

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2234/2002

New Delhi, this the 3rd day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri R.K. Upadhyaya, Member(A)

Ajay Kumar Himanshu
c/o Vijay Kumar
Sector 6, Plot D/8
Janta Flat No.14, Rohini
New Delhi-110085

... Applicant
(Shri Jog Singh, Advocate)

versus

Union of India, through

1. Secretary
Department of Atomic Energy
South Block, New Delhi
2. The Chairman
Atomic Energy Commission
(Department of Atomic Energy)
Anushakti Bhawan, CSM Marg
Mumbai
3. Director
Variable Energy Cyclotron Centre
Department of Atomic Energy
Government of India
Bidam Nagar, Sector I, Block AF
Kolkata
4. Prime Minister's Office
South Block, New Delhi

... Respondents

(By Shri K.C.D. Gangwani, Advocate)
with Mrs. Meenu Mainee, Advocate)

Justice V.S. Aggarwal

ORDER

Shri Ajay Kumar Himanshu is the applicant. He raises the basic question as to whether selection should be made solely on basis of the interview. The post is Scientific Officer 'C' (Physics).

2. Certain facts are that the respondent- Atomic

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Energy Commission had advertised the said post and one of the conditions for employment after mentioning the age, educational qualification, etc. was:-

"8. Mere fulfilment of requirement by itself as laid down in the advertisement does not qualify a candidate for interview. Where the number of applications received in response to the advertisement is large, and where it is not practicable for the Centre to interview all the candidates the centre may restrict the number of candidates for the interview, to a reasonable limit on the basis of percentage of marks and higher experience."

3. The applicant had applied for the post. He was shortlisted by the Selection Commission in the written test. He was called for the written examination mentioning that the result of the written examination shall be declared on the same day and in the event of the person qualifying, he will have to appear in the interview on 21.1.2002. The applicant appeared in the written examination. 17 candidates had qualified and they were called for the interview. Applicant was one of those successful candidates in the written test. It is asserted that the applicant had not been selected and had been ignored because he is stated to have ^{not} made the mark in the interview. It is on basis of this fact that the applicant asserts that so far as he is aware that he had done extremely well in the written test and selection simply on basis of the interview is invalid.

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4. Needless to state that in the reply filed the application has been contested. It has been pointed that the mode of selection for these posts as per norms prescribed was through interview. Yet the number of candidates screened was very large, it was necessary to restrict the number of candidates for interview to a reasonable limit. Call letters were sent to all the 233 candidates requesting them to appear in the written test. It was clearly mentioned in the call letters that only those candidates who qualify would be called for interview. The purpose of written test was only to shortlist the candidates for interview. In this backdrop, it is asserted that the procedure so adopted is valid.

5. During the course of submissions, the learned counsel for the applicant has drawn our attention to the method of selection adopted at certain other centres. On the strength of the same, it is contended that at the other places interview was only the sole method for selection.

6. In the absence of statutory recruitment rules, selection had been made as per the instructions and the ^{shortlisting} method adopted. Therefore, if some other departments are adopting any other method, that is no precedent to say or conclude that herein also the same methodology must be adopted.

7. Reverting back to the main argument advanced

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that interview could not be the sole method to select the persons, the learned counsel for the applicant had drawn our attention to certain precedents on the subject. He read to us the famous decision of the Apex Court in the case of **Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others**, (1981) 1 SCC 722. That was a decision pertaining to admission to Regional Engineering College, Srinagar. Certain important factors came up for consideration including the one raised by the applicant.

The Supreme Court held:-

"18. The second ground of challenge questioned the validity of viva voce examination as a permissible test for selection of candidates for admissions to a college. The contention of the petitioners under this ground of challenge was that viva voce examination does not afford a proper criterion for assessment of the suitability of the candidates for admission and it is a highly subjective and impressionistic test where the recruit is likely to be influenced by many uncertain and imponderable factors such as predilections and prejudices of the interviewer, his attitudes and approaches, his preconceived notions and idiosyncrasies and it is also capable of abuse because it leaves scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence violative of Article 14. Now this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity. We may quote the following passage from the book on PUBLIC ADMINISTRATION IN THEORY AND PRACTICE BY M.P.Sharma which voices a fair and balanced criticism of the oral interview method:

The oral test or the interview has been much criticised on the ground of its subjectivity and uncertainty. Different interviewers have their own notions of good personality. For some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The

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atmosphere of the interview is artificial and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit-or-miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole lifetime to judge a man's worth while interviewers have to do it in a quarter of an hour. Even at its best, the common sort of interview reveals but the superficial aspects of the candidate's personality like appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc go largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition."

