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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7150/2017**

AJIT SINGH

..... Petitioner

Through: Mr. Nitin K. Gupta and Mr. Rahul
Sinha, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Suman Chauhan, Advocate for R-
1 to R-6.

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+ **W.P.(C) 7152/2017**

NAVEEN KUMAR

..... Petitioner

Through: Mr. Nitin K. Gupta and Mr. Rahul
Sinha, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Suman Chauhan, Advocate for R-
1 to R-6.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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30.10.2018

Dr. S. Muralidhar, J.:

1. These are two writ petitions preferred by Mr. Ajit Singh and Mr. Naveen Kumar respectively arising from the same background facts. Both these

Petitioners responded to an advertisement issued by Respondent No.4, viz. the Staff Selection Commission ('SSC'), inviting applications for recruitment of Sub Inspectors ('SI') in the Central Police Organisation ('CPO'), Assistant SIs in the Central Industrial Security Force ('CISF'), and Intelligence Officers in the Narcotics Control Bureau ('NCB'). The Petitioners were issued admission certificate for the written examination to be conducted on 28th August 2011. It is not in dispute that in the final merit list declared on 1st March 2012 both these Petitioners figure in the list. As far as Mr. Ajit Singh is concerned, he placed at Rank 13 on the merit list whereas Mr. Naveen Kumar placed at Rank 33. In the nomination list, both of them were nominated for the post of SI in the CISF.

2. On 6th May 2013, both these candidates were issued identical Show Cause Notices ('SCNs') which read as under:

“With reference to his/her candidature for the above noted examination, he/she was found that prima-facie he/she was resorted to malpractices in Paper-1 and Paper-2. He/she is directed to explain as to why he/she should not be debarred from all examinations/recruitments conducted by the Commission for a period of five years.

He/She is directed to submit explanation immediately so as to reach this office latest by 15.05.2013 failing which orders for debarment would be issued without any further correspondence to him.”

3. Both of them replied to the SCNs pointing out *inter alia* that there was nothing incriminating against each of them as regards the alleged malpractices committed by them and that the SCNs were based on “surmises and conjectures”. This was followed by a communication dated

31st May 2013 from Respondent No.4 to each of them stating that “incontrovertible and reliable evidence have emerged” during the scrutiny of the objective type multiple choice question papers with the help of experts with provable expertise and that as a result of such analysis each of them had “resorted to copying in the said papers in association with other candidates to also took the same examination”. At this stage, it may be mentioned that there were other candidates who figured in the selection list who were issued similar SCNs and all of them resorted to judicial remedies against the same.

4. As far as the present Petitioners are concerned, while Mr. Naveen Kumar filed W.P.(C) 9106/2014 and Mr. Ajit Singh filed W.P.(C) 9204/2014 and both of them sought the quashing of the SCNs on the ground that they were vague and impossible to reply to. A Division Bench of this Court, by identical orders dated 22nd December 2014 in both writ petitions, without expressing any view as to the validity of the reasons which purportedly led to the cancellation of their appointments, was of the view that “in the absence of any material reflected in the show cause notice dated 06.05.2013, the said show cause notice deserves to be quashed. It is accordingly quashed”.

5. Nevertheless, by the aforementioned orders, this Court granted a further opportunity to the Respondents to serve fresh SCNs upon the Petitioners “if they so desire” and directed that the same should contain the exact reasons on which it was found that the Petitioners had indulged malpractice or unfair means during the examination. It was further directed that in such an event

the Petitioners would have the right to file replies and that thereafter, Respondent No.4 shall pass “a speaking and reasoned order”. Further, the Petitioners were set at liberty to challenge any such order if they were aggrieved by the same.

6. As a result of the above order, fresh SCNs were issued to Mr. Naveen Kumar on 20th January 2015 and to Mr. Ajit Singh on 23rd February 2015. As far as the SCN issued to Mr. Naveen Kumar is concerned, it was stated that he had “indulged in malpractice with Shri Raj Kumar, Roll No.2201512425, in Paper-II” and that this conclusion was based on the details of the matching of their answer responses. The details of the matching of their answer responses were set out in a tabular form with the ‘Total Matches’, the ‘Right Right Matches’, the ‘Blank Blank Matches’, and the ‘Wrong Wrong Matches’ indicated therein. As far as Mr. Ajit Singh is concerned, it was stated in the SCN issued to him that he had “resorted to malpractice in association with Shri Kuldeep, Roll No.2201012112, in Paper-I and in association with Shri Pradeep Kumar, Roll No.2201003746, Shri Naveen Kumar, Roll No.2201005037 & Shri Raj Kumar, Roll No.2201512425, in Paper-II” and that this conclusion was based on details of the matching of their answer responses which was set out in tabular form in a manner similar to the SCN issued to Mr. Naveen Kumar.

