

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

% Judgment Reserved On: 28th September, 2010
Judgment Delivered On: 5th October, 2010

+ **W.P.(C) 6586/2010**

PRASHANT RAMESH CHAKKARWAR
& ANR. Petitioners

Through: Mr.Sumit Kumar, Advocate

versus

UNION PUBLIC SERVICE COMMISSION
& ANR. Respondents

Through: Ms.Aditi Gupta, Advocate for R-1
Ms.Sugandha, Advocate for
Mr.Atul Nanda, Advocate for R-2

W.P.(C) 6590/2010

SONIA CHAHAR Petitioner

Through: Mr.Sumit Kumar, Advocate

versus

UNION PUBLIC SERVICE COMMISSION
& ANR. Respondents

Through: Ms.Aditi Gupta, Advocate for R-1
Ms.Sugandha, Advocate for
Mr.Atul Nanda, Advocate for R-2

W.P.(C) 6592/2010

SANJAY KUMAR SINGH & ORS. Petitioners

Through: Mr.Sumit Kumar, Advocate

versus

UNION PUBLIC SERVICE COMMISSION
& ANR. Respondents

Through: Ms.Aditi Gupta, Advocate for R-1
Ms.Sugandha, Advocate for
Mr.Atul Nanda, Advocate for R-2

W.P.(C) 6596/2010

ASHISH GUPTA Petitioner
Through: Mr.Sumit Kumar, Advocate

versus

UNION PUBLIC SERVICE COMMISSION
& ANR. Respondents
Through: Ms.Aditi Gupta, Advocate for R-1
Ms.Sugandha, Advocate for
Mr.Atul Nanda, Advocate for R-2

W.P.(C) 6601/2010

PRANAV KUMAR VATSA Petitioner
Through: Mr.Sumit Kumar, Advocate

versus

UNION PUBLIC SERVICE COMMISSION
& ANR. Respondents
Through: Ms.Aditi Gupta, Advocate for R-1
Ms.Sugandha, Advocate for
Mr.Atul Nanda, Advocate for R-2

W.P.(C) 6602/2010

PHANI BHUSHAN & ORS. Petitioners
Through: Mr.Sumit Kumar, Advocate

versus

UNION PUBLIC SERVICE COMMISSION
& ANR. Respondents
Through: Ms.Aditi Gupta, Advocate for R-1
Ms.Sugandha, Advocate for
Mr.Atul Nanda, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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.

1. Every year, Union Public Service Commission (hereinafter referred to as the “UPSC”) conducts Civil Services Examination for the purposes of recruitment to Indian Administrative Service and other allied services. So high are the expectations of some candidates that on not finding success, they resort to litigation as they earnestly believe that by no reasonable process of evaluation, could they achieve such low level of success. We find that virtually every year same ritualistic pleas are urged, notwithstanding that the issue has been debated repeatedly and Courts have held, that though not a perfect situation, in the absence of a better alternative, the procedures followed by UPSC while evaluating the answer sheets do not warrant judicial interference. We had heard learned counsel for the petitioner and the respondents at length on 28.9.2010. It was the first date when the matter was listed before us. The petitioners were relying upon pleadings of UPSC in earlier litigations and the issues were discussed with reference to the said pleadings.

2. The Civil Services Examination comprises of two successive stages; namely, (i) Civil Services Preliminary Examination (Objective Type) for the selection of candidates for appearing in the main examination, and (ii) Civil Services Main examination (Written and Interview) for the selection of candidates for the various services and posts. The Preliminary Examination consists of two papers of objective type (multiple choice questions) in two subjects, namely, General Studies and one subject to be selected from the list of optional subjects set out in paragraph 2 of the plan of examinations notified by the

