

Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) Nos. 16563-70/2004, WP (C) Nos. 16582-86/2004
WP (C) Nos. 16610-24/2004 and WP (C) No. 263/2005

Reserved on : December 06, 2007
Pronounced on : February 01, 2008

1. WP (C) Nos. 16563-70/2004

Manoj Panwar Petitioner
! **through** : Mr. M.K. Bhardwaj, Advocate

VERSUS

\$ Govt. of NCT of Delhi & Ors. Respondents
^ **through** : Mr. V.K. Tandon with
Ms. Manpreet Kaur, Advocates
for the respondent Nos. 1 & 2.
Mr. Arun Bhardwaj, Advocate
for the respondent No.3.

2. WP (C) Nos. 16582-86/2004

Rakesh & Ors. Petitioners
! **through** : Mr. M.K. Bhardwaj, Advocate

VERSUS

\$ Govt. of NCT of Delhi & Ors. Respondents
^ **through** : Mr. V.K. Tandon with
Ms. Manpreet Kaur, Advocates
for the respondent Nos. 1 & 2.
Mr. Arun Bhardwaj, Advocate
for the respondent No.3.

3. WP (C) Nos. 16610-24/2004

Vikrant & Ors. Petitioners
! **through** : Mr. Sandeep Sethi, Sr. Advocate
with M.K. Bhardwaj, Advocate

VERSUS

\$ Govt. of NCT of Delhi & Ors. Respondents
^ **through** : Mr. V.K. Tandon with
Ms. Manpreet Kaur, Advocates
for the respondent Nos. 1 & 2.
Mr. Arun Bhardwaj, Advocate
for the respondent No.3.

4. WP (C) No. 263/2005

Delhi Subordinate Service Selection Board Petitioner

! **through**: Mr. V.K. Tandon with
Ms. Manpreet Kaur, Advocates

VERSUS

\$ Amar Nath Shukla & Ors. Respondents

^ **through**: Mr. Arun Bhardwaj, Advocate
for the respondent No.1.

CORAM :-

*** THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The issue involved in all these writ petitions, being identical, including the facts, the same were heard together and are being decided vide this common judgment. For the sake of brevity, facts of WP (C) Nos. 16582-84/2004 are taken.
2. Vide advertisement No. F-3(20)/97/S-II dated 9-16.8.1997, the Government of NCT of Delhi advertised various posts of DASS Grade-II and Grade-IV posts for appointment of the Govt. of NCT of Delhi. All these posts were reserved for sports persons and were to be filled from amongst meritorious sportsmen and women. For Grade-II, there were 10 posts and for Grade-IV the advertisement was for 27 posts. Number of persons claiming to be covered in the said sports category submitted their

applications. While this process was on, the Delhi Subordinate Service Selection Board (hereinafter referred to as the 'Board') was constituted in the Month of September 1999, which is given the task of making recruitments to the various appointments in the Govt. of NCT of Delhi. Thus, after the constitution of this Board, the entire record pertaining to the selection was sent to the Board for making selections. The Board constituted an Expert Committee comprising of Dr. S.N. Gupta, Deputy Director (Sports), Delhi University; Dr. R.S. Maan, Reader in Physical Education, Shaheed Bhagat Singh College, Delhi University; the Chairman, Secretary and Deputy Secretary of the Board. This Committee formulated the criteria which was to be adopted for carrying out the selections. As per this criteria the candidates were required to be assessed in the following three stages :-

“60 marks for past achievement in National and International events.

25 marks for present achievement in the trials.

25 marks for personality test.

The grand total of the same comes out to 110.”