It must be stated that these observations must be confined where admission to different colleges have to take place. The Supreme Court, as would be noticed hereinafter, had been drawing a clear distinction where admissions must have to be effected and where the interview can be made the sole criteria for ~~appointment~~ admission to different institutions. That practice was deprecated and it is in this back-drop that the abovesaid findings have to be appreciated.

8. In that event, reliance was being placed on a decision of the Supreme Court in the case of **Dr. J.P. Kulshrestha and Others v. Chancellor, Allahabad University and Others**, (1980) 3 SCC 418. The Supreme Court held:-

"Any administrative or quasi-judicial body clothed with powers and left unfettered by procedures is free to devise its own pragmatic,

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flexible and functionally viable processes of transacting business subject, of course, to the basics of natural justice, fair play in action, reasonableness in collecting decisional materials, avoidance of arbitrariness and extraneous considerations and otherwise keeping within the leading strings of the law. We find no flaw in the methodology of interviews'. Certainly, cases arise where the art of interviewing candidates deteriorates from strategy to stratagem and undetectable manipulation of results is achieved by remote control tactics masked as *viva voce* tests. This, if allowed, is surely a sabotage of the purity of proceedings, a subterfuge whereby legal means to reach illegal ends is achieved. So it is that courts insist, as the learned Single Judge has, in this very case, suggested on recording of marks at interviews and other fair checks like guidelines for marks and remarks about candidates and the like. If the court is skeptical, the record of the selection proceedings, including the notes regarding the interviews, may have to be made available. Interviews, as such, are not bad but polluting it to attain illegitimate ends is bad. Dr. Martin Luther King Jr. was right when he wrote:

So I have tried to make it clear that it is wrong to use immoral means to attain moral ends. But now I must affirm that it is just as wrong, or even more, to use moral means to preserve immoral ends."

It was in the facts of that particular case that the Supreme Court had concluded that methodology of interview adopted was not correct though it was observed that the Supreme Court did not find a flaw in the said methodology. Consequently, it cannot be taken to be a precedent that wherever appointment has to be made strictly on basis of the interview, it must be taken to be invalid.

9. Reliance was further placed on a decision of the Supreme Court in the case of *Lila Dhar v. State of Rajasthan and Others*, (1981) 4 SCC 159. In the said case, the method of recruitment was written test plus interview. The controversy particularly raised was that

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as to how much weightage has to be given to the interviews in this regard. The Supreme Court made a clear distinction pertaining to admission in colleges because it was noticed that in case of admission to a college, a candidate's personality is yet to develop. This is not the controversy before us and the said decision also is distinguishable. For the same reason, the decision rendered by the Apex Court in the case of **Mohinder Sain Garg v. State of Punjab and Ors.**, (1991) 1 SCC 662 though relied upon by the learned counsel will not come to the help of the applicant because there also, the selection was held to be vitiated on the ground of allocation of excessively high percentage of marks for viva voce test.

10. In all fairness to the applicant's learned counsel, we also take note of the decision of the Supreme Court in the case of **Praveen Singh v. State of Punjab and Others**, AIR 2001 SC 152. It was in the peculiar facts of the case that the Supreme Court held that recruitment to the post of Block Development and Panchayat Officer cannot be made on basis of viva voce test only. This is for the reason that the Supreme Court insisted that neither the job requires mature personality nor the recruitment should be on the basis of interview only having regard to the nature and requirement of the concerned jobs. These observations clearly make the point recorded by the Supreme Court that it was in the peculiar facts about the nature of the job requirement that this method was not approved. In fact, the

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consistent view had been that the recruitment can certainly be made only on basis of the interviews. We take note of some of the precedents on the subject.

11. In the case of **Abid Asghar v. State of Bihar and Others**, (1994) 1 SCC 150, the Supreme Court made a clear distinction with regard to fixation of marks for interview holding that in selections that are made, they can be classified into two categories. One selection for admission to educational institutions and the other selection for employment. In other words, undue weightage to interview only in cases of admission to educational institutions was a practice not very much approved.

