

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO. 16498 OF 2016

DATE OF DECISION: AUGUST 26, 2016

Ashok Kumar and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

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

Present: Mr.Shalender Mohan, Advocate for
Mr.DPS Bajwa, Advocate for the petitioners.

Mr.DS Nalwa, Additional Advocate General, Haryana
with Mr.Rajesh Gaur, Additional Advocate General,
Haryana for the respondents.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of Civil Writ Petition No.16498 of 2016 (Ashok Kumar and others v. State of Haryana and another), Civil Writ Petition No.16512 of 2016 (Mohit Kumar v. State of Haryana and others), Civil Writ Petition No.17407 of 2016 (Yogesh Kumar Tewatia and another v. State of Haryana and others), Civil Writ Petition No.17436 of 2016 (Jaswinder Kumar and others v. State of Haryana and another), Civil Writ Petition No.17392 of 2016 (Chanderdev v. State of Haryana and another), Civil Writ Petition No.17270 of 2016 (Kuljeet Singh v. State of Haryana and another), Civil Writ Petition No.17293 of 2016 (Sonu Yadav and another v. State of Haryana and another), Civil Writ Petition No.17292 of 2016 (Sandeep v. State

of Haryana and another), Civil Writ Petition No.17287 of 2016 (Vikrant v. State of Haryana and another), Civil Writ Petition No.17272 of 2016 (Devender and another v. State of Haryana and another), Civil Writ Petition No.17179 of 2016 (Virender Singh v. State of Haryana and others), Civil Writ Petition No.17517 of 2016 (Mohit Singh and others v. State of Haryana and another) and Civil Writ Petition No.17506 of 2016 (Rakesh Kumar v. State of Haryana and others) as identical issue is involved in these petitions.

2. Petitioners assail the action of the Haryana Staff Selection Commission (hereinafter to be referred as 'the Commission') treating them as not qualified in a Physical Screening Test conducted for purposes of selection and appointment to the posts of male constables (General Duty).

3. Brief facts are that the Commission issued advertisement dated 19.7.2015 inviting applications for recruitment to 5000 posts of male constables (General Duty, Category-1). The selection process was detailed in the advertisement itself and provided for a Physical Screening Test (PST) followed by a Knowledge Test, Physical Measurement Test and interview-cum-personality test. In the first hurdle i.e. Physical Screening Test, a male candidate was to complete a test distance of 5 kms. in a qualifying time of 25 minutes. For ex-Serviceman the test distance was 2.5 kms. and the qualifying time was 13 minutes.

4. It has been contended on behalf of the petitioners that inspite of each one of them having completed the test distance of

5 kms. or 2.5 kms., as the case may be, within the stipulated qualifying time, yet they have not been declared successful in the Physical Screening Test. It has been argued that the action of the Commission is without any justifiable basis and is arbitrary. Petitioners allege violation of their fundamental right as regards consideration for appointment to the post in question and seek directions to be permitted to appear in the next stage of selection i.e. the Knowledge Test slated for 28.8.2016.

5. Since a large number of petitions raising identical issues were being filed, this Court sought response from the Commission in two writ petitions i.e. Civil Writ Petition No.16498 of 2016 (Ashok Kumar and others v. State of Haryana and another) and Civil Writ Petition No.16512 of 2016 (Mohit Kumar and others v. State of Haryana and another). A short reply on behalf of the Commission has been filed and placed on record in both these petitions. In the reply, it has been stated that in response to the advertisement dated 19.7.2015 for recruitment of 5000 posts of male constables (General Duty, under category-1) a total number of 5,05,566 applications were received online and 3,88,091 candidates downloaded their admit card. As per the various stages of the selection process indicated in the advertisement, the Physical Screening Test was conducted on different dates between 15.6.2016 to 23.7.2016. On behalf of the Commission, it has been stated that it was a challenge to conduct the Physical Screening Test of such a huge number of candidates and to ensure transparency and to eliminate the human factor a computerized fully automated technology was

adopted. The Physical Screening Test is stated to have been conducted by using the Radio Frequency Identification Device (RFID) Technology in terms of which electromagnetic fields to automatically identify and to track tags attached to objects are used. The tags were stated to contain electronically stored information which is read through readers and stored in the computers via software. The process for conducting the physical screening test comprised of five stages i.e.:

- 1. registration of candidate on the basis of admit card along with taking biometric thumb impression as well as capturing photograph, issuing the chip and chest number,*
- 2. Capturing the photograph at the start point,*
- 3. Capturing the photograph at mid-point,*
- 4. Capturing the photograph at end point through CCTV installed at start point, mid-point and finish point and*
- 5. De-registration of the candidate by taking thumb impression through biometric device, capturing photograph, taking back the chip and chest number.*

