

(2020) 10 DEL CK 0043

In the Delhi High Court

Case No : Civil Writ Petition No. 7494 Of 2020

Bhaskar Singh Chilwal & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Right to Information Act, 2005 — Section 24, 24(1)

Citation : (2020) 10 DEL CK 0043

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Ankur Chhibber, Anshuman Mehrotra, Harsh Dhankar, Nikunj Arora, Rahul Sharma, C.K. Bhatt

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

CM No.25003/2020 (for exemption)

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

W.P.(C) No.7494/2020 & CM No.25002/2020 (for interim directions)

3. The 23 petitioners, being personnel of the respondents No.3&4 Central Reserve Police Force (CRPF), of the rank of Inspectors/Sub-Inspectors, have filed this petition (i) impugning the orders dated 11th May, 2020 and 7th July, 2020 whereby the respondent No.2 Indo-Tibetan Border Police Force (ITBP) has rejected the request of the petitioners, under the Right to Information Act, 2005 (RTI Act), seeking certified copies of their answer sheets of Paper III of the Limited Departmental Competitive Examination (LDCE) held on 2nd February, 2020, on the ground that the respondent No.2 ITBP is exempted under Section 24(1) of the RTI Act, to provide the same; and, (ii) seeking mandamus directing the respondent No.2 ITBP to either provide the certified copies of the answer

sheets or in the alternative to re-evaluate the answer sheets of Paper III of the LDCE held on 2nd February, 2020 and consequently re-declare the result of all candidates who appeared in the said examination.

4. The counsel for the respondents appears on advance notice.

5. Being prima facie of the opinion that the petition is not maintainable and/or has no merits and notice thereof does not deserve to be issued, we have heard the counsel for the petitioners at length and have also heard the counsel for the respondents.

6. It is the case of the petitioners, (i) that the petitioners, while serving as Inspectors/Sub-Inspectors in the respondents No.3&4 CRPF, had applied for the post of Assistant Commandant in the Central Armed Police Forces (CAPFs), through LDCE, pursuant to an advertisement dated 28th June, 2019 issued by the respondent No.2 ITBP, being the Nodal Authority for conducting the said examination; (ii) that the said recruitment comprised of Written Examination, Physical Standard Test (PST), Physical Efficiency Test (PET), Interview and Personality Test; (iii) that the written examination in turn comprised of Paper I (Intelligence Test and General Knowledge), Paper II (Professional Skill) and Paper III (Essay, Precise Writing and Comprehension); (iv) that the petitioners appeared in the written examination on 2nd February, 2020; (v) that Paper I and Paper II of the said written examination comprised of Multiple Choice Questions checked through Optical Mark Reader; (vi) that the result of Paper I and Paper II of the written examination was declared on 4th February, 2020; (vii) that a total of 1046 candidates were declared 'pass' in Paper I and Paper II and became eligible for PST/PET; (viii) that an additional list of 126 candidates declared 'pass', after re-checking of Paper I and Paper II, was declared shortly thereafter; (ix) that the petitioners were declared 'pass'; (x) that the result of Paper III was to be announced after conducting PST/PET; (xi) that the petitioners were called for PST/PET held between 5th February, 2020 and 10th February, 2020 and qualified therein also; (xii) that however in the result declared on 24th April, 2020 of 145 successful candidates, the names of none of the petitioners found mention; (xiii) that only 34 candidates from CRPF were selected for Interview and Personality Test; (xiv) that the result declared on 24th April, 2020 was full of anomalies and arbitrariness; (xv) that the LDCE was conducted for 135 vacancies; (xvi) that the respondents failed to disclose how many marks were obtained by the candidates who did not make it to the final list declared on 24th April, 2020; (xvii) that the act of the respondents of calling only 145 candidates for Interview and Personality Test, is contrary to the law laid down in *Ashok Kumar Yadav Vs. State of Haryana* (1985) 4 SCC 417 to the effect that the number of candidates to be called for interview should not exceed twice or at the highest, thrice the number of vacancies to be filled; (xviii) that the petitioners were kept in dark about the marks secured by them in Paper III; (xix) that the petitioners, on 26th April, 2020, through the medium of RTI Act, sought certified copies of their answer sheets of Paper III, from the respondents; (xx) that the

