

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

14

9. OA 875/87

Sanjay Joshi ...Petitioner

versus ... Versus

Union of India & Another ... Respondents

and others and the appropriate persons are furnished

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

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
half papers and the marking of the full
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 variance with the said report. Firstly,
it is necessary to point out that none of the para-
graphs 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 totum. They have stated in paragraph-6 of the reply as follows:-

Part of their reply is as follows:-
that the Commission had made certain observations regarding evaluation procedures in general terms and 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 assessing and 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 overall process of evaluation followed by the Commission as per existing records since 1949 and is not linked with Kothari Committee

recommendations as it 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 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

18
 in the year 1985 was also followed in the earlier
 objective examination for the year 1984. So far as the
 subjective examination held in the year 1984 is concerned,
 the method of moderation procedure followed by the UPSC was
 subsequently 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
 subsequently 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
 reasons as follows:-

in 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."

in SLP No.14000/86: "In view of the order
 passed in SLP No.15251/86 this Special
 Petition is dismissed."

Parliament has also passed a Bill to amend the
 Civil Services Commission Act, 1963.

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. Another contention urged is that the examination is vitiated for the reason that the marks allotted 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

San.
201092
211092

Attested the copy
A. H. Gulzar Ali

Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi-110001