3. After conducting the trials, a comparative merit list was drawn adding the marks obtained by the candidates in the first two stages, i.e. past achievement and trials. The candidates in the said comparative merit list were called for interview. One Mr. Shailesh Mudgal did not receive the interview call. He approached the Central Administrative Tribunal (CAT), Principal Bench, New Delhi through an application filed under Section 19 of the Administrative Tribunal Act praying for quashing of the entire selection and for reconducting of the trials etc. after

framing fresh criteria. This OA was filed on 17.5.1999 and vide orders dated 11.11.1999, the Tribunal dismissed this OA upholding the validity of the criteria and also recording that the same was uniformly applied. However, even before this OA was filed, another person, namely Amar Nath Shukla, who is arrayed as respondent No.3 herein, had also filed OA No. 1056/1999 on 6.5.1999. His grievance was that he had not received call for interview despite the fact that he stood first in the trials for his game, i.e. Chess. Notice in this application was issued and interim order was also passed by the Tribunal directing that he be provisionally interviewed and his selection be kept in a sealed cover. This OA was disposed of on 18.4.2002 granting liberty to him to proceed in the matter afresh in accordance with law. The respondent No.3, being not satisfied with that order, impugned the same by filing WP (C) No. 4145/2002 in this Court. This was, however, dismissed as withdrawn on 16.9.2002. Thereafter, in January 2003 he filed another OA 116/2003 in view of the permission granted by the Tribunal in its order dated 18.4.2002. The respondent No.3, this time, succeeded in this efforts as vide judgment dated 24.8.2004 the Tribunal has allowed the said OA and quashed the appointments of the petitioners in this petition with directions to the Board to conduct the entire exercise of recalculation and preparing the merit list by assuming the marks in the trial to be 100 and not 25, as decided by the Expert Committee constituted by the Board.

4. All these writ petitions, except WP (C) No. 263/2005, are filed by

the persons who were successful in the selections conducted by the Board. WP (C) No. 263/2005 is filed by the Board impugning that very judgment. It is, thus, clear that in all these petitions challenge is to the impugned judgment dated 24.8.2004.

5. Before coming to the grounds on which the judgment passed by the Tribunal is assailed, we make take note of the reasons which persuaded the Tribunal to arrive at the aforesaid conclusion.

6. **IMPUGNED JUDGMENT OF THE TRIBUNAL**

On going through the impugned judgment, we find that the Tribunal had directed the Board to produce the record of the selection and after perusing the same it found, in the first application filed by the respondent, that the Selection Committee had adopted unfair marking policy inasmuch as initially it had fixed 100 marks for the trial test but while preparing the final merit list these marks were reduced to 25. In this manner, a person who had gained a substantial lead over others was pushed down in the merit list. The record further revealed grave errors in totalling of marks which had led to wrong selection. The Tribunal in one of its OA had recorded that – *'during the course of hearing, we inspected the mark sheets containing marks awarded for trial tests and we noted that prima facie there appeared to be some discrepancies in the figures while totalling was being carried out.'* Inspection of the records was permitted to the counsel for the applicant (respondent No.3 herein) and further glaring irregularities were noted. However, at that moment it was noticed that selected persons had not been impleaded as parties. In these

circumstances, the first OA was disposed of on 18.4.2002 permitting the respondent No.2 to proceed in the matter in accordance with law and armed with this permission, as noted by us in chronological order above, the second OA was filed impleading the selected candidates, i.e. the petitioners in these petitions. After hearing the second application, the learned Tribunal in the impugned judgment found, on the basis of records produced, that recommendations made by the Selection Board were objected to by the Govt. of NCT of Delhi, which is clear from the following noting pertaining to the candidates :-

S.No.	Name	Page of the inspected record	Noting
1.	Vikrant	134/C	Form No.1 not signed by Federation, BA pass certificate not attached; mark sheet not showing marks.
2.	Ashish Shokin		Wrong date of birth in certificates and forms; documents neither sealed nor attested
3.	Virender Kumar		Overage on 31.12.1996
4.	Surender		Only photocopy; unattested
5.	Hema Rathi	132/C	In Form 3 in support of Inter University C/Ship, which is necessary to certify her participation in C.Ship- was 3 rd in national but intentionally said 1 st in Nationals - has been clearly favoured.
6.	Puran Chand		No certificate showing 2 nd position in National Championship or even participation; 3 rd position in Inter Univ. Championship in event of Power Lifting/Wt. Lifting, whereas photocopy of certificate shows 3 rd position in Power Lifting Competition which competition is not in the list of games in Advertisement. Therefore wrong certificates intentionally considered to favour him.