petitioners, vide their communications dated 1st May, 2020 and 5th May, 2020 also requested the respondents to re-evaluate the answer sheet of Paper III; (xxi) that the petitioners, though having done well in the Paper and having good command over the English language but had been declared failed; (xxii) that in response to the application under the RTI Act, vide order dated 11th May, 2020, the petitioners were intimated that the information sought did not pertain to corruption and/or violation of human rights and hence as per Section 24(1) read with Second Schedule of the RTI Act, the respondent No.2 ITBP was exempted from providing the information sought; (xxiii) that the petitioners preferred first appeal under the RTI Act; (xxiv) that the petitioners, in response to their communications, were informed vide email dated 27th May, 2020 that answer sheets of Paper III being subjective in nature were evaluated by subject specialist; (xxv) that the petitioners, vide their email dated 27th May, 2020 sought disclosure of their marks in Paper III; (xxvi) that the non-disclosure of marks of Paper III to the petitioners deprives the petitioners from knowing the modus of evaluation thereof and is arbitrary and unjust; (xxvii) that since the petitioners did not hear anything about their first appeal under the RTI Act, they, on 1st July, 2020 preferred second appeal under the RTI Act, asserting right to know the marks which the petitioners had obtained in the examination in Paper III; (xxviii) that the respondent No.2 ITBP, vide email dated 1st July, 2020 took the stand that the Standard Operating Procedure (SOP) of the Assistant Commandant (GD) (LDCE) issued by the respondent No.1 Ministry of Home Affairs on 1st July, 2014 did not provide for uploading the marks of Paper III; (xxix) that vide letter dated 7th July, 2020, the petitioners were informed that there was no merit in the challenge to the order dated 11th May, 2020; (xxx) that the act of the respondent No.2 ITBP, of not disclosing the marks of Paper III and of not providing the certified copies of the answer sheets of Paper III is violative of the principles of transparency enshrined in the RTI Act; (xxxi) that it has been held in Central Board of Secondary Education Vs. Aditya Bandopadhyay (2011) 8 SCC 497 that the examining bodies are not exempted under Section 24 of the RTI Act; (xxxii) that again, in Mradul Mishra Vs. Chairman U.P. Public Service Commission, Allahabad MANU/SC/0974/2018 it was held that giving inspection of answer sheets does not involve any public interest and does not affect the efficient operation of the Government; (xxxiii) that not only were the marks of the petitioners obtained in Paper I and Paper II not disclosed but the marks obtained by the petitioners in PST, PET and Paper III have also not been disclosed; and, (xxxiv) that such non-disclosure has potential of foul play.

7. We have at the outset itself enquired from the counsel for the petitioners, whether not the remedy of the petitioners, if aggrieved from the orders of the First Appellate Authority and/or Second Appellate Authority of the respondent No.2 ITBP under the RTI Act, is before the Chief Information Commissioner and in the face of such alternative remedy available, how is the present petition maintainable. We have also observed that the writ petitions impugning the orders under the RTI Act are perhaps not in the Roster of this Bench.

8. The counsel for the petitioners states that the petitioners are not asserting any rights under the RTI Act but are asserting their right otherwise to know the result of the LDCE, not only of themselves but also of the other candidates who participated therein. It is argued that it is the right of every examinee to know the result of the examination.

9. Once the petitioners as per the statement of their counsel are not pressing for any relief under the RTI Act, we have enquired from the counsel for the petitioners, whether not the law otherwise is that unless there is a provision in the scheme of examination and/or in the rules and regulations for conducting of the examination, copies of the answer sheets of subjective type question papers and re-evaluation thereof cannot be sought. It has further been enquired, whether not the same would amount to changing the rules of the game after the petitioners have remained unsuccessful.

10. The counsel for the petitioners refers to the judgments cited in the petition and annexed thereto.

11. The counsel for the respondents states that all the aforesaid judgments are pertaining to RTI Act and claim whereunder, though made in the petition, has been abandoned by the petitioners during the hearing. It is argued that else the law as laid down in *Ran Vijay Singh Vs. State of U.P.* (2018) 2 SCC 357 is, that in the absence of a rule or clause permitting re-evaluation and obtaining copies of the answer sheets, there is no right to re-evaluation or to obtain certified copies of the answer sheets.

12. The counsel for the petitioners states that in the present case, from the declaration of the addendum to the result declared on 4th February, 2020 of Paper I and Paper II itself, it is evident that mistakes had been committed at least in the conduct of examination of Paper I and Paper II. It is argued that since according to the petitioners, they had done well in Paper III, the petitioners suspect similar mistakes in evaluation of their answer sheets of Paper III also. It is argued that the main grievance of the petitioners in this petition is non-declaration of result by the respondents. It is also argued that declaration of the result of the examination is a basic requirement and the petitioners in this petition are seeking at least the said relief.

13. It is also argued that since the respondent No.2 ITBP was the Nodal Agency in the subject year for conducting of the examination, foul play is also evident from majority of the successful candidates being from ITBP only. It is also contended that the law requiring candidates double the number of vacancies, for interview, is also being flouted in the conduct of the subject examination. It is argued that the entire conduct of the examination is shrouded in secrecy.

14. The counsel for the respondents adds that the SOP filed by the petitioners themselves does not provide for declaration of result and/or re-evaluation and/or for supply of copies of the answer sheets.

15. The counsel for the petitioners contends that in the absence of any prohibitory clause in the SOP, the same implicitly follows.

