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

Date of Decision: 12th November, 2010

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W.P.(C) 6211/2010

C.K.SINHA Petitioner
Through: Mr.Raju Ramachandran, Senior Advocate
with Mr.A.K.Behera, Ms.Jasmine Ahmed,
Advocates.

versus

UNION OF INDIA Respondent
Through: Ms.Indira Jaising, ASG with
Mr.Satyakam, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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?

PRADEEP NANDRAJOG, J.(Oral)

1. We are called upon to decide the validity of the deliberations at the Departmental Promotion Committee held on 3.7.2009 and 14.9.2009 wherein petitioner's candidature for the post of Special Secretary (RAW) was considered along with other eligible candidates; it is apparent that the petitioner was declared unfit for promotion. This is the reason why we are being troubled.

2. The journey which has to be covered by us passed by an office memorandum dated 3.6.2008. It may be noted that pertaining to the said office memorandum the debate is on the point: Whether the office memorandum introduces a

benchmark only for '*in-situ*' promotions and not '*regular promotions*' qua regular vacancies.

3. As a matter of fact, it may be noted that neither party is at variance on the point that at the meetings held by the two DPCs, petitioner's candidature was considered against regular vacancies to the post of Special Secretary and not for '*in-situ*' promotion.

4. Since not only the caption of the office memorandum under the heading '*Subject*' but even certain words and phrases thereof was picked upon by rival counsel, it would be necessary to note the contents of the office memorandum. It reads as under:-

"ORDER

Subject: Scheme for introduction of in-situ promotions at the level of Joint Secretary, Additional Secretary and Special Secretary in the Research and Analysis Wing.

Pursuant to the approval of the Cabinet Committee on Security, in the meeting held on 22.05.2008, as conveyed vide Cabinet Secretariat (Main) Note No.CCS/10/2008 (I) dated 30/05/2008, the Government has approved that the promotions in Class-I Executive cadre of R & AW, in the rank of Joint Secretary, Additional Secretary and Special Secretary will be effected as per the following procedure:-

- (a) Promotion of eligible RAS officers and permanently seconded officers, (on deputation from All India Services/ Group 'A' Central Services) to the next higher grades be taken up together, batch wise with stricter norms of promotion, as laid down in Annexure 'A' to this order.
- (b) Officers of the same batch in both RAS stream and deputation stream, who are assessed as 'fit' for promotion, by the DPC, be promoted together against the available vacant posts in

their respective quotas.

- (c) In cases where regular vacancies are not available either in the RAS quota or in the deputation quota to promote eligible RAS and permanently seconded officers, to the rank of Joint Secretary and above, as per the prescribed qualifying service laid down in Schedule I of R & AW (RC&S) Rules, 1975 and the officers of the same batch in the IB are considered for promotion, requisite number of temporary posts in the higher grades shall be created by upgradation of lower grade posts (in their respective quota) to promote RAS and permanently seconded officers who are assessed 'fit' for promotion. However, at no stage, the total numbers of posts held by RAS officers or officers on permanent secondment/deputation shall exceed the total number of sanctioned posts, in their respective quota, in the Class-I Executive cadre.

2. Necessary follow up action to amend the Recruitment Rules, to incorporate the above scheme may be taken."

5. The norms referred to in para (a) of the office memorandum as per Annexure A are relevant and may be noted. They read as under:-

"NORMS FOR ASSESSMENT OF OFFICERS FOR PROMOTION TO THE LEVEL OF JOINT SECRETARY AND ABOVE IN R & AW.

1. Officers eligible for promotion, with prescribed residency period, would be assessed on the basis of their records of service, with particular reference to their last ten years ACRs.
2. Each annual ACR for last ten years would carry a maximum of 05 marks and the allotment of marks would be on the following basis:-