7. In their respective replies, the Petitioners pointed out that, once again, only bald statements of them having resorted to malpractice have been made without showing any basis for this belief. They claimed that the other candidates were not known to them as they were among thousands of other

candidates. They maintained that they did not resort to copying and further pointed out that no answer sheets or other material had been seized from which it could be ascertained that they had resorted to copying.

8. It transpires that these replies were not acted upon, thus compelling both Petitioners to return to this Court for a second time with Mr. Naveen Kumar preferring W.P.(C) 4822/2015 and Mr. Ajit Singh preferring W.P.(C) 4831/2015. This Court dismissed Mr. Ajit Singh's petition as premature by its order dated 15th May 2015 since the "Competent Authority has yet to consider reply filed by the petitioner to the show cause notice and pass a final order". As for Mr. Naveen Kumar's petition, it came to be disposed of by an order of this Court dated 18th May 2015 whereby directions were issued to Respondent No.4 to positively consider the reply filed by the Petitioner and take a decision thereon within three months and communicate the same to the Petitioner.

9. It must be noticed at this stage that in both the aforementioned writ petitions, one of us, viz. Sanjeev Narula, J. appeared as counsel for the Respondents. However, neither counsel presently appearing before this Court have expressed any objections to Narula, J. hearing these petitions.

10. It is a matter of fact that, till date, Respondent No.4 has not bothered to communicate a decision to the Petitioners in response to the replies given by them to the respective SCNs served upon them.

11. Challenges to similar SCNs issued to candidates who appeared around the same time in such examinations was dealt with in different petitions by

this Court. In a decision dated 19th December 2014, in W.P. (C) 9055/2014 (*Staff Selection Commission v. Sudesh*), a Division Bench of this Court considered a challenge by the SSC to the decision dated 30th July 2014 passed by the Central Administrative Tribunal ('CAT') in OA No.930/2014 whereby the CAT allowed the application of respondent Sudesh, quashed the second SCN dated 28th January 2014, and directed the SSC to declare his result and those of others similarly placed. There again, two SCNs had been issued to respondent Sudesh alleging that he had resorted to malpractices in the Tier-II exams held for the Combined Graduate Level Examination 2012. The Division Bench of this Court found that no particulars had been set out in the SCNs that could have enabled the candidate to file an effective reply.

12. Pertinently, this Court observed in para 12 of the said decision in *Sudesh* (*supra*) as under:

“If, according to the petitioner; malpractice/cheating had been resorted to by the applicant and the other candidates, it was essential that such candidates were, at least, informed of the basis on which it had been concluded, or a prima-facie view formed, that such malpractices/act of cheating had been undertaken. The petitioner should have given the reasons for its said conclusions, by disclosing as to what was the analysis "undertaken by the experts/outside agency; what was the pattern discerned by the outside experts upon analysis of the answer-sheets of all such candidates, and; that the disclosed pattern could lead to a reasonable inference - with a very high probability/near certainty of cheating/malpractice. Without such disclosure, the applicant and other candidates were left in the dark, not knowing how to meet the serious allegations made against them, except by simply denying the same - which they did.”

13. The Division Bench in *Sudesh (supra)* further observed in para 15 as under:

“In our view, therefore, the Tribunal was-justified in quashing the second show-cause notice which suffered from the same lacunae of being vague and devoid of any relevant particulars, and there was no purpose in permitting the petitioner to deal with the replies and pass any further order on the basis of such a vague show-cause notice. The said show-cause notice did not fulfill the basic requirements of principles of natural justice inasmuch, as, the respondent-applicant could not effectively have met the allegations made against him - except to deny the same (which he did), in view of the show-cause notice itself being completely vague and devoid of particulars.”

14. The aforementioned decision in *Sudesh (supra)* was challenged by the SSC before the Supreme Court by way of Civil Appeal 2836-38/2017. The Supreme Court dismissed the said appeals by its order dated 19th July 2017. A review petition against said order was also dismissed by the Supreme Court on 31st October 2017.

15. Another similar challenge by candidates who were issued near identical SCNs was considered by this Court in its decision dated 15th November 2017 in W.P.(C) 8896/2015 (*Krishan Gurjar v. Union Of India*). That case pertained to the candidature of the petitioner therein for appointment to the post of SI/GD through the COP's examination, i.e. the very same examination for which the present two Petitioners appeared. Mr. Krishan Gurjar had been issued first an SCN which alleged that he had resorted to malpractice and another SCN wherein it was alleged that he had committed such malpractice with another candidate, one Manish Kumar Verma. There again, just as in the present cases, the SCN set out, in a tabular

form, the 'Total Matches', the 'Right Right Matches', the 'Blank Blank Matches', and the 'Wrong Wrong Matches'. Interestingly, in the said case, the SSC even went to the extent of alleging that "both the candidates were sitting in the same venue, same room, one after the other" whereas in the present cases there was no such allegation.