UPSC and carries 150 and 300 marks respectively. The marks obtained in the preliminary examination are not considered and counted for determining the final order of merit of the successful candidates at the main examination. The candidates who are declared successful in the Preliminary Examination are required to appear at the Main Examination which consists of written examination as well as viva voce test. The written examination consists of nine papers; namely, two papers each for two optional subjects, two papers pertaining to General Studies, one paper pertaining to English, one paper pertaining to Regional Language and one paper pertaining to an essay written by the candidate. The marks pertaining to English and Regional Language are not counted for purposes of ranking in the examination. The papers pertaining to optional subjects and General Studies carry 300 marks whereas the paper pertaining to essay carries 200 marks, thus totaling 2000 marks in all. The viva voce test carries 300 marks. The marks obtained by a candidate in the Main Examination (written as well as viva voce) determine his final ranking. The successful candidates are allotted various services having regard to their ranking in the examination and the preferences expressed by them for various services and posts.

3. The petitioners herein are the civil services aspirants, who appeared in Civil Services Examinations conducted by UPSC in the years 2007, 2008 and 2009. The petitioners successfully cleared the Preliminary Examination in the year they sat, but could not qualify in the Main Examination. Aggrieved by the marks awarded to them in the Main Examination, the petitioners filed applications under Section 19, Administrative Tribunals Act, 1985 before Principal Bench

of Central Administrative Tribunal, New Delhi inter-alia, alleging that the possibility that there were irregularities in the Civil Services Examination conducted by UPSC in the years 2007-2009 cannot be ruled out inasmuch as various irregularities have been detected in the Civil Services Examinations conducted in the past several years and that the process adopted by UPSC for evaluation of answer sheets of the candidates pertaining to Main Examination is arbitrary and illegal. The details of the applications filed by the petitioners are being tabulated herein below:-

S. No	Number of application filed in Tribunal (O.A. No.)	Date of filing of application before Tribunal	Year of challenge of Civil Services Examination	Date of judgment of Tribunal	Number of Writ Petition filed by applicant (W.P. (C) No)
1.	1565/2010	30.04.2010	2008	13.05.2010	6586/2010
2.	3504/2009	05.11.2009	2007	04.12.2009	6590/2010
3.	3507/2009	05.11.2009	2007	04.12.2009	6592/2010
4.	3502/2009	05.11.2009	2007	04.12.2009	6602/2010
5.	2419/2010	27.07.2010	2009	11.08.2010	6601/2010
6.	1252/2009	30.04.2009	2008	21.05.2009	6596/2010

4. For the sake of convenience, O.A. No.1565/2010 titled 'Prashant Ramesh Chakkravar & Anr v Union Public Service Commission & Anr' shall be treated as the lead matter inasmuch as a perusal of the aforesaid applications reveals that the contents thereof are more or less identical and during arguments said petition was extensively referred to.

5. As already noted herein above, feeling aggrieved by the marks awarded to them by UPSC, petitioners namely, Prashant Ramesh Chakkravar and Pranav Kumar Vatsa, filed O.A. No.1565/2010 before the Tribunal, inter-alia, seeking following reliefs:-

- i) Direct the respondent to produce all the records relating to the case including attendance sheets/Proforma F containing details of supplements taken, the answer books of the Applicants in all the subject and verify the irregularities committed by the Respondent in the evaluation of the answer books; and
- ii) Direct the respondent to produce attendance sheets/Proforma F (Containing details of supplements used) of all the applicants to verify the number of extra sheet used by them and verify the irregularities committed by the Respondent;
- iii) Direct the respondent to produce raw and moderated marks of applicants and all other candidates in Civil Services (Main) Examination 2008 to verify justness of moderation system;
- iv) To strike down the system of moderation/scaling applied by the UPSC after asking UPSC to explain the system;
- v) Direct the Respondent to bring uniformity on the system of awarding marks in personality test by reducing excessive subjectivity;

vi) Permit the Applicants to carry out the inspection of the answer books in the answer books in the Court.

vii) direct the respondent to reexamine and re-evaluate the answer books of the Applicants where the irregularities are found to be existing in the evaluation process of Civil Service (Main) Examination 2008; and

viii) direct the respondent to declare the Applicants pass in the Civil Service (Main) Examination 2008 if after revaluation and proper valuation they get more marks than the mark achieved by the last candidate in the result who was called for interview and consider them for appointment; and

viii) To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case."

