

UNION OF INDIA AND ANR
v
N. CHANDRASEKHARAN AND ORS.

JANUARY 29, 1998

[K. VENKATASWAMI AND A.P. MISRA, JJ.]

Service Law—Promotion—Post of Assistant Purchase Officer in Indian Space Research Organisation—Selection through written test—Followed by interview and assessment of annual confidential reports (ACR)—Allocation of Marks—30% allotted to interview and 20% to ACRs—Held: having due regard to the level of post and nature of performance expected from incumbent, high weightage given to interview and ACR—Hence rational, not arbitrary or violative of Articles 14 and 16—Constitution of India, 1950—Articles 14 and 16.

Indian Evidence Act, 1872—Section 115—Estoppel—Candidates made aware of procedure for promotion before they appeared for written test and before departmental promotion committee—Cannot subsequently raise plea that marks allotted to interview and ACR was unduly disproportionate or the authorities cannot fix minimum marks to be secured at the interview or in ACR.

The respondents are contestants for promotional post of Assistant Purchase Officer. Vide Office Memorandum date 09.07.1987 promotion was based on written test followed by interview and assessment of ACR. The allocation of marks allotted under the head is 50, 30 and 20 respectively. The Respondents, aggrieved by the selection list on account of allotment of unduly disproportionate marks to interview and confidential report, approached the Tribunal. The Tribunal relying on the ratio laid down in Ashok Kumar Yadav's case that "spread" of marks allotted under the head of interview was totally unreasonable and arbitrary, held the allotment of marks to be arbitrary and unreasonable in the present case.

In this appeal challenging the Tribunal's Order, the appellant contended that due regard had to be given to the level of post and the nature of performance expected from the candidate. Therefore, the marks allotted for the interview cannot be disproportionately high or spread of marks arbitrary.

Allowing the appeal, this Court

A **HELD : 1.** The Tribunal went wrong in applying the ratio laid down by this court in *Ashok Kumar Yadav's* case that the spread of marks allotted under the head of interview was totally unreasonable and arbitrary, while upsetting the 1990 selection list and giving directions to prepare a new selection list in accordance with that direction. [430-D]

B *Ashok Kumar Yadav's* case, [1985] 4 SCC 417, held inapplicable.

2. Due regard has to be given to the level of post and the nature of performance expected from the incumbent. Therefore, the marks given to the interview cannot be disproportionately high or spread of marks arbitrary. [425-D]

C 3. There was no scope for arbitrary exercise of selection or favouritism beyond any reasonable doubt. Even though in the pleadings vaguely malafide was raised, nothing was established nor the Tribunal discussed about it. Therefore, in the absence of any malafide pleaded and established and in the facts and circumstances of this case, the importance given to the interview cannot by any means be termed as arbitrary or violative of Articles 14 or 16 of the Constitution. [426-A-B]

E 4. The candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential reports. [425-C]

F *Mehmood Alam Tariq and Others v. State of Rajasthan & Others*, [1988] 3 SCC 241; *C.P. Kalra v. Air India Through its Managing Director, Bombay and Others*, [1994] Supp. 1 SCC 454 and *State of U.P. v. Rafiquddin* [1987] Supp. SCC 401, referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5477 of 1993.

From the Judgment and Order dated 28.2.92 of the Central Administrative Tribunal, Ernakulam in Kerala in O.A. No. 21 of 1991.

V.C. Mahajan, (Rajiv Nanda) and V. K. Verma for the Appellants.

H Roy Abraham and M.M. Kashyap for the Respondents.

The Judgment of the Court was delivered by

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K. VENKATASWAMI, J. The appellants feeling aggrieved by the judgment of the Central Administrative Tribunal, Ernakulam Bench dated 28.2.1993 in O.A. No. 21/91 have filed this appeal by special leave. After going through the pleadings and judgment, we find that the issue raised before the Tribunal was no longer *res integra* but by wrong appreciation and application of law laid down by this Court, the Tribunal has handed down the judgment under challenge obliging the appellants to approach this Court.

