

(1997) 11 GAU CK 0029

In the Gauhati High Court

Case No : Civil Rule No's. 56 and 81 of 1996, No's. 351, 357, 416, 628, 513, 810, 782 and 624 of 1997

E. Suraj Singh and Others

APPELLANT

Vs

Manipur Public Service Commission and Others

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3(1)
Constitution of India, 1950 — Article 226

Citation : (1998) 1 GLT 21

Hon'ble Judges : H.K. Seha, J

Bench : Single Bench

Advocate : Mr. Kotishwar Singh, Mr. H.S. Paonam, Mr. HNK Singh, Mr. Th. Ibohal Singh, Mr. I. Lalit Kumar, Mr. Kh. Chonjohn Singh, Mr. N. Kumarjit Singh, Mr. T. Nanda Kumar and Mr. Kh. Namaichand, for the Appellant; Mr. Ashok Potsanbgbam, Mr. A. Jagatchandra and Mr. A. Nilamani Singh, for the Respondent

Final Decision : Allowed

Judgement

1. These batches of writ petitions raises common question of law facts, and as such, they being disposed by this common Judgment.

2. The unpleasant facts leading to the filing of these batches of writ petitions are common in all the writ petitions and the fact in C.R. No. 56/96 may be briefly recited strictly for the purpose of disposal of these petitions.

3. The Respondent No. 1, by a notification dated 16.4.1994 invited applications for recruitment to 9 (nine) posts of Manipur Civil Service (MCS) and 11 (eleven) posts of Manipur Police Service (MPS) Junior grade. The petitioners as well as the private respondents herein applied for the posts. Written test was held from 25.9.1994 to 11.10.1994 and the result of Written test was declared on 23.12.1995. Rumours spread that there was serious illegalities/ manipulation in tabulation of marks secured by the successful candidates. Some of the unsuccessful candidates filed representation to the Chairman, Manipur Public

Service Commission by its representation dated 27.12.1995 inter alia praying for appointment of High Power Committee to conduct enquiry into the manner in which the answer scripts were examined and the conduct of the examination, the process of tabulation of marks, etc. without any result. Being aggrieved. Civil Rule No. 56/ 96 has been filed praying inter alia to institute an enquiry to investigate the manipulation and temparing answer scripts of the petitioners and others and also direct/order of security and re-tabulation of the answer scripts of the written test by cancelling the result declared on 23.12.1995. Petitioners also filed Misc. application registered as Misc. case No. 36/96 praying inter alia interim order for suspension of holding Viva voce test to be held from 22.1.1996 on the basis of the written test result declared on 23.1.1995. On 16.1.1996, this Court direct the Registrar of the Court to examine and find out if such allegations are founded at all. Pursuant to the aforesaid direction, the Registrar of this Court submitted enquiry report on 18.1.1996. The same was placed before the Court on 19.1.1996 as ordered, and after going through the enquiry report submitted by the Registrar, the Misc. case No. 36/ 96 was finally disposed by this Court on 19.1.1996. This report is having important bearing which I shall deal in detail at the appropriate time.

4. In the interregnum, the learned Sr. Government Advocate also produced a copy of Government Notification dated 17.1.1996 postponing the date of viva voce/personal test for recruitment to MCS/MPS to be held from 20.1.1996, until further notice due to certain unavoidable circumstances. The said order has been issued by Joint Secretary, Manipur Public Service Commission (MPSC). This Court further ordered as under ;-

"Without obtaining orders from this Court, viva voce/personal test for recruitment of MCS/MPS which is now stated to be postponed shall not take place."

This is how the holding of viva voce/personal test on the basis of written test result declared on 23.12.1995 has been withheld, resulting into filing of subsequent writ petitions by the so-called successful candidates.

5. It will be pertinent to mention that during the pendency of the Civil Rules, the Government of Manipur constituted one Man Commission of enquiry by a notification dated 25.3.1996 in exercise of power conferred under sub-section (1) of Section 3 of the Commission of Enquiry Act, 1953, under the Chairmanship of Justice T.C Das (Retd). The commission has submitted its report on 18.10.1996 which has been rejected by the Government. I shall deal with the terms of reference and findings of the Commission on the important reference at the appropriate time.