6. To demonstrate that there was a possibility of irregularities in the Civil Services Examinations conducted by UPSC in the years 2007, 2008 and 2009 following averments were made in the application:-

"4.17 It is respectfully submitted that in recent past, a number of instances have come to light intimating serious irregularities in the conduct of the examinations. Some of them are explained below:

(a) In the 1985 Examinations, when the result was declared, it was found that none from Bhopal Center was selected for interview. The candidates from that Center made representations to the UPSC. When the Press took up the matter, the UPSC conducted inquiries and it was found that the answer-sheets of General Studies-II of all 95/97 candidates of that

Center were lost and were untraceable. As such, fresh examination was held for these candidates as a result of which, 25 of them were called for interview. Out of these 25, 22, were finally declared successful. This has been accepted by the Respondent before this Hon'ble Tribunal in O.A. No.816 of 1997.

(b) In 1985, the C.B.I. registered a case under Sections 420, 464, 471 and 120-B of the I.P.C. as also under the Prevention of Corruption Act against one, Ratipal Saroj and four employees of UPSC, Shri Saroj was selected in Civil Service Examinations, 1985 and was declared as No.3 in the merit list. A letter was written by certain candidates of Allahabad Centre to the Prime Minister declaring their suspicion and requested him to look into the matter. The C.B.I. inquiries revealed that Shri Saroj joined the UPSC as Section Officer and then was promoted to the post of Deputy Secretary. He was well known to a number of officers in UPSC to whom he had been supplying various articles from time to time. It was alleged that he replaced his answer sheets with the new ones in the UPSC in collusion with the officers. In this examination he got very good marks and stood third in the examination. A copy of news item reported by the Tribune News Service, downloaded from the Internet and other paper cuttings showing irregularities in the recruitment of the respondent is annexed as **ANNEXURE A-4.**

(c) In 1985, the C.B.I. filed another case under Section 420 and 120-B of the I.P.C. against Sanjay Bhatia and others. The accusation against him was that he produced false Caste certificate showing himself to be a Scheduled Caste and he got himself selected for I.P.S.

(d) In 2001, one Nitin Verma was initially declared to be on 278th rank. However, after re valuation he was declared to be holding 28th rank. Translated copy with original of Daily "Dainik Bhasker" dated 25.7.2002 showing this fact is filed herewith as **ANNEXURE A-5.**

(e) Mr.Brijees Sher Arzoo Roll No.306429 who was reported absent in the paper of Urdu literature I & II as his optional in Civil Services (Main) Examination

2005 contrary to his actual score of 176 out of 300 and 190 out of 300 respectively.

(f) In 2006, the lines of SC and ST candidates for Civil Service Main Exam. 2005 were deliberately exchanged thereby affecting the entire list. True copy of news report to this effect published in "Hindustan" daily dated 8.6.2006 and revised merit list is filed herewith as **ANNEXURE A 6 (COLLY)**.

(g) Even in 2006, re-examination of Public Administration paper in Civil (Services Preliminary) Examination, 2006 has been held due to discrepancy in tallying the number of question papers at one of the examination centres. True copy of the news report to this effect containing in "The Hindu" dated 17.5.2006 is filed as **ANNEXURE A-7**.

(h) The news report contained in the Indian Express dated 16.7.2006 shows that even before the declaration of result a candidate namely Sunita Dogra claimed herself to be successful in the UPSC which also show flaw in the system. The same is filed as **ANNEXURE A-8**.

