner variability is minimized that the procedure known as moderation was recognized. The classic method of moderation and the stages involved therein were also enumerated. Under the method of moderation the paper setter of the subject would normally act as the Head Examiner for the subject. A meeting of the Head Examiner with all the Examiners is to be held soon after the examination. The question paper, the possible answers and the weightage to be given to various aspects of the answers would be discussed. A sample evaluation of the scripts by each of the Examiners is then reviewed by the Head Examiner and variations in assigning marks are discussed. Thereafter, a consensus is arrived at with regard to the norms of evaluation to be adopted. The answer scripts having been evaluated by the Examiners, the Head Examiner would proceed to conduct a random sample survey of the corrected answer scripts to verify whether the norms set down in the meeting of the Examiners have actually been followed. The process of random sampling would consist of scrutiny of some top level answer scripts and some answer books selected at random from the batches of the answer scripts evaluated by each Examiner. The Head Examiner, then, would proceed to carry out corrections or alterations in the award of marks as he thinks best to achieve uniformity. If, in the opinion of the Head Examiner there has been erratic or careless marking by any Examiner and for which it is not feasible to have any standard

moderation, such answer scripts are re-valuated either by the Head Examiner or any other Examiner, who was found to have followed the agreed norms. Where the number of candidates is very large and the Examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners and in such situation one more level of Examiners is introduced i.e. for every 10 or 20 Examiners there would be a Head Examiner and the work of the Head Examiners in turn is checked by a Chief Examiner.

Such procedure of moderation elaborated upon in detail in **Sanjay Singh's** case (supra) was against the backdrop of the U.P. Civil Judge (Jr. Divn.) Examination (Main, 2003) conducted by the Uttar Pradesh Public Service Commission. The Main Examination consisted of five compulsory papers i.e. General Knowledge, Language, Law-I, Law-II, Law-III. The number of candidates who took the Examination were 5748. The answer scripts relating to each subject had been distributed to several Examiners for evaluation. The number of Examiners to whom the answer scripts were distributed for evaluation were as follows:-

1.	<i>General Knowledge</i>	-	18
2.	<i>Language</i>	-	14
3.	<i>Law-I & II</i>	-	10
4.	<i>Law-III</i>	-	14

However, the factual position emerging in the present case is entirely distinct. In the main examination conducted by the Commission only 677 candidates appeared. Evaluation of answer scripts has been done at the hands of a sole Examiner and who also happened to be the Paper Setter for that particular subject. The Main Examination was conducted between 14.4.2016 to 20.4.2016. The result was declared on 5.7.2016. Such

time frame of almost six weeks made it feasible for the Commission to have the answer scripts pertaining to each subject evaluated from a single Examiner and who was also the Paper Setter. This in itself would be a pointer towards uniformity and consistency in evaluation of the answer scripts. This Court does not find any justification as such to command the Commission to adopt the methodology of moderation and to thereby revise the result. In taking such view this Court would draw support from the following observations made in **Sanjay Singh's** case (supra) itself:-

“Where the number of candidates taking the examination are limited and only one Examiner (preferably the paper setter himself) evaluates the answer scripts, it is to be assumed that there will be uniformity in the valuation.”

At this stage, the contention raised by Mr. Khehar that absolute and unaccountable power has been given to one Examiner to decide the fate of so many candidates and which would necessarily lead to undesirable results, has been noticed only to be rejected. There are no allegations of malafide, bias or favoritism raised in the petition. This Court would not proceed to draw any dubious inference on the basis of a bald assertion raised during the course of arguments and which has gone unsubstantiated in terms of pleadings or by placing necessary and relevant material on record.

As regards the process of scaling is concerned, the same would entail the marks secured by candidates in different subjects to be adjusted to a common scale and thereby ensuring uniformity *inter se* candidates, who have taken Examination in different subjects. In **Sanjay Singh's** case (supra) various methods adopted towards the statistical scaling had been examined and the anomalies/absurdities arising there from had also been

noticed. The position on scaling was then summarized in para 45 of the judgement and which is reproduced hereunder:-

“45. We may now summarise the position regarding scaling thus:

(i) Only certain situations warrant adoption of scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner but not a solution to solve examiner variability arising from the “hawk-dove” effect (strict/liberal valuation).”

It would, thus, be clear that even the method of scaling was at best seen as one of the viable options that may be adopted in a situation, where candidates take examinations in different subjects. One of the pre conditions noticed for the process of scaling to be acceptable was a situation where more than one Examiner is involved. The conclusion drawn was that scaling is a methodology which is not without flaws.

The question that now arises is as to whether the Hon'ble Apex Court in **Sanjay Singh's** case (supra) had laid down any principle of law to the effect that in a public examination involving different subjects, the scaling method has to be necessarily adopted to bring uniformity in the results?

Precisely such issue came to be dealt by the Hon'ble Apex court in ***Sunil Kumar and another Vs. Bihar Public Service Commission and others, 2015 (4) S.C.T., 706*** and was answered in the negative and in the following terms:-

“20. The entire of the discussion and conclusions in Sanjay Singh (supra) was with regard to the question of the suitability of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context. But did Sanjay Singh (supra) lay down any binding and inflexible requirement of law with regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult to understand as to how this Court in Sanjay Singh (supra) could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable results. Sanjay Singh (supra) did not decide that to such an examination i.e. where the papers are common the system of

moderation must be applied and to an examination where the papers/subjects are different, scaling is the only available option. We are unable to find any declaration of law or precedent or principle in Sanjay Singh (supra) to the above effect as has been canvassed before us on behalf of the appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus.”