6. Mr.DS Nalwa, learned counsel appearing for the Commission would submit that the terms and conditions as also manner of conducting the Physical Screening Test were displayed on the flex notice board at different locations at the site where physical screening test was to be conducted and was also announced repeatedly through the public address system. Learned counsel contends that the process followed for the

physical screening test was absolutely fair, transparent and fool proof. The petitioners have not been treated as qualified in the physical screening test either on account of having not completed the test distance within the qualifying time or on account of having not adhered to the terms and conditions regulating the Physical Screening Test. It has been vehemently argued on behalf of the Commission that no interference is called for in the matter as the candidates who have not qualified the Physical Screening test cannot be permitted to participate in the subsequent stages of the selection process i.e. knowledge test etc.

7. At this stage, it would be apposite to take note that a number of petitioners had raised a grievance that even though they had finished the test distance of 5 kms. within the qualifying time and which was not in dispute, yet they have not been treated as qualified. In this regard, Mr.Nalwa, learned counsel for the Commission would clarify that there are candidates where the time recorded for completion of the test distance was within the qualifying time of 25 minutes, yet they have been disqualified on account of having not adhered to final stage No.5 of the physical screening test i.e. de-registration of the candidate and by giving his thumb impression through Bio-metric device. Under such circumstances, this Court had taken Civil Writ Petition No.16512 of 2016 filed by Mohit Kumar as a test case and on 24.8.2016 had directed the Commission to permit him to view the video footage as also original record as regards Stage No.5.

8. In deference to the directions issued by this Court,

Mohit Kumar, petitioner in Civil Writ Petition No.16512 of 2016 attended the office of the Commission on 25.8.2016 and was shown the documents/video clippings as also the biometric registration/ de-registration data. At that stage, Mohit Kumar suffered the following statement:

"I, Mohit Kumar s/o Shri Rajender Kumar bearing Regd.No.100092624 and Roll No.1001210902, in pursuance of the directions dated 24.8.2016 issued by the Hon'ble High Court in CWP No.16512 of 2016 attended the office of the Haryana Staff Selection Commission, Bays No.67-70, Sector-2, Panchkula today i.e. on 25.8.2016 at 3.00 PM and I have been shown the documents/video clippings and Biometric registration/Deregistration Data with regard to the Physical Screening Test held in Kurukshetra pertaining to the undersigned as well as other five candidates who have appeared along with me, before me and after me and have satisfied myself about the contents of the documents/video clippings.

*Sd/-
(MOHIT KUMAR)
s/o Rajender Kumar
25.8.16"*

9. Apparently, a second statement was also given by Mohit Kumar subsequently on 25.8.2016 itself and is in the following terms:

"1. After finishing the race I, at the instance of computer operator put my right hand thumb impression. Thereafter he said that this has been put

wrongly. Then I asked him, sir, whether I should put the thumb impression again. Then the computer operator said that no, doesn't matter, it is right. There will not be any problem. I, again while going asked, Sir, if there is any problem then let me know. He said there is no problem.

2. That's why I didn't register any complaint in writing in this regard to the officers present there.

3. Two boys who ran with me namely Vikas and Dharamvir and who are resident of Hansi, I have seen mine and their video clipping and the video of the race is correct. I don't remember the ink of the thumb impression which I had put.

4. Now I have seen the video and I had come to know that my thumb impression is not matching even though I had put the thumb impression.

*Sd/-
25.8.16"*

10. Having heard learned counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that these writ petitions lack merit and deserve dismissal.

11. It has gone uncontroverted that the conduct of Physical Screening Test comprising of a test distance run of 5 kms. in a qualifying time of 25 minutes is strictly in conformity with Rule 12.16 of the Punjab Police Rules and as amended vide Haryana Government notification dated 18.6.2015. The Commission was faced with the Herculean task of conducting a Physical Screening

Test of 3,88,091 candidates. The Commission, as such, was free to devise and adopt a procedure which was fair and reasonable. The Physical Screening Test has been held adopting a Radio Frequency Identification Device Technology. As per procedure adopted, a candidate was registered at the start point and presence was marked by affixing the thumb impression in a biometric device and chip and chest number was also issued. A photograph was captured at the start point, at the mid point as also end point through CCTV. The chip worn by a candidate recorded a candidate's presence at a half way mark. Registration at the start point and de-registration by affixing a thumb impression on the biometric device at the end of the test run ensured that no impersonation takes place and the candidate who had registered at the start point, he alone has run the race and finished it on his own and there has been no exchange of the chest number or the chip. No exception can be taken to such procedure and technology having been adopted by the Commission for conducting the Physical Screening Test. The same was to ensure transparency as also to eliminate instances of impersonation and also to remove the vice of human discretion while conducting the test.