(i) There are general allegations against many officers of the UPSC, that they got the question out in order to get their wards and relatives qualified for the Civil Services examination. There are other allegations causing suspicion on account of the fact that the wards of I.A.S. officers are invariable selected in these examinations. The other allegations are that in Rau's Circle (Rau Study Circle for 1985 Examination, a guess paper was given to the students with 11 questions out of which 8 questions appeared in the actual question paper. Further, during the investigations by the C.B.I. into the matter of Saroj and Sanjay Bhatia, two other candidates, namely, Mrindula Sinha and Suresh Chandra were also found to be involved. It has also been reported in the Press that with the manipulations of the UPSC officials, answer-sheets had been substituted in some other cases.

(j) The irregularity may also be seen in the case of Chittranjan Kumar wherein, when he requested the Respondent for rechecking the papers of Hindi paper II, the Respondent responded vide letter dated

16.6.2009 that the total number of answer-sheets used by him was 2. When he further applied for details of the number and serial No. of the copies, the Respondent replied vide letter dated 22.7.2009 and thereby stated the number of answer-sheets of Hindi paper II was 3. However, in fact that the candidate had written four answer-sheets in Hindi Paper II. The Respondent further did not mention the map submitted with the paper of History Paper-I. True copy of the letter dated 16.6.2009 alongwith translation and letter dated 22.7.2009 sent by the Respondent is filed herewith as **ANNEXURE A-9 (COLLY)**.

4.10. These instances show that the UPSC is not infallible and that the recruitment process of UPSC is not full proof. It is further submitted that where many instances have come to public knowledge, there may be several others which may not come into light due to the closed system of recruitment process and this itself hurts the integrity of the highest agency of recruitment in India....”

7. With respect to the allegations pertaining to method adopted by UPSC for evaluation of answer sheets of candidates pertaining to the Main Examination being arbitrary and illegal, following averments were made in the application:-

“4.12 It is respectfully submitted that the said lower marks of the Petitioners may be due to the manner of evaluation applied by the Respondent for evaluation of Answer-Books of Main’s Examination which includes the scheme of Moderation as disclosed by the Respondent in several cases including the case of Subash Chandra Dixit Vs. U.P. Public Service Commission (S.L.P. (civil) 23723/2002) before Hon’ble Supreme Court and before Hon’ble Delhi High Court in case of Neel Ratan Vs. union of India and ors (CWP No.1271 of 2006) true copy of which are filed herewith as **ANNEXURE P-11 (COLLY)**.

....

4.14 It is further submitted as per own admission of the respondent in case of Neel Ratan Vs. union of

India CWP No.1271 of 2006, statistical moderation is done by liner transformation of marks.....

It is respectfully submitted though the Respondent has not clarified anywhere what is liner transformation and how it is different from linear scaling, the Applicant has tried to find out the materials on the concerned issue and have been able to find out at least two reports which suggest that the said linear transformation of marks is same as liner scaling, except the name.....

True copy of the report to the qualifications and curriculum authority "Statistical moderation of teachers assessment" commissioned by the qualifications and curriculum authority, United Kingdom prepared by "John Wilmot and Jennifer Tuson" is filed herewith as **ANNEXURE P-12 (colly)**.

.....

4.22 It is further submitted that in the case of Subash Chandra Dixit Vs. U.P. Public Service Commission (S.L.P. (civil) 23723/2002) the Respondent Commission had stated that they follow equi-percentile method of scaling and not linear scaling. However, the Respondent Commission has in the case of Neel Ratan has stated in their Additional Affidavit dated 10.3.2006 that they do statistical moderation by Linear transformation in subjective papers of Civile Services Examination. Meanwhile, as the above reports show, the Linear Transformation is the Linear Scaling only, and therefore, the Respondent Commission is applying the same method of Linear Scaling in the present case which it has been found to be improper by Hon'ble Supreme Court in Sanjay Singh & Anr Vs.UPSC (2007) 2 Scale 1)....." (Emphasis Supplied)

8. The relevant portion of the counter affidavit filed by UPSC before Supreme Court in Special Leave Petition (Civil) No.23723/2007 titled 'U.P. Public Service Commission Vs. Subash Chandra Dixit & Ors', which affidavit was relied upon by the petitioner(s) to show that the method adopted by the