Outstanding - 5

Very Good - 4

3. Officers in the zone of consideration, obtaining minimum of 44 marks out of 50 in respect of last ten years ACRs, would be assessed as 'fit' for promotion. This means that the benchmark would be appreciably higher than the normal benchmark of 'Very Good'.
4. With a view to ensure that the introduction of stricter screening standards do not have a sudden adverse impact on the officers in the immediate zone of promotion, the above assessment scheme would be implemented in a phased manner over a period of 3 years. In the current assessment year 2008-09, the DPC shall adopt 42 marks as minimum marks for assessment as 'fit' for promotion. The DPCs which would be held in the assessment year 2009-10, would adopted 43 marks as minimum benchmark and for the year 2010-11 and beyond, the DCPs would rate the officers as 'fit', w.r.t. the minimum of 44 marks."
6. Relevant would it be to note that as per para 4 of Annexure-A to the memorandum dated 3.6.2008, the authors of the office memorandum were conscious of a sudden adverse impact on the career of the officers who were in the immediate zone of consideration; being the consequence of the introduction of stricter screening standards, and for said reason it has been stipulated that the norms of obtaining 44 marks out of 50 marks in respect of last 10 years' ACRs would be implemented in a phased manner: over a period of 3 years. The memorandum being issued on 3.6.2008; for the current year i.e. year 2008-09 the DPCs were directed to adopt 42 marks as the qualifying marks. For the next assessment year i.e. 2009-2010, marks to be adopted as minimum benchmark was 43 and beyond the year 2009-2010 the qualifying marks had to be 44.

7. It is not in dispute that at the time the first DPC met on 3.7.2009, the petitioner was awarded 42 marks and missed the benchmark prescribed for the assessment year 2009-2010, by 1 mark.

8. Aforenoted factual background needs further flashback reference i.e. requires us to go back a little more in the past to the year 2006 for the reason, as noted hereinafter a submission was urged that the proposal for introducing stricter norms for '*in-situ*' promotions was initiated in the year 2006. As pleaded in para 4.4 of the Original Application before the Tribunal, the case of the petitioner is that at the time of initiating the process to lay down the norms it was known that some time would be consumed till the proposal came through. It is pleaded that a 3 years' phased assessment had been planned in advance. It is further pleaded that it so happened that the proposal came through on 3.6.2008, by which time most of the DPCs for the year 2008-09 had already met and submitted recommendations. It was pleaded that the framers of the office memorandum followed the scheme in letter, ignoring the spirit; the spirit being to introduce the higher qualifying norms in a phased manner: absorbing the sudden impact by prescribed 42 marks for the ensuring year, 43 marks for the next year and 44 marks in the next year.

9. The forensic battle fought at the Bar inter-se the petitioner and the respondent may be crystallized into 3 broad submissions, with the first submission with its various sub-heads.

10. Submission No.1 pertains to the office memorandum dated 3.6.2008. Referring to the contents of the '*Subject*' as described in the office memorandum, Sh.Raju Ramachandran, learned Senior Counsel for the petitioner urges

that what more clarity could be found in the office memorandum; the heading whereof proclaims that it was a scheme introducing *in-situ* promotions at the level of Joint Secretary, Additional Secretary and Special Secretary in the Research & Analysis Wing.

11. The first limb of Submission No.1 is obviously plain. If the subject matter of the office memorandum proclaims loudly that it pertains to *in-situ* promotions, why go about wandering in the woods to find out the genetic material wherefrom the memorandum has evolved.

12. The second limb of submission No.1 finds sustenance from the language of para (a), referring to the words '*stricter norms*' in the phrase '*with stricter norms of promotion as laid down in Annexure-A to this order*'. It is urged that the expression '*stricter*' had to be understood vis-à-vis the word '*normal*'. Counsel highlights that the OM did not use the expression '*revised norms*'. It is thus urged that it was apparent that the office memorandum referred to the introduction of '*stricter norms*' and this had implicit in it the concept of a '*normal norm*'. Counsel highlights that the normal norm had to be the one which was applicable in the case of normal regular promotions.

13. Shorn of rhetoric and syntactical analysis, as we understand it, the submission in plain English is that if the memorandum is to apply to *in-situ* promotions as also regular promotions, where was the need to use the expression '*stricter norms of promotion*' for the reason if concept (A) applies to situation X and Y, where would be the occasion to refer to the concept as being stricter. Obviously for a concept to be stricter it must have a reference to a base norm.

14. The third limb of submission No.1 was language of

para 2 of the office memorandum. It is highlighted that para 2 of the memorandum states that follow up action to amend the Recruitment Rules would be taken up. It is thus submitted that the authors of the office memorandum clearly contemplated amendment to the Recruitment Rules pertaining to regular promotions and if it was to be that stricter norms for promotion would govern regular promotions, the same would obviously be after the Recruitment Rules were amended. Counsel highlighted that admittedly, till date the Recruitment Rules have not been amended. Counsel submitted that para 2 is clearly clarificatory of the requirement to separately amend the Recruitment Rules if normal promotions were to be governed by the stricter norms.

