

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 432/92
~~XXXXXX~~

~~XXXXX~~

DATE OF DECISION 25.9.92

Ms PP Mala Applicant (s)

M/s KP Dandapani Advocate for the Applicant (s)

Versus

The Senior Administrative Respondent (s)

Officer, S. Air Command HQ,
Trivandrum & 2 others.

Mr V Krishna Kumar, ACGSC Advocate for the Respondent (s) 1-3

CORAM : Mr S Subramani " " 4

The Hon'ble Mr. **SP Mukerji** - Vice Chairman

&

The Hon'ble Mr. **AV Haridasan** - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ys*
4. To be circulated to all Benches of the Tribunal? *Ys*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Ms PP Mala, ^{is} holder of a Second Class Masters Degree in Hindi. ^{She} also possesses a Post-Graduate Diploma in Translation, Administrative Drafting and Reporting in Hindi issued by the Cochin University of Science & Technology. She has passed Hindi typewriting Higher Grade examination and also typewriting (English) Lower Grade. She had worked as Instructor of Post-Graduate Diploma in Translation Course for Hindi at Keral Hindi Sahitya Mandal from 1.1.1988 to 1.2.1989 and as a Junior Hindi Translator

in CIFNET (Central Institute of Fisheries, Nautical & Engineering Training), Kochi from 10.2.89 to 9.5.89 and thereafter from 22.5.89 to 21.8.89 and again as Instructor at Keral Hindi Sahitya Mandal from 23.8.1989 to 23.8.1990. From 20.5.1991 to 9.8.1991, she was working as Junior Translator (Hindi) at Central Silk Board. The respondents 1 and 2 invited applications from candidates who possess a Post-Graduate Degree in Hindi and Diploma in Translation with experience for appointment to the post of Senior Hindi Translator. The applicant was one among 11 other candidates sponsored by the Professional & Executive Employment Exchange, Thiruvananthapuram, pursuant to the above employment notice. She, along with other candidates, participated in the selection process consisting of a written test and a viva voce held on 12.2.1992. There were two papers for written test--translation from Hindi to English and from English to Hindi. All the candidates who took part in the written examination were called for viva voce. On the basis of her educational qualifications, experience and satisfactory performance at the written test and viva voce, the applicant was confident of being placed first in the panel of selected candidates. She understood that selection was made on the basis of the aggregate marks obtained in the written test as well as viva voce and that 50% marks were earmarked for viva voce. As she did not get any intimation regarding the result of the selection,



the applicant sent a letter to the 1st respondent on 2.3.92 seeking information as to whether she has been selected or not (Exhibit P.11). In reply to this letter, the applicant was informed by the 1st respondent by the impugned communication dated 4.3.1992 (Exhibit P.1)) that she had been placed second in the order of merit and that there was only one vacancy. Knowing that her placement as second in rank was only on account of allotment of 50% marks to the viva voce, the applicant sent a notice to the 1st respondent seeking information regarding the percentage of marks fixed for written test and viva voce, the marks obtained by her in the written test and viva voce and the name and particulars of the candidate who had been assigned first rank. As there was no response to this notice and coming to know that the 4th respondent has been assigned the first rank, the applicant has filed this application under Section 19 of the Administrative Tribunals Act praying for the following reliefs:-

- (i) To set aside the 2nd rank given to the applicant in the selection towards appointment to the post of Senior Hindi Translator as per Exhibit P.1;
- (ii) to declare that the applicant is entitled to 1st rank in the selection and appointment to the post of Senior Hindi Translator in the Southern Air Command Headquarters of Indian Air Force, Thiruvananthapuram;

- (iii) to direct the respondents 1 and 2 to appoint the applicant as Senior Hindi Translator at Southern Air Command Headquarters at Thiruvananthapuram forthwith; and
- (iv) to direct the respondents 1 and 2 to produce the entire files leading to the selection towards appointment to the post of Senior Hindi Translator at Southern Air Command Headquarters, ~~IAF, Trivandrum~~,
- (v) ~~award costs; and~~
- (vi) call for the records leading to Exh P1 and quash the same. It has been averred in the application that allocation of 50% marks for the viva voce test being in violation of the directions contained in the decisions of the Hon'ble Supreme Court in Vikram Singh v. Subordinate Services Selection Board, 1991 (1) SLR 176, Mohinder Sain Garg v. State of Punjab and others, 1991 (1) SLR 546, and Ashok Alias Somanna Gowda and another v. State of Karnataka, (1992) 1 SCC 28, the applicant is entitled to be placed first in the panel of successful candidates and to be appointed as Senior Hindi Translator in the Southern Air Command Headquarters of Indian Air Force, Thiruvananthapuram.

2. The 4th respondent had already been appointed before an interim order was issued on 5.5.1992 to the effect that appointment of 4th respondent, if not already made, should be kept in abeyance.

