

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

% **Date of decision: 24th June, 2020.**

+ **W.P.(C) 3716/2020**

AMIT KUMAR SHARMA **Petitioner**

Through: Mr. Umesh Kumar Choubey, Adv.

Versus

UNION OF INDIA & ORS **Respondents**

Through: Mr. Manish Mohan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.13311/2020 (for exemption)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

W.P.(C) No.3716/2020 & CM No.13310/2020 (for stay)

3. The petitioner seeks cancellation of the entire result of Limited Departmental Competitive Examination, 2017-18 for the post of Assistant Commandant (GD) in Central Armed Police Forces (CAPF) and re-conduct the said examination under the guidance of Union Public Service Commission (UPSC); alternatively, evaluation by an independent third party, of at least the third paper (Essay, Precis Writing and Comprehension, consisting of 100 marks) is sought.

4. The petition, though filed by the petitioner alone, contains an averment in paragraph 4 that six other candidates who also had taken the

examination and were unsuccessful therein, have verbally authorized the petitioner to file the petition on their behalf as well; it is stated that the said six others are posted outside Delhi and are unable to travel to Delhi to authorize the filing of the petition.

5. Re-conduct of the examination/re-evaluation, is sought averring (i) that there were rampant irregularities, mass cheating and non-uniform and arbitrary evaluation of the English paper in the examination; (ii) that the petitioner and the said six others, though very good in English language, in the result are shown to have flunked in English language; (iii) that though the respondents, in order dated 19th February, 2020 in W.P.(C) No.1947/2020 titled ***Mahipal & Ors. Vs. Union of India***, had assured this Court that they will look into the allegations and that the Board of Officers (BOO) would make its report within four weeks, but despite that, the respondents are going ahead with the selection procedure and final appointments; (iv) that the schedule of the entire examination process was revised twice and finally the examination took place on 2nd February, 2020; (v) that the written examination consisted of three papers of 100 marks each; Paper I (Intelligence Test and General Knowledge) and Paper II (Professional Skill) consisted of multiple choice questions; Paper III was an English Language paper of descriptive nature, to assess the command of the candidates over English Language; (vi) that the result of Papers I and II was to be announced within two days of the written examination and the candidates who qualified in the said papers were to be called for the next stage i.e. Physical Standard Test (PST) and Physical Efficiency Test (PET), which were of qualifying nature; the result of Paper III was to be announced

thereafter; (vii) that only those candidates who secured required aggregate percentage of marks in the three papers of written examination as well as had qualified in the PST and PET, were to be called for interview/personality test of 100 marks; (viii) that the allocation of roll numbers and sitting plan was faulty, as the candidates from the same unit were made to sit together; (ix) that in some centres of examination, wrong question paper booklets were distributed and only after efflux of time, the question paper was changed; (x) that some of the questions in the examination were vague and factually incorrect; no answer key was declared; (xi) that the cut-off marks were also not declared; the marks obtained by the candidates who were not selected, were also not declared; (xii) “that in view of this large scale cheating and illegalities in the examination, various candidates have been unfairly prejudiced against”; (xiii) that complaints preferred by others were not addressed, leading to the filing of W.P.(C) No.1947/2020 aforesaid; (xiv) that the result was declared on 28th February, 2020 i.e. even before the expiry of time of four weeks for the report of BOO granted vide order dated 19th February 2020 in W.P.(C) No.1947/2020; (xv) that the decision of the BOO was not put up on the website; (xvi) that number of shortlisted candidates in BSF are lesser than the number of vacancies published; (xvii) that per contra, in CRPF and SSB, shortlisted candidates are more than the vacancies; (xviii) that the checking of the English paper has been done in a capricious manner; and, (xix) that examination has been got conducted from some nondescript firm.

6. Interference by this Court in the result of an examination, at the instance of unsuccessful candidates, has been the subject matter of several

decisions. One of us (Rajiv Sahai Endlaw, J.) in *Tushant Vs. University of Delhi* MANU/DE/1913/2015 and in *Tripti Jha Vs. Guru Gobind Singh Indraprastha University* 221 (2015) DLT 609 had occasion to deal with the subject. On a conspectus of past precedents, it was held (i) that competitive examinations, holding whereof takes mammoth organization, cannot be annulled on mere conjectures and surmises; (ii) that it cannot be lost sight of that annulment of examination and consequent holding of fresh examination (which takes re-organization and hence time) ultimately causes delay and has cascading effect; (iii) that the same also results in the examinees being inconvenienced; (iv) that holding of fresh examination also, besides costing money, takes considerable effort; (v) that annulment of examination without proper cause will thus be detrimental not only to the body/entity holding the examination but also to the large number of candidates taking the examination and would be against the public interest and would amount to a cure worse than disease; (vi) that merely because a controversy has been raised, would not invite the drastic order which has a devastating effect on a large number of people; (vii) that en masse cancellation can be resorted to only on finding a large number of such selections to be tainted and segregation of good and bad being difficult and a time consuming affair; (viii) that the examinations are thus not to be annulled lightly, on the mere asking of any one, with the allegations of possibility of the same having been corrupted; (ix) that only when it is sufficiently established that the examination though purportedly conducted, was no examination and cannot be treated as a test of proficiency of students taking the examination or had ceased to be competitive or that the defects/malpractices therein had seeped to such an extent as to make it impossible for the examining authority or the

Court to determine a fair result of the examination, would the Court be justified in annulling an examination; (x) that en masse cancellation would otherwise be violative of Article 14 of the Constitution of India; (xi) that where the tainted candidates in a selection process can be segregated from others, innocent persons should not be punished with the tainted; and, (xii) that cancellation cannot be effected merely on suspicion, which is unfounded.