6. Civil Rules No. 55/96 and Civil Rule No. 81/96 have been filed by the unsuccessful candidate inter alia praying for quashing of the written test examination held from 25.9.1994 to 11.10.1994. Civil Rules, 351/97, 357/97, 416/97, 624/97, 628/97, 513/97, 810/97 and 782/97 has been filed by the so-

called successful candidates. Their prayers are common to allow the viva voce/ personal test to be held on the basis of result declared on 23.12.1995.

7. I have heard Mr. Kotishwor, learned counsel for the petitioner in C.R. No. 56/96, Mr. H.S. Paonam, in C.R. 81/96, Mr. HNK Singh in C.R. 351/97 and C.R. 415/97, Mr. Th. Ibohal Singh in C.R. 357/97, Mr. Kh. Nimachand in C.R. 624/97, Mr. Lalit Kumar in C.R. 628/97, Mr. N. Kumarjit Singh in C.R. 810/97, Mr. T Nandakumar in C.R. 782/97, Mr. Kh. Chojohn Singh in C.R. 513/ 97, Mr. A. Nilamani Singh, Learned counsel for the respondents Nos. 2 to 13 except respondent Nos. 6 and 9 in C.R. 56/96. Mr. A. Jagatchandra, learned counsel for the respondent No. 1, Manipur Public Service Commission (MPSC) and learned Advocate General for the State of Manipur.

8. Before I advert further, at this stage it is considered necessary to deal with the preliminary enquiry report submitted by the Registrar of this Court on 18.1.1996, pursuant to the direction of the Court on 16.1.1996 in Misc. application No. 36/96. This Court on 16.1.1996 directed the Registrar to find out the allegations in terms of the following order :-

"In view of the serious allegation that there is a difference in the marks actually given by the Examiners and the marks shown in the tabulation sheet of all the successful candidates, it appears, it would be for the ends of justice that I direct the Registrar of this Bench to examine and to find out if such allegations are founded at all, if not in respect of all the successful candidates, at least in respect of some successful candidates."

The report of the Registrar, in my view has an important bearing and it is quoted in extenso :-

"Sub- : - Enquiry Report

My Lord,

With reference to the order of the Court passed in Civil Misc. Appln. 36/96 (reference to C.R. 56/96) on 16.1.1996, I beg to submit my report.

While taking necessary steps, I could start the required preliminary enquiry on 17.1.1996 at about noon and I continued it only upto 4.50 P.M.

The answer scripts and detached slips of all candidates were found in bundles without making proper arrangement and as such it was not possible to trace out all the answer scripts of all the successful candidates within the said period for the purpose of finding the alleged discrepancies in between the marks actually given by the Examiners in the answer scripts of the successful candidates and their marks shown in the relevant tabulation sheets.

During the said period, I could examine answer scripts and relevant tabulation sheets of some of the successful candidates in general category who had appeared in Sociology and Political Science papers. In the course of enquiry, I ascertained that there were patent discrepancies in respect of Roll Nos. 17, 298,

1126, 913 and 3420. The discrepancies are as follows :

Roll Nos. Subject Code No. Marks in answer script Marks in tabulation sheets

17 Sociology Paper-I 53 115 195

17 Sociology Paper-II 149 149 189

298 Sociology Paper-I 83 104 194

298 Sociology Paper-II 182 84 184

298 Political Science Paper-I 172 109 179

913 Political Science Paper-I 158 68 188

1126 Political Science Paper-I 33 58 188

1126 Political Science Paper-II 242 151 191

3420 Political Science Paper-I 110 138 188

In respect of the Roll No. 1126, I detected the following discrepancies in respect of History papers.

Roll Nos. Subject Code No. Marks in answer script Marks in tabulation sheets

1126 History Paper-I 58 There Is overwriting as regards code number shown in answer script. 111 191

1126 History Paper-II 40 100 190

In view of the above findings, examination of the answer scripts and relevant tabulation sheets of Roll Nos. 17, 298, 913, 1126 and 3420 in respect of the other papers including compulsory papers would have been illuminating but it could not be done for want of time.