12. The petitioners having submitted their applications online had downloaded the admit cards. Condition No.10 contained in the admit card was in the following terms:

"The candidature of the candidates who do not obey the terms and conditions displayed at the site of the PST shall be cancelled."

13. The terms and conditions which were displayed at the PST site were as follows:

"1. The candidate shall bring with him only admit card and one identity proof and shall not bring anything else with him.

2. Those candidates who have downloaded their admit card after 15.6.2016 and on the right side of the admit card in the box above it is written (date, time and avenue of PST will be informed later on), those candidate should not stand in the queue for PST. Their PST Schedule shall be issued. If anybody is found standing in such line their candidature may be cancelled.

3. After standing in the queue candidate should obtain chest number and chip belt.

4. Thereafter the candidate should mark their presence in the registration camp after fixing their thumb impression. Get a photograph clicked. If any candidate doesn't get himself registered in the registration camp and give the thumb impression or get the photo clicked, then his race shall be deemed to be cancelled and its responsibility shall be of the candidate.

5. The candidate should take care of the chest number and chip belt during the race. The responsibility in its regard shall be of the candidate or his candidature shall be cancelled. The candidate during the race

should run only on the fixed track. Running left or right of the track shall result in the cancellation of the candidature.

6. Please note your roll No. at the start.

7. After completion of the race, the candidate should get himself de-registered on the finishing point and get the photograph clicked and give the thumb impression and deposit the chest number as well as the chip belt or their candidature shall be deemed to be cancelled.

8. If any candidate is found to have used any kind of drug or narcotics, his candidature shall be cancelled and he shall be handed over to Police. After getting the medical done if he is found guilty, he shall be proceeded against legally."

14. A bare reading of the conditions reproduced hereinabove would make it apparent that the candidates had been apprised of the five stages for conduct of the Physical Screening Test on account of adoption of the RIFD Technology. Such terms and conditions would require strict adherence to ensure fair play. The timing of the test run was being recorded not manually but by using such advanced automated technology in tandem with the chip belt worn by a candidate. A biometric registration at the start and de-registration at the end by way of affixing thumb impression ensured elimination of impersonation. Under such factual position, it cannot be heard of a candidate to complain that his timing of the test run has been wrongly recorded. Likewise, even with regard to such candidates who

may have completed the test run and within the qualifying time, the process of de-registration by affixing the thumb impression at the end of the run was mandatory. A number of candidates including some of the petitioners herein have been held not to be qualified on account of non-adherence to the terms and conditions of the PST and which had been duly displayed at the site. No infirmity, as such, is found in the action of the Commission.

15. In these connected petitions, none of the petitioners have levelled allegations of malafides against the members of the Commission or against the officials who may be at the helm of affairs. Neither has it been alleged that the Physical Screening Test is vitiated on account of bias or has been conducted to favour a particular section of candidates. A total of 1,26,177 candidates have been declared successful in the Physical Screening Test and would now be eligible for the Knowledge Test. This Court does not find any justification to record a finding against the Commission as regards any deliberate attempt having been made to treat the petitioners as not qualified in the Physical Screening Test. The scope of judicial review in such matters would be extremely limited. The High Court cannot make a roving enquiry to fish out material to sustain the challenge made to the manner of conduct of a Physical Screening Test nor can it draw dubious inferences of arbitrariness or malafide exercise of power on the basis of bald and vague assertions made in the petitions.

16. It is also a settled position that unsuccessful

candidates cannot be permitted to turn around and assail a selection process. Reference in this regard may be made to the decision of the Apex Court in **Madan Lal v. State of Jammu and Kashmir**, AIR 1995 SC 1088. In **Om Parkash Shukla v. Abhilesh Kumar Shukla and others**, (1986) supp. SCC 285, the Hon'ble Supreme Court had held specifically that when a candidate appears in the examination without protest and subsequently finds himself to be not successful, the question of entertaining a petition challenging the process of selection would not arise.

17. Even as regards Mohit Kumar, petitioner in Civil Writ Petition No.16512 of 2016, he has initially given a statement that he was shown the document/video clippings and biometric registration/deregistration data with regard to the Physical Screening Test and he has satisfied himself about the contents thereof. The second statement as regards the thumb impression of the wrong hand having been put and the computer operator having assured him that it would not matter can only be observed to be an afterthought. In the writ petition, there is not even a whisper as regards such episode.

18. For the reasons recorded above and in the totality of circumstances, no case for interference is made out.

19. The writ petitions are, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 26, 2016
SRM

Note: *Whether speaking/reasoned?* *Yes/No*

Whether referred to Reporter? *Yes/No*