In the Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No.791/87 Date of decision: 20.10.1992.
Tapan Kumar Das ...Petitioner

Versus

Union of India & Another ...Respondents

2. OA No.792/87
S.R. Ayde ...Petitioner

Versus

Union of India & Another ...Respondents

3. OA No.793/87
Debananda Sahoo ...Petitioner

Versus

Union of India & Another ...Respondents

4. OA No.794/87
Ajay Kumar Satapathy ...Petitioner

Versus

Union of India & Another ...Respondents

5. OA No.795/92
Ajay Kumar ...Petitioner

Versus

Union of India & Another ...Respondents

6. OA No. 796/87
Surya Bhushan ...Petitioner

Versus

Union of India & Another ...Respondents

7. OA No.797/87
Sidhartha Kanugo ...Petitioner

Versus

Union of India & Another ...Respondents

8. OA 798/87
Prabhat Kumar ...Petitioner

Versus

Union of India & Another ...Respondents

contd...2..

9. OA 875/87

Sanjay Joshi ...Petitioner

Versus

Union of India & Another ...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the petitioners Shri Shyam Moorjani, Counsel.

For the respondents Shri N.S. Mehta, Senior Standing Counsel.

Judgement(Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners in these cases have challenged the procedure adopted by the Union Public Service Commission (UPSC for short) for selection for the Civil Services Examination in the year 1985. The petitioners who took the examination were not called for interview for the reason that they did not come within the range of consideration having regard to the lower marks secured by them. Being aggrieved they have come to the Tribunal for relief.

2. The petitioners grievance is in regard to the method of moderation adopted by the UPSC. The petitioners have taken the stand that the moderation procedure is arbitrary and, therefore, violative of Article 14 of the Constitution of India. Another contention urged by Shri Shyam

Moorjani, learned counsel for one of the petitioners is that having regard to the wide range of subjects available as optional subjects and the marks that can be obtained vary from subject to subject, proportion should have been fixed for each subject in the matter of selection. Failure to make such apportionment, it was contended, is arbitrary and violative of Article 14 of the Constitution of India.

3. Considerable reliance was placed by the learned counsel on the several paragraphs of the report of the Kothari Committee which has examined the procedure followed by the UPSC for selection. The petitioners have extracted the observations in the said report about the inadequacies or incongruities in the matter of evaluation of the papers in respect of different subjects. It was submitted that the Kothari Committee report has been accepted. It was urged that the respondents have acted at varience with the said report. Firstly, it is necessary to point out that none of the paragraphs of the report extracted by the petitioners speak about the procedure to be followed for avoiding the inadequacies and incongruities noticed in the report. The petitioners are not able to point out any recommendation in the report of the Kothari

Committee prescribing the procedure to be followed to avoid the possible incongruities or anomalies.

The respondents in their reply have asserted that they have not accepted the report of the Kothari Committee in toto. They have stated in paragraph-6 of the reply as follows:-

"It is further submitted that the Committee had made certain observations regarding evaluation procedures in general terms but had not indicated the mechanisms by which the same are to be implemented in the complex nature of the scheme of the examination, which have been outlined in the following paragraphs.

To achieve uniformity of assessment and to ensure fair and equitable treatment to all candidates to the extent feasible, the Commission follows a system of moderation. Like all examining bodies, the Commission also treats its moderation system as confidential and the petitioners have made baseless averments in that regard. This system is an integral part of the process of evaluation followed by the Commission as per existing records since 1949 and is not linked with Kothari Committee

recommendations as is made out in the petition."

4. It is, therefore, clear that there is no substance in the contention that the Kothari Committee's report has become part of the accepted mode of selection and the respondents have acted in violation of the same. The stand taken by the respondents is clear and categorical viz. that the process of evaluation now followed by the Commission has consistently been operated from the year 1949 and is not linked in any manner with the recommendations of the Kothari Committee. In other words, the same method is being followed consistently from the year 1949, notwithstanding, the Kothari Committee's report.

5. The petitioners do not rely upon any rule, regulation or executive order in support of their case. No material has been placed before us from which an inference can be drawn that the procedure followed by the UPSC consistently from the year 1949 is arbitrary or violative of Article 14 of the Constitution.

6. This question need not detain us any further for the reason that the matter stands concluded by the decision of the Supreme Court. The moderation procedure followed for the examination in question

in the year 1985 was also followed in the earlier examination for the year 1984. So far as the examination held in the year 1984 is concerned, the moderation procedure followed by the UPSC was challenged in the High Courts of Gujarat and Delhi. The two High Courts having upheld the validity of the procedure followed by the UPSC in this behalf the matters were taken up by way of appeals before the Supreme Court in SLP No.15251/86 and 14000/86. The Supreme Court dismissed the said SLPs with the following observations:-

> "SLP No.15251/86: We are in agreement with the view expressed by a division Bench of the High Court that the system of moderation of marks adopted and followed by the Union Public Service Commission in evaluating the performance of the candidates appearing for the Civil Services Examination cannot be said to be vitiated by the arbitrariness or illegality of any kind. Special Leave Petition is accordingly dismissed."
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> "SLP No.14000/86: In view of the order passed in SLP No.15251/86 this Special Leave Petition is dismissed."

7. It is, therefore, clear that the Supreme Court has upheld positively the procedure followed in the matter of holding Civil Services Examination. Hence no further discussion or debate in this behalf is called for, as we are bound by the decision of the Supreme Court under Article 141 of the Constitution of India.

8. Another contention urged is that the examination is vitiated for the reason that the marks for the paper of Sociology have been raised from 35 to 45. This has been controverted in the reply by stating that the allegation of the petitioners in this behalf is malicious. There is no good reason to disbelieve the statement of the responsible officer of the UPSC in this behalf.

9. It was next submitted that the maximum marks that the best candidate can secure in one subject is not the same as that can be scored in another subject. That being the position, to ensure equality of treatment, it was necessary to give proportionate representation to students opting for different subjects. Apart from some observations in the Kothari Committee report we have no satisfactory material in support of the assertion of the petitioners. As the candidates have the option to choose the subjects they cannot complain, as

they can certainly choose the subject which in his opinion is a better scoring subject. It is not easy to make a satisfactory identification of scoring subjects. The number of subjects is very vast and it would not be practicable to give proportionate representation. It is not possible in the very nature of things to achieve equality with mathematical exactitude. We are not in the circumstances satisfied that failure to give proportionate representation on subjectwise basis is irrational or manifestly unreasonable and, therefore, violative of Article 14 of the Constitution of India.

10. For the reasons stated above, all these petitions fail and are dismissed. No costs.

(I.K. RASGOTRA)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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Attested true copy
Anil Srivastava

Court Officer
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