UPPSC for evaluation of answer sheets of the candidates pertaining to Main Examination is faulty, reads as under:-

“3. This respondent further craves leave to submit that the scaling system being followed by Uttar Pradesh PSC is different from that of the UPSC. The Uttar Pradesh PSC is following a linear method (also known as standard deviation method) for its examination which involve descriptive as well as objective type of papers. As against this the UPSC follows two different and distinct procedures for the objective and descriptive papers. As regards examinations involving optional objective papers the UPSC scaling procedure is based on Normalized Equi-Percentile (NEP) method. Descriptive (Conventional) type question papers are manually evaluated. These are subjected to moderation and not scaling. The scaling is done only in the Civil Services (Preliminary) Examination where the candidates have the choice to opt for any one paper out of 23 optional papers. No scaling is done for the compulsory papers in any of the examinations conducted by the UPSC.

....

MODERATION

16. Moderation is applied by UPSC to achieve uniformity in standards of evaluation of descriptive answer books where a number of examiners are involved. The problem of uniformity of standards becomes more complex when viewed against the background that candidates in Civil Services (Main) Examination have the option of answering the papers, besides English, in any one of the eighteen languages specified in the Eighth Schedule of the Constitution.

17. As far as conventional/descriptive type of examinations are concerned, the question papers are set up by experts duly approved by the Commission for each subject. The paper setter acts as the Head Examiner.

18. When conventional papers are set, the answers have to be of descriptive type by the very nature of questions, and such answers are evaluated by a

number of examiners, depending upon the number of candidates. These examiners are called Additional Examiners and work under the Head Examiner for each subject.

19. The Commission have devised a procedure of moderation to ensure equitable treatment to all candidates and to judge them on merit by reducing the "Examination variability" to the extent possible.

20. The experts who set the question papers for each subject, act as Head-Examiner for the evaluation of the answer-books of that subject/paper. Whenever the number of candidates is very large in a particular subject, the Commission appoints Additional Examiners from amongst subject experts. Each Additional Examiner evaluates approximately 250 to 300 answer books. To achieve uniformity in valuation, where more than one examiner are involved, the UPSC arrange for a meeting of the Head Examiner with his additional examiners for each subject soon after the examination is over. At this stage, they thoroughly discuss the question paper and the appropriate answers. They also carry out a sample valuation of answer books and this is reviewed by the Head Examiner and variations in marking, if any, are further discussed. After the discussion is over and the standard of evaluation of Answer Scripts has been decided upon, the examiners disperse and complete the valuation of answer books according to a given time schedule.

21. This exercise alone is not enough to bring about uniformity of assessment since, in the process of valuation, the examiners tend to deviate from the standards laid down by Head Examiner and expected to be followed. The UPSC therefore, apply further checks to ensure uniformity in evaluation of answer scripts.

22. After all the answer scripts duly evaluated are received back in the office of the UPSC from each Additional Examiner, they are kept separately each Additional Examiner-wise. To ensure that Additional Examiners have not deviated from the uniform standards of evaluation and followed the agreed norms the Head Examiner conducts sample survey

of the 20 answer books (ten highest scoring answer books and ten selected random in respect of each of the additional examiners). Depending on the standards adopted by the additional examiner, the Head Examiner confirms the awards without any change or carries out upward or downward moderation according to the degree of leniency or strictness in marking. The awards given by the Head Examiner of these revalued 20 answer books are accepted as final.

23. As regards the other answer scripts, to achieve maximum measure of uniformity *inter se* the examiners, the award of marks by the additional Examiners are moderated as considered appropriate by the Head Examiner. To achieve the uniformity in the standards of evaluation, this exercise is done in regard to each subject in the Main Written Examination. If in the opinion of the Head Examiner, there has been totally erratic marking by an additional examiner, for which the Head Examiner considers that it is not feasible to have statistical moderation, the scripts already evaluated by the additional examiner are revalued by the Head Examiner or by any other additional examiner whose norms of marking are similar to that of the Head Examiner and other additional examiners.

