

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.26859 of 2017
Date of Decision: November 27, 2017

Pravesh Kumar & others

...Petitioners

Versus

Union of India & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr.Aman Arora, Advocate,
for the petitioners.

AMIT RAWAL, J.

1. Petitioners, being unsuccessful before the Central Administrative Tribunal, Chandigarh Bench (for short "CAT") in challenging the Notice (Annexure A-4), whereby the written test for the post of Constables was ordered to be conducted online, i.e., to be treated as Computer Based Test (CBT) instead of Written (OMR sheet), have approached this Court under Articles 226/227 of the Constitution of India.

2. Mr.Aman Arora, learned counsel appearing on behalf of the petitioners submitted that on 15.11.2015, respondent-Chandigarh Police issued an advertisement inviting online applications for filling up 520 posts of Police Constables, including Male and Female by fixing the cut off date as 31.12.2015. The petitioner-applicants, being aspirants, submitted their applications in pursuance to the advertisement (Annexure A-1) as Clause-VIII of the terms and conditions of the advertisement provided that the

candidates were advised to go through the guidelines/instructions for filling up the applications forms (On-line) as well as Standing Order No.1/2015 governing the recruitment of Constables, i.e., detailed criteria and eligibility conditions etc.

3. It was also submitted that the Standing Order No.1/2015 did not provide any computer knowledge or stipulated that the written test could be taken on computer. Similarly, Clause 20 of the Standing Order provided written test of one hour and forty-five minutes of duration carrying 100 marks. Questions were to be of multiple choice objective type. The advertisement and the Standing Order also provided that selection criteria for the post in question was the Physical Endurance & Measurement Test (in short “PE&MT”) followed by written examination. However, vide notice aforementioned, after the petitioner-applicants qualified the PE&MT test, the test was ordered to be conducted online, i.e., on CBT basis. Such a change in the selection criteria was contrary to the settled proposition of law as culled out by the Hon'ble Supreme Court in **Maharashtra State Road Transport Corporation and others Versus Rajendra Bhimrao Mandve and others**, 2001 (10) SCC 51, **K.Manjusree Versus State of A.P. & Anr.**, 2008 AIR (SC) 1470, **Hemani Malhotra Versus High Court of Delhi**, 2008(2) S.C.T. 736, **Tej Prakash Pathak and others Versus Rajasthan High Court and others**, (2013) 4 Supreme Court Cases 540, **Ashok Kumar Sharma and others Versus Chander Shekhar and another**, (1997) 4 Supreme Court Cases 18 and Full Bench of this Court in **Amardeep Singh Sahota Versus State of Punjab**, 1993 (4) SCT 328.

4. The learned counsel also argued that the CAT failed to ignore the aforementioned pronouncements inspite of the fact that the proposition

raised before it had already been laid to rest in the judgments cited supra. The order of CAT is, thus, illegal and perverse. It was further urged that the petitioner-applicants had not been given any notice or hearing or option before making the change in the mode of written test from OMR Sheets to CBT. The selection was for Constables in Police Department and majority of candidates are hailing from rural areas, who do not possess computer knowledge and, therefore, it was difficult for them to attend/attempt the CBT. The CAT also failed to appreciate that the advertisement issued and published calling applications constitutes a representation to the public and the department was, thus, bound by it. The aforementioned impugned notice tantamounts to changing the mode of written examination, which would require the candidates to have additional knowledge of computer and, therefore, many students would be called upon to answer the question paper on CBT basis.

5. It was next contended that the CAT failed to appreciate that the change in the mode of written examination from OMR sheets to the CBT would have adverse and detrimental effect on the selection of the petitioners, who do not know the computer. The petitioners had already completed PE&MT and are waiting to sit in the written test. There is no arrangement by the respondents to educate the candidates regarding CBT. There is no coaching institute to teach CBT nor there is any link on the website of the Chandigarh Police to educate the aspiring candidates to sit in the online examination.

6. We have heard the learned counsel for the petitioners, appraised the paper book and are of the view that there is no force and merit in the submissions of the learned counsel for the petitioners.

7. In order to appreciate the aforementioned contentions and as well as the case law referred to above, it would be apt to reproduce Clause-VIII of the advertisement, Clause 20 of the Standing Order and notice regarding online written test (Annexure A-4), which are germane to the proper adjudication of the lis read thus:-

“VIII) Candidates are advised to go through the guidelines/ instructions for filling in the application forms On-line as well as Standing Order No.1/2015 governing the recruitment of Constables in Chandigarh Police containing detailed criteria/ eligibility conditions etc., which is available on the Chandigarh Police website www.chandigarhpolice.nic.in. The candidates can also download/print copies of the guidelines/ instructions as well as Standing Order from above website of Chandigarh Police.

