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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.3059/91

Date of decision: 22-5-92

SHRI HAROON SARTAJ KHAN

APPLICANT

MS. LATA KRISHNAMURTHY

COUNSEL FOR THE APPLICANT

Vs.

UNION OF INDIA THROUGH THE

DIRECTOR, CENTRAL PUBLIC

WORKS DEPARTMENT

RESPONDENTS

SHRI V.S.R. KRISHNA

COUNSEL FOR THE RESPONDENTS

CORAM:

The Hon'ble Shri. T.S. OBEROI, MEMBER(J)

The Hon'ble Shri. B.N. DHOUNDIYAL, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the judgement? *Yes.*
2. To be referred to the Reporter or not? *Yes.*

JUDGEMENT

(delivered by Hon'ble Member Shri B.N. DHOUNDIYAL)

The main question raised in this OA is whether any Recruiting Authority conducting a written test followed by an interview can restrict admission in the exam, to those who have secured a minimum percentage (in this case 75%) in their university/institutional examination.

2. The applicant obtained a Diploma in Civil Engineering from the Aligarh Muslim University in 1990 securing 71% marks in aggregate. He is at present employed in a private firm. He is aggrieved by the following condition laid down by the C.P.W.D. for recruitment to the posts of Junior Engineer (Civil) in their advertisement published in the Employment News on 30.11.1991:-

"Minimum Essential Qualification:

Three-year full-time (or equivalent) diploma in Civil Engineering for Junior Engineer (Civil) and Diploma in Electrical/Mechanical Engineering for Junior Engineer (Electrical) from a recognised Institute, Board or University and recognised by the All India Board of Technical Education with not less than 75% marks in respect of candidates belonging to general category and not less than 60% marks for SC/ST. However, this condition shall not apply in case of candidates possessing degree in civil/mechanical or electrical engineering and also to those who are physically handicapped and Ex-Servicemen."

3. The applicant meets all the essential requirements except that relating to 75% marks being obtained by Diploma Holders, as he secured only 71% marks. He contends that the percentage prescribed is too high and arbitrary, particularly in view of the fact that all candidates applying for the post have to appear in an examination consisting of objective type tests in English/Hindi (applied grammar) and general awareness, including geography of India and General Engineering (Civil and Structural) for a maximum marks of 50 and 200 respectively and those qualifying would have to appear for an interview. Thus, there is a self contained scheme for selection apart from the academic record of the candidates. The very purpose of written examination is to ensure that candidates coming from different universities and adjudged by differing yard sticks are subjected to a uniform assessment. The Department of Telecommunication does not prescribe such a minimum percentage for recruitment to similar posts nor any such condition is laid down for the combined Civil Services Examination. According to him, prescription of 75% marks by the CPWD is arbitrary and unreasonable and susceptible to be hit by Article 14 of the Constitution.

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4. The respondents have stated that the cut-off percentage of 75% marks has been fixed with a view to get best candidates for recruitment as Junior Engineers (Civil) and has been adopted as part of selection process. A different department like Telecommunication can adopt their own procedure for selection, which may be different.

5. We have gone through the records of the case and have heard the arguments of the learned counsel for both the parties. Relying on a catena of cases, the learned counsel for the applicant has tried to prove that the courts do intervene in such matters and in some cases, the apex court has issued guidelines regarding the maximum percentage of marks that can be prescribed for viva voce. On the other hand, the learned counsel for the respondents has contended that the object of classification is clearly related to the higher essential qualification or evidence of higher mental equipment. The recruitment or test of eligibility is not subject of review for the judicial authority/Court.

6. While admitting the application on 01.01.1992, the Tribunal had observed that a substantial question of law was involved i.e. in case where an All India Written Test followed by an Interview are prescribed, can restriction be placed on the basis of a minimum percentage in the last academically qualifying examination. The marks given by various Universities/Examining Bodies may not have adopted the same standard of evaluation and prescription of a minimum of 75% marks in such examination may be unfair and may attract violation of the provisions of Article 14 and 16 of the Constitution, particularly, as the academic ability is to be tested again through an All India Written Examination. The applicant was directed to be allowed to take the examination as an interim measure, though the result

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was to be with-held, in his case, unless leave was granted by this Tribunal. The applicant has appeared in the written examination held on 23.02.1992.

7. The learned counsel for the applicant has relied upon the authority of Ashok Kumar Yadav Vs. State of Haryana (1985(4) SCC 417) at pages 452 to 457), whereby, the apex court intervened to prescribe the marks fixed for the viva vice, should not exceed 12.2% of the total marks. This view was reiterated in case of Ajay Hasia Vs. Khalid Mujib Suhravardi 1981(1) SCC 722 at page 745. In the case of Ashok Kumar Yadav, the apex court has also drawn a distinction between the constitutional authorities like the Public Service Commission and the Departmental Selection Committees. The latter have to be extra-careful to avoid any impression of having a bias. Various methods for listing the candidates like minimum experience or minimum percentage of marks in the written examination held by the UPSC in order to limit the number of candidates to a manageable number (2-3 times the vacancies) has been upheld by this Tribunal in S.P. Sonowal Vs. Union of India, 1974 (4) ATC (Bom.) 251). It is also conceded that different departments may have different criteria for selection and the action of the respondents cannot be challenged simply on the ground that the Department of Telecommunication have not adopted any such criterion (S.P.Sonowal Vs. Union of India, Para-8, Page.256).
8. Prescription of a maximum percentage of 75% in different examinations conducted by different Universities/bodies having different standards of evaluation and different syllabi may not be completely fair and uniform for all the candidates. That is why various Public Service Commissions rely totally on their own examination or the universities, apply different moderators to the marks obtained in examinations conducted by the feeder academic institutions. Moreover, changing the minimum percentage from year to year may also result in lack of uniformity. However, these are matters of policy falling exclusively

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within the purview of the executive (vide State of Andhra Pradesh Vs. Sadanandam, AIR 1989 SC 2060). In that case, the Supreme Court observed that the mode of recruitment and the category from which the recruitment to a service should be made, are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgement over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made. In this case, the minimum percentage was prescribed to keep the number of candidates within manageable limits.

9. In the light of the above, we see no merit in the present application and the same is dismissed. ~~The interim order already passed is hereby reversed.~~

10. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER(A)
22.05.1992

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)
22.05.1992

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