16. We have drawn the attention of the counsels to our judgment in Mahipal Vs. Union of India MANU/DE/1752/2020 and in connected petitions. The said petitions were filed by personnel of the Border Security Force (BSF) seeking mandamus for cancellation of the result of the aforesaid LDCE and re-conduct afresh of the LDCE under the guidance of Union Public Service Commission and/or re-evaluation of the answer sheets of Paper III of the examination. It was inter alia the contention of the petitioners therein also that there were anomalies/ discrepancies in the conduct of the examination, sufficient to nullify / cancel the entire examination. While dismissing the said petitions, it was found / recorded / reasoned, (a) that an earlier petition being W.P.(C) No.3131/2020 titled Beer Pratap Singh & Ors. Vs. Union of India & Ors. challenging the same LDCE was withdrawn on 14th May, 2020; (b) that yet another writ petition being W.P.(C) No.3716/2020 titled Amit Kumar Sharma Vs. Union of India & Ors., also seeking cancellation of the same LDCE, had been dismissed on 24th June, 2020; (c) that the addendum to the result of Paper I and Paper II was announced because representations from the examinees had been received regarding inaccuracies in a few questions of Paper I and merit was found in which representations and accordingly revised result was prepared and equal weightage was given to all candidates who had appeared in Paper I and Paper II, for the two wrong questions and one question which had multiple right options; (d) that else, no merit was found in the other complaints received with respect to the examination held on 2nd February, 2020; (e) that only a few candidates at one of the examination centre were found using unfair means and action initiated against them; (f) that no case for interference with the subject LDCE was found to have been made out; (g) that merely because on receipt of representations, a few of the multiple choice type questions in Paper I were found to be erroneous, did not require the entire examination process to be nullified; and, (h) that no grievance whatsoever with respect to the conduct of examination in Paper III had been urged.

17. We may mention that the petitioners herein also have not pleaded any error in the conduct of Paper III. Even otherwise, the scope of any error in a subjective essay type question paper is negligible in comparison to an objective multiple choice type question paper.

18. Once the matter is to be considered de hors the RTI Act, the reliance placed by the counsel for the respondents on Ran Vijay Singh supra is apposite. The Supreme Court therein, after considering a host of past precedents, concluded that (i) if a statute, Rule or Regulation governing an examination permits 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; (ii) if a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then

the Court may permit re-evaluation or scrutiny, only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation", that a material error has been committed and only in rare or exceptional cases; (iii) the Court should presume the correctness of the key answers and proceed on that assumption; (iv) in the event of a doubt, the benefit should go to the examination authority rather than to the candidate; (v) sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet; if an error is committed by the examination authority, the complete body of candidates suffer; 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 by an erroneous question or an erroneous answer; all candidates suffer equally, though some might suffer more, but that cannot be helped since mathematical precision is not always possible. While holding so, the Supreme Court also observed that despite several decisions of the Supreme Court, interference by the Courts in the result of examinations continued, placing the examination authorities in an unenviable position, where they are under scrutiny and not the candidates. It was further held that a massive and sometimes prolonged examination exercise concludes with an air of uncertainty and that it must not be forgotten that examination authorities put in equally great efforts to successfully conduct an examination; the enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the effort put in by the examination authorities. It was yet further held that consequence of interference by the Court in the result of the examination leads to no finality to the result, even after long lapse of time and this unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded, with public interest suffering.

19. Though in view of the aforesaid dicta, reference to no other judgment is required but Mr. Rahul Sharma counsel for the respondents, while emailing the aforesaid judgment to us has also emailed to us a comparatively recent judgment in High Court of Tripura Vs. Tirtha Sarathi Mukherjee (2019) 16 SCC 663 where also a host of judgments on this aspect including Ran Vijay Singh supra were noticed.

20. The counsel for the petitioners does not controvert that the SOP for the subject examination does not provide for re-evaluation or for furnishing copies of the answer sheets. No other rule or provision providing for re-evaluation of the result of the subjective type question paper has been cited. Merely because the respondents themselves reviewed the result of the objective multiple choice type question papers, on finding merit in the representations thereagainst of error in few questions in Paper I, would not vest a right in the petitioners to seek re-evaluation of the answer sheets of the subjective type question paper also.

21. Mr. Rahul Sharma, counsel for the respondents is also right in his contention that all the judgments referred to by the petitioners in the writ petition are under the RTI Act and rights whereunder are not pressed.

22. Faced therewith, the counsel for the petitioners contends that the petitioners do not even seek the relief of re-evaluation and only seek the relief of declaration of the result and information of the marks secured by the petitioners in Paper III of the written examination. It is argued that the cut-off marks have also not been disclosed.

23. A perusal of the SOP of the scheme/modalities for selection of Assistant Commandant (GD) through LDCE for CAPFs shows the same to be prescribing the qualifying marks, in each paper of 45% and in aggregate of 50%, for the General Category candidates and 40% in each of the papers and 45% in aggregate, for Scheduled Castes and Scheduled Tribes candidates. The same also prescribes for the result of Paper III to be announced after the conduct of PST and PET. Therefrom, it follows that the petitioners have not secured the qualifying marks prescribed in Paper III and/or in aggregate of all the three papers. The petitioners thus are not entitled to seek declaration of the result also.

24. We may notice that the petitioners have not made out any case for this Court to find a need for calling for the records or for re-evaluation exercise to be carried out. We may also notice that the petitioners have only sought the reliefs of seeking certified copies of their answer sheets and re-evaluation thereof and no other relief and the relief of declaration of result is being pressed only finding that the reliefs claimed to be not tenable in law.

25. No merit is found in the petition.

26. Dismissed.