

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CWP No.19500 of 2015
DATE OF DECISION : 07.01.2016**

Staff Selection Commission

...Petitioner

Versus

Central Administrative Tribunal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL.

HON'BLE MR. JUSTICE RAJ MOHAN SINGH.

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. D.R. Sharma, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner/Staff Selection Commission has assailed order dated 17.10.2014 (Annexure P-4) passed by Central Administrative Tribunal, Chandigarh Bench Chandigarh whereby OA No.1529/HR/2013 filed by respondent No.2 was allowed and order dated 07.11.2013 impugned therein, was quashed.

[2]. Respondent No.2/Pardeep Kumar challenged the validity of order dated 07.11.2013 passed by Deputy Regional Director before the Tribunal whereby candidature of respondent No.2 for Combined Graduate Level Examination, 2012 was cancelled and he was debarred from the Commission's examination for a period of 3 years w.e.f 16.09.2012.

[3]. Respondent No.2 was a candidate of Combined Graduate Level, Examination, 2012 which was notified in the employment news on 24.03.2012. Respondent No.2 appeared in the examination with Roll

No.1601506382. Respondent No.2 was provisionally called for DEST of the aforesaid examination on 19.11.2012 and he appeared therein.

[4]. According to the Authority, the Commission causes regular post examination scrutiny and analysis of performance of the candidates in objective type multiple choice question papers with the help of experts who have proven expertise in such scrutiny and analysis and had undertaken such scrutiny and analysis in the present examination. Petitioner claimed that incontrovertible and reliable evidence has surfaced during such scrutiny and analysis against respondent No.2, who had resorted to unfair means in the examination. Petitioner claimed that two candidates namely Balvinder and Sunil Panwar in Paper-I of Tier-II have also been involved in unfair means with respondent No.2. On the basis of aforesaid scrutiny and analysis, petitioner-Commission decided to cancel candidature of respondent No.2 and further debarred him from appearing in the examination conducted by the Commission for a period of 3 years. Petitioner alleged that such standard practice is uniformly followed in case of detection of malpractice, unfair means and impersonation.

[5]. Petitioner further alleged that in order to protect the integrity of selection process, a conscious decision has been taken to prevent candidates who are found to be involved in unfair means in the examination from entering into Government service through such a mechanism of manipulative practice. A show cause notice was issued to respondent No.2 on 04.06.2013 and on receipt of explanation/reply from respondent No.2 and after considering the same, the Competent Authority decided in view of incontrovertible evidence discovered by

post examination analysis and scrutiny to proceed against respondent No.2 and to cancel the candidature for Combined Graduate Level Exam, 2012 and further to debar him from appearing in any examination conducted by the Commission for a period of 3 years from 16.09.2012.

[6]. Withholding of result of respondent No.2 was also assailed before the Central Administrative Tribunal and directions were sought to treat respondent No.2 as fully eligible for the examination in question and also to give appointment to the post from the date of which the appointment is to be given to his juniors with benefit of salary and allowances and also interest @ 18 % from the date of amount became due to the date of actual payment.

[7]. Respondent No.2 was declared as pass in the examination, however, a revised result was declared vide publication dated 30.05.2013 whereby result of number of candidates including respondent No.2 was withheld. Thereafter, a show cause notice was issued on the ground that respondent No.2 had been found indulging in use of unfair means/copying in Paper-I of Tier-II examination. The representation dated 21.06.2013 submitted by respondent No.2 was found unsatisfactory and the Authority passed the order dated 07.01.2013 on the grounds as mentioned above.

[8]. Use of unfair means by respondent No.2 along with Balvinder and Sunil Panwar was alleged in Paper-I of Tier-II as respondent No.2 had opted Chandigarh Centre with Code 1601, whereas other two candidates opted Shimla Centre with Code 1201.