3. The respondents 1 to 3 have sought to justify the selection and appointment of the 4th respondent on the ground that as the 4th respondent obtained the highest grading in the selection test consisting of a written test and a viva voce held in an impartial manner, the claim of the applicant that she should have been placed at Sl No.1 in the select list is baseless. It has been contended that as there was no previous references with regard to selection of Hindi Translator by Air Headquarters or any other source that the maximum to be marks/allocated for the interview should not exceed 12.2% of the total marks, as contended by the applicant, the method adopted by the respondents in conducting the selection cannot be faulted. The details of marks obtained by the applicant and the 4th respondent on various counts in the written examination and viva voce have been given in detail in the reply statement. It reads as follows:-

	<u>Ms. PP Mala</u> <u>applicant</u>	<u>Ms. S Radha</u> <u>4th respondent</u>
(a) A passage for translation from English to Hindi approximately 200 words. Maximum 20 marks	14	16
(b) A passage for translation from Hindi to English approximately 200 words. Maximum 20 marks.	12	15
(c) NCC/Scouts. Maximum 2½ marks.	2½	Nil
(d) Literary achievements/published articles. Maximum 2½ mks. Nil		1½
(e) Achievements in sports. Maximum 2½ marks.	1	Nil

	<u>Ms. Mala</u>	<u>Ms. Radha</u>
(f) Proficiency in typing in Hindi/English. Maximum 2½ marks.	2	2½
<u>Viva voce</u>		
(g) Appearance/Health. Maximum 10 mks.	10	8
(h) Verbal communication skill in English. Maximum 10 marks	9	9
(i) Verbal communication skill in Hindi. Maximum 10 marks.	8	8
(j) Overall impact. Maximum 20 marks.	16	19
Total out of maximum 100 marks	<u>74½</u>	<u>79</u>
Corrected as....	<u>75</u>	

4. The 4th respondent has also filed a counter affidavit supporting her selection and appointment on the ground that the selection was made purely on the basis of relative merits of the candidates.

5. We have heard the arguments of the counsel on either side and have also carefully perused the pleadings, documents and other materials on record. The only ground on which the process of selection is assailed by the applicant is that the allocation of 50% marks for viva voce is arbitrary, illegal and opposed to the dictum contained in the decisions of the Hon'ble Supreme Court in 1991 (1) SLR 176, 1991 (1) SLR 546 & (1992) 1 SCC 28.

6. In Vikram Singh v. Subordinate Services Selection Board, Haryana and others, 1991 (1) SLR 176:(1991) 1 SCC 686, following the dictum in Ashok Kumar Yadav's case, (1985) 4 SCC 417, it was held that allocation of 28.5% marks for viva voce test for selection to the post of Excise Inspectors

in the Excise and Taxation Department of the State of Haryana, was bad in law. In Mohinder Sain Garg v. State of Punjab and others, 1991 (1) SLR 546, after a survey of the authorities on the point, the Hon'ble Supreme Court held that allocation of 25% marks for viva voce test for selection to the post of Excise and Taxation Inspectors in the State of Punjab, was arbitrary and excessive. It was observed that it would not be reasonable to fix the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview. In Ashok Alias Somanna Gowda and another v. State of Karnataka, (1992) 1 SCC 28, the Hon'ble Supreme Court held that the rules providing for allotment of 50 marks for interview out of a total of 150 marks in the matter of recruitment of Assistant Engineers (Civil) and (Mech) for the Public Works Department in the State of Karnataka was irregular and excessive and that it was in violation of the dictum laid down by the Hon'ble Supreme Court in Ashok Kumar Yadav's case. On the strength of the above rulings, the learned counsel for the applicant argued that the process of selection adopted in this case is vitiated since 50% marks have been allotted for viva voce against the directions of the Hon'ble

Supreme Court that 12.2% or 15% should be the maximum marks that can be normally allocated for viva voce test. The respondents have not, in their reply statement, disputed the allocation of 50% marks for viva voce test. What is contended by respondents 1 to 3 is that there are no previous reference with regard to selection of Hindi Translators by Air Headquarters or any other source that the maximum marks allocated for the interview shall not exceed 12.2% of the total marks. From the comparative chart regarding the performance of the applicant and the 4th respondent given at page 2 of the reply statement filed by the respondents 1 to 3, it is seen that for written examination, literary achievements, achievements in sports and proficiency in typing altogether 50 marks were allocated and the remaining 50 marks were allocated on the following counts:-

	<u>Maximum marks</u>
1. Appearance/Health	10
2. Verbal communication skill in English	10
3. Verbal communication skill in Hindi	10
4. Overall impact	20