Apart from the above mentioned findings, I also found that there were addition, overwriting and cancellation without proper authentication as regards marks shown in the answer scripts of Roll No. 107, 298, 1486, 1720, 2098, 3036 in Political Science paper-I. Further, I found that no code number is written on the concerned detached slips of Roll Nos. 951 & 2375 in respect of Sociology Paper-II.

Due to non availability of time, I could not examine the answer scripts and relevant tabulation sheets of all the successful candidates as per direction of the Court.

Your Lordship may kindly appreciate the situation and excuse me in respect of my inability to complete the enquiry fully.

In the light of finding noted above, let me conclude my report with an observation that there is a reasonable possibility of finding more discrepancies in case of examining answer scripts and relevant tabulation sheets of other successful candidates in a full fledged enquiry,

(Italicised is mine)

(M. BINOYKUMAR SINGH)

Laid REGISTRAR : IMPHAL BENCH"

9. After perusal of the Report of the Registrar of this Court, this Court has suspended the holding of viva voce / Personal test by its order dated 9.1.1996 while disposing of the Misc. application. It would appeared from the Report of the Registrar that, there werеп2 fabrication marks in tabulation.

10. That Das Commission of enquiry was constituted by the Government, vide, its Notification dated 25.3.1996 with the terms of reference, the relevant of which is reference (a) reads :-

"(a) To enquire into the procedure of setting question Papers, examination of answer sheets, tabulation of marks and the declaration of results ;"

11. The Commission after examination of witnesses and documents available on record including question papers, answer scripts and Code number has answer the reference (a) at page 29 of the Report as under ;-

"1. Codification of Answer scripts was not done according to any standard norm.

2. A candidate has 5 different code Nos. in 6(six) different subjects/ papers. This has made things difficult for any subsequent checking or confirmation.

3. Any standard question design was not followed.

4. Many of the examiners did not follows any standard rules, e.g. authentication of any cut or alteration in marks.

5. It is observed that the same person was making alterations of marks in many subjects.

6. No proper scrutiny of the scripts was done as it was evident in many cases of mistakes in totalling marks.

7. Only one tabulation sheet of marks is found. This is less reliable as there is no chance of comparison.

8. Entries in the tabulation sheet are done by employees of the MPSC which is highly objectionable.

9. MPSC prepared a new set pf mark-sheets apart from those supplied by the examiners. This is highly objectionable as it created room for manipulation. Many such cases wherein the examiner"s marks was increased to the extent of 100 marks in the MPSC sheet have been detected e.g. for Roll No. 922, marks for History-I is changed from 140 to 240, etc.

10. The non-existence of scrutinizers of different subjects is apparent. So also that of head examiners."

12. Manipur Public Service Commission is impleaded as Respondent No. 1 in Civil Rule No. 56/96 and Civil Rule No. 81/ 96. Counter on behalf of the respondent No. 1 has been filed. The counter has been sworn by the secretary of the Commission. It is stated in paragraph 3 of the counter as under :

"3. That it is further to state that the acting Chairman of the Commission, namely, shri I. Bijoy Singh had already tendered resignation on 23.1.96 taking moral responsibility of the mistakes committed by Shri R.K. Jhulon Singh private secretary and the same has been duly accepted by this excellency, Governor of Manipur."

13. The averments made in para 3 of the counter would show that the mistakes committed by the Commissioner has become an admitted fact. Further a series allegations have been made in para 11 of the writ petition that the norms set for the coded and decoded of the answer scripts had not been followed. The allegation made in para 11 of the writ petition has been answered in para 5"of the counter as under :-

"5. That with reference to para 11 of the writ petition I have nothing to submit."

Silence amounts to admission.

14. After admitting the mistakes committed by the Secretary of the Commission, the counter ended with the following :-

"In view of the facts and circumstances of the case the Commission carve leave of the Hon"ble Court to leave the matter entirely to the Court and undertake to abide by any decision or direction that may be issued in due course by the Hon"ble Court."