24. It may be relevant to mention here that the answer scripts are given dummy roll numbers to ensure anonymity.

25. In a competitive written examination with 51 different optional subjects as in the C.S. (Main) Examinations, it is not enough only to ensure reasonable degree of uniformity between the examiners in individual subjects but also *inter se* subjects. If a paper setter in a particular subject is very strict or lenient in either setting the question paper or in awarding marks to candidates, then the candidates offering that subject may lose or gain, as compared to others offering different optional subjects, not on merit but because the paper setter/examiner has been strict or lenient. It, therefore, becomes necessary to moderate the marks scored by the candidates with a view to bringing about the uniform standards between all

the subjects also. The Commission, therefore, considers the statistical position of all the optional subjects to see whether the evaluation in any subject have been too strict or too lenient and accordingly does statistical moderation where it is considered necessary.....”

9. The relevant portion of the additional affidavit filed by UPSC before this Court in Writ Petition (Civil) No.1271/2006 titled 'Neel Ratan Vs Union of India & Ors', which affidavit was relied upon by the petitioner(s) to show that the method adopted by UPSC for evaluation of answer sheets of the candidates pertaining to Main Examinations is faulty, reads as under:-

“12. That in a competitive written examination with 51 different optional subjects as in the C.S. (Main) Examinations, it is necessary not only to ensure reasonable degree of uniformity between the examiners in individual subjects but also *inter se* subjects. If a paper setter in a particular subject is very strict or lenient in either setting the question paper or in awarding marks to candidates, then the candidates offering that subject may lose or gain, as compared to others offering different optional subjects, not on merit but because the paper setter/examiner has been strict or lenient. It, therefore, becomes necessary to moderate the marks scored by the candidates with a view to bringing about the uniform standards of evaluation in all optional subjects as well. The Commission, therefore, considers the statistical position of each subject to find out if the valuation has been strict or liberal by the Head Examiner/Paper Setter and does statistical moderation by linear moderation wherever considered necessary. (Emphasis Supplied)

10. After holding that in absence of any provision for re-evaluation of an answer-sheet in the relevant rules, no candidate at an examination has got any right whatsoever to claim or ask for re-evaluation of his answer-sheet and that the applications raising similar issues as involved in the present

case have been dismissed by the Tribunal on earlier occasions on the ground that the method of moderation applied by the Tribunal cannot be faulted as being subjective or unscientific, vide impugned judgment(s) passed on different dates noted by us in the table extracted above, the learned Tribunal dismissed the aforesaid applications filed by the petitioners.

11. Aggrieved by the dismissal of the aforesaid applications by the Tribunal, the petitioners have filed the above-captioned petitions under Articles 226 and 227 of Constitution of India.

12. During the hearing, following 4 submissions were advanced by the learned counsel for the petitioner(s):-

A That the learned Tribunal failed to appreciate that the method of moderation of marks applied by UPSC in evaluating answer sheets of the candidates pertaining to Civil Services (Main) Examination is unreasonable and arbitrary and thus violative of Articles 14 and 16 of Constitution of India.

B That the learned Tribunal failed to appreciate that the method of scaling of marks applied by UPSC in evaluating answer sheets of the candidates pertaining to Civil Services (Main) Examination was held to be arbitrary and illegal by Supreme Court in the decision reported as Sanjay Singh & Anr Vs. UP Public Services Commission (2007) 2 Scale 1. To bring home the point that scaling was being applied by UPSC in evaluating answer sheets of the candidates pertaining to Main Examination particular emphasis was laid down by the counsel on the averment contained in the additional affidavit filed by UPSC in this Court in Writ Petition (Civil) No.1271/2006 titled 'Neel Ratan Vs Union of India & Ors' that *'the Commission, therefore, considers the statistical position of each subject to*

find out if the valuation has been strict or liberal by the Head Examiner/Paper Setter and does statistical moderation by linear moderation wherever considered necessary’. It was argued by the counsel that the aforesaid averment when read in conjunction with the report titled “Statistical moderation of teachers assessment” commissioned by the qualifications and curriculum authority, United Kingdom and prepared by John Wilmut and Jennifer Tuson (which report was filed and particularly relied by the petitioners before the learned Tribunal), bring out that statistical moderation of marks by linear transformation is nothing but linear scaling of marks.