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Respondents 1 and 2 were the contestants along with the respondents 3-11 and several others for the promotional post of Assistant purchase officer from the post of Purchase Assistant - B. The promotion was based on a written test followed by an interview and assessment of the confidential reports as prescribed in the office Memorandum dated 9.7.1987. The marks prescribed for written test, interview and confidential report were 50, 30 and 20 respectively. It was also prescribed that to qualify for promotion, one should get minimum of 50% prescribed for each head and also 60% in the aggregate. The selection was made on that basis was not in dispute.

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The grievance of the respondents 1 and 2, who did not find their names in the select list, was that on account of unduly disproportionate marks allotted to interview and confidential report, that enabled the Departmental Promotion Committee to manipulate the results which denied the reasonable expectation of candidates who secured maximum marks in the written test. In other words, according to the respondents 1 and 2, who were the applicants before the Tribunal though they had secured maximum marks in the written test, by reason of lesser marks awarded to them by the Departmental Promotion Committee in the interview, they were not selected ultimately. In addition to that respondents 1 and 2 also contended before the Tribunal to challenge the promotion list for the year 1990 that the minimum marks prescribed to qualify for promotion at 50% of the marks allotted for interview and confidential report was also arbitrary and unsustainable.

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The appellants, who were respondents before the Tribunal, submitted before it that Indian Space Research Organization (hereinafter referred to as ISRO) has to perform a number of tasks and hence it was necessary to choose proper personnel and provide for a proper recruitment system with adequate career growth opportunities in the light of the instructions given in the Office Memorandum. It was also submitted by the appellants that the procedure which was adopted for the promotion in the year 1990 was broadly the same

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A which was in vogue from 1976 onwards except for small modifications brought in by O.Ms. dated 5.6.1982, 31.3.1987 and 9.6.1987. The requirement of 50% minimum marks that was to be secured by any candidate to qualify for promotion both in the interview and the confidential reports was brought into existence subsequently. The appellants brought to the notice of the Tribunal the importance of the interview in selecting Assistant Purchase Officer by stating as follows:-

C “Written tests may bring out normally the relative theoretical skills of the candidates in the group. Interviews through personal interactions of the candidates with the committee are meant to find out the strength and weaknesses of the total personality and potential of the candidates to hold a particular post which may involve considerable inter personal interactions, too. It provides an opportunity to observe the non-verbal cues like facial expression, mannerism, emotional stability, maturity, attitudes approach etc. It gives a first hand impression on what a candidate is saying of what he feels to say. Due to its spontaneity it demonstrates the candidate’s perceptiveness, clarity of thought analytical ability, aspirations, motivations, interest etc. The behaviour of individual in the personal interviews has a definite bearing on his personality and behavioural attributes at work. But the immediate inferences drawn from the above would be more objective and reflect on reality if it is appropriately supported by the ratings in the theoretical knowledge tested through written test and as well as the CR ratings”.

The Tribunal also directed the production of relevant records relating to the preparation of panel for the year 1988 and 1990.

F The Tribunal on a consideration of the pleadings and arguments addressed before it found that the argument of the applicants (respondents 1 and 2 herein) that the allocation of 20% of marks for evaluation of ACRs is arbitrary and unreasonable, cannot be accepted.

G So far as the marks allotted to interview, namely, 30 marks, the Tribunal held by wrong application of the ratio laid down by this Court in *Ashok Kumar Yadav’s* case [1985] 4 SCC 417 that the “spread” of marks allotted under the head of interview was totally unreasonable and arbitrary and has resulted in using this as a lever to select candidates who otherwise might not have stood any chance for selection. The Tribunal also held that on the basis of the test used in *Ashok Kumar Yadav’s* case, it can be concluded that the H marks given for interview by the selection committee has been done arbitrarily.

After having come to the above conclusion, the Tribunal gave the following directions:- A

"In the circumstances we allow this application with the following directions:-

(i) The panel at Annexure - I is quashed and all promotions made on the basis of this panel as Assistant Purchase Officers shall stand quashed. B

(ii) The fixation of a minimum mark of 50% to be scored in the interview is quashed.