15. This appart, the Commission also filed an answer by the Private Secretary of the Commission dated 23.1.1996 to the explanation called by the Commission by which the Private Secretary admitted to have made a mistakes marked as Annexure-D/1. The Commission also annexed order dated 23.1.1996 placing the secretary under suspension (Annexure-D/2). Commission also annexed a letter dated 24.1.1996 accepting the resignation of the acting Chairman of the Commission by His Excellency the Governor of Manipur (Annexure -D/3).

16. The last but not the least, Mr. Jagatchandra, learned counsel appearing on behalf of the Commission produced the rules framed by the Manipur Public Service Commission for the conduct of the business (Confidential) at the time of hearing of this writ petition, particularly the rules regulating the procedure to be followed for conducting the examination and interviews and setting of question papers. The decision regulating the procedure to be followed was taken on 27th and 28th of November, 1985. To mention only few, the following decisions are taken :-

"1. Names of paper setters should be selected by the Chairman of the Member concerned.

2. The paper setters will sent the questions so set addressed to the Secretary, MPSC by name.

3. As soon as the questions are received in two sealed envelopes by the Secretary, he will sign on the cover at several places of all the opening edges and hand over it to the Chairman or the Member concerned.

4. The Chairman or Member concerned will then countersign the envelopes at the same opening edges and will be kept under his safe custody.

5. The envelopes will not be opened till the morning of the examination as far as possible."

17. At the time of hearing of this writ petition, Mr. Jagatchandra, learned counsel appearing for the respondent No. 1 fairly admits that the aforesaid procedure has not been followed while conducting written test from 25.9.1994 to 11.10.1994.

18. At this stage, it will be relevant to refer to the statement made by Mr. R. K. Jhulon Singh, Private Secretary to the Secretary, MPSC before the DAS Commission. The evidence of R.K. Jhulon Singh has been quoted by the Commission in his report at Page 16 as under -

"I had to engage the teacher for setting Question Papers and the Examiners as instructed verbally by the Chairman/Secretary, MPSC. I was verbally instructed by the Chairman/Secretary to verify the Answer-scripts, Mark-sheets and to do Tabulation work of the Examination. As instructed by the Secretary and the Chairman. I prepared all related papers of the Examination including coding and decoding evaluation works, etc."

19. From the admitted facts and circumstances as alluded above, it would therefore clearly shows that the conducting of the written test examination from 25.9.1994 to 11.10.1994 for recruitment to the posts of MCS and MPS conducted by the Commission was not in accordance with the regulated procedure, and in this view, it can be safely held that the written test conducted by the Commission was void abnatio.

20. In the backdrop of facts and circumstances as aforesaid, let me now examine the rival contentions raised by the parties.

21. Mr. Kotishwor and Mr. H.S. Paonam, learned counsel for the petitioners in C.R. No. 56/96 and C.R. No. 81/96 contended that viewing from the conduct of the examination, an enormity of malpractices in the written test is writ large. It is further contended that there is mass malpractices and the entire conduct of the examination are tainted with fraud as the examination being conducted in Hagrant violation and breach of rules and procedures laid down in this regard.

22. On the other hand, counsels for the respondents/Successful candidates raised the following contentions :-

(a) The C.R. 56/96 and 81/96 have been filed by failed candidates in the written

test and the writ petitions are not maintainable.

(b) In the writ petitions, petitioners have not prayed for quashing of written test, and therefore, the relief which are not prayed for in the writ petition cannot be granted.

(c) The deposition made before the Commission of enquiry has no evidentiary value and cannot be used in judicial proceeding inasmuch as Commission of enquiry is only a fact finding body and not Court.

(d) If written examination is cancelled, meritorious candidates who have been found successful and whose cases no manipulation in tabulation of marks are detected, it would cause serious prejudice to the meritorious candidates.

(e) If the written examination is cancelled and order a fresh written examination to be held, the candidates who were eligible and within the age in 1994 would now become overage and they will be seriously prejudiced. These are the sums and substance of the contentions raised by the parties. Now let me deal one by one.