C That the learned Tribunal failed to appreciate that overwhelming material was produced by the petitioners strongly suggesting that there may have been manifold irregularities in the Civil Services Examination conducted by UPSC in the years 2007-2009. Counsel argued that faced with such a situation, it was incumbent upon the Tribunal to direct UPSC to produce the answer-sheets of the petitioners pertaining to Main Examination and redress the doubts raised by the petitioners regarding the sanctity of the said examination(s). In said regards, particular emphasis was laid down by the counsel on the averments extracted by us in para 6 above.

D That the petitions raising similar issues as involved in the present petitions have been admitted for hearing by a co-ordinate Bench of this Court. It was argued by the learned counsel that judicial propriety and discipline demand that this Court should not proceed to adjudicate upon the present petitions till the pronouncement of decision in such other petitions.

12. Whether the petitioners are right in contending that the method of moderation of marks applied by UPSC in evaluating answer sheets of the candidates pertaining to Civil Services (Main) Examination is arbitrary and illegal and that the method of scaling of marks applied by UPSC was held to be arbitrary and illegal by Supreme Court in Sanjay Singh's case (supra)?

13. The issue pertaining to legality of method of moderation of marks in evaluating answer sheets pertaining to Civil Services (Main) Examination was examined by Gujarat High Court in the decision reported as Kamlesh Haribhai Goradia Vs Union of India & Anr (1987) 1 GLR 157. In the said case, the marks of the petitioner therein were substantially reduced in several subjects in Civil Services (Main) Examination due to method of moderation of marks applied by UPSC. The method of moderation of marks applied in evaluation of Civil Services (Main) Examination was explained by UPSC in the following terms:-

“As a constitutional functionary, the Commission is aware of its responsibilities and have devised its own procedure regarding the conduct of examination and finalisation of marks/results to ensure that in a competitive examination no injustice is done to a candidate or a group of candidates due to the subjectivity involved in the examination of answer books. It is submitted that the process of moderation is an integral part of the finalisation of marks/results of an examination when a large number of examiners are involved to bring about uniformity of assessment inter se the examiners. It is in the context that the phrase "marks finally awarded to each candidate" occurring in Rule 15 reproduced above is to be read. The U.P.S.C. follows a well established procedure of moderation which has stood the test of time. The system of moderation can be shown to be in vogue since 1949 in the case of I.A.S. etc. examination and also for the Civil Services

Examination which is a successor to the I.A.S. etc. examination) held since 1979. The system of moderation forms part of the internal functioning of the Commission which is treated as 'secret' and it would not be in public interest to disclose the details of the same.

In this connection it is submitted that the 'Committee on Recruitment Policy and Selection Method' set up under the Chairmanship of Dr. D.S. Kothari, an eminent educationist, on whose recommendations the present scheme of Civil Services Examination was based, had observed, "We have elsewhere pointed out that an examination, however carefully organised, suffers inevitably from what is termed 'examination variability'. The marks may be markedly different-specially when the answer books, because of their large number, are distributed amongst several examiners". It was to overcome this subjectivity in the valuation and to ensure that the candidates do not suffer or gain due to the strictness or liberality of the examiners in evaluation of scripts, that the system of 'Moderation' has been evolved by the Commission. The system has been studied and found by the learned Single Judge to be 'beneficial to the candidates and will remove some arbitrariness, if there is any, of different examiners....