15. The submission is completed by urging that the normal norms for promotion as per DOPT memorandum was the benchmark '*Very Good*' which had to be with reference to the preceding 5 years ACR gradings.

16. The second and the third submissions have been highlighted in the pleadings in the writ petition and learned Senior Counsel states that for clarity of thought, pleadings in sub-para (B) and (C) of para 3 of the writ petition may be noted as the second and third submission urged.

17. As pleaded in the writ petition, submission No.2 would read as under:-

"B. Assuming without conceding, the said order dated 3rd June, 2008 was applicable to regular promotions as well the same was required to be implemented in a phased manner. The same was not done as a result of which as against the original benchmark of 40, the benchmark which could have been 42 for the year 2009-2010, was wrongly made 43. If, it had been correctly done in a phased manner the Petitioner with 42 plus marks would have even met the 'stricter' standard."

18. Submission No.3 would be as under:-

“C. Again, assuming without conceding, that the order dated 03.06.2008 was applicable to regular promotions, the standards prescribed therein could not have been applied to ACRs written prior to the said date because, the existing standard for promotion prior to the said date required only five ‘Very Goods’ or 20 marks for five years or ten ‘Very Goods’ and 40 marks for ten years. Therefore, all the previous ACRs would have been written by the Initiating and Review Officers keeping the existing benchmarks in mind. By applying the ‘stricter’ standards to ACRs written with the previous benchmarks in view, the Respondents have, in effect changed the rules midway.”

19. It may be noted that on 24.9.2009 i.e. after the two DPCs had met, an addendum was issued clarifying the subject of the office memorandum dated 3.6.2008. The heading ‘Subject’ was directed to be read as under:-

“Promotions & in-situ upgradations at the level of Joint Secretary, Additional Secretary and Special Secretary in the Research & Analysis Wing.”

20. With respect to the said amendment, learned Senior Counsel submits that the addendum being issued after the DPCs had met was a case of an obvious afterthought.

21. In response to the query of the Court: Whether or not it would be an anomalous situation to introduce higher norms for *in-situ* promotions and prescribed lower benchmark of 5 ‘Very Good’ ACR gradings in case of normal promotions, which was the apparent and obvious consequence if submissions urged by learned Senior Counsel were accepted, response is that there would be no anomaly for the reason *in-situ* promotion is a special benefit not otherwise normally available and thus learned counsel urges that the question of

any anomaly arising does not even arise.

22. When questioned as to what would be the impact of para (b) of the memorandum if submissions of learned Senior Counsel were accepted, Sh.Raju Ramachandran, learned Senior Counsel fairly concedes that para (b) would be rendered otiose.

23. We may highlight here and now that para (b) of the office memorandum dated 3.6.2008 refers to the promotion of officers of the same batch in both RAS stream and Deputation stream. It is but obvious that para (b) of the office memorandum cannot apply to *in-situ* promotions for the reason *in-situ* promotions are personal to a candidate who has rendered the requisite length of service and in the absence of a promotional post is placed in the next higher grade; treated as promotion. The same is personal to the person concerned. However, learned Senior Counsel is quick to add that notwithstanding para (b) of the office memorandum being not conceptually belonging to the stated subject matter of the office memorandum and notwithstanding the paragraph introducing a foreign element, the existence thereof would not detract from the submissions urged by him.

24. To put it plain, yet again, learned senior counsel urges that the weight of the language of the '*Subject*' of the office memorandum and the submissions pertaining to the language of sub-para (a) thereof, and as noted hereinabove, would more than out-weigh the existence of sub para (b) in the office memorandum.

25. Responding to the submissions urged by Sh.Raju Ramachandran, Ms.Indira Jaising, learned Additional Solicitor General submits that the language under the caption '*Subject*' of the office memorandum as originally framed was no doubt