23. Point (a)

The contentions that the C.R. 56/96 and C.R. 81/96 have been filed by failed candidates and it is not maintainable is ill advice. From the facts and circumstances recited above, public interest is writ large. This Court on the basis of the writ petition has taken seized of the matter and ordered enquiry by the Registrar of the Court and has taken cognisance of the report as the matter of paramount public importance is involved. Conducting of civil examination by the Commission is of paramount important because the selected candidates are the future administrator of the public and if only good candidates are elected, they can serve the public with due devotion, efficiently and with integrity and deliver goods to the public at large. This can be possible only if the examination is conducted in fair manner. In this connection, learned counsel for the respondents have referred to the decision of the Apex Court rendered in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, There it was pointed out by the Apex Court that:

"Candidate taking calculated chance and appeared at oral interview and declared unsuccessful at interview, cannot challenge interview test as unfair."

This decision is not applicable in the facts of the case at hand. Because, in the instant case, the system of the written examination has been challenged, and that the written test was not conducted in accordance with the norms set by the Commission had been admitted by the Commission itself.

24. Point (b)

The contention of the respondents that the petitioners did not pray for quashing of the written test examination, and therefore, no relief can be granted is not well founded. In fact the petitioners in C.R. 56/96 has stated in para 14 as

under :-

"14. That the petitioners state that as the result of the written test has been manipulated by playing fraud upon the petitioners, the same is plainly illegal and liable to be quashed."

25. Also the petitioners in C.R. 81/96 inter alia prayed as under :-

"(ii) issue a rule in the nature of certiorari or any other appropriate writ or direction for quashing and setting aside the result of the written test examination if found irregular and unsuitable after examining all the relevant answer scripts of the petitioner."

Therefore, it cannot be said that the petitioners have not prayed for setting aside the written test result.

26. Point (c)

It is contended by Mr. A Nilamani Singh that, evidence recorded before the Commission has no evidential value. According to the counsel, the statement of R.K. Jhulon, Private Secretary to the Secretary of the Commission admitting mistakes committed by him cannot be used as evidence as the Commission is only a body of fact finding and not to adjudicate upon the rights of the parties. The report of the DAS Commission being not accepted by the Government, no evidential value can be attached to the statement of Mr. R.K. Jhulon. This submission, in my view is thoroughly misconstrued. Firstly, because this Court is not precluded from taking assistance of the fact reported by the Commission. Secondly, as already said, this Court had also ordered the Registrar of this Court to make an enquiry and submit the report and the report has been considered by this Court and accepted. Thirdly, this submission is of no consequences, because in the instant case, the Commission themselves had admitted that written test has been conducted in violation of the procedure regulated by it for conducting written test examination.

27. Point (d)

Mr. HNK Singh and Mr. N Kumarjit Singh strenuously urged that, in the event of the written examination is ordered to be cancelled, the meritorious candidates who have secured qualified marks, to face the viva voce/personal test and in whose cases no interpolation or alteration of marks in tabulation are detected, serious prejudice would cause to them. Mr. HNK Singh further contended that in such case the doctrine of severability should be resorted to. In this connection, the learned counsel has referred to. In this connection, the learned counsel has referred to Administrative Law by H.W.R. Wade & C.F. Forsyth, Seventh Edition on Severance of good from bad, which says that,

"An administrative act may be partially good and partially bad. It often happens that a tribunal or authority makes a proper order but adds some direction or condition which is beyond its powers. If the bad can be cleanly severed from the

good, the Court will quash the bad part only and leave the good standing."

28. How this doctrine of severability would assist the case of successful candidates. In the instant case, the illegalities and irregularities as pointed out above are not confined to interpolation/alteration of marks in tabulation. The root cause of the written examination is vitiated being conducted in derogation of the norms regulated by the Commission as admitted by the Commission. If that is so, the conducting of written examination is void ab initio and the whole process of conducting the written examination from setting question papers to declaration of results are bad. The meritorious candidates can be claimed as meritorious if the system of the conduct of the examination is fair. But when the conduct of the examination itself is tainted with fraud and malpractices, the unmeritorious candidates can become meritorious and meritorious candidates can become unmeritorious. Then the difficulties arises "to sift the grain from the chaff." In the instant case, the system of conducting the written test examination being tainted with fraud and malpractices, no candidate can claim to be a meritorious candidates out of such examination. This apart, such contention in the similar circumstances had been rejected by the Apex Court in Krishan Yadav and another Vs. State of Haryana and others, It was held by the Apex Court in para 20 of its Judgment as under :-

"20. In the above circumstances, what are we to do ? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors."

