



2025:DHC:345-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2650/2023

VIPIN KUMAR AND ANRPetitioners

Through: Mr. Ankur Chhibber, Adv. and
Mr. Anshuman Mehrotra, Adv.

versus

UNION PUBLIC SERVICE COMMISSION
AND ORSRespondents

Through: Mr. Ravinder Agarwal and Mr.
Manish Kumar Singh, Advs. for R-1
Mrs. Avnish Ahlawat, SC with Mr. Nitesh
Kumar Singh, Ms. Laavanya Kaushik and
Mr. Mohnish Sehrawat, Advs. for
GNCTD/R-2 & R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **20.01.2025**

C. HARI SHANKAR, J.

1. This writ petition assails order dated 29 September 2022 passed by the Central Administrative Tribunal¹, in OA 44/2015² and OA 171/2015³. The Tribunal has, by the impugned judgment, dismissed the OAs. Aggrieved thereby, the applicants in OA 44/2015 have approached this Court by means of the present writ petition.

¹ "the Tribunal", hereinafter

² **Dr. Sukhbir Singh Yadav v UPSC**

³ **Gajraj Singh v UPSC**



2. We have heard Mr. Ankur Chhibber, learned Counsel for the petitioners, at length.

3. The dispute relates to recruitment to the post of Principal, consequent on advertisement notice dated 19 February 2010. Even as per the submissions made before the Tribunal by the petitioners, the prescribed mode of recruitment, in the advertisement notice, envisages a screening test followed by interview. The petitioners submitted that they were successful in the written examination and were shortlisted for interview. However, consequent on interview, their names did not figure in the list of selected candidates. This prompted the petitioners to approach the Tribunal by means of the aforesaid OA, from which the present writ petition emanates.

4. Mr. Chhibber has ventilated, before this Court, primarily two contentions, both of which were raised before the Tribunal and were negatived.

5. The first is that the procedure followed by the respondents amounted to changing the rules of the game after the game had begun, which was impermissible in law. In this regard, he submits that, though a provision for interview was in existence in the original advertisement, the advertisement did *not* stipulate that 50% marks would be allocated for the interview. By incorporating a stipulation of 50% marks in interview and 50% marks in the recruitment test, Mr. Chhibber submits that the respondents changed the rules of the game after the game had begun, which is impermissible in law.



6. Mr. Chhibber's second submission is that allocation of 50% marks for interview is excessive. He submits that various judgments of the Supreme Court have held that interview marks for interview should not ordinarily exceed 25%. He has placed reliance on the judgment of the Supreme Court in *Bishnu Biswas v UOI*⁴ and *P. Mohanan Pillai v State of Kerala*⁵.

7. From *Bishnu Biswas*, Mr. Chhibber has drawn our attention to paras 8, 14, 15 and 19, which read as under:

“8. This Court has considered the issue involved herein in great detail in *Ramesh Kumar v High Court of Delhi*⁶ and held as under : (SCC p. 109, paras 13-15)

“13. In *Durgacharan Misra v State of Orissa*⁷ this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the Rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in *B.S. Yadav v State of Haryana*⁸, *P.K. Ramachandra Iyer v Union of India*⁹ and *Umesh Chandra Shukla v Union of India* wherein it had been held that there was no ‘inherent jurisdiction’ of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. ‘inherent jurisdiction’ is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

⁴ (2014) 5 SCC 774

⁵ (2007) 9 SCC 497

⁶ AIR 2010 SC 3714

⁷ (1987) 4 SCC 646

⁸ 1980 Supp SCC 524

⁹ (1984) 2 SCC 141



14. Similarly, *in K. Manjusree v State of A.P* this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

15. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce.”

14. This Court in *Ashok Kumar Yadav v State of Haryana*¹⁰ held that allocation of 22.2% marks for the viva voce test was excessive and unreasonably high, tending to leave room for arbitrariness. (See also *Munindra Kumar v Rajiv Govil*¹¹, *Mohinder Sain Garg v State of Punjab*¹², *P. Mohanan Pillai*¹³ and *Kiran Gupta v State of U.P*¹⁴).

15. In *Satpal v State of Haryana*¹⁵ this Court disapproved allocation of 85% of total marks for interview observing that such fixation was conducive to arbitrary selection. While deciding the said case the Court placed reliance upon the Constitution Bench judgment in *Ajay Hasia v Khalid Mujib Sehravardi*¹⁶, wherein the Court had held that allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. Thus, it is evident that the courts had always frowned upon prescribing higher percentage of marks for interview even when the selection has been on the basis of written test as well as on interview.

