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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 218/91

Date of decision: 13.04.1992

Shri R.K. Bhargava & Others

...Applicants

Vs.

The ESIC Corporation & Another

...Respondents

For the Applicants

...Shri E.X. Joseph,
Counsel

For the Respondents

...Shri S.K. Gambhir,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The 4 applicants before us had appeared in the open examination *Q* competitive/held by the respondents for the post of Insurance Inspector/Manager Grade II in the Employees State Insurance Corporation (ESIC). The said examination consisted of two parts, namely, written test and interview. They came out successful in the written test but failed at the interview. They have challenged the process of selection and have *a*

prayed for the following reliefs:-

- (i) To strike down the procedure followed by the respondents for recruitment by laying down minimum 40% marks in the written test and minimum 40% for the interview.
- (ii) To direct them to hold fresh selection by duly constituted Selection Committee.

2. On 24.1.1991, the Tribunal passed an interim order to the effect that any appointment made pursuant to the selection would be subject to the outcome of the present application and the persons so appointed should be specifically informed about this.

3. We have gone through the records of the case carefully and have heard the learned counsel of both parties at length. The present litigation before us is, in a sense, continuation of the litigation before the Supreme Court on the same issue. The ESIC had resorted to direct recruitment by open competition for the post of Insurance Inspectors/Managers Grade-II which had been challenged before the Hyderabad Bench of this Tribunal in Sudhir Kumar Sen Vs. ESIC, 1990 Lab.IC 471(Hyd.CAT). By advertisement dated 8.8.1983, the ESIC had invited applications for filling up one third vacancies by direct recruitment to the category of post of Insurance Inspector/Manager Grade II. The petitioners before the Supreme Court in Writ Petition No.226/86 (Manjeet Singh & Others Vs. ESIC) had responded to the said

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advertisement and were declared successful at the test. Their grievance before the Supreme Court was that though their name figured in the panel, they had not been appointed. The unsuccessful candidates had moved the Hyderabad Bench of this Tribunal, as mentioned above. By judgment dated 28.4.1989, the Hyderabad Bench held as follows:-

" We would direct in these cases that the respondents shall work out and estimate the vacancies available upto 20th June, 1986 accurately (we have used the work 'accurately' as an apprehension has been expressed that direct recruits are not getting their due since over 320 posts were filled up between May, 1988 and December, 1988 by promotees on ad hoc basis or otherwise). After such estimation, the respondents shall deduct therefrom 116 vacancies which have already been filled and make available the remaining vacancies to the applicants and others who took the examination on the basis of aggregate marks, i.e., total marks obtained in the written test and the oral interview. Such of the applicants in all the three cases before us and heard by us at Hyderabad, Madras and Calcutta, who come within the zone of selection in accordance with this procedure as directed by us would be entitled to appointment".

which was the respondent. 9

4. The ESIC/before the Hyderabad Bench had challenged the aforesaid decision in Civil Appeal No.1236/90 (K. Prakasam & Others Vs. T. Subrahmanyam & Others).
5. The aforesaid Writ Petition and Civil Appeal were disposed of by judgment dated 22.3.1990 in Manjeet Singh Vs. The ESIC, 1990 SCC(L&S) 271.
6. The respondents have submitted in the present application that the impugned open competition has been held by them and candidates selected pursuant to the directions contained in the aforesaid judgment of the Supreme Court.
7. In its judgment dated 22.3.1990, the Supreme Court noted that the last list on the basis of the recruitment examination was drawn up in 1984 and that there have been

a good number of vacancies then existing and subsequently a number of them had arisen as against which only 116 appointments had been made, including 16 out of the reserved categories. The ESIC had filed before the Supreme Court an affidavit stating that candidates had been waiting for the holding of fresh recruitment examination and if out of the panel of 1984 all the existing vacancies were directed to ~~be~~ candidates so waiting for the examination ~~be~~ filled up, the ~~the~~ would be frustrated. The Tribunal in its decision had indicated that even upto 20.6.84, there were some vacancies which were available to be filled up out of 1984 panel. On account of the inaction of the respondents in holding of annual recruitment examination, vacancies had accumulated. Keeping these aspects in view, the Supreme Court made the following directions:-

" We direct that 50% of the vacancies existing upto 31st of December, 1989, relating to the one-third quota should be filled up out of the the panel after giving credit to 116 appointments noticed by the Tribunal. The remaining vacancies should be filled up by holding of a fresh recruitment examination latest before 30th of September, 1990".

