

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

% **Date of decision: 9th November, 2020.**

+ **W.P.(C) 2432/2020**

WAQUAR AKBAR AND ORS. Petitioners

Through: Mr. Satish Kumar Birla, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vivekanand Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The seven petitioners, and of which the petitioner No.1 is an Advocate, have filed this petition pleading, that (i) the petitioners No.2 to 7 are Constables in the respondents Border Security Force (BSF), posted in Shillong since 2017-2018 and the petitioner No.1 is a practicing Advocate who is authorized by rest of the petitioners to file the present petition in public interest and on behalf of approximately 300 candidates of the Limited Departmental Competitive Examination (LDCE) conducted by the respondents BSF pursuant to the Notification dated 18th September, 2018; (ii) the said LDCE invited applications from Constables (General Duty) (GD), Head Constables (GD), Assistant Sub-Inspectors (ASI) (GD) and Tradesmen meeting the requisite criteria, employed with the respondents BSF, for appointment as Sub-Inspectors (SIs); (iii) the recruitment process comprised of written examination as well as Physical Efficiency Test (PET);

(iv) for the purposes of PET, separate standards were provided for candidates from hilly regions, plain lands and Peninsular plateau; (v) PET was conducted between 2nd December to 30th December (the year is not mentioned) at six different locations i.e. in Tekanpur Academy, Madhya Pradesh, Jodhpur Frontier, Rajasthan, South Bengal Frontier and North Bengal Frontier in West Bengal, Punjab Frontier in Punjab, Srinagar Frontier in Jammu and at Shillong Frontier at Shillong, Meghalaya; (vi) Shillong is more than 5000 ft. above sea level, as compared to other locations where PET was conducted; (vii) it is well known that high altitude causes breathing problems, especially for people who are not adaptive or native of high-altitude areas and the efficiency of a person running at high altitude will be much less than a person running in plain areas; (viii) this was the first occasion when PET was conducted at Shillong; earlier PET used to be conducted at North Bengal Frontier at Kadamtala; (ix) for the whole Srinagar Frontier, also having high altitude, PET was conducted in Jammu and Jalandhar, Punjab; (x) even the Indian Army, while conducting PETs provides extra time for participating candidates if the PET is conducted at locations of high altitude of more than 5000 ft. above sea level; (xi) however the notification for the subject LDCE did not provide for extra time for 1600 mtr. race in Shillong, Meghalaya Frontier which is more than 5000 ft. height above sea level and the candidates undertaking PET at Shillong were to be compared with the candidates taking part in 1600 mtr. race at plain areas; (xii) the same amounts to discrimination on the basis of region; (xiii) this discrimination reflected in only 25% of the candidates being able to complete the race of 1600 mtrs. in 6 minutes 30 seconds at the Shillong, Meghalaya Frontier in comparison to 70% candidates who completed the race

at other locations; (xiv) also, the track provided in Shillong was of 200 mtrs. only instead of 400 mtrs. as provided at other locations and which also hamper the running capacity of the candidates; (xv) though representations were made to conduct the PET again, either by providing extra time for 1600 mtrs. race or at a different location, other than Shillong but were rejected stating that the best available ground had been provided to candidates of Shillong Frontier and without considering the huge geographical difference between Shillong and other locations; (xvi) the notification for the PET conducted in 2017 provided 30 seconds extra on top of the standard time provided for the PET conducted at locations at altitude between 5000 ft. and 9000 ft. above sea level and 120 seconds extra on top of the standard time at locations at altitude between 9000 ft. and 12000 ft. above sea level; and, (xvii) the Director General, BSF also issued instructions for the PET held in 2011, thereby providing extra time for candidates running at altitude higher than 5000 ft above sea level.

2. On the aforesaid pleas, relief, of direction to the respondents BSF to re-conduct the PET for candidates of the Shillong Frontier with extra time or at another location and for maintaining *status-quo* qua declaration of results till disposal of this petition is sought.

3. The petition came up before this Court first on 2nd March, 2020, when notice of the petition was issued and the declaration of the results of the LDCE 2018-2019 was made subject to the orders in this petition.

4. The completion of pleadings in the petition remained derailed owing to the prevalent pandemic.

5. On 16th July, 2020, fresh W.P.(C) No.4248/2020 came up before this Court and during the hearing whereof, the counsel for the petitioner therein stated that the issue as had arisen for consideration therein was identical to the issue as already pending consideration in this petition. Accordingly, the two petitions were ordered to be listed together on 30th July, 2020. However on 30th July, 2020, though the counsel for the petitioners herein did not appear but on perusing this petition, it was found that the issue entailed in W.P.(C) No.4248/2020 was not related to the issue entailed in this petition. However, finding that there was an interim order in this petition, this petition was directed to be listed for virtual hearing on 24th September, 2020.

6. On 24th September, 2020, the counsel for the petitioners appeared, and directing the pleadings to be completed, the petition was ordered to be listed for hearing today.

