

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

% **Date of decision: 14th September, 2020.**

+ **W.P.(C) 6386/2020 & CM No.22569/2020 (for direction)**

MAHIPAL & ORS. Petitioners

Through: Mr. Praveen Chandra, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Apoorv Kurup, Mr. Anshuman
and Ms. Nidhi Mittal, Advs.

AND

+ **W.P.(C) 6387/2020 & CM No.22570/2020 (for direction)**

PUSHPINDER SINGH & ORS. Petitioners

Through: Mr. Praveen Chandra, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mrs. Bharathi Raju and Mr. Jitender
Kumar Tripathi, Advs. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. Both petitions, W.P.(C) No.6386/2020 by seven personnel of the respondent Border Security Force (BSF) and W.P.(C) No.6387/2020 by 46 personnel of the respondent BSF seek, (i) mandamus to cancel the entire result of the Limited Departmental Competitive Examination (LDCE) 2017 – 2018 held for appointment of Assistant Commandants (General Duty) (GD) in Central Armed Police Forces (CAPFs), as far as BSF is concerned; (ii) mandamus for re-conduct of the examination afresh for BSF candidates

who, in the earlier examination aforesaid, were issued admit cards; (iii) mandamus to have the said subsequent examination conducted under the guidance of Union Public Service Commission (UPSC); (iv) mandamus directing Indo-Tibetan Border Police Force (ITBP) which had conducted the examination (of result whereof cancellation is sought) to provide the answer key of Paper-I and Paper-II and to disclose the marks secured by the petitioners in the examination; (v) mandamus directing the respondents to re-evaluate the answer sheets of Paper-III of the petitioners, to enable the petitioners to assess their performance; and, (vi) independent judicial inquiry to investigate into the various anomalies with respect to the examination, as far as BSF is concerned. In addition, in W.P.(C) No.6386/2020, relief of quashing the show cause notices issued to the petitioners no.6 & 7 therein, is also sought.

2. It is the case of the petitioners, that (i) the advertisement dated 3rd July, 2019 inviting applications from serving Sub-Inspectors (GD), Inspectors (GD) and Subedar Major (GD) for the post of Assistant Commandants (GD) in BSF, Central Reserve Police Force (CRPF) and Sashastra Seema Bal (SSB), through LDCE, as per Recruitment Rules of respective Forces, was published; (ii) all the four para-military forces i.e. BSF, CRPF, SSB and ITBP are established by the Government of India for different specialised purpose but they, for the sake of administrative convenience, jointly conduct, every year, a LDCE, thereby giving Subordinate Officers an opportunity for promotion in their respective forces;; (iii) the responsibility of conduct of the examination process is undertaken one by one by the four para-military forces every year, on rotational basis; (iv) the petitioners applied and were issued admit card to

appear in the examination scheduled in three sittings, all on 2nd February, 2020; (v) there were number of discrepancies in the conduct of examination at the particular examination centre in which the petitioners appeared, which not only affected their performance in the examination but also vitiated the very purpose of conducting an examination; (vi) the candidates posted at one unit/battalion were made to sit next to each other rather than randomly, meaning thereby that candidates seating next to each other were known to one another; (vii) distance between the seating plan was negligible, with hardly any gap between two candidates and which allowed candidates to do mass copying; (viii) some of the candidates even exchanged question papers/answer sheets with each other; (ix) the question papers were not distributed correctly in few rooms; the BSF candidates were given the question paper meant for SSB candidates and vice versa; this led to total chaos in the examination hall; though extra time was given but it was not enough to compensate for the lost time; (x) the answer sheets were taken by the invigilator before the assured time; (xi) examination started at different time in different rooms and which led to the situation of noise created by the candidates in one room while leaving, after their examination, disturbing the candidates in the other room who were still writing the examination; (xii) Paper-III took place in noisy environment and that too without adhering to the time table in the admit card; (xiii) certain wrong questions were asked in the examination, which also led to total confusion to the already chaotic environment; (xiv) prescribed time was not given to attempt the third paper; Paper-III started almost after 10-15 minutes of scheduled time and although assurance was given that extra time would be given but the invigilator took away the paper from the