¹⁰ (1985) 4 SCC 417

¹¹ (1991) 3 SCC 368

¹² (1991) 1 SCC 662

¹³ (2007) 9 SCC 497

¹⁴ AIR 2000 SC 3299

¹⁵ 1995 Supp (1) SCC 206

¹⁶ (1981) 1 SCC 722



19. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while a large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so-called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.”

8. To return to the facts, the UPSC, on finding that the number of applicants were large, issued a Corrigendum to the original advertisement on 4 April 2012, in which it was made known that a recruitment test would be held to shortlist the candidates. Admittedly, the petitioners participated in the said recruitment test. Thereafter, the UPSC shortlisted the candidates by awarding 50% marks for the recruitment test and 50% marks for interview. As the petitioners did not make the cut with respect to the total marks of recruitment test and interview, they were not selected.

9. The Tribunal has, dealing with the merits of the matter, held as under:

“13. To recapitulate, the applicants being fully eligible in terms of the relevant Recruitment Rules appeared in the selection process for the post of Principal, pursuant to the advertisement dated 19.02.2010. The said advertisement clearly stated that in case the number of applications received is large and it is not convenient or



possible for the Commission to interview all the candidates, the Commission at their “discretion” may restrict the number of the candidates. We have read over the provision time and again and the only inference which we can draw is that the primary intent of the Commission was to make the selection on the basis of interview. However, on account of administrative exigencies, a condition was set out that in case of large number of candidates, some amount of screening may be done. How it was to be done was further spelt out in the advertisement and these conditions were (a) either qualification or experience being higher than the minimum requirement, (b) experience in the relevant field, (c) counting experience before or after acquisition of essential qualification or (d) by holding a screening test. The rules of game, as notified, authorized the Commission to resort to any one or more of these methods to restrict the number of candidates invited for the interview. In this case, the Commission chose to hold the Screening Test, which was later named as Recruitment Test. The Commission enjoyed its discretion in terms of advertisement dated 19.02.2010.

14. It is not in dispute that while notifying this condition, the Commission issued a Corrigendum on 04.04.2012, a copy of which is placed along with the reply of the respondents and it indicates that the said Corrigendum was published in the Times of India newspaper. Therefore, we have no reason to dispute the fact that it was widely publicized. Moreover, when this Corrigendum was issued, the actual selection process in terms of holding the written examination or the interview had not commenced. Therefore, in our view, if the rules of the game underwent any change, it was prior to the commencement of the game. Moreover, we cannot even call it any change in the rules because the initial advertisement had categorically stipulated that the Commission enjoyed the discretion to adopt any of the methods notified therein, for restricting the number of candidates and holding a written test is one of the methods notified therein.

15. Even though, it may be termed as Recruitment Test, subsequently, if the Commission, in its wisdom, decided to assign 50% weightage to the written test, we do not find any arbitrariness in the same as the other alternatives available before the Commission were either to consider the written test only for the purpose of limited screening and selecting the candidates by assigning 100% weightage to the interview or assigning some other weightage may be less or more than 50% to either of the two. The charge of the arbitrariness could have been made in either of the cases. However, in the instant case, if equal weightage was assigned to the written test, as also the interview, we are of the well considered view that this has reduced the possibility of any



arbitrariness or unfairness. The Hon'ble Apex Court, in the case title **Anzar Ahmad**, which has been referred to in the preceding paragraph had also held that "by giving equal weight to academic performance, the Commission has rather reduced the possibility of arbitrariness". In the present case, we can substitute academic performance with written test and accordingly, we are not inclined to accept that the process suffered from any arbitrariness or discriminatory treatment towards the applicants.

16. In view of the position detailed above, we are not convinced that the selection process, which is challenged in the present OA, deserves any interference by this Tribunal. Accordingly, we are not inclined to grant any relief, as prayed for by the applicants."

10. Having heard Mr. Chhibber, we do not find that the judgment of the Tribunal smacks of any arbitrariness or illegality, as would justify interference therewith, under Article 226 of the Constitution of India.

11. There is no real case of changing of the rules of the game after the game began, as the initial advertisement itself provided for an interview and also provided, in Note (II), as under:

"Note – II : Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to Interview all the candidates, the Commission at their discretion may restrict the number of candidates, to a reasonable limit by any or more of the following methods: (a) on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement; or (b) On the basis of experience in the relevant field; or (c) by counting experience before or after acquisition of essential qualifications or (d) by holding a screening test."

12. Thus, from the very outset, the petitioners were placed on notice that the interview would be part of the selection process and that holding of a screening test was one of the options available with the UPSC for shortlisting the candidates, in the event the number of



candidates were excessive.

13. The Tribunal, therefore, has correctly held that the UPSC was well within its rights in holding a recruitment test for shortlisting the candidates and that, therefore, the Corrigendum dated 4 April 2012 did not change the rules of the game after the game began.

