
(2018) 12 DEL CK 0310

Delhi High Court

Case No: Civil Writ Petition No. 5607, 5679, 5695, 5699 Of 2015, 2065 Of 2017

Sandeep Kumar & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: Dec. 18, 2018

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: S.Muralidhar, J; Sanjeev Narula, J

Bench: Division Bench

Advocate: Garima Sachdeva, Rajesh Kumar Gogna, Liu Gangamei, Akhilesh Kumar, Perala Upendra Sai, Bharathi Raju, Archana Gaur, Rakesh Kumar, M.K. Bhardwaj, K.K. Jha

Judgement

Dr. S. Muralidhar, J

1. The common issue in all these petitions concerns the cancellation of the candidature of the Petitioners who sat for the Sub-Inspector (Executive)

[SI (E)] selection in the CISF conducted by the Respondents pursuant to an advertisement issued in 2011. After declaring the Petitioners

provisionally qualified, each of them received a letter calling them for interviews. Their names appeared in the merit list that was subsequently

declared. While other selected candidates joined the training, the Petitioners were not issued call letters. When they made queries, they received a

reply that the cases were pending before the Staff Selection Commission (SSC) for post-examination analysis.

2. Thereafter, on 6th May 2013, identically worded show cause notices (SCNs) were issued to each of the Petitioners asking them to submit

their explanations as to why they should not be debarred from all examinations/ recruitment conducted by the SSC for a period of 5 years.

3. It was stated in the SCN that each of the Petitioners was found to have resorted to malpractices in paper I and paper II. In other words,

there was nothing else stated except that it was prima facie found that the Petitioners had resorted to malpractices.

4. This was followed by another SCN (which in the case of Sandeep Kumar in W.P.(C) 5607/2015 was dated 31st May 2013) where, in the operative

part, it was stated as under:

“Whereas as informed by SSC (HQrs) incontrovertible and reliable evidence has emerged during such scrutiny and analysis that Mr/Ms. Sandeep

Kumar had resorted to copying in the said papers in association with other candidates who also took the same examination.

5. In other words, all that was said was that the Petitioner had resorted to copying in Papers I and II, in association with other candidates who

also took the same exam. However, no explanation was made as to who the other candidates were, where they took the exam, and in what manner

the Petitioners had indulged in copying.

6. In response to these SCNs, the Petitioners pointed out that the grounds for seeking to debar them were vague and were not capable of being replied

to. When there was no response further from the Respondents, the Petitioners approached this Court with the present petition.

7. The facts in these connected writ petitions are more or less similar and therefore, are not being dealt with individually.

8. The Petitioners, in all, place reliance on earlier orders of the Division Benches (DBs) of this Court in similar matters.

9. There is an order dated 17th December 2014, in W.P.(C) 7484/2013 (Ashwani Kumar v. Union of India) where, in similar circumstances, a DB of

this Court quashed the show cause notices. Then, in an order dated 19th December 2014 in W.P.(C) 9055/2014 (Staff Selection Commission v.

Sudesh) passed by this Court considering the challenge by the SSC to a decision dated 30th July 2014 of the Central Administrative Tribunal

(“CAT”) in OA No.930/2014. The CAT had allowed the application of Sudesh, quashed the SCN dated 28th January 2014 issued to him alleging

malpractices, and directed the SSC to declare his result and those of others similarly placed. The DB of this Court found that no particulars had been

set out in the SCNs that would enable the candidates to file a written reply.

10. It is mentioned that the decision in Sudesh (supra) was challenged by the SSC in Civil Appeal Nos.2836-38/2017 which was dismissed by the

Supreme Court on 19th July 2017. A review filed against the said order was also dismissed by the Supreme Court on 31st October 2017.

11. In fact, the present batch of writ petitions was kept adjourned by the Court while awaiting the decision of the Supreme Court in the review petition

in the case of Sudesh (supra).