16. In **Krishan Gurjar** (*supra*), this Court found that the SCNs were bereft of any material/evidence which could throw light on the malpractices supposedly pursued by the petitioner therein. It was observed that "without such disclosure, the petitioner was in the dark about the allegations to be met by him. The serious allegations of malpractice had cost him the appointment as a SI/GD in the BSF. It appears that the issuance of show cause notices were mere formality to show compliance of principles of natural justice. It is also a settled law that principles of natural justice does not only warrant issuance of show cause notice and eliciting a reply but includes giving such material to the noticee, which has been found against him to ensure he considers the said material and gives his reply".

17. The decision of this Court in **Krishan Gurjar** (*supra*) also referred to the earlier decision in **Sudesh** (*supra*) and noted that it had been affirmed by the Supreme Court. The Division Bench held the SCNs to be in violation of the principles of natural justice and set them aside. It was ultimately directed that Krishan Gurjar "shall be appointed to the post of SI/GD as per the CPOs Examinations, 2011 in BSF with continuity of service, including notional pay fixation. He shall not be entitled to any monetary benefits".

18. The Court is informed at the bar by learned counsel for the Petitioner,

without being controverted by learned counsel for the Respondents, that the aforementioned decision dated 15th November 2017 in **Krishan Gurjar** (*supra*) has not only been accepted by Respondent No.4 but has also been acted upon with Mr. Krishan Gurjar having been appointed around two weeks ago pursuant to the contempt petition filed by him.

19. At this stage, it must also be mentioned that learned counsel for the Respondents urged that as there were some other writ petitions by such other candidates being heard by other Division Benches of this Court and, therefore, this Bench should not decide the present petitions but await the decisions of those Division Benches. The Court sees no warrant for acceding to this request because with the pleadings having been completed in these petitions and the petitions ripe for hearing, there is no need felt for postponing the hearing of these petitions. Moreover, another Division Bench has already decided, almost a year ago, the case in **Krishan Gurjar** (*supra*) which arose in similar facts. Respondent No.4, having accepted the verdict of this Court in **Krishan Gurjar** (*supra*) and having acted upon it, and also having contested the decision of this Court in **Sudesh** (*supra*) which was affirmed by the Supreme Court and thereafter acted upon it, there is no reason whatsoever for the cases of the present Petitioners to be treated any differently.

20. It must also be mentioned that in these petitions, despite repeated opportunities, the Respondents did not file their reply. At one stage, the opportunity to file the reply stood closed. Even so, on 7th September 2018, the Respondents served upon the Petitioners an advance copy of the counter

affidavit. Although the said counter affidavit was not placed on record, learned counsel for the Petitioners sought to rely upon it only to explain the stand taken by the Respondents in response to the present petitions. Consequently, since learned counsel for the Petitioner also sought to rely on it, the Court took on record the said counter affidavit of the Respondents in these petitions.

21. A perusal of the said reply shows that the only defence taken which is worthy of mention is that, according to the Respondents, the Petitioners should not have waited for two years after the disposal of their writ petitions by this Court in 2015 to file the present petitions. On merits, there is absolutely no defence whatsoever about the vagueness of the SCNs issued to the Petitioners.

22. The Court has already noticed that the present Petitioners could hardly be said to have slept over their remedies. They had already approached this Court twice with writ petitions. In the second round, the writ petitions had been disposed of in May 2015 in the expectation that the Respondents would abide by the orders of this Court and communicate the decisions in the Petitioners' cases within a reasonable time. Not having obeyed the orders of this Court, it is not open to the Respondents to contend that it is the Petitioners who were sleeping over their rights. This contention requires to be rejected.

23. As far as the merits of the present petitions are concerned, this Court finds no warrant for taking a view different from that taken by other

Division Benches of this Court in ***Krishan Gurjar*** (*supra*) and earlier in ***Sudesh*** (*supra*). Just as in those case, the SCNs in both the present cases are vague and bereft of particulars. There is no way either of these Petitioners could have meaningfully replied to the SCNs to dispute the allegation that they had committed malpractices with other candidates particularly when the Respondents are unable to be point out whether those candidates were in the same hall in which the Petitioners were sitting and whether in fact any such malpractices were noticed. It must also be noted that despite such an allegation being made in ***Krishan Gurjar*** (*supra*), the Division Bench of this Court found that the allegation was unsubstantiated and without basis and constituted a violation of principles of natural justice. As pointed out by this Court in ***Krishan Gurjar*** (*supra*), the mere issuing of a SCN to a candidate will not meet the requirement of natural justice. The SCN issued must contain specific allegations and the basis on which those allegations are made so that the candidate can meet such allegation meaningfully.

24. For the aforementioned reasons, this Court quashes the SCNs issued to Mr. Naveen Kumar on 20th January 2015 and to Mr. Ajit Singh on 23rd February 2015. Each of the Petitioners will be appointed to the post of SI in the CISF with continuity of service including notional pay fixation. They would not, however, be entitled to any monetary benefits.

25. The consequential orders be issued by the Respondents in each case not later than four weeks from today.

26. The writ petitions are disposed of in the above terms with no orders as to costs.

27. Order *dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 30, 2018

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