

(37)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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R.A.No. 71/92

Date of decision 4/2/93

in

O.A.No. 928/91

alongwith

M.P. Nos. 1225/91,  
1226/91 & 233/92 and

M.P.Nos. 622, 664 & 665/92.

S.D. SHASTRI

V/s

UNION OF INDIA & ORS.

O\_R\_D\_E\_R

M.P.No. 622 is for early disposal. M.P.No. 664 is for hearing of the Review Application and M.P. No. 665 is for stay for the operation of the judgement dated 18.2.1992.

2. The applicant has been heard in detail in person. The Learned Counsel for the respondents has also been heard and we proceed to deal with the Review Application.

3. The issues raised in the Review Application are that the method of selection by oral test/interview cannot be sustained. Further, whether the Commission should not have prepared the panel for year-wise vacancies, whether

the presence of the departmental representatives did not vitiate the selection, whether the Commission could say that suitable candidates were not available and give a list shorter than the number of posts ? The applicant has further raised the question as to whether he was really unsuitable for the post of Assistant Director and Station Director. He has said that his position in the Select List after preparing year-wise merit list should be determined by keeping away some candidates who, according to him, were not eligible. He has further added that while the judgement dated 18th February, 1992 observed that the applicant might be re-interviewed for determining his suitability or otherwise for the post of Assistant Director, no such direction had been given for the post of Station Director.

4. At the out-set it may be mentioned that a review of the judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake has crept in earlier, by judicial fallibility. There are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise

of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made ; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. A mere repetition of over-ruled arguments are obviously insufficient.

5. An important point taken in the review petition is that the method of selection by oral test/interview cannot be sustained. There is no law to support this contention. It is entirely for the Government to decide what kind of competitive assessment is appropriate in a given case. In the very nature of things it would not be within the province or even the competence of the court, and the court would not venture into such exclusive thickets to discover ways out when the matters are more appropriately left to the wisdom of the experts. There may be posts and appointments where the only proper method of selection may be by a viva voce test.

The following extracts from the judgement in the case of Lila Dhar vs. State of Rajasthan & Ors. [AIR 1981 SC 1777] would speak for themselves :-

" Has any such consensus emerged among the informed and the cognoscenti as to require the Court to scrap a selection as arbitrary on the sole ground that the weight accorded to the oral test appeared to be high "?

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" On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview test catch a glimpse of the future personality."

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" In the aforesaid view, the selection was also not open to challenge on the ground that marks were awarded in the interview-test in a single lot instead of sub-dividing and awarding them separately under various heads for the various matters tested in the interview. The rules themselves do not provide for the allocation of marks under different heads at the interview test. The criteria for the interview test have been laid down by the rules. It is for the interviewing body to take a 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 judgement over the methods of marking employed by interviewing bodies unless it is proven or obvious that the method of marking was chosen with oblique motive. "

In the case of M.K. Sharma versus UPSC and Another [1992 (1) AISLJ CAT 33\_] it was held that if the selection does not comprise both the written test as well as interview but is only confined to the interview, short listing is a reasonable and sensible method.

6. The applicant was interviewed by the UPSC both for the post of Assistant Station Director and Station Director and he was not selected. According to instructions of Government of India [Memo.No.22011/7/86-Estt(D)], dated 3rd July, 1986, the unfilled direct recruitment quota vacancies would be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to usual practice. It was done so in this case and we find no illegality about it. However, taking the totality of factors it was observed that Review DPC comprising only authorised Members might re-interview the candidate to determine his suitability or otherwise for the post of Assistant Station Director, more so when all his seniors were reported to have been selected, though

it was against a direct recruitment quota and not a case of promotion by seniority and the vacancy existed. A similar direction from the Bench in regard to the post of Station Officer if not given has to be taken as refused. If the decision of the Bench was erroneous on merit, that would not be within the province of a review application. That would be the province of a Court of Appeal. The Public Service Commission is a body of specialised persons constituted under the Constitution to advise the Government with regard to selection of candidates. Their selection is not justiciable except for a violation of any statutory rules. A Public Service Commission has discretion, subject to rules, to adopt its own method of selection.

7. Finally, it may be stated that there was nothing wrong in considering the MPs along with the main OAs., if the Bench decided to do so.

8. The application is bereft of merits and is dismissed with no order as to costs. The MPs are also disposed of.

*I.P. Gupta*  
I.P. Gupta  
Member (A) 4/2/93

*Ram Pal Singh*  
Ram Pal Singh  
Vice-Chairman (J) 4.2.93