12. However, today learned counsel for the Respondents placed reliance on an order dated 5th May 2017 passed by the Supreme Court in Civil

Appeal No.6424/2017 (Union of India v. Ashwani Kumar) whereby the Supreme Court set aside the decision of this Court dated 17th December

2014. The said decision reads as under:

“Leave granted.

We have heard the learned Additional Solicitor General appearing for the appellants and the learned counsel appearing for the respondents.

We have gone through the impugned Judgment passed by the High Court.

Learned Additional Solicitor General has drawn our attention to Page No.19 - Para No.4 of the additional documents, which reads as follows:-

“NOW THEREFORE, in the light of above developments and order dated 1-2-2013 of S.S.C. and the fact that your candidature for the post of

A.S./Exe. has been cancelled by S.S.C. which was the basis for the issue of offer of appointment to you by C.I.S.F., you are hereby directed to

show cause as to why your services shall not be terminated on cancellation of your candidature for the above post by the S.S.C. to the respondents.

In view of the above, we find that the order passed by the High Court is not correct as on 9th October, 2013, reason was given for termination of

service on cancellation of candidature for the above post by the S.S.C. to the respondents.

The High Court did not appreciate the facts of the matter in question and has erred in setting aside/quashing the show cause notices issued to the

respondents by the appellants.

Thus, the order of the High Court is not sustainable in the eyes of law and deserves to be set aside.

Accordingly, we set aside the impugned order of the High Court.

As prayed by the learned counsel appearing for the respondents, eight weeks' time is granted to the respondents to file reply to the show cause notice.

We make it clear that status-quo with regard to service of the respondents - herein shall be maintained till the matter is decided by the authorities.

13. Learned counsel for the Respondent additionally refers to a decision in the *Nidhi Kaim v. State of Madhya Pradesh* AIR 2016 SC 2865 to urge

that the scope of interference by the Court in this matter is limited.

14. Learned counsel for the Petitioners have pointed out that, in many similar cases, this Court has consistently set aside similarly worded SCNs and

issued mandamus to the Respondents to declare the results of the Petitioners and offer them appointment letters, if found qualified. One such order is

dated 31st October 2014 in W.P.(C) 5060/2013 (*Sunil Singh Dev v. Union of India*) which has been accepted and implemented by the Respondents by

an order dated 5th December 2018, a copy of which has been placed before the Court. Another instance is a decision dated 15th November 2017 of

this Court in W.P.(C) 8896/2015 (*Krishan Gurjar v. Union of India*) where again, in similar circumstances, this Court set aside the SCNs. Then we

have the decision of this bench dated 30th October 2018 in W.P.(C) 7150/2017 (*Ajit Singh v. Union of India*) where again, following the decisions in

Sudesh (supra) and Krishan Gurjar (supra), this Court quashed the SCNs and directed that the Petitioners should be appointed to the post of SI in CISF

with continuity of service.

15. It is useful to extract from the last-mentioned decision of this Court in Ajit Singh v. Union of India (supra) the relevant portions which discuss the

earlier decision in Krishan Gurjar (supra) as under:

“15. Another similar challenge by candidates who were issued near identical SCNs was considered by this Court in its decision dated 15th

November 2017 in W.P.(C) 8896/2015 (Krishan Gurjar v. Union Of India). That case pertained to the candidature of the petitioner therein for

appointment to the post of SI/GD through the COP’s examination, i.e. the very same examination for which the present two Petitioners appeared.

Mr. Krishan Gurjar had been issued first an SCN which alleged that he had resorted to malpractice and another SCN wherein it was alleged that he

had committed such malpractice with another candidate, one Manish Kumar Verma. There again, just as in the present cases, the SCN set out, in a

tabular form, the “Total Matches”, the “Right Right Matches”, the “Blank Blank Matches”, and the “Wrong Wrong Matches”.

Interestingly, in the said case, the SSC even went to the extent of alleging that “both the candidates were sitting in the same venue, same room, one

after the other” whereas in the present cases there was no such allegation.