8. As regards the prescription of the marks for the interview, the Supreme Court expressed the view that the scheme intended for recruitment should be on the basis of an examination comprising of written test and interview. The Supreme Court agreed with the submission of the ESIC that interview has its own place in the matter of selection process and the choice of the candidate. The Supreme Court observed that "in the absence of any prescription of qualifying marks for the interview test, the same prescription of 40% marks as applicable for the written

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examination seems to be reasonable. That has been the view expressed by one of us (Punchhi, J.) in a decision (Rajesh Sood and Others Vs. Director General, ESIC and Another decided on 7.8.1985) to which our attention has been drawn. We approve of the view".

9. Accordingly, the Supreme Court modified the direction of the Administrative Tribunal and held that "in the oral examination the pass mark shall be 40% and 40% marks shall be insisted separately for the written as also the oral test for qualifying in the selection".

10. After hearing both sides, we are of the considered opinion that there is no force in the challenge made by the applicants before us as regards the procedure followed by the respondents in the matter of the impugned selection.

11. The judgment of the Supreme Court is dated 22.3.1990. On 22.5.1990, the ESIC issued an advertisement to fill up 115 posts of Insurance Inspectors/Managers Grade II. It was stipulated in the advertisement that the minimum qualifying marks in respect of each paper of the written examination shall be 40% and that as regards interview, the minimum qualifying marks shall also be 40%. Final selection would be based on merit with reference to total marks secured by candidates who qualify both in the written examination and interview.

12. The contentions of the applicants are two fold,

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namely, (i) the number of candidates called for interview was too large as the respondents had called for interview 716 candidates as against 53 vacancies. This gave scope for favouritism and manipulation. (ii) the Selection Committee^α which held interviews at Bombay, Bangalore, Madras, Calcutta and Delhi were not constituted in accordance with the relevant Recruitment Rules.

Q 13. The contention of the respondents is that a total number of 3258 candidates (including SC/ST) appeared for the written test at 18 centres spread all over the country and out of them 750 candidates qualified for the interview. They have denied the fact that a large number of candidates were called to show favours or to indulge in manipulation, as alleged.

Q 14. As regards the composition of Selection Committee, the contentions of the applicants is that the same committee did not interview of the candidates and that even otherwise the said committee was not properly constituted. As against this, the respondents have contended that regulation 20 of the ESIC(Recruitment) Relations, 1965 empowers the Director General to constitute departmental committee for the purpose. The composition of the departmental committee constituted for the purpose of impugned selection has been set out at Annexure R-2 to the counter-affidavit, pages 78-79 of the paper book. It will be noticed that there was one member ~~AN RAN GANAKAR~~^α from the Provident Fund.

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included^a
Organisation/in the Committee. Before the Committee had proceeded with the selection at 5 centres mentioned above, there had been an informal meeting of all the Chairman/Chairperson so as to ensure uniformity in the assessment of the candidates. Having regard to the large number of candidates to be interview^{ed}^a from various centres, it would have been a difficult task for the respondents to interview all the candidates at one place expeditiously. In fact, the respondents had to apply to the Supreme Court to grant extension of time to comply with its directions so as to complete the selection before 30.9.1990.

15. The applicants have not alleged any mala fides against the members of the Selection Committee. There is nothing on record to indicate that any favouritism or manipulation has gone into the process of the impugned selection.

16. The learned counsel for the applicant have relied upon certain rulings of the Supreme Court and the observation^{by} contained therein regarding the permissible limit of percentage of marks that may be awarded at interviews while selecting candidates. We do not consider it necessary to go into the details of this argument on the ground that the impugned selection has been made pursuant to the directions contained in the judgment of the Supreme Court in Manjeet Singh's case in which the Supreme Court has upheld the

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prescription of the percentage of marks for the written test as well as the interview, contained in the advertisement.

17. In the light of the foregoing discussion, we see no merit in the present application and the same is dismissed.

18. The interim order passed on 24.01.1991 is hereby vacated.

There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL) 13/4/91
MEMBER (A)

P.K. Karthia
(P.K. KARTHA)
VICE CHAIRMAN (J)

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