

**\* HIGH COURT OF DELHI : NEW DELHI**

**Judgment reserved on : August 11, 2009**

**Judgment delivered on : August 19, 2009**

**+ W.P. (C) No. 6555 of 2007**

% Vikas Pareek ...Petitioner  
Through: Ms. Aishwarya Bhati & Mr.  
Abhishek Gulam, Advocates.

versus

Union of India & Anothers ... Respondents  
Through: Mr. S.M. Zulfiqar Alam & Ms.  
Shubhra Goyal, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

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

**SUNIL GAUR, J.**

1. Petitioner- Vikas Pareek, had applied for the post of Executive Trainee –XIII Batch (IT) in pursuance to Advertisement (Annexure P-1). On 16<sup>th</sup> May, 2007, respondent No.2-Power Grid Corporation of India Ltd. (hereinafter referred to as the respondent-Corporation) had conducted All India Written Examination for the selection

post of Executive Trainee –XIII Batch (IT) and petitioner had qualified the written examination and he was interviewed on 14<sup>th</sup> June, 2007. In the last week of June, 2007, the result of the aforesaid examination was declared by the respondents on the web-site- [www.powergridindia.com](http://www.powergridindia.com). Individual results were intimated to the candidates and the message (SMS) received by the petitioner was that his name does not appear in the list of qualified candidates. Petitioner had invoked the provisions of Right to Information Act, 2005, and vide Annexure- P-5, the breakup of the marks obtained by the petitioner and eight other candidates was disclosed.

2. According to the petitioner, as per Annexure P-5, he stood third in the written examination while he got 5.9 marks in the interview, whereas the minimum marks fixed for the interview were 6.00. It is the case of the petitioner that it was not mentioned by the respondents in the Advertisement (Annexure P-1), that the candidates had to secure minimum cut off marks in the interview. The grievance of the petitioner is that he could not qualify for the selection as he had got 0.5 marks less than the minimum qualified marks for the interview. The stand of the petitioner is that respondent-Corporation cannot fix the minimum cut off marks for the

interview without notifying it in the Advertisement (Annexure P-1). It is pointed out on behalf of the petitioner that even in the interview letter, Annexure P-3, it was not specified that the interview carries any minimum marks. Rather, as per the note given in the interview letter, Annexure P-3, the eligibility criteria was as specified in the Advertisement, Annexure P-1. The relief sought in this petition is of quashing of the interview result for the post of Executive Trainee –XIII Batch (IT), Information Technology declared by respondent-Corporation in the last week of June, 2007 and to conduct a fresh interview for the aforesaid selection in a fair and transparent manner. In the alternative, a direction is sought to the respondents to declare petitioner selected on the basis of his high performance.

3. Respondent-Corporation in its counter affidavit has taken a stand that the detailed Advertisement (Annexure P-1), was available on the web-site of respondent-Corporation and the petitioner accessed the web-site of respondent-Corporation to know the information about his candidature etc. during the entire recruitment process, as admitted by him in Para-5 of the writ petition and after being unsuccessful in the interview, the petitioner is estopped from

raising objections regarding the interview system adopted by respondent-Corporation.

4. The selected candidates, i.e. respondent Nos. 4,5, and 7 to 10 in the counter affidavit have taken a stand that prescription of minimum passing marks in the interview would not '*per se*' vitiate the entire selection process and have adopted the stand taken by the respondent-Corporation. There is no rejoinder to counter affidavit filed by the contesting respondents.

5. Learned counsel for the parties have been heard, material on record and judgment cited, has been perused.

6. The principal stand of the petitioner is that prescription of minimum marks for *viva voce* after the written test is not permissible. Reliance has been placed upon the case of '*Hemani Malhotra v. High Court of Delhi*' **(2008) 7 SCC 11** in support of this stand. In the writ petition, there is reference to decisions reported in (1981) 1 SCC 722; (1981) 2 SCC 484; (1971) 1 SCC 60 and (2006) 12 SCC 724 to state that prescription of 15 per cent marks for *viva voce* examination would result in constitutional invalidity. Learned counsel for the petitioner has not rightly relied upon the aforesaid decisions as in the case of *Hemani Malhotra*

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(Supra) what has been authoritatively declared by the Apex Court is as under:-

*“There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks for both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview.”*

7. In view of the aforesaid, it is abundantly clear that prescription of minimum marks for any interview is not illegal. What is said to be illegal is prescription of minimum marks for the interview during the selection process.

8. After having gone through the decision rendered by the Apex Court in Hemani Malhotra’s Case (Supra), this Court finds itself in complete agreement with the ratio of the decision in Hemani Malhotra’s Case (Supra). It is no doubt true that introduction of requirement of minimum marks for interview after the entire selection process is completed, would amount to changing the rules of the game after the game is played. However, aforesaid dictum of the Supreme Court would not apply to the facts of the present case as in

the Advertisement (Annexure P-1), it was clearly provided that the respondent-Corporation had reserved the right to raise the eligibility standards in case applicants are in very large number. Thus, it is evident that Circular (Annexure-C), has not come out of the blue and has not taken the petitioner by surprise. Advertisement, Annexure P-1, permits the respondent-Corporation to decide upon the parameters for calling the number of candidates for the interview.

9. It is not the case of the petitioner that he was not aware of the parameters, Annexure-C, which were laid down by the respondent-Corporation, as the same were available on the web-site of the respondent-Corporation. Since the power to fix the criteria of providing cut off marks for the interview flows out of the Advertisement (Annexure P-1), which was issued prior to the initiation of the selection process, therefore, petitioner cannot be heard to say that he was taken by surprise or that the cut off marks cannot be fixed by the respondent-Corporation after the written test and before the interview. This Court is of the considered view that ratio of decision in Hemani Malhotra's Case (Supra) does not apply to the instant case as respondent-Corporation had already declared before the selection process began

that it had the right to raise the eligibility standard, in case the applicants are in very large number. It is not the case of the petitioner that large number of candidates had not applied for the post in question. In any case, there is no challenge from the side of the petitioner to the following Clause of the Advertisement (Annexure P-1):-

“4. Management reserves the right to raise the eligibility standards incase the applicants are in very large number.”

10. In the absence of any challenge to the aforesaid Clause in the Advertisement (Annexure P-1), challenge to the Circular (Annexure-C), cannot be maintained. By way of passing reference, it needs to be noticed that in Hemani Malhotra's Case (Supra), the prescription of minimum of marks in *viva voce* was contrary to the recommendation of Shetty Commission, which stood approved by the Apex Court in '*All India Judges' Association*' case **(2002) 4 SCC 247**, which expressly provided that there should be no cut of marks for *viva voce*. The situation in the present case is entirely different. There is no embargo upon respondent-Corporation to provide for cut off marks for the interview, more so, in view of the above referred Clause of Advertisement (Annexure P-1).

11. In view of the aforesaid, this petition lacks substance and is hereby dismissed.

12. No costs.

**Sunil Gaur, J.**

August 19, 2009  
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