7.	Pawan Tokas		Certificates show only participation, whereas in the application wrongly mentioned 2 nd in National/International clear attempt to favour.
8.	F. Begum		No certificate of 3 rd position in National/International attempt to favour, Sales of Federation missing from forms on which whole fate of merit position of candidates defeated.
9.	Manoj Kumar		No “No Objection Certificate” from MHRD; certificate contrary to Form 4 regarding representation in National Games; 75 papers sent without highlighting which document was considered & verified by Board was clearly favoured.
10.	Mohinder Singh		Form 2 not filled to show participation in National Competition; attempt intentional to favour.
11.		129/C	Dossier of all 10 candidates are returned.
12.		128/C	No one from selected candidates can be given offer of appointment. 1 st line – That despite the above gross irregularities the Board recommended the selection of above candidates for illegal considerations. The GNCT had also given appointment to these candidates even though no clarification was made by the GNCT on their respective Dossiers.

7. Apart from the above, the argument of counsel for the respondent No.3, which prevailed with the Tribunal, was that though initially 100 marks were fixed for the trial test, but when the merit list was prepared they were reduced to 25 and in this manner the person who had gained substantial lead over others in the trial test was pushed down in the merit list. This fact was even admitted in the reply filed by the official respondents in the said OA, noted the learned Tribunal. The Tribunal, thus,

observed that once there was an admission that 100 marks were fixed as maximum pass for the trial test, there was no reason for the Interview Board to reduce the same thereafter to 1/4th to give overall score of 110. Recording this fact the Tribunal stated as under, pointing out the implication thereof :-

“18. Decision in this regard is always to be taken in advance. They cannot be changed subsequently. Our attention has not been drawn to any decision by an appropriate authority to reduce the marks before the test was held. The Interview Board otherwise also was not competent to do so. Decision taken subsequently without any basis or logic cannot be sustained merely because it was felt that it will give overall score of 110 is not a proper explanation. Once 100 marks were fixed for the trial test, necessarily the same had to be adhered to. The result is obvious that a person who might score well in the trial test out of 100 marks and if it is divided by ¼ may slide down on the overall merit that will be totally contrary to law. To that extent the contention of the respondents indeed is not at all sustainable.”

8. Referring to certain judgments, including the decision of the Supreme Court in the case of ***Union of India & Ors. v. Rajesh P.U., Puthuvalnikathu & Anr.***, 2003 SCC (L&S) 1048, the Tribunal came to the conclusion that there was no reason otherwise to quash the entire selection process but it was necessary to quash the appointments/results declared giving the following directions :-

“24. a) The respondent No.1 will re-examine the entire dossiers of the candidates to enquire that they have filed complete certificates and were within the age limit prescribed etc;

b) The marks obtained in the trial test should be calculated as was decided to be 100 marks; a fresh merit list in this regard should be prepared and thereafter the result should be declared as per the merit of the candidates.

25. Subject to aforesaid, the impugned selection is quashed. This exercise should be completed preferably within two months from the date of receipt of the certified copy of this order. No costs.”

9. So far as objections of the Govt. of NCT of Delhi mentioned in the tabulated form above are concerned, the Tribunal observed that since the matter was remanded back to the authorities, they may look into this controversy.

10. **THE CONTROVERSY**

The pivotal issue which requires determination, in the aforesaid admitted factual matrix, is as to whether fixing 100 marks for the trial test and awarding the candidates marks in the trial test on that basis out of 100, but thereafter reducing the same to 25 by dividing the marks obtained in the trial test by 4 has made any difference in the overall position of the candidates in the merit list. If it has, the judgment of the Tribunal is perfectly valid.