candidates without giving an opportunity to utilize the whole of the prescribed time for attempting the paper; (xv) though the petitioners complained to the invigilator, but in vain; (xvi) the petitioners made representations vide letters dated 3rd February, 4th February and 6th February, 2020; (xvii) despite the receipt of representations, the respondent no.2 carried on with the recruitment process and declared the examination result of Paper-I and Paper-II, within two days of the examination i.e. on 4th February, 2020, as was scheduled and 1046 candidates in all were declared pass/successful and of which 507 belonged to BSF; the name of the petitioner no.1 in W.P.(C) No.6386/2020 and the petitioners no.5 to 46 in W.P.(C) No.6387/2020 figured in the list of successful candidates/candidates who had passed; (xviii) despite the mixed result of the petitioners, they were very hopeful that the respondent no.2 will take the necessary action of cancellation of the examination after making necessary investigation with respect to the various anomalies in the conduct of examination; and, (xix) the aforesaid result was declared without disclosing the answer key.

3. The counsel for the petitioners states that the only difference between the two petitions is that while the seven petitioners in W.P.(C) No.6386/2020 earlier filed W.P.(C) No.1947/2020 titled ***Mahipal & Ors. Vs. Union of India & Ors.***, detailing all the aforesaid facts and seeking cancellation of the result of the entire examination with respect to all CAPFs and seeking re-conduct thereof and further seeking inquiry into the irregularities and mismanagement in the conduct of the examination, the petitioners in W.P.(C) No.6387/2020 had not filed any earlier petition. Else

it is stated that the pleadings in W.P.(C) No.6387/2020 are identical to that in W.P.(C) No.6386/2020.

4. W.P.(C) No.6386/2020 further proceeds to narrate, that (i) W.P.(C) No.1947/2020 came up before this Court on 19th February, 2020 when the counsel for the respondents appearing on advance notice informed the Court that the complaints of the petitioners therein and other similar complaints were being examined by a Board Of Officers (BOO) constituted for that purpose and the decision of BOO would be available within four weeks and a copy of the same would be furnished to the petitioners; reserving the right of the petitioners in W.P.(C) No.1947/2020, if remained aggrieved from the decision of BOO, to seek appropriate remedies thereafter, W.P.(C) No.1947/2020 was disposed of; (ii) that the petitioners in W.P.(C) No.1947/2020, and who are the petitioners in W.P.(C) No.6386/2020, received a communication dated 7th April, 2020 informing that the BOO had examined the available evidences and found that there were very few specific limited instances of misconduct by the personnel who had been identified and suitable action was being taken against them; (iii) the aforesaid communication did not comply with the order dated 19th February, 2020 in W.P.(C) No.1947/2020 which required the petitioners therein to be provided with the copy of the decision of the BOO; instead of copy of the decision, only the finding of the BOO was communicated; (iv) the basic purpose of the order dated 19th February, 2020 was to provide to the petitioners in W.P.(C) No.1947/2020, and who are petitioners in W.P.(C) No.6386/2020, a copy of the decision of BOO in order to enable them to examine the decision and its findings in view of their complaints against the examination, to ascertain whether their complaints had been

addressed; (v) the basic purpose of the order dated 19th February, 2020 was thereby vitiated and the petitioners were left in dark with respect to the findings of BOO and basis thereof; (vi) such conduct of the respondents has led to the sanctity and credibility of the whole examination process coming under question; (vii) the examination was conducted in an opaque fashion; (viii) no answer key was provided and no cut off marks declared; applications under Right to Information Act, 2005 (RTI) seeking the answer key were also denied; (ix) CAPFs provide answer keys of other examinations held by them and there was/is no reason to discriminate; (x) no explanation was given with respect to five questions in Paper-I & II together, which were complained by the petitioners to be erroneous; (xi) the respondents, though on 19th February, 2020 before this Court stated that the complaints with respect to the conduct of the examination were being examined by BOO, did not stay the examination process and respondents, surprisingly, on 28th February, 2020 came up with additional result, declaring 126 more candidates as pass/successful and without any explanation whatsoever; in the said additional result, the petitioners no.2&3 in W.P.(C) No.6386/2020 and petitioners no.3&4 in W.P.(C) No.6387/2020 were also declared successful; (xii) though no reasons for bringing out the additional result were disclosed but even if the same was on revision of answer key, there ought to have been modification of the entire result and not only addition to the result earlier declared; (xiii) the petitioners who had been so declared successful participated in the further examination process; (xiv) show cause notices were issued to two of the seven petitioners (petitioners no.6&7) in W.P.(C) No.6386/2020 and who had earlier filed W.P.(C) No.1947/2020; such conduct discloses *mala fides* and