suggestive as if the office memorandum was introducing a scheme of *in-situ* promotions, but contends that a meaningful, not a semantic and pedantic, reading of the office memorandum makes it clear that it deals with both *in-situ* as well as regular promotions. Learned counsel submits that the word '*stricter*' prefacing the word '*norms*' in para (a) of the office memorandum has to be read as descriptive of the succeeding word i.e. the word '*norms*'. Learned counsel urges that the textual setting of the word '*stricter*' in sub para (a) makes it clear that it is intended to be used as a descriptive word i.e. the intent is to convey to the reader that the office memorandum introduces a higher norm for promotion. Learned Additional Solicitor General urges that it is a settled rule of interpretation that the words and phrases in a statute, office memorandum or a guideline should not be interpreted in a manner which violates 'The Rule Against Redundancy'. Counsel urges that the admission of Sh.Raju Ramachandran, learned Senior Counsel for the petitioner that the interpretation of the office memorandum as per him would render part (b) thereof redundant is an admission of the fact that the learned Senior Counsel requires this Court to interpret the office memorandum contrary to the known and recognized principles of law governing interpretation of statutes, office memorandums and office orders. Advancing the submission a little further learned Additional Solicitor General urges that this reinforces her submission that the word '*stricter*' preceding the word '*norms*' in para (a) of the office memorandum has been used as a descriptive word and not as in contradistinction. Learned Additional Solicitor General urges, that it is plain illogic to any rational mind that regular promotions should be based on lower suitability norms and *in-situ* promotions should

be on the basis of tougher/higher qualifying norms. Indeed, learned Additional Solicitor General urges that no rational person can countenance a situation that personal promotion, which is intended to obviate stagnation, should require the candidate to jump a higher hurdle in the onward race and a competitive medley i.e. regular promotion would need lower placed hurdle to be crossed.

26. With respect to submissions 2 and 3 urged by learned Senior Counsel for the petitioner, learned Additional Solicitor General urges that as long as a cut-off date or a cut-off year is not shown to be operating in a discriminatory manner or is not shown to be per-se arbitrary, it is not for the court to substitute the date or the year. Counsel urges that there is no material or basis for the petitioner to urge that the office memorandum was conceived in the year 2006 and the applicability of higher norms prescribed was in relation to the said year and that by the time the office memorandum was notified the letter thereof was retained and not the spirit. Learned Additional Solicitor General urges that the introduction of the higher norms was with current effect i.e. 3.6.2008. Conscious of the sudden strictness introduced by the higher norm, to soften the impact, the executive stipulated a phase-wise strictness being introduced by specifically providing in the office memorandum that for the current assessment year 2008-09 the minimum qualifying marks would be 42 marks and for the next assessment year i.e 2009-10 the same would be 43 marks. Thereafter, as per the office memorandum the same would be 44 marks. Learned Additional Solicitor General highlights that para 4 of the OM clearly shows that the executive applied its mind to the phase-wise adoption of the marks with reference to the year and

submits that there is no scope to urge that while adopting the letter, the spirit was ignored. Counsel urges that the spirit of the office memorandum is to introduce higher qualifying norms; engrained in the spirit is the conscious decision to somewhat soften the impact of sudden introduction of the higher norm by phase-wise implementation thereof.

27. It may be noted that there is the issue pertaining to the norms adopted by two preceding departmental promotion committees which met on 4.8.2008 and on 20.3.2009. Pertaining to DPC which met on 4.8.2008 it be noted that the post being considered was that of Joint Secretary. We have been shown the deliberation of the DPC, and save and except we find a separate list of such officers who were to be granted *in-situ* promotion, a separate list of officers granted regular promotion has been drawn. We could gather no more from the deliberations, as minuted. Indeed, as is urged by learned counsel for the petitioner the impasse can be broken only if we were to call upon and refer to the proposal submitted before the DPC. The mode and manner of the proposal would guide us. For, if the proposal tabulates the data for the preceding 5 years with reference to the preceding 5 years ACR gradings, the same would show that the DPC had adopted the benchmark 'Very Good' as prescribed by the DOPT circular. If the data made available to the DPC pertain to preceding 10 years ACR gradings with marks assigned being 5 for ACR grading 'Outstanding', 4 for ACR grading 'Very Good' and 3 for ACR grading 'Good', it would show to the contrary.

28. Qua the DPC held on 20.3.2009, the minutes thereof clearly indicate that the DPC had applied the office memorandum dated 3.6.2008.

29. Relevance of noting the preceding submissions and the facts is on account of a submission which has been urged: that the department never understood the office memorandum dated 3.6.2008 as intended to apply to regular promotions and proof thereof would be the deliberations of the DPC which met on 4.8.2008 and 20.3.2009.

30. It may be noted that apart from the aforementioned two DPCs which met before candidature of the petitioner was considered, the DPCs which met on 23.11.2009, 25.11.2009 and 25.7.2008 qua *in-situ* as also for promotions, the office memorandum dated 3.6.2008 was applied.

31. Before reflecting upon the submissions urged by learned Senior Counsel and as noted above, it would be instructive to note the reasoning of the Tribunal as per its order dated 8.4.2010 by which OA No.2830/2009 filed by the petitioner has been rejected.