(iii) The respondents are directed to reduce the total marks for interview from 30 to 10 and work out the marks given to the candidates and by applying a factor of 1/3 to the marks already given and then compile the marks scored by the candidates out of 80 i.e. 50 for written test, 20 for ACR and 10 for interview. C

(iv) The marks so secured shall be converted into marks out of 100 by applying a factor of 5/4 to the total marks scored. D

(v) This shall be taken as the final result of the 1990 examination and a fresh panel shall be prepared and promotions granted on this basis.

(vi) These directions be complied within one month from the date of receipt of this order." E

Aggrieved by the above directions and quashing of selection list and the fixation of minimum marks of 50% to be secured in the interview, the appellants have come to this Court in the above appeal. F

Mr. Mahajan, learned Senior Counsel for the appellants, submitted that the Tribunal has wrongly applied to law laid down in *Ashok Kumar Yadav's* case which related to interview held for competitive examination for recruitment to posts in the Haryana Civil Service and was not a case of selection for higher posts. Therefore, the Tribunal was not right in applying the ratio laid down in *Ashok Kumar Yadav's* case. He also submitted that this Court had made clear distinction between interview held for competitive examination or admission in educational institutions and selection for higher posts. In this connection, he relied on two judgments of this court in *Mehmood Alam Tariq and others v. State of Rajasthan & others*, [1988] 3 SCC 241 and *C.P. Kalra v. Air India through its Managing Director, Bombay and Others*, [1994] H G

A Supp. 1 SCC 454. He also emphasized the need for giving importance to interview marks in this case by bringing to our notice the averments in the reply statement which reads as follows :-

B “Usually, a written test may aim at ascertaining the theoretical knowledge. There is no scope in a written test to raise further questions on answers written down nor to ascertain additional information as to how one would react in different practical situations such as the Vendor rating scenario, space qualification requirement of components, sub-systems to be procured; skill required or the strategies to be adopted during contract negotiations and during different tendering stages; up-to-date knowledge on the national and international market situations which are much relevant to Indian Space Research organization/DOS; capability for personal presentation of the cases to the satisfaction of the customs authorities to obtain waiver for physical examination or cases; intricacies relating to the Laws such as Insurance Act etc. and above all the understanding of the requirements of the space programmes which involve, technological uncertainties, repetitive ground testing of systems, sub-systems, failure analysis procedures, and reworking on components/sub-systems/ systems which have already been procured or fabricated. The capability to handle these and many similar practical aspects required to effectively discharge the duties and responsibilities of an Assistant Purchase Officer in Indian Space Research Organisation / DOS can normally be assessed only through a personal interview.”

F The learned senior counsel also submitted that the Tribunal went wrong in holding that the fixation of minimum marks of 50% to be secured in the interview was bad, as this *Court in State of U.P. V. Rafiquddin*, [1987] Supl. SCC 401, has categorically held that such fixation of minimum marks is well within the powers of the authority.

G In the light of the submissions made by him, according to the learned senior counsel for the appellants, the judgment of the Tribunal is liable to be set aside.

H Mr. Roy Abraham, learned counsel appearing for the contesting respondents 1 and 2, on the other hand submitted that the reasons given by the Tribunal are based on an analysis of marks obtained by the respondents 1 and 2 in the written test *qua the* selected candidates as well as marks allotted in the interview and, therefore, it does not call for any interference

by this court. He laid stress on the fact that the rank-holders in the written test were not selected because of the fact that either they could not get more marks or they could not get the minimum marks in the interview. According to the learned counsel for respondents 1 and 2, on facts the Tribunal was justified in interfering with the selection list and giving directions for preparing fresh selection list in accordance with that.

