

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

21/91

199

DATE OF DECISION 28.2.92

N.Chandrasekharan & another Applicant (s)

Mr. P. Ravindran Advocate for the Applicant (s)

Versus

Chairman, ISRO & 10 others Respondent (s)

Mr. N.N.Sugunapalan (For R1&2) Advocate for the Respondent (s)
Mr. N.Govindan Nair (For R5)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Member (Administrative)

The Hon'ble Mr. N.Dharmadan, Member (Judicial)

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

JUDGEMENT

N.V.Krishnan, AM

The two applicants before us are Purchase Assistants-B in the Vikram Sarabhai Space Centre, Trivandrum (VSSC, for short), an establishment under the Indian Space Research Organization (ISRO, for short), the first respondent. The next promotion is to the post of Assistant Purchase Officer. The promotion is made on the basis of executive instructions issued from time to time. These have been compiled in "A Compendium of Orders on Career Opportunities for Administrative Staff" published in July 1987 and produced for our perusal and referred to as 'Compendium' for short. The procedure for recruitment is compiled and laid down in the Office Memorandum dated 9.7.87 (P.1 of the Compendium) and admittedly, in the instant case, the promotion is based on a written test, followed by an interview and assessment of the

Confidential Reports . Para B.2.4 of the aforesaid O.M. prescribes the marks for these components as follows:

(a) Written test	- 50
(b) Interview	- 30
(c) Confidential Report	- 20
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100	
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Para B.2.6 states that to qualify for promotion 50% each should be scored in each of the three elements of evaluation and 60% should be scored in the aggregate.

2. The grievance of the applicants is that by manipulating the marks awarded at the interview and for confidential reports they have been effectively denied promotion in as much as in the panel prepared in 1990 (Ann.A1) the second applicant's name has been excluded while the first applicant has been placed at S.No.7, though he and the second applicant had respectively scored the highest and second highest marks in the written test. It is for this reason that the applicants have sought the following reliefs:

- "(a) To declare that Norm 20-4 insofar as it permits 30% of marks for interview and 20 marks of the confidential reports is violative of Articles 14 and 16 of the Constitution of India and hence unconstitutional.
- (b) Call for the records leading to Annexure-A1 order and quash the same.
- (c) Stay the operation of Annexure-A1 order.
- (d) Award the cost of this application in these proceedings.
- (e) Grant such other and further reliefs as may be prayed for.
- (f) Direct the respondents to include the applicants' name in the panel and rank them on the basis of the marks obtained by them in the written test."

3. As a matter of fact, the written test is held in 3 papers, viz. General Knowledge, Area Paper & Special Area Paper, as laid down in the Ann.D.3 to the O.M. dated 9.7.87 referred to above (p. 32-35 of the Compendium) and further, Ann.D.5 (P. 38, 39 of the Compendium) permits the use of the relevant Manuals/Acts etc. for the Area and Special Area

Papers. Each paper carries 100 marks and the total marks scored against the maximum marks of 300 is then proportionately reduced with reference to a maximum of 50 prescribed for the test.

4. The applicants state that, as compared to the selection held in 1988 they had done much better in the written examination and scored more marks as will be evidenced from the following particulars, based on information furnished by the respondents:

Name	General knowledge		Core Paper		Special Core paper	
	1988	1990	1988	1990	1988	1990
N.Chandrasekharan (first applicant) (Ann. AII & AV)	32	72	61	60.5	57.75	69
			[Total: 1988 - 150.75 1990 - 201.5]			
R. Parameswaran Pillai (Ann. AIII & AVI)	34	53	57	69	66	64
			[Total: 1988 - 157 1990 - 186]			

Admittedly, the names of the applicants were included in the panel for promotion in 1988 at S.No.7 and 10 respectively (Vide Annexure-AIV). However, in so far as the 1990 selection is concerned, as stated above, the first applicant has been placed in the panel at S.No. 7 and the second applicant's name has not been included in the panel vide Annexure-AVII. It is pointed out that the third respondent who has scored lesser marks in the written paper than either of the two applicants has been placed first in the panel. Therefore, the applicants contend that the marks for interview and CR have been manipulated to favour the first respondent and some others who have been placed above them in the A.VII panel. Allegations of malafide have also been made in this connection. It is emphasised that respondents 1 and 2 have taken advantage of the high percentage of marks provided for interview and assessment of the ACR to deprive

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the applicants of their legitimate place in the panel. It is contended that the allocation of 30 marks for interview and 20 marks for ACR out of 100 is arbitrary and discriminatory and no guidelines have been issued as to how these marks have to be awarded. It is in these circumstances that the above prayers have been made.