32. It may also be noted that RA 143/2010 by which petitioner sought limited review of the order dated 8.4.2010 has been dismissed vide order dated 1.7.2010.

33. Both orders are under challenge.

34. Fact pertaining to RA 143/2001 is that in its main decision dated 8.4.2010 the Tribunal has noted that the petitioner was awarded 40 marks. Seeking review, the petitioner pointed out to the Tribunal that the marks obtained by the petitioner would be 42. Petitioner seems to have sought the correction aforementioned on account of the submission that if submission urged by the petitioner that the qualifying marks for the year 2009-2010 would be 42 and not 43 as per the OM dated 3.6.2008 he would succeed.

35. The Tribunal has rejected the review petition on the ground that since the qualifying marks was 43, it hardly mattered whether the petitioner got 40 or 42 marks.

36. We may note the correct factual situation. As conceded by the learned Additional Solicitor General, petitioner would obtain 42 marks with respect to the ACR gradings for the preceding 10 years i.e. for the year 1998-1999 till the year 1.4.2007-31.3.2008. It may be noted that the ACR gradings for the year 2008-09 had yet to be written when DPCs met on 3.7.2009 and 14.9.2009.

37. Vide its decision dated 8.4.2010, the Tribunal noted that no clear picture was emerging as to what norms were adopted by the DPC which met on 4.8.2008 and on 20.3.2009, but has held that on the assumption that the two DPCs had treated the office memorandum as applicable to only *in-situ* promotions, the same was a wrong. The Tribunal has interpreted the office memorandum as applicable to *in-situ* promotions as well as regular promotions and thus has held that wrong cannot be the foundation of a claim. Interpreting the office memorandum and influenced by para (b) thereof, the Tribunal has held that it is as clear as daylight that the office memorandum covers the charter of *in-situ* as also regular promotions. We note that the second and third submissions urged before the Tribunal and as noted hereinabove has not found a very clear reflection in the order passed by the Tribunal, in the context of the pleadings before the Tribunal that the policy was initiated in the year 2006 and realizing the sudden adverse impact upon the officers within the zone of consideration, to soften the impact, a conscious decision was taken to slowly upgrade the benchmark commencing from 42 marks in the year of its introduction and

going up by 1 mark each in the two succeeding years. What we find is a finding returned by the Tribunal that it not being the case of the petitioner that for some others, the cut off mark adopted was 42, for the panel year 2009-2010, the petitioner was not wronged by adopting the yardstick of 43 marks.

38. We agree with the reasoning of the Tribunal that a wrong can never be the foundation of a right and thus if it is held that the office memorandum in question governs the field for both *in-situ* as well as regular promotions, it would be of no consequence as to what norms were adopted by the DPC which met on 4.8.2008, we note that the DPC which met on 20.3.2009 had adopted the office memorandum as applicable to regular promotions. Thus, what we need to decide is whether the office memorandum applies only to *in-situ* promotions.

39. Having noted the submissions urged by learned counsel, suffice would it be to state that the preamble in the instant case to the office memorandum, being its listed '*Subject*', as originally written is indicative that the scheme introduced by the office memorandum is for *in-situ* promotions. However, it is settled law that neither the headings nor the marginal notes can control the plain meaning of the substance of the main provision. Thus to ascertain the intent and meaning of the office memorandum it has to be read as a whole. We concur with the submission of the learned Additional Solicitor General that 'The Rule Against Redundancy' needs to be applied in reading the office memorandum. A perusal of the office memorandum above would show that para (b) of the office memorandum clearly deals with promotion of officers from the RAS stream and the

Deputation stream, a concept which has perforce to apply to regular promotions and not to *in-situ* promotions. Indeed, as noted herein above, Sh.Raju Ramachandran, learned Senior Counsel for the petitioner concedes that the language of para (b) is clearly suggestive of its applicability to regular promotions. Counsel concedes that if submissions as urged by him have to be accepted para (b) would be rendered redundant.

40. We have to avoid the situation contemplated by 'The Rule Against Redundancy' and this requires us to deal with the interpretation of para (a) of the office memorandum and in particular the word '*stricter*' preceding the word '*norms*' in said para. As noted hereinabove the submission urged by Sh.Raju Ramachandran is that the words '*stricter norms*' have to be read co-jointly, meaning thereby, the word '*stricter*' has been used in contradistinction to the '*normal*'. The rival submission was that the word '*stricter*' has been used as a descriptive word to describe the word '*norms*', that is to say, the textual setting in which the word '*stricter*' has been used is to bring home the point that the office memorandum is introducing a higher qualifying norm.