vindictiveness, to deter candidates from opposing the examination process; (xx) a final result was uploaded on the website on 24th April, 2020 and in which none of the petitioners (in both the petitions) were shown successful; (xxi) even the final shortlisted candidates list, which has been uploaded on the website, contains less number of candidates than in the advertised vacancies, as far as BSF is concerned; (xxii) the final result also has anomalies; the number of candidates declared successful at the examination is either less than the vacancies or just about the same number as the vacancies; for BSF, 06 candidates less than the vacancies were called for interview; thus in case of SSB, shortlisted candidates are not even twice of the vacancies while in case of BSF, the number of shortlisted candidates are less than the advertised vacancies meaning that 06 seats in BSF would remain vacant; (xxiii) the reason for such low pass percentage of candidates in BSF is that Paper III was tough and/or the candidates were not well versed with English language; (xxiv) many of the candidates had earlier also unsuccessfully taken the LDCE and claim that there were differences in the medium of the examination from that of the previous years, without being so notified; and, (xxv) as the opportunities for taking the LDCE are limited, several of the candidates will miss out on the opportunity for this year, unless the reliefs are granted.

5. The counsel for the petitioners in both the petitions argues on the same line as the contents of the petitions, with particular emphasis on, the order dated 19th February, 2020 in W.P.(C) No.1947/2020 having not been complied with and, the declaration of additional result without disclosing any reason itself demonstrating errors in the examination process.

6. On enquiry, whether not the impugned examination was subject matter of challenge recently also, in another petition, the counsel for the petitioners confirms but admits that neither any pleadings have been made with respect thereto nor have copies of the orders passed in those petitions been filed.

7. The counsel for the respondents appearing on advance notice has e-mailed to us, (a) a copy of the order dated 14th May, 2020 in W.P.(C) No.3131/2020 titled ***Beer Pratap Singh & Ors. Vs. Union of India & Ors.***, of withdrawal of the petition after some arguments and states that the said petition was also filed challenging the same examination process; and, (b) copy of the judgment dated 24th June, 2020 in W.P.(C) No.3716/2020 titled ***Amit Kumar Sharma Vs. Union of India & Ors.***, of dismissal of the petition, seeking cancellation of the same examination.

8. The counsel for the petitioners states that he had no intention to conceal the aforesaid orders/judgments and though has not pleaded them or filed copies thereof with these petitions, intended to disclose the same during the hearing.

9. The counsel for the petitioners has further contended that the respondents, in the matter of the subject examination, have indulged in “shooting the messenger” i.e. of vindictively issuing show cause notices against two of the petitioners in W.P.(C) No.6386/2020, for the reason of their having earlier filed W.P.(C) No.1947/2020 pointing out irregularities and other defects in the conduct of examination.

10. We have enquired from the counsel for the petitioners that if the respondents were vindictive as argued, why would the show cause notices be issued to only two of the seven petitioners in W.P.(C) No.6386/2020 and

who had earlier filed W.P.(C) No.1947/2020 or why have only two of the seven been picked up.

11. No proper answer is forthcoming, save for stating that all were not picked, to not appear to be vindictive.

12. The counsel for the respondents appearing on advance notice states that he has received instructions in writing to the effect that, (i) Ministry of Home Affairs, vide communication dated 27th December, 2018 nominated ITBP as the Nodal Agency for LDCE for the post of Assistant Commandants (GD) in CAPFs, for the year 2017-18 and ITBP set up a Directorate for the said purpose; (ii) representations from the candidates were received by the Directorate regarding few questions of Paper-I and the said representations were forwarded to the outsourced firm to check the genuineness of the representations; (iii) on the basis of representations, revised result was prepared by the outsourced firm and equal weightage was given to all candidates who had appeared in the examination held on 2nd February, 2020, for the two wrong questions and one question which had multiple right options; (iv) accordingly on the basis of revised result received from the outsourced firm, additional 126 candidates declared qualified in Paper-I and Paper-II were shortlisted for Physical Standard Test (PST) and Physical Efficiency Test (PET) and was uploaded on the website of the Directorate on 28th February, 2020 as well as forwarded to the concerned CAPFs for disseminating to the candidates concerned; (v) the BOO constituted to check the veracity of complaints regarding use of unfair means and improper seating plan in the written examination conducted on 2nd February, 2020 at Vidya Bharati School, Rohini, New Delhi, vide their report submitted on 20th March, 2020, after examining the available