5. Though the contesting respondents 3 to 11 were issued notice, they did not either file a reply or appear when the case was finally heard. Respondents 1 and 2 (the Department) have filed replies contending that the allegations are baseless and that the application deserves to be dismissed. They have produced the 'Compendium' which contains copies of the relevant instructions which have been issued from time to time.

6. Their reply is summarized as follows:

6.1 The ISRO has to perform a number of technical tasks and hence it was necessary to choose the proper personnel and provide for a proper recruitment system with adequate career growth opportunities in the light of the instructions in the Compendium.

6.2 Recruitment in the manner it was done in 1990 has been in vogue from 1976 itself, as evident from Ann.R3 instruction dated 5.10.76. This has been referred to in the O.M. dated 9.6.87 in the Compendium also. Respondents have filed Ex.R2 which is O.M. dated 5th June 1982 relating to filling up posts of Assistant Officers which includes the posts of Assistant Purchase Officers. It is necessary to state here that Ex.R2 O.M. is in modification of the O.M. dated 31.3.81 which has been referred to in para (1) of the O.M. dated 9.6.87 at page 1 of the Compendium. The O.M. in the Compendium does not refer to Ex.R2 O.M. dated 5.6.82 which contains an important provision in para 3.3 therein which is reproduced below:

"3.3. Those who secure a minimum of 50% marks in the written test alone will be eligible to appear for the interview. After the written test,

interview and assessment of ACRs is completed, the names of the candidates who secure a minimum aggregate of 60% marks will be arranged in the order of merit area-wise, (i) Personnel and General Administration, (ii) Accounts, (iii) Purchase, and (iv) Stores."

We mention this because this provision seems to be at variance with Para B.2.6 of the Compendium at p.3 thereof which requires that 50% minimum marks has to be secured both in the interview and the evaluation of ACR. We will revert to this later on.

6.3 It is contended that the interview has an important role to play in the selection. In this regard the respondents have stated as follows:

"Written tests may bring out normally the relative theoretical skills of the candidate in the group. Interviews through personal interactions of the candidates with the Committee are meant to find out the strength and weaknesses of the total personality and potential of the candidates to hold a particular post which may involve considerable inter-personal interactions, too. It provides an opportunity to observe the non-verbal cues like facial expression, mannerism, emotional stability, maturity, attitudes, approach, etc. It gives a first hand impression on what a candidate is saying or what he feels to say. Due to its spontaneity it demonstrates the candidate's perceptiveness, clarity of thought, analytical ability, aspirations, motivation, interest, etc. The behaviour of individual in the personal interviews has a definite bearing on his personality and behavioural attributes at work. But the immediate inferences drawn from the above would be more objective and reflect on reality if it is appropriately supported by the ratings in the theoretical knowledge tested through written test and as well as the CR ratings."

6.4 Though the applicants claim that the Supreme Court has held that allocation of 20% marks for evaluation of ACR is unreasonable, respondents state as follows:

"CR forms are filled in by the Reporting Officer and evaluated by the Reviewing/Countersigning officers. It provides a systematic and objective means to understand and assess one's background for a continuous long period.

It is submitted that the applicants have not given the details on the decision of the Supreme Court while stating that awarding 20% marks for CR is illegal. As stated above, CRs give one of the basic inputs for the DPC to make an assessment about the official in such reviews. Also, the CR continues to have an important role in such DPC reviews as per the Govt. of India guidelines."

6.5 Regarding arbitrariness in regard to the marks awarded for interview and malafide, the Department have rebutted the contention in the following statement:

"Marks awarded to CR/Interview is as assessed by the DPC. It is applied uniformly to all. These elements with the written test performance is part of an established evaluation system which has been in existence for over a decade and the applicants also did not find any fault with it all these years. Further the qualities required to hold posts at higher supervisory levels cannot be brought out by Written Test alone. The decision of the Hon'ble Supreme Court regarding awarding of marks to an extent more than 12% for viva voce is also not relevant to the system of promotion formulated by ISRO and applied uniformly to all. It is neither arbitrary, nor discriminatory as there are definite parameters and guidelines for review of all concerned uniformly. The DPC is constituted with the senior officers of the Organisation. The DPC assess the suitability of the candidates as per the set parameters and recommends suitable candidates for promotion to the post. The DPC does not favour anyone nor the process is vitiated by malafide since well set procedures are followed strictly by the DPC. Neither it amounts to any colourable exercise of jurisdiction or power. The marks are not awarded in excess to off set the marks obtained by the applicants or anyone. The marks awarded are neither illegal nor to put anyone to any disadvantage. Marks are awarded based on the collective wisdom of the DPC. It is based entirely on performance of the individuals. allegations made by the applicants are not based on facts and hence the application is liable to be dismissed in limini."

6.6 For these reasons, the Department urges that the application be dismissed.

7. We have heard the rival contentions and carefully perused the pleadings of the parties. On our direction, the Department produced for our perusal the records relating to the preparation of the panel in 1988 and in 1990.

8. The learned counsel of the applicant submits that the relative weightage which should be given for interview in the process of selection has been considered by the Supreme Court in **Ashok Kumar Yadav's case [AIR 1987 SC 454]** wherein it was held that the marks for interview shall not exceed 12.2% of the total, as in the case of selection for the Indian Administrative Service. Even as late as in 1991 a similar decision has been rendered by the Apex Court in **Munindra Kumar V. Rajiv Govil [AIR 1991 SC 1607]**, where it was held that prescribing 40% of the total

marks for appointment of Assistant Engineers by the Electricity Board by direct recruitment was arbitrary and that this should not exceed 15% and the entire proceeding were quashed.

9. On the contrary, the learned counsel of the Department points out that there are also other decisions of the Supreme Court which have held that prescription of 40% marks for the interview cannot be considered to be unreasonable [vide *Manjit Singh Vs. ESI Corporation* [1990(2) SLR 433 SC]]. He contended that there cannot be any uniform yardstick in this matter and the question as to how the selection should be made should be left to the experts in the field and the Department, which has considerable experience in this regard.

10. ~~For a proper consideration, we would like to specify the issues raised.~~ The rival contentions raise the following issues:

(i) Whether prescription of 30% marks for the interview and 20% marks for the ACR can be said to be arbitrary and capable of misuse?

(ii) Whether a minimum of 50% in the interview can be justified? and

(iii) Whether the 1990 selection is vitiated by bias or arbitrariness?

11. Though the applicants have contended that the fixation of 20% marks for evaluation of confidential reports is violative of Articles 14 and 16 of the Constitution, they have not made out ~~any~~ case in this regard. They have also not cited any judicial authority in support of this contention. We are of the view that the evaluation of the ACR is different from evaluation of a person in an interview. The ACR is a valuable contemporaneous assessment of the performance of an official on the basis of a factual report given by the official himself which is then assessed by the officer under whom he works, who enters the first opinion. This opinion is then scrutinized by a reviewing authority. Unlike

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an interview, it is a written record in which the many facets of an individual employee are evaluated on the basis of his performance during the course of the year. Therefore, when disputes arise as to the relative assessment of individuals, it is possible to review the marks given for this purpose by the DPC and conclude whether there has been any favouritism or bias. In fact, the assessment of the character roll is amenable to scrutiny. Therefore, we do not find that the fixation of 20% marks for this element is in any way arbitrary or discriminatory.

12. In so far as the weightage given for the interview is concerned, it is true that no uniform principle can be laid down because the requirements will differ from case to case.

Nevertheless, in Ashok Yadav's case (supra), the Apex Court came to the conclusion that generally, the weightage for interview in the total marks should not be more than what is ~~given~~ even in as important a selection as the Civil Services Examination. As this is a landmark decision in which the question as to what relative weightage should be given in a selection consisting of the written examination followed by an interview, we find it necessary to consider this decision in depth.

13. In that case, the selections made by the Haryana Public Service Commission for the Haryana Civil Service and Allied Services were impugned on a number of grounds, one of which related to the marks allocated for the viva voce test. That examination was open to general candidates and to ex-servicemen. The general candidates had to appear in a written examination in 4 compulsory and 3 optional subjects, each carrying 100 marks. Thus, the written examination carried 700 marks. Ex-servicemen were exempted from appearing in the optional subjects and the minimum marks for the written examination was thus only 400. The maximum for the viva voce

test in both cases was 200 marks. Thus, in the case of the general candidates, the maximum for the viva voce test was 200 marks out of a grant total of 900 marks (i.e. 22.2%), while in the case of ex-servicemen, it was 200 marks out of 600 marks (i.e. 33.3%). The examination was challenged on ^{✓ among other} the following grounds:

"...that the allocation of 200 marks for the viva voce test out of a total of 900 marks for the generality of students and a total of 600 marks for ex-servicemen, was arbitrary and excessive and it had the effect of distorting the entire process of selection by introducing in a preponderant measure subjective element which could facilitate arbitrariness and manipulation and it was accordingly unconstitutional as involving denial of equal opportunity in public employment." (Para 4 of report)

This was repelled by the respondents who contended as follows:

"....this allocation of 200 marks for the viva voce test was made under the Punjab Civil Service Executive Branch Rules, 1930 which had been in force since over 50 years and no one had raised any objection to it during this long period of half a century and it had stood the test of time and could not possibly be regarded as arbitrary or excessive." (Para 5 of report)

14. We are concerned only with the manner in which these rival contentions were disposed of by the Supreme Court. This aspect of the case is dealt with in paras 22 to 27 of the report where, after a detailed discussion, the Court came to the conclusion that the allocation of 22.2% marks for the viva voce test for general candidates and 33.3% for ex-servicemen were unreasonable. After pointing out to the need for using viva voce as an instrument of selection and also admitting that it is not for the Court to lay down whether an interview test should be held at all, or how many marks should be allotted for the interview, the following important observations were made:

"It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test." (Para 23 of report)

"While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, co-operativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with

others, adaptability, judgement, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board." (Para 24 of report)

"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 Liladhar's case "exaggerated weight has been given with proven or obvious oblique motives." (Para 25 of report)

15. The Supreme Court then examined whether the marks given for the viva voce test in the aforesaid examination could be considered to be arbitrary. For this purpose, it adopted a test based on the "spread" of marks, i.e. the difference between the maximum scored and the minimum required as a percentage of the total marks. In the case of ex-servicemen, while the maximum marks for the written examination were 400, they were required to obtain only 45% in the aggregate (i.e. 180) to be eligible to appear in the viva test. The highest mark obtained in the written examination was 270, i.e. 90 marks more than the minimum which works out to 22.2% of the total of 400 marks. As against this, in the viva test for which no minimum was prescribed, the lowest mark obtained was 20 while the highest mark secured was 171, the "spread" being 151 in a total of 200, i.e. about 76% of the total marks. It is on noticing this wide disparity the Court concluded as follows:

"The spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination, the viva voce test tended to become a determining factor in the selection process, because even if a candidate secured the highest marks in the written examination, he could be easily knocked out of the race by awarding him the lowest marks in the viva voce test and correspondingly, a candidate who obtained the lowest marks in the written examination could be raised to the topmost position in the merit list by an inordinately high marking in the viva voce test. It is therefore obvious that the allocation of such a high percentage of marks as 33.3% opens the door wide for arbitrariness and in order to diminish, if not eliminate, the risk of arbitrariness, this percentage needs to be reduced." (Para 26 of report)

The same observations were made in regard to the general candidates as follows:

"The position is no different when we examine the question in regard to the percentage of marks allocated for the viva voce test in case of persons belonging to the general category. The percentage in the case of these candidates is less than that in the case of ex-service officers, but even so it is quite high at the figure of 22.2. Here also it has been pointed out by the Division Bench by giving facts and figures as to how in the case of present selections from the general category the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination so that a candidate receiving low marks in the written examination could be pulled up to a high position in the merit list by inordinately high marking in the viva voce test. The viva voce test in the general category, too, would consequently tend to become a determining factor in the process of selection, tilting the scales in favour of one candidate for the other according to the marks awarded to him in the viva voce test." (Para 27 of report)

16. The Apex Court also derived considerable support for its conclusion that the weightage for interview should be reduced from the Report of the Kothari Committee in regard to selections made to the IAS. It observed as follows:

"The Kothari Committee pointed out that even where the percentage of marks allocated for the viva voce test was 17.11, nearly 1/4th of the candidates selected owed their success to the marks obtained by them at the viva voce test. This proportion was regarded by the Kothari Committee as "somewhat on the high side". It is significant to note that consequent upon the Kothari Committee Report, the percentage of marks allocated for the viva voce test in the competitive examination for the Indian Administrative Service and other allied services was brought down still further to 12.2. The result is that since the last few years, even for selection of candidates in the Indian Administrative Service and other allied services where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for the viva voce test constitute only 12.2% of the total marks. Now if it was found in the case of selections to the Indian Administrative Service and other allied services that the allocation of even 17.11% marks for the viva voce test was on the higher side and it was responsible for nearly 1/4th of the selected candidates securing a place in the select list owing to the marks obtained by them at the viva voce test, the allocation of 22.2% marks for the viva voce test would certainly be likely to create a wider scope for arbitrariness." (Para 27 of report)

17. It is on the basis of these findings that the following general directions were given:

"We would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. We would suggest that this percentage should also be adopted by the Public Service Commissions in other States, because it is desirable that there should be uniformity in the selection process throughout the country and the practice followed by the Union Public Service Commission should be taken as a guide for the State Public Service Commissions to adopt and follow." (Para 29 of report)

18. We have found it necessary to reproduce copiously from this judgement because of ~~the exhaustive discussion of the issue and the procedure adopted to consider whether there has been arbitrariness.~~ Before applying the same test to the facts of the present case, we may notice some of the other decisions.

19. It is true, as the learned counsel for the Respondents has pointed out, that the Supreme Court has also upheld the validity of rules providing for 30% or more marks out of the total marks for interview. That does not mean that the judgement in Ashok Kumar Yadav's case, which was delivered by a 5 member Bench, has been departed from. These judgements were delivered in the special circumstances of the cases.

20. Thus, in Leeladhar V. State of Rajasthan [AIR 1981 SC 1777] decided six years before Ashok Kumar Yadav's case, the selection to the Rajasthan Judicial Service came under consideration. The Rules provided for a relatively high allocation of 25% marks for viva voce. Nevertheless, that provision was upheld for two reasons. Firstly the selection was made by a totally highpowered independent body consisting of a Judge of the High Court of Rajasthan, the Chairman and a Member of the Public Service Commission and an expert, ^{the fact that the} specially invited for the purpose. Secondly, the candidates are not raw graduates fresh from the college, had also relevance for fixation of marks. They are persons who have already received a certain amount of professional training. Therefore, it was possible to assess them relatively better in an interview and hence a higher percentage for interview

was not unjustified. Thereafter, the court considered what would be the requirement in different kinds of cases and came to this conclusion:

"There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for Courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission." (Para 6 of report)

21. The case of Manjeet Singh Vs. E.S.I Corporation [1990 (2) SLR 433 (SC)] has been cited by the respondents to show that even 40% marks for interview to the post of Insurance Inspector/Manager Grade.II has been approved. That does not necessarily mean that 40%, or for that matter any other percentage, can apply to all cases. That is the thrust of the judgement in Lila Dhar's case [AIR 1981 SC 1777], wherein it was observed that how many marks should be allocated for interview depends on many factors.