11. **ARGUMENTS**

Learned counsel for the petitioners, including counsel for the Board Mr. V.K. Tandon, submitted that since the marks obtained in the trial test of all the candidates were reduced to $1/4^{\text{th}}$, it had not made any difference in the overall results. It was submitted that criteria was not changed inasmuch as from the very beginning 25 marks were assigned for the trial test. However, while giving the marks, for the sake of convenience, these marks were awarded taking marks for the trial test as 100 and thereafter, as per the criteria originally fixed, the maximum marks were reduced to 25. It was argued that when the marks for trial test was fixed at 25 in the beginning, this parameter could not have been given much importance as fixing 100 marks for trial test and 25 each for past achievement and personality

test would rather disturb the equilibrium and divide the object of giving benefit to the meritorious sports persons.

12. It was argued that by fixing 25 marks for trial all the three factors, namely, past achievements, personality test and trial, were given importance in proper ratio to meet the objective sought to be achieved. It was also argued that if the marks for trial are taken as 100 and for past achievement and personality test 25 each, the candidates of individual sports having less competition will get considerable lead vis-a-vis candidates having specialization in team games. For example, if in the game of chess the candidates participating are less and of district level and state level, naturally the competition would be of less degree, but where the candidates participating in another game, namely, boxing are of international and national level, definitely competition would be of higher degree. This would be despite the fact that the petitioners are the players of international and national repute, whereas the respondent No.3 has played at State Level or National Junior Level. It was also argued that the respondent No.3 was not making place in the selected list, whether trial marks are taken as 100 or 25 and, therefore, he had no *locus standi* even to file the OA in view of the judgment of the Supreme Court in ***Subhash Chander Bajaj v. Kamal Singh Singhmar & Ors.***, 1998 (6) Scale (SP). Learned counsel also pointed out that when there were no *mala fides* or arbitrariness found in the selection process, it was not proper to uproot the petitioners who have been serving for the last 8 years and they should not be punished for no fault of theirs. Some of

the petitioners have even joined their service after leaving their earlier services. They had also crossed the age limit of 35 years which is prescribed for getting such public employments and, therefore, the decision would adversely affect them. In the end it was submitted that once it is found from the record that the selection criteria was never changed and during this period the petitioners were appointed after due verifications of their academic/sports qualifications, date of birth etc. and the respondent No.3 was not coming within the selection zone, in any case such a selection should not be quashed and the petitioners should not be made to suffer in view of the dicta laid down by the Supreme Court in the case of ***Reserve Bank of India & Anr. v. C.L. Toora & Ors.***, (2004) 4 SCC 657.

13. Mr. Tandon, learned counsel appearing for the Board, produced list of candidates with their marks, report of Selection Board for the recruitment of these posts and the merit list on the basis of maximum trial marks of 100 as well as merit list taking maximum trial marks at 25 by reducing the same to 1/4th in order to show the impact of pro-rata reduction.
14. Learned counsel for the respondent No.3, on the other hand, gave the same arguments which were given before the Tribunal and recorded in the judgment. He highlighted the irregularities contained in the remarks made by the Govt. of NCT of Delhi in the aforesaid tabulated form in respect of each selected candidate and also submitted that by awarding the marks in respect of trial test against 100 and reducing the same to 25 had adversely affected some of the candidates who were pushed

down in the merit list. He, thus, submitted that in view of such glaring illegalities and irregularities, the entire selection was vitiated and the directions of the Tribunal quashing the selections and not the entire selection process and preparing the merit list on the basis of marks obtained by the candidates in the trial test out of 100 was just and proper and should not be interfered with.

15. **FINDINGS**

We have considered the respective submissions and have also gone through the records filed.

At the outset, we may mention that the Tribunal has proceeded on the basis that for the trial test the Committee had decided to award the marks out of 100 which were later on reduced to 25 and this could not have been changed subsequently. This appears to be factually incorrect and is not born from the record. On the contrary, it has been pointed out by the Board that even before the selection process started, criteria was formulated by the Selection Committee fixing 25 marks for trials, 60 marks for the past performance and 25 marks for interview. Therefore, observations of the Tribunal in para 18 of the impugned judgment on the basis of aforesaid premise, which is factually incorrect, is not sustainable.