14. We may note, in this regard that the Constitution Bench of the Supreme Court has, in its recent judgment in *Tej Prakash Pathak v Rajasthan High Court*¹⁷, examined in detail the principle that the rules of the game, in matters of selection, could not be changed after the game began. In this regard, the Supreme Court has specifically noted that, in the matter of shortlisting of candidates, the principle that the rules of the game could not be changed after the game began would not apply with the same rigour. One may reproduce, in this regard, paras 31 to 36 of the said decision, thus:

“31. As already noticed in Section (A), a recruitment process inter alia comprises of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Subject to the rule against arbitrariness, how tests or viva voce are to be conducted, what questions are to be put, in what manner evaluation is to be done, whether a short listing exercise is needed are all matters of procedure which, in absence of rules to the contrary, may be devised by the competent authority. Often advertisement(s) inviting applications are open-ended in terms of these steps and leave it to the discretion of the competent authority to adopt such steps as may be considered necessary in the circumstances albeit subject to the overarching principle of rule against arbitrariness enshrined in Article 14 of the Constitution.

¹⁷ 2024 SCC OnLine SC 3184



32. To elucidate the above proposition we shall notice few instances where the procedure devised by the recruiting body has been approved by this Court. In *Santosh Kumar Tripathi v U.P. Power Corporation*¹⁸, this Court was required to consider whether the Rule enabling Service Commission to examine, interview, select and recommend suitable candidates would include power to hold written examination. This Court accepted the High Court's view that power to 'examine' would include holding of written examination.

33. In *M.P. Public Service Commission v Navnit Kumar Potdar*¹⁹ the question which arose before this Court was as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. In that context it was observed:

“6. ... It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.”

34. Likewise in *Union of India v T. Sundararaman*²⁰ where the eligibility conditions referred to a minimum of 5 years' experience, the selection committee was held justified in shortlisting those candidates with more than 7 years' experience

¹⁸ (2009) 14 SCC 210

¹⁹ (1994) 6 SCC 293

²⁰ 1997 4 SCC 664



having regard to the large number of applicants compared to the vacancies to be filled. The relevant observations are being extracted below:

“4.Note 21 to the advertisement expressly provides that if a large number of applications are received the Commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum qualifications. In the case of *M.P. Public Service Commission v Navnit Kumar Potdar*²¹ this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service Commission for calling candidates for an interview. This was upheld by this Court. In the case of *Govt. of A.P. v P. Dilip Kumar*²² also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate....”

35. Similarly, in *Tridip Kumar Dingal v State of W.B.*²³ it was held that shortlisting is permissible on the basis of administrative instructions provided the action is bona fide and reasonable. The relevant observations in the judgment are extracted below:

“38. ... The contention on behalf of the State Government that written examination was for shortlisting the candidates and was in the nature of “elimination test” has no doubt substance in it in view of the fact that the records disclose that there were about 80 posts of Medical Technologists and a huge number of candidates, approximately 4000 applied for appointment. The State authorities had, therefore, no other option but to “screen” candidates by holding written examination. It was observed that no recruitment rules were framed in exercise of the power under the proviso to Article 309 of the Constitution and hence no such action could be taken. In our opinion, however, even in absence of statutory provision, such an action can always be taken on the basis of administrative

²¹ (1994) 6 SCC 293

²² (1993) 2 SCC 310

²³ 2009 1 SCC 768



instructions-for the purpose of “elimination” and “shortlisting” of huge number of candidates provided the action is otherwise bona fide and reasonable.”

36. Another example is in respect of fixing different cutoffs for different subjects having regard to the relative importance of the subjects and their degree of relevance.²⁴ These instances make it clear that this Court has been lenient in letting recruiting bodies devise an appropriate procedure for successfully concluding the recruitment process provided the procedure adopted has been transparent, non-discriminatory/non-arbitrary and having a rational nexus to the object sought to be achieved.”

15. We may note that Mr. Chhibber, quite fairly, did not seek to contend that the UPSC was not empowered to hold a recruitment test for shortlisting the candidates or that, for that reason, the corrigendum dated 4 April 2012 was unsustainable in law. His grievance, however, is, as we have already noted, firstly, that the respondents could not have arbitrarily fixed 50% as the marks which could be allotted to the interview and that the said percentage of marks was excessive.