29. Point (e)

It is the common argument advanced by all the counsels of the successful candidates that if the written examination is ordered to be cancelled and order a fresh examination it would cause serious prejudice to the successful candidates who were within the age in 1994 would not become overage and they will not be eligible to compete in the examination if a fresh written examination is conducted. There is some substance in this argument. It is unfortunate that because illegal conduct of the examination by the Commissioner in 1994, by now many of the candidates would become overage if a fresh written examination is held. But this Court is not helpless. This problem can be taken care of by directing the Commission that in the meantime, if anybody is found to be overaged, the period which was spent in pursuing the present litigation should be excluded by the Commission.

30. The sole purpose of conducting written test by the Commission is to search and select the best amongst the applicants. In order to achieve this goal, the

examination must be carried out in a thorough and scientific manner so as to arrive at a fair and satisfactory evaluation of the performances of the candidates.

31. This test is of paramount importance, because the candidates selected by the Commission for the civil services if made strictly on merit are the future good and efficient administrator of the public who would by dint of their own merit and efficiency deliver goods to the needy people who are yearning for social justice.

32. In the instant case, from the facts and circumstances as revealed above, the conduct of written examination from the stage of selecting examiners and of setting of question papers to the stage of tabulation of marks and declaration of result was a systematic fraud. Fraud is being practiced at the costs of public interest. In the facts and circumstances of the case, this Court has no alternative but to quash the written examination held from 25.9.1994 to 11.10.1994 for recruitment to the post of MCS/MPS and the result declared on 23.12.1995. It is accordingly quashed.

33. The Manipur Public Service Commission is directed to re-advertise the posts and conduct a fresh written test examination after receiving applications from the eligible candidates. The Commission shall re-advertise the posts within a week from the date of receipt of this order. In the meantime, if there is more vacancy in existence, it is open to the Commission to add those posts in addition to the posts earlier advertised.

34. Before parting with the records, I am tempted to quote the importance of the Public Service Commission stressed by the Apex Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, This is what the Apex court said in para 30 of its Judgment :-

"30. Before we part with this Judgment we would like to point out that the Public Service Commission occupies a pivotal place or importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission. It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are honest, upright and independent and who are not swayed by the political winds blowing in the country.

The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and Members of the Public Service Commission are eminent men possessing a high degree of calibre, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them. We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would

not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit."

35. It is enlightening to know from the learned Advocate General that, Manipur Public Service Commission has been re-constituted with new Chairman who has varied experience in the administration of the affairs of the State. It is hoped and trust that reconstituted Commission would carry out the sacred trust repose on them by the Public, keeping in view of the observations made by the Apex Court as quoted above.

36. I am also constrained to observe that the way R.K. Jhulon Singh conducted himself in conducting the written test examination involving manipulation/ alteration of marks are penally liable

37. The Superintendent of Police Imphal is directed to investigate the case himself and take necessary action in accordance with law. It is open to the Superintendent of Police Imphal to interrogate and book any person whether high or low involved in this matter/ suspected to be involved in the matter and take action as per law. "Be ever you so high, the law is above you." It is hoped and trust that the long arm of law will not fail or reach the person responsible committing this sordid affairs. Superintendent of Police Imphal shall submit the progress report of the investigation to Registrar of this Court every month beginning from 15th December, who shall in turn place the report before the Court.

38. With the aforesaid direction, Civil Rule 56/96 and Civil Rule 81/ 96 are allowed. The rest of the Civil Rules are dismissed. However, without costs. Needless to say that all interlocutory orders connected with these cases are merged with this order.