41. Assuming both interpretations as projected by rival counsel are permissible within the domain of the grammar of the English language, since accepting the grammatical interpretation as urged by Sh.Raju Ramachandran would render otiose clause (b) of the office memorandum, it would be our duty to accept the grammatical interpretation as propounded by Ms.Indira Jaising, learned Additional Solicitor General.

42. That apart, guided by the rules of grammar it is apparent that the three words '*norms of promotion*' constitute

a single phrase and would be a noun phrase. The word '*stricter*' preceding the noun phrase is clearly used as an adjective. Thus, rules of grammar compel us to read the phrase '*stricter norms of promotion*' as interpreted and propounded by the learned Additional Solicitor General.

43. With respect to the third limb of the submission that para 2 of the office memorandum itself contemplates action to amend the Recruitment Rules and that till date the Recruitment Rules have not been amended. We concur with the submission urged by the learned Additional Solicitor General that prescribing benchmark is not within the purview of Recruitment Rules since benchmark are prescribed by executive instructions. Indeed para 2 of the office order is a mindless provision.

44. We may hasten to add that it would be plain to the reader of our decision that while interpreting the office memorandum we have made redundant para 2 thereof and thus we may be read as if we have contradicted ourselves with respect to our previous findings where we have held that while interpreting the office memorandum 'The Rule Against Redundancy' has to be kept in mind.

45. But, where it is so plain that a foreign concept has entered into a memorandum and the same has no concern with the substance of the memorandum, so superfluous is the part concerned, strictly speaking it would not be a case where 'The Rule Against Redundancy' is violated.

46. Having interpreted the office memorandum to be all inclusive i.e. to be applied to *in-situ* promotions as well as regular promotions we are to deal with the second and third submissions urged, which we note are intertwined.

47. Suffice would it be to state that it is within the domain of the executive to prescribe benchmarks. An introduction of a higher benchmark, by amending the existing policy guidelines, would not be a case where the interest in promotion is being affected. Nobody has a vested right to a promotion. The only vested right is to a fair consideration to be promoted. Illustratively, we may note that pertaining to seniority positions, since they affect promotion, issues of seniority have always been interpreted as akin to interest in promotion. Right to earn a promotion with reference to higher or lower benchmark is always treated as akin to abolishing promotional posts or merger of cadres i.e. affecting the right/chance to be promoted.

48. Thus, it cannot be said that the executive had no right to prescribe higher benchmark or that by a sudden lifting of the benchmark for promotion, a vested right of any candidate has been affected.

49. Having laid the foundation in the aforementioned words, the requirement to deal with the submission would be met by recording an approval of the submissions urged by the learned Additional Solicitor General.

50. But, lest we be accused of delegating our judicial function and acting as a copy cat by simply approving the submissions urged by learned Additional Solicitor General, we may state that the spirit of the office memorandum to soften the impact of higher qualifying norms introduced all of a sudden, finds reflection in the letter thereof by prescribing that in the year the OM was introduced, benchmark prescribed would be 42 marks and for the next year it would be 43 marks. Now, it may be that the executive could have said that the benchmark should be adopted for the ensuing year, but that

would be a matter of policy and in which this Court would be helpless to render any assistance to the petitioner.

51. It may be true, and we deal with the third submission, that there is bound to be some hardship for the reason when the ACRs were written by the concerned officers for the year 1999 till the year 2008, they had in mind the benchmark 'Very Good' and keeping said benchmark awarded the ACR gradings. But merely because difficulties arise on account of amendment to an executive policy, would not render the same as arbitrary, unconstitutional or illegal. To a large extent the situation of hardship brought about by the office memorandum has been softened by lowering the qualifying marks by 2 marks i.e. as against 44 marks, 42 marks have to be achieved for the first year, gradually rising by 1 mark for the next and achieving the maximum in the third year. It would be fair and reasonable.

52. It is settled law that hardships would not be a ground to strike down, write down or substitute the language of an office memorandum.

53. It is hard luck of the petitioner that he has lost by a whisker i.e. 1 mark, but it happens in life. Nothing can be done.

54. We see no reason to differ with the conclusions arrived at by the Tribunal. The writ petition is dismissed, but keeping in view that the issue raised was certainly interesting and arguable, we refrain from imposing any costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

NOVEMBER 12, 2010
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