16. Once there was a provision for holding of an interview in the original advertisement as well as a provision for holding of a screening test for shortlisting of candidates, we are in agreement with the Tribunal that the UPSC was within its right in deciding the percentage of marks which could be allocated for interview. On this aspect, we find ourselves fortified by para 20 of the judgment of the Supreme Court in *Anzar Ahmad v State of Bihar*²⁵ which is reproduced as under:

“20. In the instant case, we find that the State Government in its letter dated September 20, 1990 has clearly stated that selection

²⁴ Banking Service Recruitment Board, Madras v V Ramalingam, (1998) 8 SCC 523

²⁵ (1994) 1 SCC 150



should be made on the basis of interview. On the basis of this letter the Commission could have made the selection wholly on the basis of marks obtained at the interview. But in accordance with the past practice, the Commission has made the selection on the basis of interview while keeping in view the academic performance and with that end in view the Commission has allocated 50% marks for academic performance and 50% marks for interview. It cannot be held that the said procedure adopted by the Commission suffers from the vice of arbitrariness. *By giving equal weight to academic performance the Commission has rather reduced the possibility of arbitrariness.*”

(Emphasis supplied)

17. We may also note that the decision in *Anzar Ahmad* has been approvingly cited by the Supreme Court in *Bishnu Biswas*, on which Mr. Chhibber placed reliance, without expressing any reservation with respect to the above principle. We may, for ready reference, reproduce, in this context, para 17 of *Bishnu Biswas*, as under:

“17. In *Mehmood Alam Tariq v State of Rajasthan*²⁶ this Court had upheld fixation of 33% marks as minimum qualifying marks for viva test. In *State of U.P. v Rafiquddin*²⁷ this Court upheld the fixation of 35% marks as minimum qualifying marks in the viva test for selection for the recruitment to the post of a Judicial Magistrate. In *Anzar Ahmad v State of Bihar*²⁸, allocation of 50% marks for viva test and 50% marks for academic performance was upheld by this Court while considering the appointment of Unani Medical Officer observing that the court must examine as to whether allocation of such higher percentage may tend to arbitrariness.”

18. As such, if one goes by the ratio of *Anzar Ahmad*, the UPSC would have been within its rights in fixing any percentage to be allotted to the interview. As has been noted in *Anzar Ahmad*, by restricting the percentage of marks allotted to the interview to 50% and allocating the remaining 50% for the recruitment test, the UPSC

²⁶ (1988) 3 SCC 241

²⁷ AIR 1988 SC 162

²⁸ (1994) 1 SCC 150



has in fact avoided arbitrariness.

19. Insofar as Mr. Chhibber’s contention that 50% was excessive as the percentage of marks allotted to the interview, the Supreme Court has, in case after case, noted that there is no hard and fast rule regarding the maximum marks which could be apportioned to the interview, and that the percentage of marks which could be apportioned to the interview could not be placed in a strait-jacket. It is also noted that the principle that the percentage of marks allotted to the interview cannot be very high, applicable to selection and admission to educational institutions, would not apply to interviews held for selection in the context of employment. Para 16 of ***Bishnu Biswas*** itself, on which Mr. Chhibber places reliance, reads as under:

“16. The appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post *and no straitjacket formula can be laid down*. Further, *there is a distinction while considering the case of employment and of admission for an academic course*. *The courts have repeatedly emphasised that for the purpose of admission in an educational institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post.*”

20. Immediately following para 16, the judgment in ***Bishnu Biswas*** notes, in para 17, that, in ***Anzar Ahmad***, allocation of 50% marks for interview was found to be legal and proper.

21. In fact, in ***Bishnu Biswas***, the reason for the Supreme Court choosing to interfere is to be found in para 19, which also stands reproduced supra. The Supreme Court in that case found that *the*



manner in which marks were allocated between the written test and interview was disproportionate, which indicated that there was an element of arbitrariness involved. There is no such assertion by the petitioners in their OA filed before the Tribunal.

22. To a query from us in this regard, Mr. Chhibber placed reliance on para 4.12 of the OA which read thus:

“4.12 That it is pertinent to mention herein that although till date marks scored by candidates has not displayed but the fact that all the applicants found place in first list of written test result is sufficient to prove that applicants have scored more marks in written test than the final selected candidates from second list of written test. So, if the total marks allocated for, interview is reduced as per the ratio of judgments of Hon'ble Supreme Court from 100 marks to less than 25 marks, then applicants have very fair chance to get selected for appointment on the post of Principal.”

23. Para 4.12, in our view, cannot be read as advancing a contention that there was disproportionate or skewed distribution of allocated marks between the interview and the recruitment test.

24. No other allegation of *mala fides* by the UPSC in conducting the selection was alleged.

25. In these circumstances, we are in agreement with the Tribunal that no case for interference had been made out by the petitioners. The impugned judgment of the Tribunal is, therefore, affirmed in its entirety.



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26. The writ petition stands dismissed with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 20, 2025/aky

[Click here to check corrigendum, if any](#)