16. In Krishan Gurjar (supra), this Court found that the SCNs were bereft of any material/evidence which could throw light on the malpractices

supposedly pursued by the petitioner therein. It was observed that “without such disclosure, the petitioner was in the dark about the allegations to

be met by him. The serious allegations of malpractice had cost him the appointment as a SI/GD in the BSF. It appears that the issuance of show

cause notices were mere formality to show compliance of principles of natural justice. It is also a settled law that principles of natural justice does not

only warrant issuance of show cause notice and eliciting a reply but includes giving such material to the noticee, which has been found against him to

ensure he considers the said material and gives his reply.

17. The decision of this Court in Krishan Gurjar (supra) also referred to the earlier decision in Sudesh (supra) and noted that it had been affirmed by

the Supreme Court. The Division Bench held the SCNs to be in violation of the principles of natural justice and set them aside. It was ultimately

directed that Krishan Gurjar "shall be appointed to the post of SI/GD as per the CPOs Examinations, 2011 in BSF with continuity of service,

including notional pay fixation. He shall not be entitled to any monetary benefits.

18. The Court is informed at the bar by learned counsel for the Petitioner, without being controverted by learned counsel for the Respondents, that the

aforementioned decision dated 15th November 2017 in Krishan Gurjar (supra) has not only been accepted by Respondent No.4 but has also been

acted upon with Mr. Krishan Gurjar having been appointed around two weeks ago pursuant to the contempt petition filed by him.

16. Although the decision of the Supreme Court in Ashwani Kumar (supra) was dated 5th May 2017, the attention of this Court was not drawn to it

when it decided Krishan Gurjar (supra) or Ajit Singh (supra). The aforementioned decisions of the Supreme Court in Sudesh (supra) and Krishan

Gurjar (supra) cannot be overlooked, particularly since the facts in the latter make it clear that even where in the SCN the Respondents were able to

set out in tabular form the "Total Matches", the "Right Right Matches", the "Blank Blank Matches", and the "Wrong Wrong

Matches" and went to the extent of alleging in the SCN that both the candidates were sitting the same venue, same room, one after the other, this

Court still considered the SCN to be vague and incapable of reply and that view was affirmed by the Supreme Court.

17. The Court therefore finds that even after the decision in Ashwani Kumar (supra) was set aside by the Supreme Court, thereafter, consistent

orders have been passed by the Supreme Court affirming the decision of this Court in setting aside SCNs in the similar circumstances.

18. It may also be noted that in Ashwani Kumar (supra), the Supreme Court, while restoring the SCNs, made it clear that status quo should be

maintained "till the matter is decided by the authorities". The Court is not informed as to what happened thereafter in Ashwani Kumar (supra). At

the same time, the Court also cannot be oblivious to the fact that the Respondents have themselves implemented the decisions of this Court,

particularly the decision in Krishan Gurjar (supra) and in Sunil Singh Dev (supra). Clearly the Respondents cannot pick and choose which judgments

they will implement and which they will not. They have to be consistent in their approach in that regard. It cannot be that similarly placed persons who

have had success before the Courts are faced with a situation where some orders of the Courts are implemented and others are not.

19. The relevant portions of the SCNs in the present case have been set out hereinbefore. They are vague and incapable of being answered as they

do not set out, with any degree of specificity, the precise allegations against each of the Petitioners. Particularly, even when the SCNs allege

malpractices, it is essential to set out the exact nature of such malpractice, the persons in association with whom such malpractice was committed, as

well as the time, date, and place of commission of such malpractice. Importantly, such allegations must be capable of being established.

20. For the aforementioned reasons, the Court finds that the SCNs in the present case do not pass muster when tested on the mantle of

reasonableness within the scope of Article 14 of the Constitution of India. The SCNs are accordingly quashed. The writ of mandamus is issued to the

Respondents to issue appointment letters to the Petitioners if otherwise found qualified in accordance with law. If the Petitioners are appointed

pursuant to the orders issued, their notional seniority shall be correspondingly fixed. The requisite orders be issued within a period of eight weeks from

today.