20. WRITTEN TEST

All candidates [including ex-servicemen], who qualify the PE&MT, shall be put through a written test of one hour and forty-five minutes (1¾ hour) duration which shall carry 100m marks. The questions shall be multiple choice objective type and will carry one mark for every correct answer and a negative marking of 0.25 for every wrong answer and shall include questions on:

<i>General Knowledge/Current Affairs</i>	<i>50 marks</i>
<i>Reasoning</i>	<i>35 marks</i>
<i>Numerical Ability</i>	<i>15 marks</i>

The question paper for the written test shall be in Hindi, English and in Punjabi. Each candidate will be given the test paper only in the language selected by the candidate during the application process. Change of medium will not be permitted. Answer sheets will be in the form of OMR sheets in view of guidelines on Transparent Recruitment Process (TRP) issued by BPR&D, there shall be no interview and the merit list for each category shall be based only on the outcome of the

marks obtained in the written examination.

Annexure A-4

CHANDIGARH POLICE

NOTICE REGARDING ONLINE WRITTEN TEST FOR THE POST OF CONSTABLES (520 POSTS) ADVERTISED IN THE YEAR 2015.

Physical Efficiency & Measurement Test of the Male candidates who have applied for the post of constables (520 posts) advertised in the year 2015 was started w.e.f. 17.04.2017 and will continue upto 22.06.2017. The PE&MT of Female Candidates will start w.e.f. 03.07.2017 for which schedule has already been made available on the official web site of Chandigarh Police.

The written test of the qualified candidates in the PE&MT will be held probably in the month of September/October 2017.

This is for the information of the candidates that the written test of the candidates will be conducted online & will be a Computer Based Test (CBT). Therefore candidates who have been declared qualified in PE&MT and issued admit card for written test are hereby informed to start preparation for online written test (Computer Based Test) only. The decision of conducting online written test (CBT-Computer Based Test) has been taken for fair and transparent selection of the candidates.”

8. Clause VIII extracted above, enables the candidates to go through the guidelines/instructions for filling up the application forms available online by downloading the same. As per Clause IX, the candidates were expected to have their own email ID. Thus, in the present era, all the test sheets, notice inviting tenders are available on the website of the concerned departments to be down loaded by the aspirants. Thus, the plea of the petitioners that they do not have knowledge of the computer cannot be

accepted and it also would not tantamount to changing the conditions or eligibility or qualification.

9. It was not disputed that the examination in question has not been held so far and even the CAT, while deciding the Original Application, had recorded a proposal given to the learned counsel for the applicants that the respondents will hold the examination based on CBT test after two months, enabling the candidates to prepare themselves for taking examination in the manner and mode specified in Annexure A-4.

10. However, the said proposal was not accepted by the applicants-petitioners as they had not agreed to such suggestion. For the sake of brevity, the relevant paragraph of the order rendered by the CAT reads thus:-

“10. At the time of arguments, a proposal was given to the counsel for the applicants based upon the argument raised by them that the applicants are from rural background that the respondents will hold the examination after two months and in the meantime, if their clients are not familiar with computer then they can get the knowledge of the same so that they can give the online computer test but he refuted for this proposal.”

11. In all fairness, we proceed to examine the case law relied upon by learned counsel for the petitioners. **Maharashtra State Road Transport Corporation's case (supra)** pertained to a controversy relating to the claim of the Corporation vis-a-vis Circular No.17/96 dated 24.6.1996, which, according to the unsuccessful candidates therein, was issued by way of a clarification as they could not clear the examination on the premise that the department had laid a written test for selection of Drivers. In **K.Manjusree'**

case (supra), the Full Court of Andhra Pradesh High Court had authorised the Chief Justice to constitute a committee for the purpose of selection of 10 posts of District & Sessions Judges (Grade II) in the higher judicial service. The Administrative Committee, vide resolution dated 30.11.2004, decided the method and manner of selection and resolved to conduct the written examination for the candidates by fixing 75 marks and oral examination for 25 marks. On placement of the matter before the Full Court, a fresh list of candidates for appointment was also prepared. The grievance of the affected parties was that no minimum marks for the interview could be there as the Administrative Committee did not fix the same as the resolution had not prescribed any marks. In **Hemani Malhotra's case (supra)**, the affected candidates were aspirants of being selected in the Delhi Higher Judicial Service and the grievance was that the second stage did not provide any marks for vive-voce test. The issue whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed, would amount to changing the rules of the game, decided in favour of the petitioner therein. The facts involved therein being distinguishable, no advantage can be derived by the petitioners.

12. In **Tej Prakash Pathak's case (supra)**, it was held that the rules of game once settled cannot be changed, though the matter had been referred to the larger bench. **Ashok Kumar Sharma** was a case where the department had permitted the candidates of having acquired the qualification later albeit before holding of the interview. The Full Bench of this Court in **Amardeep Singh Sahota's case (supra)** held that the terms and conditions of the prospectus are sacrosanct.

13. **Maharashtra State Road Transport Corporation (supra)**

was a case where the driving test was prescribed and the selection process had commenced. However, in the instant case, no such selection process has ever started. All the judgments pertained to the selection of the candidates. On a specific query, the learned counsel for the petitioners stated that the selection process in the present case has not even commenced so far. Thus, these pronouncements do not advance the case of the petitioners.

14. As an upshot of our observations, we do not find any illegality and perversity in the findings of the CAT. The same cannot be faulted. The writ petition stands dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**November 27, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No