evidence stated that there was no mass scale cheating at Vidya Bharati School, Sector 15G, Rohni, New Delhi on 2nd February, 2020 during the conduct of the written examination; however it was found that there were few specific limited instances of unfair means i.e. exchanging of answer sheets/papers; (vi) on the basis of report submitted by BOO, action taken was communicated to all seven petitioners in W.P.(C) No.1947/2020 on 7th April, 2020 and show cause notice issued to nine candidates including petitioners Ramesh Kumar Jat and Anil Choudhary in W.P.(C) No.1947/2020, found involved in use of unfair means i.e. exchanging of answer sheets/papers during examination; (vii) as per scheme of the examination, Paper-III is to be checked for those candidates only who are declared qualified in PST and PET; (viii) Paper-III is subjective in nature and evaluated by subject specialist through outsourced firm; and, (ix) on the basis of result of written examination, PST and PET, 104 candidates of CAPFs including 80 from BSF were shortlisted for Interview and Personality Test scheduled to be conducted from 5th October, 2020 to 13th October, 2020 and list of shortlisted candidates forwarded.

13. We have also perused the judgment dated 24th June, 2020 in W.P.(C) No.3716/2020 titled ***Amit Kumar Sharma Vs. Union of India*** and find that (i) the petitioner therein also had sought cancellation of the entire result of the same examination, re-conduct of the examination under the guidance of UPSC and/or evaluation by an independent third party, at least of Paper-III; (ii) re-conduct of the examination was sought averring rampant irregularities, mass cheating and non-uniform and arbitrary evaluation of the English paper in the examination and on the ground of the respondents having not complied with the order dated 19th February, 2020 in W.P.(C)

No.1947/2020 titled *Mahipal & Ors Vs. Union of India & Ors.*; and, (iii) it was further averred, (a) that the allocation of roll numbers and seating plan was faulty, as the candidates from the same unit were made to sit together; (b) that in some centres of examination, wrong question paper booklets were distributed and only after efflux of time, the question paper was changed; (c) that some of the questions in the examination were vague and factually incorrect; (d) no answer key was declared; (e) no cut-off marks were also declared; (f) the marks of the candidates who were not selected, were also not declared; (g) “that in view of this large scale cheating and illegalities in the examination, various candidates have been unfairly prejudiced against”; (h) that complaints made had not been addressed; (i) that the additional result was declared even before the report of BOO; (j) that the decision of the BOO was not put up on the website; (k) that number of shortlisted candidates in BSF were lesser than the number of vacancies published; and, (l) that the checking of the English paper had been done in a capricious manner.

14. On a conspectus of past precedents, the law on annulment/cancellation of competitive examinations or result thereof, in *Amit Kumar Sharma* supra, was held to be, (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; and, (x) that en masse cancellation would otherwise be violative of Article 14 of the Constitution of India.

15. Applying the aforesaid law, no case for interference with the subject examination, in ***Amit Kumar Sharma*** supra, was held to be made out. It was held, that without majority of the candidates taking the examination, or the authority conducting the examination, being of the view that the examination process had been vitiated, any one or more unsuccessful candidates in the examination cannot be permitted to stall the selection and appointments pursuant to the examination. Reliance *inter alia* was placed

on *Uttar Pradesh Public Service Commission Vs. Rahul Singh* (2018) 7 SCC 254 and *Bihar Staff Selection Commission Vs. Arun Kumar* 2020 SCC OnLine SC 443.

16. As would be immediately evident from above, the grievances of the petitioner in *Amit Kumar Sharma* supra, were more or less the same as the grievances of the petitioners herein. Once this Court has found no merit in the said grievances and dismissed the same challenge and petition claiming the same reliefs as claimed in these petitions, merely because these petitions are filed by the same petitioners who had filed W.P.(C) No.1947/2020 and by another about 50 petitioners, and through a different counsel, would not change the decision. The petitions are liable to be dismissed on this ground alone.