Since both the set of candidates appeared in different Centre with

different code, therefore, the mechanism evolved by the Authority to arrive at such a conclusion that the misconduct of respondent No.2 has to be founded on sound evidence, emanating from exercise of scrutiny and analysis of performance of the candidates in objective type multiple choice questions with the help of expert opinion. Apparently, manual conversation, connivance and copying did not arise as both the set of candidates have appeared in different Centres of examination. Central Administrative Tribunal vide the impugned order held that the marks of respondent No.2 who appeared in Chandigarh Centre were different from those two candidates who appeared in Centre of Examination at Shimla. Respondent No.2 obtained 132.50 marks in Paper-I of Tier-II, whereas the said two candidates had got lower marks than respondent No.2. It was rather physically impossible for a candidate in Chandigarh to copy or involve in unfair means with two persons appearing in the examination at Shimla Centre. The stand of the Authority was found to be unsatisfactory and the action of the Authority was quashed by the Tribunal vide the impugned order.

[9]. Learned counsel for the petitioner while relying upon comparative chart of all the three candidates has argued that the matching configuration of questions attempted by the candidates and the questions left from giving answers have been culled out on the basis of analysis conducted by the expert based on scientific and theoretical methodology which is claimed to be time tested, incontrovertible and reliable evidence. On a pointed question asked from the learned counsel for the petitioner, he submitted that the modus operandi was adopted by the candidates by using Mobile Bluetooth technology to get answers from common source or to get a copy of

question papers before exam and send answers to such candidates sitting at different venues. Admittedly, no FIR was registered against anyone, nor any recovery of any instrument like Mobile was made from possession of respondent No.2. Learned counsel for the petitioner was candid enough to admit that no incriminating material has been recovered from respondent No.2 except the mechanism evolved by the Authority based on such comparison of matching configuration and left out configuration of questions in the examination by different candidates. In considered opinion of this Court, the process evolved by the petitioner-Commission is far-fetched and has resulted in very serious repercussions. In what way the regular post examination scrutiny and analysis of the performance of candidates in multiple type questions with the help of experts would give incontrovertible and reliable evidence of malpractice or unfair means. The question papers produced in the Court pursuant to the order passed by this Court show that different questions were attempted by the candidates. Perusal of answersheet does not give any such irresistible conclusion with the help of which an inference can be drawn that the candidates have devised some unfair mechanism in the examination.

[10]. Learned counsel for the petitioner relied upon a judgment of Delhi High Court rendered in **LPA No.155 of 2013** titled as **Varun Bhardwaj Vs. State Bank of India and others** decided on 24.11.2015.

In the cited case, a report from institution of Banking Personnel Selection was relied to mean that 976 candidates were suspected for the use of unfair means who had appeared in different venues and Centres. The process was evolved on the basis of number of wrong answers given by the candidates which were identically the same viz-a-

viz others. We have considered the facts of cited case and are not in agreement inasmuch as that there cannot be any adverse inference if two or more candidates in the exam give identical number of correct answers. In the instant case, so far as Pardeep Kumar and Sunil Panwar are concerned, their matching configuration viz-a-viz right answer in T-1 was 40, matching configuration of wrong answer was 02 and matching configuration of blank was 01. So matching configuration of wrong answer and blank remained only to the extent of 03. In T-2, out of 46 answers, the matching configuration of right answers was 25 and that of wrong answers was 14. The tally was 7 in case of blank answers. If the performance of respondent No.2 is equated with Balvinder, then matching configurations in both T-1 and T-2 were 33 and 26. Configurations of wrong answers were 2 and 13 respectively and for blank 0 and 7. The facts of the cited judgment cannot be universally applied in every case, though civil cases are to be decided on preponderance of evidence and probability. The evidence should be of impeaching character so as to shatter the credibility of candidates in the context of appearing in the examination and the evidence as alleged against respondent No.2 is of unimpeachable nature so as to draw any inference on use of malpractice. The nature of order is punitive in nature and for that guilt has to be proved beyond all shadows of doubt.

[11]. The cited judgment in Varun Bhardwaj Vs. State Bank of India's case (supra) cannot be held to be of universal application. Even otherwise, we are of the considered opinion that nothing incriminating was recovered from respondent No.2, nor any prosecution was lodged by the Authority against wrongdoers, therefore, no indulgence can be

given to the petitioner in seeking quashing of impugned order which otherwise is found to be based on sound reasoning.

[12]. In view of aforesaid, the present Civil Writ Petition stands dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

January 07, 2016
prince