Though appearance/health can be assessed only in a personal interview, it cannot be said that the marks allotted on this count are for viva voce test. The Department to which recruitment is made being a defence establishment if they require a certain standard of health and physical appearance for recruitment even to the civilian posts, such a requirement therefore, cannot be said to be unreasonable and allocation of 10 marks

for health and appearance cannot also be said to be arbitrary or unreasonable. Verbal communication skill either in English or in Hindi can be assessed only during the viva voce test. The ~~force~~ of expression in the languages concerned, the manner of expression etc would be ~~relevant considerations~~ as ~~as~~ selection to the post. Therefore, ~~for~~ translator is concerned. ~~The~~ allocation of 10 marks for communication skill in English and 10 marks for communication skill in Hindi also cannot be said to be exaggerated or excessive. Though in Ashok Kumar Yadav's case the Hon'ble Supreme Court has held that the percentage of marks allocated for viva voce test by the UPSC in the case of selection to Indian Administrative Service and Allied Services, namely 12.2%, is fair and just striking a balance between the written examination and the viva voce test, ^{and} ~~had~~ directed that in the case of selection to be made to the Haryana Civil Services Executive Branch and other allied services where the competitive examination consists of a written test followed by a viva voce, the percentage of marks allocated for viva voce should not exceed 12.2% and that this percentage should be adopted by the Public Service Commissions in other States as it was felt desirable that there should be uniformity in selection throughout the country. In the same judgement, the Hon'ble Supreme Court has observed that there cannot be any hard and fast rule regarding the precise weightage to be given to the viva voce test in relation to the written examination. After discussing the merits and demerits of a

written examination and a viva voce test, the Hon'ble Supreme Court observed as follows:-

"There can, therefore, be no doubt that the viva voce test performs a very useful function in assessing personal characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them. "In the case of admission to a college for instance", as observed by Chinnappa Reddy J. in Lila Dhar case, "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has perforce to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be minimal. It was for this reason that in Ajay Hasia case this Court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary". But as pointed out by Chinnappa Reddy, J., "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". There may also be 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 in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Lila Dhar case "exaggerated weight has been given with proven or obvious oblique motives".

7. It is obvious from what is quoted above that in

Ashok Kumar Yadav's case the Hon'ble Supreme Court has

not said that in no case more than 12.2% marks should be allocated for ~~viva voce~~. According to the above quoted observation, the precise weightage to be given to viva voce test would depend on various factors and would vary from service to service according to the requirements of the service. Viewed in this respect, the allocation of 10 marks for verbal communication skill in English and 10 marks for verbal communication skill in Hindi cannot be considered either excessive or exaggerated. But 20 marks have been allotted for overall impact. It has not been explained in the reply statement by the respondents 1 to 3 what is meant by 'overall impact'. Allocation of as high a percentage as 20 for overall impact, which is vague and non-specific, is likely to lead to arbitrariness and may tend to destroy the objectivity of the process of selection. We are, therefore, of the view that allocation of 20 marks for 'overall impact' is quite unreasonable and arbitrary. But the question is what is the effect of allocation of such a high percentage of marks for overall impact as part of the Viva voce test as far as the impugned selection process is concerned? Is it necessary to strike down the selection and to direct the respondents 1 to 3 to redo the same without considering the marks for overall impact? A perusal of the pleadings and the comparative chart of performance of the applicant and the 4th respondent would indicate that it is not necessary to do so to meet the ends

of justice. As far as the manner in which the written examination was held, the applicant has no complaint or grievance. Her grievance is only in regard to the high percentage of marks allocated for the viva voce test. Out of 10 marks allocated for appearance/health, the applicant has been awarded full marks and the 4th respondent has been awarded only 8 marks. For verbal communication skill in English, both the applicant and the 4th respondent have been awarded 9 marks each and for verbal communication skill in Hindi both the applicant and the 4th respondent have been awarded 8 marks each. On the count of overall impact, the applicant has been awarded 16 marks out of 20 while the 4th respondent has been awarded 19 marks out of 20. This difference of 3 marks in overall impact may, probably, be due to the better marks scored by the 4th respondent in the written examination. However, even ignoring the marks obtained by the applicant and the 4th respondent on overall impact, the 4th respondent has scored higher marks than the applicant. Ignoring the entire marks for viva voce test also, the 4th respondent has scored higher marks in the written examination. Therefore, the allocation of 50% marks for appearance/health and viva voce test has not ~~at all altered the position, as~~ between the applicant and the 4th respondent. We are, therefore, of the view that the selection of the 4th respondent cannot be characterised as arbitrary, illegal or partisan. It is evident from the comparative chart that on a fair and

proper evaluation of the merits of the candidates, the 4th respondent has been adjudged to be more meritorious than the applicant. Therefore, we are of the view that there is no scope for interference in the selection.

8. In the result, on a careful scrutiny of the pleadings and documents available, we find that the selection and appointment of the 4th respondent as Senior Translator in Hindi does not suffer from any infirmity and, therefore, we dismiss the application. However, before parting with the case, we wish to suggest that the respondents 1 to 3 should consider evolving a reasonable guideline for future selections to the post of Senior Translator in Hindi fixing a reasonable percentage of marks for viva voce test, leaving no scope for arbitrariness in the light of the observations made in paragraph 7 above.


(AV HARIDASAN)
JUDICIAL MEMBER


25-9-92
(SP MUKERJI)
VICE CHAIRMAN

25.9.92