17. It is quite evident that the petitioners, by seeking cancellation of the examination, are seeking another chance at LDCE. The counsel for the petitioners though agrees that the number of times a serving personnel can appear in the LDCE is limited, perhaps to three, but on asking, how many chances/attempts the petitioners have already availed of, conveniently states that he has not taken instructions on this aspect. This attitude also indicates that these petitions, at least by some of the petitioners if not all of them, may be designed to, after exhausting the maximum number of chances/attempts which can be availed of for LDCE, avail of yet another chance.

18. The main grievance of the petitioners herein is, of mass cheating at the examination centre where all the petitioners took the examination. Needless to state that the said examination centre was but one, of the hundreds of examination centres at which the examination must have been

held, considering the number of candidates who took the same. Mass cheating, though is possible of answers in objective type multiple choice question paper but not in the case of answers to essay type question paper. As has emerged, Paper-I and Paper-II of the subject examination were objective type multiple choice question papers and only Paper-III was subjective/essay type. Of the seven petitioners in W.P.(C) No.6386/2020 the petitioners no.1 to 3 and of the 46 petitioners in W.P.(C) No.6387/2020 petitioners no.3 to 46, were found successful in Paper-I and Paper-II and cannot possibly have any grievance with respect to the result thereof and the challenge to the result thereof by the said petitioners is misconceived and not maintainable.

19. The challenge made to the examination process, on the ground of some of the questions being wrong and some other questions having multiple right answers or on the ground of answer key having not been declared or the reason for revision of the result, declaring 126 additional candidates including some of the petitioners, also successful in Paper-I and Paper-II, in view of the above does not survive. Rather it transpires that the grievances of some of the questions being wrong and some of the questions having multiple right answers, were looked into and redressed to the extent merit was found therein. As far as the grievance of, on such errors being admittedly found, the result of Paper-I and Paper-II being required to be modified in as much as some of the candidates earlier declared successful, on revision, not meeting the cut-off, is concerned, reference may be made to ***Gunjan Sinha Jain Vs. Registrar General, High Court of Delhi*** 188 (2012) DLT 627 (DB) where also, though on finding such errors, result of the examination was modified but the result of the candidates who had

already been declared qualified, though in the revised result would not have qualified, was not disturbed, even though in doing so the number of qualified candidates exceeded the requisite figure. We find the same practice to have been followed in a host of other judgments.

20. A close scrutiny of the writ petitions shows no grievances whatsoever with respect to conduct of examination of Paper-III, save of the same having been conducted in a noisy environment and having been commenced 10 to 15 minutes late. No merit however has been found in the said complaints and there is no reason to doubt the examining authorities in this regard. As held in *Amit Kumar Sharma* supra, for the relief of cancellation of examination be granted, large scale wrong in the conduct of the examination has to be established. The petitioners have utterly failed to do so. On the contrary the BOO, on viewing the video recording of the examination at the subject centre, not found any such thing and found only nine candidates to have indulged in cheating and who can be severed and acted against and no case of cancelling the examination is made out. The failure of the petitioners in the examination is owing to having failed in Paper-III, which required essay type answers and the challenge to the examination therein is vague and the petitioners have no right to seek re-examination and another chance.

21. The petitions are liable to be dismissed on this ground also.

22. As far as the challenge to the show cause notices issued to a few of the petitioners is concerned, the counsel for the respondents points out that the said petitioners, in their identical replies to the show cause notices, have admitted the video footage of the examination relied upon by the BOO. No case otherwise also, of interference at the show cause notice stage, is made

out.

23. The counsel for the petitioners has contended that the host of judgments relied upon and referred to in *Amit Kumar Sharma* supra, are distinguishable on facts and has informed us the factual scenario in which each of the said judgments was rendered. However in view of our above findings and even otherwise, it is not the facts of a particular case which constitute the ratio decidendi of the judgment in that case but the legal principle enunciated and applying which legal principles, W.P.(C) No.3716/2020 filed, though by another, but claiming the same relief and making the same pleadings, has been dismissed.

24. No ground to take a different view is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 14, 2020

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