The contention raised on behalf of the petitioners that it was imperative for the Commission to have adopted the tools of scaling and moderation while evaluating the answer scripts in the Main Examination for Haryana Civil Services (Executive Branch) and Other Allied Services, as such, cannot be accepted.

Reliance placed upon the Division Bench judgement of the Hon'ble Patna High Court in ***C.W.J.C No.3892 of 2011 (53rd to 55th Combined Competitive Examination Candidates Association and others Vs. B.P.S.C and others*** is wholly misplaced. In that case the Court was dealing with the Civil Services Examination conducted by the Bihar Public Service Commission in May/June, 2012 and covered by the Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Service (Recruitment) Rules, 1951. Appendix 'D' thereof laid down the syllabus for the Combined Competitive Examination. Apart from four compulsory papers the optional papers were divided into four categories/groups i.e. Groups A, B, C and D. Group A dealt with Literature, Group B with Humanities subjects, Group C with Law and Public Administration and Group D dealt with Science papers/subjects. Under the rules a candidate had to take three optional papers out of which not more than two papers

from any single group. **CWJC No.3892 of 2011** was allowed on 26.8.2011 and directions were issued to frame rules incorporating the system of moderation as well as the system of scaling of raw marks while evaluating answer scripts. It so transpires that the matter was brought before the Hon'ble Patna High Court in a second round of litigation ostensibly on the basis that the directions of the Division Bench had not been carried out. High Court declined to interfere. This led the matter to be carried to the Hon'ble Apex Court and seeking interference on the basis that while finalizing the results of the examination the Bihar Public Service Commission had moderated the marks awarded by the Examiners but the process of scaling down the marks and which process was required to be undergone in view of the fact that the examination so far as the optional papers were concerned, were in different subjects, had not been undertaken. Such matter was dealt with in **Sunil Kumar's** case (supra) by the Hon'ble Apex Court and the appeals were dismissed. The process of scaling was not found to be the essential methodology to be adopted in a case of a public examination involving the candidates who had appeared in varied subjects.

This Court to have a factual perspective in the matter had called upon the Commission to furnish information as regards the subjects opted for by the present petitioners as also the marks secured in the main examination. Learned counsel appearing for the Commission has apprised the Court that all the petitioners had opted for Public Administration as one of the optional subject. Petitioners no.1, 2, 4, and 8 had opted for Geography as the second optional subject, petitioners no.3, 5, 7 and 9 had taken Sociology as a second optional subject and petitioner no.6 had opted for Psychology as optional subject. The marks obtained by the petitioners

in the compulsory papers as also the optional subjects were as follows:-

Sr. No.	Name of Petitioner	Roll No.	Eng.	Hindi	G.S.	Optional Subject	Marks obtained	Optional Subject	Marks Obtained	Total
			Max Marks 100	Max Marks 100	Max Marks 100		Max Marks 150		Max Marks 150	Max Marks 600
1.	Navdeep Singh Suhag	1361	65	53	62	Geography	64	Public Admn.	60	304
2.	Sunil Dutt Sharma	1699	67	49	44	Geography	78	Public Admn.	77	315
3.	Virander Kumar	1794	64	49	55	Sociology	86	Public Admn.	74	328
4.	Rishabh Kharwal	1553	65	46	60	Geography	60	Public Admn.	67	298
5.	Naveen Kumar	1367	61	62	46	Sociology	82	Public Admn.	51	302
6.	Vikas Saini	1767	64	49	46	Psychology	90	Public Admn.	73	322
7.	Nagendra Saroha	1342	61	48	56	Sociology	78	Public Admn.	51	294
8.	Rinku	1552	62	48	56	Geography	63	Public Admn.	66	295
9.	Praveen Kumar	1442	36	59	52	Sociology	63	Public Admn.	85	295

A cursory glance of the tabulation would clearly demonstrate that each one of the petitioners has secured fairly high marks in the optional subjects and it is their performance in the compulsory subjects that has been disappointing. The apprehension of the petitioners that the result of the Main Examination is skewed and they have been prejudiced on account of having opted for subjects which are otherwise seen as low scoring as compared to other candidates who may have opted for high scoring subjects, is thus, ill founded.

The Haryana Civil Services (Executive Branch) and Other Allied Services Rules, 2008 do not prescribe the manner and procedure for evaluation of answer scripts, award of final marks and declaration of results. As such, it was for the Commission to regulate the manner and mode for evaluation of the answer scripts. Conduct of a public examination of the like that this Court is seized of would be a complex task involving varied issues. There can possibly be no straight jacket formula as regards

evaluation of answer scripts. These are matters which by their very nature should be left to the expert bodies in the field such as the Commission. The scope and extent of exercise of power of judicial review in such matters would be extremely limited. Judicial intervention would be called for only in a case of palpable and manifest arbitrariness. Such is not the case made out herein. There is no plea of malafides or favoritism raised in the petition. This Court does not find any basis that would warrant interference in the matter.

For the reasons recorded above, the writ petition is found to be bereft of merit and is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

29.08.2016

lucky

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes