

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2019/2014

This the 20th day of November, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

1. Navin kumar Saini S/o Sh. Netram Saini
R/o Block-C, 533/1066
Near Venus Talkies
Station Road, Ullahasnagar-421004
Distt. Thane, Maharashtra.
2. Ashish Kumar Mishra
S/o Sh. Suresh Chandra Dixit,
R/o Kailashpuri,
Distt. Banda, U.P. ... Applicants

(By Advocate: Mr. Suresh Kumar Kalra)

Versus

1. Ministry of Home Affairs through Director,
Intelligence Bureau, North Block,
Central Secretariat,
New Delhi.
2. Union Public Service Commission
through its Chairman
Dholpur House, Shahjahan Road
New Delhi.
3. Mr. Raju Bera,
DCIO (Deputy Central Intelligence Officer)
Intelligence Bureau
Ministry of Home Affairs
New Delhi.

4. Dharani Padala
 DCIO (Deputy Central Intelligence Officer)
 Intelligence Bureau
 Ministry of Home Affairs
 New Delhi.

5. Utsav Anand
 DCIO (Deputy Central Intelligence Officer)
 Intelligence Bureau
 Ministry of Home Affairs
 New Delhi.

6. Neelandra Mishra
 DCIO (Deputy Central Intelligence Officer)
 Intelligence Bureau
 Ministry of Home Affairs
 New Delhi. ... Respondents

(By Advocates: Sh. Rajender Nishchal for respondent No.1, and Sh. Ravinder Aggarwal for respondent No.2)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The Union Public Service Commission (UPSC) issued advertisement No.7/2012 on 14.07.2012, inviting applications for recruitment to seven posts of Deputy Central Intelligence Officers/Technical (Wireless Telegraphy), in the Intelligence Bureau, Ministry of Home Affairs. Qualifications, together with the pattern of reservation were notified. A note was added to the effect that in case the number of applications are large, the Commission shall adopt the short-listing criteria to restrict the number of candidates to be called for interview to reasonable number, and one of such criteria is the holding a

recruitment test. Through a corrigendum issued in November, 2012, the UPSC declared that a written test would be conducted on 06.01.2013.

2. The applicants submitted their applications in response to the notification. They were also issued admit cards, on the basis of which they participated in the written test. The result of the written test was declared on 05.04.2013, and the applicants were among the 26 short-listed candidates. Interviews were held thereafter, and the list of successful candidates was published on 17.07.2013. The names of the applicants did not figure therein. The same is challenged in this OA.

3. The applicants contend that the UPSC went on to change the conditions and criteria of selection, and the result was that they were not selected. They contend that neither in the advertisement nor in the subsequent corrigendum, the percentage of marks to be awarded for the interview were indicated, and almost in a secretive and clandestine manner, a decision was taken to award 50% marks to the interview. It is also stated that the stipulation as to the minimum marks in the interview was also made after the commencement of the selection process, and thereby the applicants and several other

meritorious candidates were denied the selection and appointment.

4. The respondents filed a counter affidavit denying the allegations made by the applicants. According to them, the written test and interview were conducted in accordance with the policy adopted by the UPSC from time to time. Objection is also raised as to the maintainability of the OA. Reference is made to a circular dated 04.01.2005 for stipulation of minimum marks in the interview. The detailed manner in which the selection was undertaken, is mentioned.

5. We heard Shri Suresh Kumar Kalra, learned counsel for the applicants, and Shri Rajinder Nischal and Shri Ravinder Aggarwal, learned counsel for the respondents.

6. The notification inviting applications for the post in question is silent as to the very conducting of the written test, not to speak of the weightage to be given to it. The relevant note reads as under:

“NOTE-II: IN THE EVENT OF NUMBER OF APPLICATIONS BEING LARGE, COMMISSION WILL ADOPT SHORT LISTING CRITERIA TO RESTRICT THE NUMBER OF CANDIDATES TO BE CALLED FOR INTERVIEW TO A REASONABLE NUMBER BY ANY OR MORE OF THE FOLLOWING METHODS:

- (a) On the basis of higher educational qualification than the minimum prescribed in the advertisement
- (b) On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement
- (c) By counting experience before or after the acquisition of essential qualification
- (d) By holding a Recruitment Test."

Unless the candidates are fully aware of the selection procedure, many may not even choose to apply.

7. It was only through a corrigendum issued in November, 2012 that the proposal to conduct a recruitment rest was indicated. There again, they were silent about the weightage to be given to the performance in the written test. The applicants participated in the written test, and were among the short-listed candidates. The interview was conducted thereafter. The list of selected candidates was displayed on 17.07.2013, and the same did not include the names of the applicants. It is on verification thereafter that the applicants came to know that the interview was held for 50% of the marks, that too, by incorporating the condition as to minimum marks.

8. Almost identical situation was dealt with by this Tribunal in OA No.2179/2014 – *Mukesh Kumar Suman v Union Public Service Commission & others*. In the judgment dated

18.09.2018, various precedents, handed out by the Hon'ble Supreme Court on the subject were taken note of. They included the judgments of the Supreme Court in *The Director General, Indian Council for Agricultural Research and others v D. Sundara Raju* [(2011) 6 SCC 605]; *Ashok Kumar Yadav and others v State of Haryana and others* [(1985) 4 SCC 147]; *P. Mohanan Pillai v State of Kerala and others* [(2007) 9 SCC 497]; *K. Manjushree v State of A.P. and others* [AIR 2008 SC 1470]; *Lila Dhar v State of Rajasthan and others* [(1981) 4 SCC 159]; and *Mohinder Sain Garg v State of Punjab and others* [(1991) 1 SCC 662]. As in this case, there also, the notification did not contain any stipulation as to the marks to be allocated to the interview, much less about the stipulation as to minimum marks. The following observations were made:

“18. A perusal of the judgments, referred to above, discloses that the very basis for fixation of the percentage of marks to be allocated to interview at 15% was the practice that was being followed by the UPSC, which allocated 12.2% marks for interview in the selections undertaken by it to various services. The Hon'ble Supreme Court had, in fact, exhorted all the State Public Service Commissions and other recruiting agencies to follow and emulate the UPSC whom, it has treated as an ideal agency.

19. In *Ashok Kumar Yadav's case* (supra), allocation of 22.2% marks for interview was held to be excessive on the touchstone of the marks allocated by the UPSC, i.e., 12.2%. Similar

references were made to UPSC in other judgments also. Even in the wildest of dreams, one cannot expect the UPSC, a constitutional body to remove itself from the position of an ideal employer, that too after the Hon'ble Supreme Court treated it as a role model, and go to the extent of allocating 50% of marks for interview, that too without revealing it in the notification. As though that is not sufficient, the minimum marks to be secured in the interview were stipulated when the selection process is halfway through. For all practical purposes, the written test was reduced to the level of irrelevance and the selection process was shadowed by subjectivity.

20. Obviously, the Commission knew very well that in case it discloses in the notification that 50% marks would be allocated for interview, it is bound to be challenged, in all probability. Therefore, it has kept the candidates in total dark. The secrecy which it was required to maintain, in the context of conducting of examination was applied to a vital condition of selection, namely, allocation of marks for interview, and stipulation as to minimum marks. The result of such a secret operation has ultimately emerged on the expected lines. The applicant who has secured 75% marks in the written test (highest being 79) was awarded the least, that too below the minimum marks in the interview, i.e., 40, and a candidate who secured 47 marks in the written test was awarded 74 marks in the interview."

The conclusions arrived at therein are contained in para 23, and the result in para 24. They read as under:

"23. On the application of the principles laid down by the Hon'ble Supreme Court in the catena of decisions, some of which are referred to above, the inevitable result that would follow is that the entire selection of 57 candidates who are

impleaded as private respondents is vitiated. The allocation of marks for interview for the selection in question, needs to be reworked and downgraded, to be 15% of the total allocation. For this purpose, the marks that have been awarded in the interview can be taken on basis and must be slashed down to 15% of the total. The requirement as to minimum marks must be ignored. In the entire process, in all probability, only one candidate is likely to be displaced on account of selection of the applicant, and if for any reasons any selected candidate has not joined, or left service after joining, such candidate can also be accommodated.

24. We, therefore, allow the OA; (a) setting aside the selections made in pursuance of the Advertisement No.51/2013 to the posts of Assistant Labour Commissioner (Central) and equivalent; (b) directing the UPSC to redo the exercise by restricting the marks to be allocated for interview to 15%, without insisting on minimum marks therein, and then to publish the results; and (c) observing that if any of the private respondents needs to be displaced on account of such an exercise, the possibility of adjusting him against the existing or subsequent vacancy may be considered, by addressing the department concerned. There shall be no order as to costs.”

Except that the description of the posts and the number of vacancies are different, the facts in both the cases are identical in all other respects, and the same situation obtains in this case also.

9. We, therefore, allow this OA –

(a) setting aside the selection in pursuance of the advertisement No.7/2012 dated 14.07.2012 to the posts of Deputy Central Intelligence Officers/Technical (Wireless Telegraphy) in the Intelligence Bureau;

(b) directing the UPSC to re-do the exercise by restricting the marks to be allocated for interview to 15%, without insisting on minimum marks therein, and then to publish the results; and

(c) observing that if any of the private respondents need to be displaced on account of such an exercise, the possibility of adjusting him against the existing or subsequent vacancy may be considered, by addressing the department concerned.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/