We have considered the rival submissions in the light of the facts presented before us. It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report. Even on merits, we agree with the learned senior counsel for the appellants that due regard must be had to the posts to which the candidates are to be promoted as well as to the nature of duties they have to discharge/perform and so viewing the marks given to the interview cannot be considered as disproportionately high or the spread of marks was done arbitrarily. The Departmental promotion Committee consisted of the following personalities :

	Designation	Location	
1. Jt. Secretary to GOI	Chairman	DOS, Bangalore	
2. Scientific Secretary ISRO	Alt. Chairman/ Member	ISRO HQ, Bangalore	
3. Head, Programme Planning and Evaluation Division	Member	ISAC B'lore	
4. Addl. Chief Engineer	Member	CED, B' Lore	
5. Head Purchase & Stores	Member.	VSSC, Trivandrum	
6. Head Purchase and Stores	Member	SHAR, Sriharikota	
7. Head Purchase and Stores	Member	ISAC, B' lore	
8. Head Purchase and Stores	Member	SAC, Ahmedabad	

A A look at the above composition will place beyond any reasonable doubt that there was no scope for arbitrary exercise of selection or favouritism. It is also relevant to point out that though in the pleadings vaguely *mala fides* was raised, nothing was established nor the Tribunal discussed about it. In the absence of any *mala fides* pleaded and established and in the facts and circumstances of this case, the importance given to the interview cannot by B any means be termed as arbitrary or violative of Articles 14 or 16 of the Constitution.

The reliance placed by the Tribunal on the Ratio laid down by this Court in *Ashok Kumar Yadav's* case is totally misconceived as that was not C a case of promotion to a higher post. this Court in *Kalra Case* (supra)) had occasion to consider similar situation and observed as follows:-

“7. It was next submitted that the promotion policy was unconstitutional as the marks assigned for the interview test were far in excess of the permissible norm or limit. The 40% prescription for D interview is based on Rule 2.6 of the promotion policy. This 40 per cent is divided under different heads or factors as stated hereinabove. The submission of the learned counsel for the petitioner was based on the observations of this Court in *Ashok Kumar Yadav* wherein this Court observed that 33.3 percent marks reserved for oral test were E excessive and would suffer from the vice of arbitrariness. The High Court has dealt with this submission and has pointed out that no hard and fast rule can be evolved in this behalf because much would depend on the job requirement for each post and the level of the post. A whole line of decisions were brought to our notice beginning from F *Ajay Hasia case* but it would be sufficient for us to refer to the latest decision in the case *Indian Airlines Corpn. v. Capt. K.C. Shukla*. In that case this Court after referring to the decisions in *Ajay Hasia*, *Lila Dhar*, *Ashok Kumar Yadav* and *Rafiquddin* observed that a distinction appears to have been drawn in interviews held for competitive examinations or admission in educational institutions and selection for higher posts. Efforts have been made to limit the G scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in, but the same standard cannot be applied for higher selections and this is clearly brought out in *Lila Dhar Case*. It is, therefore, clear that this court was also of the view that no hard and fast rule can be laid down in H these matters because much would depend on the level of the post

and the nature of the performance expected from the incumbent. In that case, the method of evaluation was based 50 per cent on the ACRs and 50 per cent on interviews and this Court upheld the said method notwithstanding the fact that the weightage for interview performance was as high as 50 per cent. We are, therefore, of the view that the contention that because in the instant case the weightage for the viva voce test is 40 percent, it is *per se* excessive and hence arbitrary, cannot be accepted.

In *Mehmood Alam's* case. (supra) this Court had occasion to deal with more or less an identical situation, held as follows:-

“20. On a careful consideration of the matter, we are persuaded to the view that the prescription of minimum qualifying marks of 60 (33 per cent) out of the maximum marks of 180 set apart for the viva voce examination does not , by itself, incur any constitutional infirmity. The principles laid down in the cases of Ajay Hasia, Lila Dhar, Ashok Kumar Yadav, do not militate against or render impermissible such a prescription. There is nothing unreasonable or arbitrary in the stipulation that officers to be selected for higher services and who are, with the passage of time, expected to man increasingly responsible positions in the core services such as the Administrative Services and the police Services should be men endowed with personality traits conducive to the levels of performance expected in such services. There are features that distinguish, for instance, Accounts Service from the Police Service - a distinction that draws upon and is accentuated by the personal qualities of the officer. Academic excellence is one thing. *Ability to deal with the public with tact and imagination* deal with the public with tact and imagination is another. Both are necessary for an officer. The dose that is demanded may vary according to the nature of the service. Administrative and police services constitute the cutting edge of the administrative machinery and the requirement of higher traits of personality is not an unreasonable expectation.