7. The respondents BSF have filed a counter affidavit pleading, (a) that the recruitment for SI (GD) through LDCE is conducted every year; (b) that the written examination for the post of SI (GD) through LDCE 2018-2019 was conducted at various BSF locations / centres on 18th August, 2019 and in which 2566 departmental candidates were declared qualified for further stages of examination i.e. PET/Physical Standard Test (PST) and Medical Examination Test; (c) that the criteria of PET for SI (LDCE) is the same as that of SI (Direct Entry); (d) that there is no provision to give extra time to the candidates appearing in the PET at Centres which are situated at the height of 5000 ft. and above from the main sea level; (e) that out of 465 candidates who appeared for the PET held at Shillong Centre, 186 candidates i.e. 40% were declared qualified in PET; (f) that in other Centres

the qualifying percentage varied from 45% to 70%; (g) that no parameters / size of race track for PET are prescribed; however as per availability, the best track for PET is provided at different Centres; (h) that the timing of the race was based on distance and size of the track, it may be short or long, as per availability of the ground; (i) that PET is a qualifying test during recruitment in Forces and does not carry any marks; (j) that PET of eligible candidates is conducted, as per scheme of Ministry of Home Affairs comprising of, (i) 100 meters race in 16 seconds; (ii) 1.6 Km race in 6 minutes 30 seconds; (iii) long jump, 12 feet in 3 chances; (iv) high jump, 3.9 feet in 3 chances; (v) shot put, 14.8 feet in 3 chances—for men; AND, (i) 100 meter race in 18 seconds; (ii) 800 meters race in 4 minutes; (iii) long jump, 9 feet in 3 chances; (iv) high jump, 3 feet in 3 chances—for women; (k) that the time of 6 minutes 30 seconds for 1.6 Km race is applicable to all candidates and is same for all PET Centres including Shillong and there is no provision to provide extra time to candidates of Shillong Frontier; (l) that no candidate at Shillong Centre reported having breathing problem during PET and no candidate at Shillong Centre objected about the high altitude; (m) that there is no policy / rule to give extra time to the candidates appearing in PET at the Centre where the height is 5000 ft. and above from the main sea level; (n) that the Centres are allotted according to the deployment of candidates in BSF and to avoid them inconvenience from travel; (o) that the results of Tekanpur Centre (Madhya Pradesh) and Jalandhar Centre (Punjab) which are located at relatively low sea level were 45% and 49% respectively and which shows that location of centre does not pose any major hurdle for physically fit Force personnel during PET; (p) that those who undertook PET at Shillong had been serving at Shillong

Frontier since long and were duly acclimatized with altitude and the weather conditions prevailing there; (q) that PST/PET for various other posts in BSF are conducted at Shillong without giving any extra time or relaxation; (r) that the notification cited by the petitioners pertains to the Indian Army and has no applicability on the PET conducted for SI (LDCE) in the respondents BSF; (s) that no discrimination has been practiced; (t) that in LDCE, only trained soldiers appear; and, (r) that the altitude of Shillong is only 3 ft. higher than the reference height of 5000 ft above sea level.

8. No rejoinder has been filed by the petitioners.

9. The counsels have been heard.

10. The counsel for the petitioners, during the hearing has drawn our attention to Annexure P-6 to the writ petition, titled "Revised Timings For 1.6 KM Run : Physical Proficiency Test (PPT) Effective From 01 APR 2017" but from which document it cannot be known who has issued the same or pertaining to which Force. The same, provides for no extra time for 1.6 Km run in hilly terrain area upto 5000 ft., provides for additional 30 seconds time in hilly terrain areas between 5000 ft. to 9000 ft. and additional 120 seconds time in hilly terrain areas between 9000 ft to 12000 ft. From the language thereof, the same, if at all genuine, seems to pertain to the Indian Army.

11. The counsel for the respondents BSF has contended that even as per the said document, no extra time is to be provided for places having altitude upto 5000 ft. above sea level and as per the petitioners themselves, Shillong is at the altitude of 5000 ft. above sea level and as per the respondents BSF, at the altitude of 5003 ft above sea level.

12. The counsel for the petitioners has next drawn our attention to Annexure P-7 to the writ petition, being a document titled "Field Physical Efficiency Test (FPET) and Physical Proficiency Test (PPT) Time Table Height upto 5000 ft. (1,500 MTR)" and which classifies, according to age groups, as 'excellent', 'very good' and 'good', timings for 3.2 Km run, 1.6 Km run etc., for heights upto 5000 ft.

13. Again, we do not find any relevance of the said document also to the present controversy. Rather, the same also goes against the petitioners and shows that the parameters remain the same upto 5000 ft above sea level. We repeat, Shillong is admitted by the petitioners to be at an altitude of 5000 ft. The petitioners have thus, themselves failed to make out any case of the need for grant of additional time for 1.6 Km race at Shillong.

14. Rather, the petitioners have not shown from the advertisement/notification of the LDCE pursuant to which they participated, that any additional time was to be given at Shillong Centre or which was not given. Once the petitioners participated in the LDCE on the terms notified and of which they knew in advance, the petitioners, after remaining unsuccessful in the LDCE, cannot be permitted to challenge the examination process. Reference in this regard may be made to our recent judgments in ***Dhiraj Milind Dhurve Vs. Union Public Service Commission*** MANU/DE/1093/2020 and ***Sharvan Kumar Rai Vs Union of India*** 2020 SCC OnLine Del 924.

15. Moreover, cancellation of an examination has an impact on a large number of candidates and is to be rarely granted. We have recently in ***Amit Kumar Sharma Vs. Union of India*** MANU/DE/1306/2020 discussed the

said aspect in detail and do not feel the need to go into the same. Suffice it is to state that the petitioners have failed to make out any case for holding up the result of the entire examination or for retest for PET at Shillong.

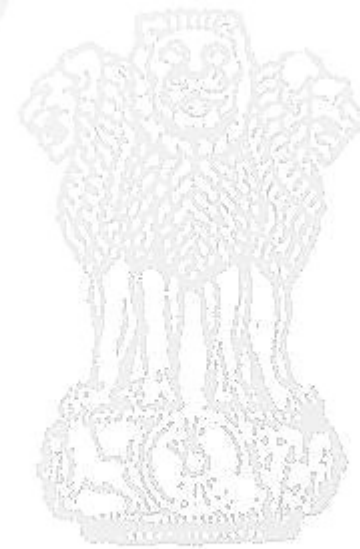
16. The petitioners have failed to make out any case for interference with the examination process.

17. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 09, 2020
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