16. It appears that though for the trial test the maximum marks were fixed at 25 by the Interview Board, at the time of conducting those trials, candidates were awarded marks against a score of 100. According to the Board, this was done only for the sake of convenience, though such a reason is not very

logical as marks could have been awarded for trial test even against 25 without much difficulty. Fact remains that if even before the trials started the criteria for awarding marks was fixed by the Selection Committee and the Committee had decided to award marks out of 25 insofar as trial test is concerned, we do not find any such serious irregularity in reducing the marks to 25, i.e. reducing the marks awarded to different candidates on dividing by 4. On the contrary, if the marks for the trial are taken as 100, though initially fixed at 25, we find merit in the contention of learned counsel for the petitioners that this would act unfairly by giving much more importance to the trial than what was decided in the beginning and in those games where there were very less number of candidates, such course of action would give them undue advantage. It was for the Selection Committee to fix the criteria and if they decided to give more importance to past record, this yardstick for assessing the overall suitability cannot be changed. In fact, as noted in the beginning, OA No. 1146/1999 filed by one Shailesh Mudgil was dismissed by another coordinate Bench vide orders dated 5.11.1999 giving some reasons. In view thereof, as held by the Apex Court in the case of ***S.I. Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors.***, JT 1999 (9) SC 597, if subsequent Bench in the impugned judgment was taking contrary view, it should have referred the matter to a larger Bench.

Be that as it may, since the matter is before us in the writ petition, which is filed under Article 226 of the Constitution of India, and we are undertaking judicial review of the impugned

judgment, we have decided to deal with this matter on merits with the concurrence of counsel for all the parties.

17. Thus, whereas we do not find anything wrong in otherwise reducing the marks to 25, the only aspect which needs determination is as to whether by initially recording the marks against 100 and thereafter reducing it to 25 has disturbed the merit list by pushing down certain persons in the said list who had gained substantial lead over the others.
18. As mentioned above, we have directed the Board to undertake this exercise and Mr. Tandon produced the two merit lists – one prepared on the basis of giving 100 marks and the other on the basis of maximum marks of 25 against the trial rest. We find that it had not made any substantial difference to the course of selection. No doubt, position of some of the candidates have changed, but it has had hardly any impact on the final selection. We may point out that insofar as the respondent No.3 is concerned, his position was at S.No. 137 when the marks are given out of 100 and he would be at S.No. 55 when the marks are awarded out of 25. Therefore, he remains out of contention in either case.
19. We also find force in the argument of learned counsel for the petitioners that in the entire selection process, insofar as the petitioners are concerned, they are not to be blamed. Moreover, there are no *mala fides* or arbitrariness attributed to the Selection Board. The only irregularity, even if it is presumed to be so, was that though before the selection process started

maximum marks against trial test was fixed at 25, at the time of taking trials candidates were awarded the marks against 100 in this category, but again while making the final merit list these marks were divided by 4 to bring it at par with the selection criteria fixed in the beginning. After their selections, the petitioners have been working for last more than eight years. Many of them left their earlier service and they are now even over age.

20. Thus, taking a holistic view of the matter, keeping in view all the aforesaid considerations and also the observations of the Supreme Court in the case of *Union of India v. K.P. Tiwari*, 2003 SCC (L&S) 1233, it would not be appropriate to interfere with the appointments of these persons at this stage. We, therefore, make the rule absolute, allow this writ petition, set aside the impugned judgment passed by the Tribunal and dismiss the OA filed by the respondent No.3 herein. There shall, however, be no order as to costs.

(A.K. SIKRI)
JUDGE

(VIPIN SANGHI)
JUDGE

February 01, 2008
nsk

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For orders, see WP (C) Nos. 16563-70/2004.

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