21. Indeed in *Lila Dhar v. State of Rajasthan*, this Court observed : (SCC pp. 164-65; SCC (L & S) pp. 592-93, para 6)

“Thus, the written examination assesses the man’s intellect and the interview test the man himself and “the twain shall meet” for

- A a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be
- B attached in later life, greater weight has perforce to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in *Periakaruppan v. State of Tamil Nadu*, *Ajay Hasia v. Khalid Mujib Sehravardi and other*, cases.
- C On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and profession requirements being satisfied..... There are, of course, many services to which recruitment is made from
- D younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to
- E the interview test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It
- F is a matter for determination by experts. It is a matter for research. it is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail
- G by the Research Unit of the Union Public Service Commission."

This Court indicated that in matters such as these, which reflect matters of policy, judicial wisdom is judicial restraint. Generally matters of policy have little adjudicative disposition.

- H 22. Indeed, the point raised in the appeals admits of the answer found in the pronouncement of this Court in *State of U.P. v. Rafiquddin*,

where this Court considered the permissibility of the prescription of minimum qualifying or cut off marks in viva voce examination, while dealing with clause (ii) of the proviso to rule 19 (as it stood prior to the 1972 amendment) of the U.P. Civil Service (Judicial Branch) Rules, 1951. The provision required the selection committee, *inter alia*, to ensure that persons who did not secure sufficiently high marks in that interview were not recommended for the posts. Pursuant to the power thus reserved to it, the selection committee, prescribed certain minimum cut off marks for the interview. This Court upholding the validity of the prescription observed at pp. 413, 415:

“ aggregate marks obtained by a candidate determined his position in the list, but the proviso of the rule required the Commission to satisfy itself that the candidate had obtained such aggregate marks in the written test as to qualify him for appointment to service and further he had obtained such sufficiently high marks in viva voce which would show his suitability for the service. The scheme underlying Rule 19 and the proviso made it apparent that obtaining of the minimum aggregate marks in the written test and also the minimum in the viva voce was the *sine qua non* before the commission could proceed to make its recommendation in favour of a candidate for appointment to the service. The Commission in view of clause (ii) of the proviso had power to fix the minimum marks for viva voce for judging the suitability of a candidate for service. *Thus a candidate who had merely secured the minimum of the aggregate marks or above was not entitled to be included in the list of successful candidates unless he had also secured the minimum marks which had been prescribed for the viva voce test.....* ”

The Commission had, therefore, power to fix the norm and in the instance case it had fixed 35 per cent minimum marks for viva voce test. The viva voce test is a well recognised method of judging the suitability of a candidate for appointment to public services and this method had almost universally been followed in making selection for appointment to public services. Where selection is made on the basis of written as well as viva voce test, the final result is determined on the basis of the aggregate marks. If any minimum marks either in the written test or in viva voce test are fixed to determine the suitability of a

A candidate, the same has to be respected. Clause (ii) of the proviso to rule 19 clearly confers power on the Commission to fix minimum marks for viva voce test for judging the suitability of candidate for the service. We do not find any constitutional legal infirmity in the provision.

B This should, in our opinion, conclude the present controversy in favour of the appellants.”

(Emphasis Supplied)

C In the light of the well settled position, as discussed above, we have no hesitation to hold that the Tribunal went wrong in applying the ratio laid down by this Court in *Ashok Kumar Yadav's* case, while upsetting the 1990 Selection list and giving directions to prepare a new selection list in accordance with that direction.

D The appeal is accordingly allowed. However, there will be no order as to costs.

N.J.

Appeal allowed.