22. Therefore, unless exceptional circumstances obtain, the general rule laid down in Ashok Kumar Yadav's case (supra) shall be followed viz. that the interview shall not carry ^{around} more than 12.2% of the total marks.

23. We can now consider the "spread" of marks in the present case to find out if allocation of 30 marks for the interview out of a total of 100 marks is totally unreasonable and arbitrary and has resulted in using this as a lever to select candidates who otherwise might not have stood any chance for selection.

24. The persons included in the panel of 1990 examination are shown in Annexure-I. The records of the original selection have been produced. It is seen therefrom that the maximum mark scored was 201.5 out of 300, as against a minimum of 50%, i.e. 150, required to be considered for viva voce, which is less than the minimum of 155 actually scored. The spread of marks is thus 51.5 out of a total of 300, which

works out to around 17%. This will be 15.5% only if the lowest mark secured is considered. As against this, assuming that in the viva voce test also a minimum of 50% (i.e. 15 marks) was prescribed--Annexure-R2 memo suggests that there was no minimum--the maximum mark secured out of 30 is 29. The spread is 14 out of a maximum of 30 marks i.e. 47%. The spread will be more significant (70%) if reckoned from the minimum mark of 8 given.

25. This is in sharp contrast to the position obtaining in the 1988 examination. From the records, the following particulars are available:

	<u>Written Examination</u> (Out of 50)	<u>Interview</u> (Out of 30)
1) Maximum scored	30	24
2) Minimum needed	25	15
3) Spread/Percentage	5/10%	9/30%
4) Minimum scored	25	8
5) Spread/Percentage	5/10%	16/25 53.3%

The spread of marks in 1988 was substantially less than in the 1990 examination. Thus, on the basis of the test used in Ashok Kumar Yadav's case, it can be concluded that the marks given for interview by the Selection Committee has been done arbitrarily.

26. This is corroborated by an analysis of the result of the 1990 and 1988 selection to find out whether the interview has tended to determine the selection. For this purpose we take the candidates who have secured the first, second and third positions, on the basis of the aggregate marks secured as also the three toprankers in the written test and interview respectively. These details are given in the two tables below:

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Analysis of results of 1990 selection

A. Rank holders - On the basis of aggregate marks
(i.e. in the Panel)

S.No	Aggregate marks	Rank	Marks in written examination	Rank	Marks in interview	Rank	Marks for ACR
1.	78	1	29	4	29	1	20
2.	70.3	2	28	5	29	1	20
3.	69.8	3	26	7	26.5	2	17.3

B. Performance of first three rank holders
in written examination, not included in A

1.	69	6	34	1	15	9	20
2.	59	out	31	2	8	17	20
3.	58.6	out	31	2	9	16	18.6
4.	69.5	4	30	3	19.5	6	20
5.	66	8	30	3	16	8	20
6.	54	out	30	3	8	17	16
7.	54	out	30	3	8	17	16
8.	54	out	30	3	8	17	16

C. Performance of first three rank holders
in viva voce not included in A

1.	67	7	26	7	21	3
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Analysis of results of 1988 selection

A. Rank holders on the basis of aggregate marks
(i.e. in the Panel)

1.	72	1	30	1	22	2	20
2.	70	2	30	1	20	3	20
3.	69.5	3	26.5	7	24	1	19.5
4.	69.5	3	27.5	5	22	2	20

B. Performance of first three rank holders in written examination not included in A above.

1.	56.5	out	29.5	2	8	11	19.5
2.	51.5	out	29.5	2	10	10	12.5
3.	66	5	29	3	18	4	19
4.	58	out	29	3	10	10	19

C. Performance of first three rank holders in interview not included in A above.

1.	68	4	25	10	24	1	19
2.	66	5	26	8	20	3	20
3.	61	10	26	8	20	3	15

The following observations can be made: *in the panel*

i) In 1990, the first three rank holders owe this rank entirely to very high marks given to them in the interview. For, if the total of the written examination and ACR is taken into account, the persons who scored the first five ranks in the written examination (S.No. 1 to 5 in B of the 1990 table) have scored more marks than the three persons given the top positions in the panel (s.No.1 to 3 of Part A of the 1990 list).