7. Applying the aforesaid law, no case for interference with the examination has been made out. The averments in the petition are vague and without any particulars. Moreover without a majority of the candidates taking the examination or the authority conducting the examination, being of the view that the examination process has been vitiated, any one or more unsuccessful candidates in the examination cannot be permitted to stall the selection and appointments pursuant to the examination.

8. The counsel for the petitioner refers to *Pranav Verma Vs. The Registrar General of the High Court of Punjab & Haryana at Chandigarh* 2019 SCC OnLine SC 1610, without however citing the said judgment. As far as we recollect, the Supreme Court therein was dealing with a petition at the instance of more than 90 candidates, challenging the entire selection process and evaluation method adopted in the Main (Written) Examination of Civil Judge (Junior Division) in the Haryana Civil Service (Judicial Branch) Examination – 2017 for 107 posts and in the result of which examination only 9 candidates constituting 0.702% of the candidates who had taken the examination were declared pass and the rest 99.298% fail. It was in the light of such low percentage of candidates who were declared

pass, that the Supreme Court had ordered a re-look into the answer sheets and which re-look reported that the question papers were very lengthy, the marking was strict, there was no uniformity in evaluation by different evaluators and the questions were very difficult. Even in such circumstances the Supreme Court did not annul or cancel the examination but directed grace marks to be awarded to all the examinees. Thus, reliance on the said judgment is not apposite.

9. We may also record that knowledge of a subject does not always result in a score of high marks in the examination in the subject. Anyone who has taken examination, would vouch for the same.

10. Supreme Court, comparatively recently in ***Uttar Pradesh Public Service Commission Vs. Rahul Singh*** (2018) 7 SCC 254 was concerned with the challenge to the correctness of answer key in an examination conducted by the Uttar Pradesh Public Service Commission. It was held, (a) that the key answer should be assumed to be correct unless it is proved to be wrong and it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation; it must be demonstrated to be wrong, that is such, as no reasonable body of men, well versed in the particular subject, would regard as correct; (b) that if a statute, rule or regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; however if the same is not permitted, re-evaluation or scrutiny of an answer sheet may be permitted by the Court only if it is demonstrated very clearly that material error has been committed; the Court should not re-evaluate or scrutinise the answer sheets

as it has no expertise; (c) that sympathy or compassion do not play any role; (d) that the entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them; and, (e) that from an incorrect answer key, all candidates suffer equally, though some may suffer more; but that cannot be helped since mathematical precision is not always possible. Again, in ***Bihar Staff Selection Commission Vs. Arun Kumar*** 2020 SCC OnLine SC 443 it was held, (i) that the scope of judicial review under Article 226 of the Constitution of India in matters concerning evaluation of candidates-particularly for purpose of recruitment for public service, is narrow; (ii) that in the absence of any provision for re-evaluation of answer sheets, judicial review should be rarely exercised, only under exceptional circumstances; (iii) that despite several decisions of the Supreme Court, there is interference by the High Courts in results of examination; this places the examination authorities in an unenviable position where they are under scrutiny and not the candidates; additionally, a massive and prolonged examination exercise concludes with an air of uncertainty; and, (iv) that while there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great effort, to successfully conduct an examination.

11. The petitioner, as Annexure P-1 to the petition, has filed a copy of the order dated 19th February, 2020 of this Court in W.P.(C) No.1947/2020 titled ***Mahipal & Ors. Vs. Union of India*** preferred with respect to the same examination, and which petition was disposed of recording the statement of

the counsel for the respondents that a BOO, constituted to look into the grievances of the candidates, was looking into the matter and the decision of the BOO would be available within four weeks, and reserving the right of the petitioners therein to seek remedy against the decision of the BOO.

12. As far as the contention that the result of the examination was declared before expiry of four weeks referred to in the order aforesaid in *Mahipal* supra, is concerned, we may state that no fault can be found in the decision taken within a week or ten days, instead of waiting till the last minute of four weeks. Once it is stated that a particular thing will be done “within four weeks”, the fact that it is done within a few days of the beginning of the period of four weeks, would also qualify as having been done “within four weeks” and it cannot be said that the statement made before the Court has not been complied with.

13. We have enquired from the counsel for the petitioner, whether the petitioner was also a party to the aforesaid petition and/or whether had made a grievance which was looked into by the BOO.

14. The counsel for the petitioner states that he was not the petitioner in the earlier round and had not even made any grievance with respect to the examination before the BOO.

15. The counsel for the respondents appearing on advance notice informs that after the report of BOO, none had challenged the same. The counsel for the respondents also states that none of the six persons whom the petitioner seeks to represent, also had made any complaint before the BOO.

16. It is quite evident that the present petition is a belated second round of litigation, after failing in the first round, to have the examination process

interfered with.

17. There is also no explanation why this petition has been preferred, after nearly four months of the declaration of the result. There is also no explanation why the petitioner, immediately after the date of examination, did not make any grievance of the irregularities now alleged. No specific instance of any irregularity in evaluation of the answer sheets of the English paper in the examination has been pleaded. The petitioner is not entitled to any relief on these grounds also.

18. No ground for interference is made out.

19. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JUNE 24, 2020

‘gsr/bs’