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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.847 of 1997

DATE OF JUDGEMENT: 11th AUGUST, 1999

BETWEEN:

M.T.JOHN

.. APPLICANT

AND

1. The Director General,
Defence Research & Development Organisation,
South Block II, New Delhi,
2. The Director,
Recruitment & Assessment Centre,
Defence Research & Development Organisation,
Lucknow Road, Timmapur,
New Delhi,
3. The Director,
Defence Metallurgical Research Laboratory,
Kanchanbagh P.O,
Hyderabad 258,
4. NIZAMUDDIN HAZARI,
5. A.SAMBASIVA RAO.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.V.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS: Mr.B.Narasimha Sarma, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.B.Narasimha Sarma, learned standing counsel for the respondents. Notice served on R-4 and R-5, called absent.

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2. The applicant in this OA was appointed as Junior Scientific Assitant Grade-I in the Defence Metallurigal Research Laboratory, Hyderabad with effect form 8.5.80. He was promoted as Senior Scientific Assistant with effect form 1.3.84. The applicant states that he is a meritorious employee in all respects and also fully qualified. For this, he has enclosed his certificates of merit and other details.

3. The next promotion for the applicant is to the grade of Scientist-B in Schedule-III. The method of filling that post under the Defence Research & Development Service (Amendment) Rules, 1987) is by direct recruitment to the extent of 90% and 10% by way of Limited Departmental Competitive Examination failing which by direct recruitment. The post of Scientist-B is incorporated in SRO No.158 dated 4.5.87 issued under Article 309 of the Constitution of India. All Scientific and Technical personnel having 5 years of regular service in Defence Research & Development Organisation and possessing the educational qualifications prescribed for the post of Scientist-B under Schedule-III are eligible to appear for the said examination without any upper age limited. The scheme of examination can be seen under Sub Para 3 of Para 263 of the Daily Order Part-I dated 5.9.90 (R&D HQrs, New Delhi letter NO.029/001/RAC/LD/90, dated 31.8.1990) (Annexure A-III at Page 15 to the OA). The applicant appeared for the selection agaisnt 10% quota. But he was not selected and the respondents 4 and 5 were selected by the impugned order No.15437/Deptt./96/RD/Pers-5, dated 22.3.96 as can be seen from Page-58 to the OA.

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4. This OA is filed to set-aside the Daily Order Part.I dated 17.5.96 issued by the DMRL under the authority of R&D Headquarters, New Delhi letter NO.15437/Dept/96/RD/Pers-5, dated 22.3.96 by holding the same as illegal, arbitrary and unconstitutional and for consequential direction to the respondents to hold a fresh selection to the post of Scientist-B without any bias and grant consequential benefits to the applicant.

5. A reply has been filed in this OA. The facts of this case as enumerated above are not disputed. Hence the OA has to be disposed of on the basis of the submissions to the various contentions raised by the applicant herein.

6. The applicant had raised four main contentions. They are discussed as under:-

(i) The applicant is a meritorious candidate and to that effect he has enclosed the certificates. Hence in the matter of promotion, he was deliberately under rated to deny promotion to the higher category.

In this connection the observation of the Apex Court in the reported case in 1981 SCC (L&S) 588 (Lila Dhar v. State of Rajasthan) is essential to be remembered. It is observed that, "Courts cannot sit in judgment 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 present case, the applicant submits that in the matter of his promotion, he was deliberately under rated to deny promotion to the higher grade. By this, he may mean that ~~the selection~~

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the Selection Committee had denied his promotion with oblique motive. But there is no material available to come to the conclusion that he was not selected with oblique motive. Hence this contention has to be rejected.

(ii) The second contention of the applicant is that a common test for the Limited Departmental Competitive Examination was held and the question papers were set separately for each Branch i.e, Metallurgy, Mechanical etc., but the Branch-wise posts against 10% quota had not been indicated whereas in direct recruitment of 90% quota, the posts were identified Branch-wise. Hence in the absence of the posts earmarked branch-wise, Metallurgy qualified persons were selected in colourable exercise of power. The applicant relies on the notification dated 13.1.88 (Annexure A-II at page 12 to the OA) whereby applications were called for by the Defence Research & Development Organisation for filling up the post of Scientist-B from ^{the} open market. In that notification, branch-wise earmarking of posts ^d has been given. As that was given against 90% quota, in 10% quota also, the same should have been adhered to. As this was not done, he was not selected and those who were in the other field were selected thereby depriving him his promotion.

The open market selection is from those who qualified in each discipline. Hence the open market candidates can apply only for the posts for which they are eligible. In that view, if branch-wise earmarking of posts is not done, it will be difficulty for the open market candidates to apply for ^{the} consolidated selection scheme. It

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will also be difficult to consider the applications from open market for fitting in a particular post or field. Hence it is essential that posts should be earmarked branch-wise for the open market selection. But in the case of departmental selection ~~xxx~~ those who had put in 5 years' of service are to be promoted. If identification of posts branch-wise is done, in certain branches, availability of posts will be very limited and that will cause leaving out those who have put in number of years of service. If all the posts are clubbed and a common selection is held, then equity will be achieved from among those who had ¹⁰fulfilled the condition and who come successful in the examination. This will be a more practical way of promoting the SSAs as the number of posts earmarked against 10% quota is limited. Hence comparing the advertisement for open selection with that of Limited Departmental Competitive Examination may not be proper. Hence this contention cannot be accepted.

(iii) The third contention of the applicant is that the selection was not conducted by associating experts in various disciplines including Mechanical Engineering in which the applicant was examined. Thus the whole selection proceedings have been vitiated for non-association of experts from various fields.

To examine the above contention, we have called for the selection proceedings for the years 1995 and 1996. In the year 1995, the number of posts to be filled against Limited Departmental Competitive Examination were 33 and 33 candidates had been empanelled. The cut off marks upto

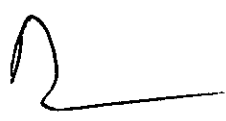

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which the candidates were empanelled was 144.19 whereas the applicant had secured 124.50 marks in that examination. The selection proceedings indicate that there was a Co-Chairman associated by the experts in various subjects including Mechanical Engineering in which the applicant was examined. From the marks obtained it is obvious that the applicant failed to obtain the minimum marks for empanelment against 33 posts for that year.

The selection proceedings ^{for} in the year 1996 were perused. The number of posts to be filled were 43. The cut off marks were 133.87 whereas the applicant had secured 130.11. ^{formation of the} The Selection Committee and the other procedure adopted for this selection is ^{the} same as in the previous year 1995.

Thus, from the above noting, it is clear that an expert committee from the Mechanical Engineering field was associated for examining the applicant herein. The Selection Committee ~~was~~ consisted of a Co-Chairman assisted by the experts. Hence it cannot be said that the Selection Committee ~~was~~ conducted the selection without proper assistance from the experts nor it ^{was} ~~is~~ manned by unsuitable persons. As stated earlier, the Court or Tribunal cannot sit on the judgment of the Selection Committee unless malafides are attributed to the Members of the Committee. A reading of the OA does not make us to come to the conclusion that the Selection Committee Members were biased against the applicant and hence he was not selected. The selection proceedings were done in accordance with the rules and there is no reason to believe that the Selection





proceedings were not in accordance with the extant rules and regulations. In that view, the above contention has to be rejected.

(iv) The last contention of the applicant is that 50% marks were allotted for the written test and 50% were allotted for the interview. Allotment of 50% marks for interview is highly excessive and beyond the upper limit of weightage as declared by the Apex Court in the reported judgments in 1991 (1) SLR 546 (Mohinder Sain Garg v. State of Punjab), 1993(3) SLR 149 (Sri Ashok alias Somanna Gowda v. State of Karnataka) and 1993 (3) SLR 798 (Anzar Ahmad v. State of Bihar).

In regard to allotment of marks for interview whether it is excessive or not, we have asked the learned standing counsel for the respondents to discuss the issue on the basis of the various judgments of the Apex Court. Accordingly, the learned standig counsel for the respondents gave a small synopsis of the various judgments delivered by the Apex Court in this connection. The judgments relied upon by the applicants as well as the respondents were brewed through and are discussed below:-

In the reported case in 1981 SCC (L&S) 588 (Lila Dhar v. State of Rajasthan), a three Judge Bench of the Supreme Court had made a distinction between the viva-voce marks allotted for selection for admission to an educational institution and in a selection for employment in service. In this connection, for selection for employment in service, it was observed that,

"Ordinarily, recruitment to public services is regulated by rules made



under the proviso to Article 309 of the Constitution and it is not for the courts to redetermine the appropriate method of selection and the relative weight to be attached to the various tests, unless exaggerated weight has been given with proven or obvious oblique motives."

The above observation does not indicate that marks for selection of candidates in a service are restricted. It varies from service to service according to the requirement of service and other factors that are to be reckoned. Grant of marks for viva-voce should necessarily be left to the experts. In this connection, as stated earlier, there is no oblique motive attributed to the Selection Committee for denying chance of promotion to the applicant. An expert committee had fixed marks for viva-voce. Hence this judgment of the Supreme Court is unfavourable to the applicant.

In the reported case in 1986 SCC (L&S) 88 (Ashok Kumar Yadav v. State of Haryana), the Supreme Court held as follows:-

"Both written examination and viva voce test are accepted as essential features of proper selection in a given case. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against

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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 'exaggerated weight has been given with proven or obvious oblique motives."

It is seen from the facts of the above cited case that it is a selection held for Haryana Civil Service (Executive) and other Allied Services from open market comprising of ex-servicemen as well as other candidates. Hence the view taken by the Apex Court in that case may not be significant in the present case as the present case pertains to the departmental examination examining the matured service candidates who had put in a considerable years of service and that selection also for technical discipline. But the extracted portion as above clearly indicates that the marks vary from service to service according to the requirement of service and also to be determined by the experts. Hence this judgment also may not be much helpful to the applicant.

The next judgment is that of Mohinder Sain Garg v. State of Punjab reported in 1991 (1) SLR 546. The above

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judgment was given by the two Judge Bench of the Apex Court. This judgment is relied on by the applicant also. A study of the facts of this case indicates that the selection was made on the basis of the advertisement in the news papers by the office of the Excise and Taxation Commissioner, Punjab for appointment to the 47 posts of Excise and Taxation Inspectors. The selection had to be made from the open market and selection was not meant for the inservice candidates for promotion. In that context, the ^{How} Supreme Court had held that 25% of total marks for interview in that selection was arbitrary and excessive and further held that the viva voce marks should not be more than 15% of the total marks for selection of the candidates from the college/school for public employment by direct recruitment where rules provide for a composite process of selection, namely, written examination and interview. The present case is not a selection for fresh candidates from schools or colleges. It is a selection from among those matured employees of the Department holding the post of Senior Scientific Assistant Grade-I to the post of Scientist-B. Hence, the above cited case is in no way prohibits the allotment of 50% marks for viva voce test in this case. The marks allotted for viva-voce in the present case is based on the experts' opinion and also the requirement of the service. Hence though this cited judgement is relied upon by the applicant, it is in no way helpful to the applicant.

In the reported case in (1994) 1 SCC 150 (Anzar Ahmad v. State of Bihar), a Division Bench of the Apex Court held that "There also no hard and fast rule regarding the precise weightage to be given to viva voce test as

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against written examination, can be laid down. The weightage must vary according to the requirements of service." The above observation is based on Lila Dhar's case cited supra. This judgment also does not prohibit 50% marks for viva-voce.

In the reported case in 1995 Supp (1) SCC 325 (Subash Chandra Verma v. State of Bihar), a Division Bench of the Apex Court held that, "where the selection was based on written test and interview, allocation of 50% marks for interview, held, not vitiate of the selection". In the present case, there were two tests both written and viva voce and 50% marks were allotted for viva-voce. As per this judgement, it does not vitiate the selection.

In a recent judgement of the Supreme Court reported in 1998 SCC (L&S) 916 (Union of India v. N.Chandrasekharan), it is held that candidates aware of the selection process earlier cannot challenge the same after appearing for that selection. The relevant portion of the observations of the Apex Court is reproduced below:-

"It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports

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are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

The applicant herein knows the rules in this connection. He appeared for selection without any murmur. Having failed in the examination, he cannot now challenge the procedure for examination on the ground that the marks allotted for ~~the~~ ^{an} interview are excessive and also on the ground that the posts were not allotted for each subject. It was also held by the Apex Court in the reported case cited above as follows:-

"Due regard must be had to the posts to which the candidates are to be promoted as well as to the nature of duties they have to discharge/perform and so viewing the marks given in the interview cannot be considered as disproportionately high or that the spread of marks was done arbitrarily."


7. The applicant relied on the judgment of the Apex Court reported in 1992 (3) SLR 149 (Sri Ashok alias Somanna Gowda v. State of Karnataka). It is to be noted here that the selection in the above cited judgement was for direct recruitment from the open market candidates. Hence this judgment as stated earlier may not be of much relevance to the present case as the present case is for selection of

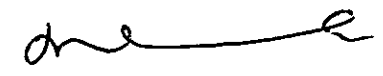
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inservice candidates on the basis of the Limited Departmental Competitive Examination. From the above judgement of the Supreme Court, it is evident that allotment of marks for viva-vice is to be decided by the experts and it varies from service to service and no rigid rule can be laid down in regard to the allotment of marks for viva-voce. In the present case, the applicant is a inservice candidate aspiring for promotion to the post of Scientist-B from the post of Senior Scientific Assistant Grade-I. He is a departmental employee who has put in a considerable years of service in the Department. Hence, in our opinion, based on the various judgments of the Supreme Court, allotment of 50% marks for viva-voce cannot be a reason to set-aside the selection.

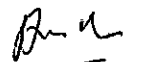
8. In view of what is stated above, we find no merits in this OA. Hence, the OA is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
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(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 11th AUGUST, 1999

vsn


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COPY TO:-

1. HDHND
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1st AND II nd COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN:
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

ORDER DATE: 11/8/99.

MA/RA/CP.NO

IN

DA.NO. 847197

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

O.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED.

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