12. In the case of **A.P.State Financial Corporation v. C.M.Ashok Raju and Others**, (1994) 5 SCC 359, the Supreme Court after discussing various controversies held that no written test was provided for promotion to the post of Manager and above. Selection was only by viva voce test. In that back-drop, it was held that no limit can be imposed in prescribing the marks for the interview. In other words, promotion could be held simply on basis of viva voce test. Similarly in the case of **C.P.Kalra v. Air India and Others**, (1994) 27 ATC 70 when the same question came up for consideration, the findings were almost identical that in cases of promotion to a Managerial post, no hard and fast rule can be laid down for allocation of marks in the interview/viva voce test.

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13. The decision rendered by the Supreme Court in the case of **Madan Lal & Ors. v. State of J & K & Ors.**, 1995 (3) SCC 486 also dealt with the same controversy. On overall view, the Supreme Court concluded that selection could be effected on basis of the interview. Same was the view in the case of **Siya Ram v. Union of India and Ors.**, (1998) 2 SCC 566. The Supreme Court again held that for certain posts only interview is considered to be the best method of selection. The Supreme Court recorded:-

"As noted above, at times for certain posts only interview is considered to be the best method for selection. We are thus of the opinion that selection made for the two posts of Chief Personnel Inspector in the present case was according to the Rules. There is no infirmity in the selection process for us to interfere in the appeal."

More recently in the case of **Kiran Gupta and Ors. v. State of U.P. and others**, (2000) 7 SCC 719 while considering the same controversy, the argument that was so advanced was rejected. It was held:-

"22. It is difficult to accept the omnibus contention that selection on the basis of viva voce only is arbitrary and illegal and that since allocation of 15% marks for interview was held to be arbitrary by this Court, selections solely based on interview is a *fortiori* illegal. It will be useful to bear in mind that there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview-test has to be decided on the facts of

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each case."

From these precedents quoted and referred to above, it is clear and obvious in terms that in the present case firstly that the applications were shortlisted by written test and thereafter interview was adopted as the method of selection by the selection committee. In the absence of any other mala fide or other factors to prompt us to interfere, it cannot be taken that on that very ground the whole selection process must be held to have been vitiated.

14. There is another way of looking at the matter. The advertisement had made it clear that if necessary, shortlisting shall take place ~~on basis of the~~ ^{for the} interview. The applicant conscious of that took part in the written test which he qualified and thereafter had been called for the interview. Having taken part in the process, it is too late in the day for him to challenge the method that had been so adopted. The Supreme Court had considered this controversy in the case of **Chandra Prakash Tiwari and Ors. v. Shakuntala Shukla and Ors.**, 2002 (3) AISLJ 88. Earlier decision of the Supreme Court in the case of **Madan Lal (supra)** was referred to and it was held that when a candidate appears at the interview and participates therein and thereafter when he is not selected, he cannot contend that the process was unfair. The findings of the Supreme Court read:-

" 31. Subsequently, the decision in **Om Prakash** stands followed by a later decision of this Court in **Madan Lal & Ors. v. State of J&K & Ors.** 1995(3) SCC 486=1995(2)SLJ 161(SC), wherein this Court

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stated as below:-

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves selected to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla V. Akhilesh Kumar Shukla (1986 Supp SCC 285) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee can not be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an

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expert committee."

32. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

15. In that event, it was contended that the applicant had scored very correctly in the written test which is being described as shortlisting. He is a brilliant candidate. He could not have been ignored in the interview. We are not delving into this controversy because it is for the expert body of persons who have to interview and adjudge the same. They have to see the requirement of the personality and all other factors suitable for the job. Consequently, the said plea necessarily cannot be accepted. We are supported in this view point by a decision of the Supreme Court in the case of Lila Dhar (*supra*) wherein the Supreme Court held:-

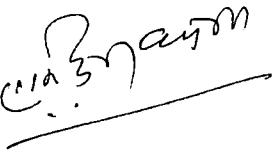
"8. The second ground of attack must fail for the same reason as the first ground of attack. The Rules themselves do not provide for the allocation of marks under different heads at the interview-test. The criteria for the interview-test has been laid down by the Rules. It is for the interviewing body to take general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method

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of marking was chosen with oblique motive."

Resultantly, we hold that in the facts of the present case, the selection on basis of the interview after screening test which had been held to shortlist the candidates cannot be described to be illegal to prompt us to interfere. Otherwise also, the applicant who had taken part in the process cannot be permitted to turn around and challenge the selection.

16. Resultantly, the application being without merit must fail and is dismissed. No costs.


(R.K. Upadhyaya)

Member (A)

SNS


(V.S. Aggarwal)

Chairman