On the contrary, in the 1988 list, the first two ranks in the panel (s.No.1 and 2 of Part A of 1988 table) are attributable to the fact that the aggregate of the written examination and ACR is the highest and they maintained this rank despite being given only the 2nd and 3rd highest marks in the interview.

ii) In 1990, there are 8 persons who have secured the top three ranks in the written examination (Part B of 1990 table). Out of them, 5 have been disqualified, including both the second rank holders. The first rank holder is placed at S.No.6 of the panel.

(Part A, S.No. 1&2 and Part B) have been disqualified, but it has to be noted that even if Out of them,

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S.No.2 of Part B of the 1988 table had been given the qualifying marks in the interview (i.e. 15), he would still have been out, because the aggregate will be less than 60. Of the remaining three, 2 have secured the first and second positions in the panel and the third the fifth position.

iii) Thus, in the 1990 selection, the maximum marks allocated to the interview gave an opportunity to the selectors to pull up certain candidates and to pull down certain others, whether this treatment was deserved or not.

27. It is neither necessary to establish that the high marks in the interview have been given without being deserved, nor is it possible to establish this, for nobody has a record of what transpired in the interview. But three facts stand out viz. that the 'spread' of marks is unusually large and that the first three positions in the panel have been determined entirely by marks given in the interview and that the marks given are unusually large. That is sufficient for us to hold that this selection is vitiated by the deliberate use of the interview as a lever to manipulate the results and this calls for interference.

28. We have already pointed out that in Ann.R2 memorandum a minimum in the interview is not prescribed and that the O.M. is not consolidated in the Compendium. It is, however, necessary to point out that fixing such a minimum, is not ^{by itself} improper ^{vide} Mehamood Alam Tariq Vs. State of Rajasthan[1988

(3) SCC 241]. However, we notice from the record of the 1990 selection ^{perusal} ~~produced for our~~ that by not giving the minimum marks for the interview, as many as ~~18~~ ^{out of 28} have been disqualified, of whom 5 are persons who would be in the panel if they had been given the minimum marks in the interview. Hence we find that this provision has been used arbitrarily.

29. The question is, in the circumstances, what relief should be granted to the applicants. In many of the cases decided by the Apex Court the results had not been set aside as the selection involved a large number of persons. That consideration need not apply to this case where a panel of 7 persons

has been prepared after considering 28 persons. In the circumstances we feel that fresh selection should be made after reducing the marks for the interview and not insisting on a minimum in the interview. We note that the total marks for the ~~written examination~~ (50) and the ACR (20) amounts to 70. If only 10 marks are allocated to the interview, the total will be 80 and the weightage for interview will get reduced from 30% to $12\frac{1}{2}\%$. The Committee has already awarded marks for the interview on a maximum of 30. The marks given out of a maximum of 10 marks for the interview will naturally be 1/3rd of the marks already given. When this exercise is completed marks obtained out of a total of 80 will be known. That can be converted into marks out of 100 and the panel can be prepared.

30. In the circumstances we allow this application with the following directions:

- (i) The panel at Annexure-I is quashed and all promotions made on the basis of this panel as Assistant Purchase Officers shall stand quashed.
- (ii) The fixation of a minimum mark of 50% to be scored in the interview is quashed.
- (iii) The respondents are directed to reduce the total marks for interview from 30 to 10 and work out the marks given to the candidates by applying a factor of 1/3 to the marks already given and then compile the marks scored by the candidates out of 80 i.e. 50 for written test, 20 for ACR and 10 for interview.
- (iv) The marks so secured shall be converted into marks out of 100 by applying a factor of 5/4 to the total marks scored.

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...contd.

(v) This shall be taken as the final result of the 1990 examination and a fresh panel shall be prepared and promotions granted on this basis.

(vi) These directions be complied within one month from the date of receipt of this order.

There will be no order as to costs.

N.Dharmadan 20.2.92
(N.Dharmadan)
Member (Judicial)

N.V.Krishnan 28/2/92
(N.V.Krishnan)
Member (Administrative)