(c) The number of candidates taking the Civil Services (Main) Examination is around 10,000 and as each candidate is required to take 8 papers, the number of scripts for valuation is around 80,000. There are subjects where a very few candidates, sometimes, even one, take the examination while there are subjects which are offered by more than 4,000/- candidates. While for the subjects where the number is around 300, the paper-setter himself values all the answer scripts; in the subjects which the number is more than this, it become necessary to appoint additional examiners in addition to the paper setter who acts as a Head Examiner for valuation of answer books within the schedule time. The subjectivity involved in valuation of conventional papers has been established by research and therefore it becomes necessary to take steps to ensure uniformity inter se the examiners where more than one examiner is involved in valuation of

the particular paper/subject. Further, in a competitive situation where a common merit list is to be prepared and the candidates have the option of selection of subjects from a variety of heterogeneous subjects and particularly so when the number of candidates widely varies it also becomes necessary to ensure reasonable degree of uniformity inter se the subjects as well. The problem of uniformity of standards becomes more complex when viewed in the background that the candidates have, in addition, the option of answering the papers in any one of the sixteen specified languages.

In some of the examinations conducted by the Commission, the number of candidates appearing is so large that the Commission have to appoint even up to one hundred examiners in a subject and therefore, it becomes incumbent on the part of the Commission to devise a system of moderation to ensure that the candidates do not suffer because of the subjectivity of the examiners concerned. The Commission have devised the moderation procedure detailed below with due regard to constraints of time and other relevant factors to ensure equitable treatment to all candidates and to judge them on merits by reducing the "examination variability" to the extent possible.

(d) The paper-setter of the subject normally acts as the Head Examiner for the subject and is selected from amongst senior academicians or scholars or senior civil servants (in case of General Studies papers only) by the Commission. In the case of subjects involving a large number of candidates, normally more than 350, the Commission appoint additional examiners to value the answer books. Each of them is allotted about 250-300 answer books for valuation. The Head Examiner values the answer books in English medium and such other language medium/ media in which he has proficiency. So far as the remaining answer books are concerned, to the extent feasible, for their valuation, the Commission appoint bilingual examiners, i.e. those who are proficient in English and one or more of the Indian languages.

(e) To achieve uniformity in valuation, where more than one examiner is involved, the Commission arrange for a meeting of the Head Examiner with his additional examiners soon after the examination is over. At this stage, they discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussion. The sample valuation of scripts is reviewed by the Head Examiner and variations in marking, if any are further discussed. After the discussion is over and the standard has been decided upon, the examiners disperse and complete the valuation of answer books according to a given schedule. The additional examiners are requested to adopt the same standard of marking in the case of answer books written in an Indian language as they adopt in the case of valuation of answer books in the English medium.

(f) Experience of the Commission over the years has shown that the above exercise is not enough to bring about uniformity of assessment inter se the examiners since in the process of valuation, the examiners tend to deviate from the standard expected to be followed. The Commission, therefore, apply further checks.

(g) After the valuation is completed by the additional examiner, the Head Examiner conducts a random sample survey of answer books to verify, if the norms of procedure evolved in the meetings of examiners have actually been followed by the additional examiners. The process of random sampling consists of scrutiny of some top level answer books and some answer books selected at random from the batches of answer books valued by the additional examiners. The top level answer books of each additional examiner are revalued by the Head Examiner who carries out such corrections or alterations in the awards as he in his judgment, considers best, to achieve uniformity. The marks in language medium answer books are checked by the Head Examiner through interpreters wherever necessary. As an aid to his work and to help in forming his judgment about the standard of marking of each examiner, the Commission prepare certain

statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest awards etc. in respect of the valuation of each examiner.

(h) It may be relevant to mentioned that the Head Examiner for each paper is not aware of the identity of any of the candidates whose scripts he values, as they bear fictitious roll numbers.

(i) Depending upon the standard adopted by the additional examiner, the Head Examiner may confirm the awards without any change if the examiner has followed the instructions correctly and the standard decided upon, or suggest upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In the case of the top level answer books revalued by the Head Examiner, his awards are accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner and as accepted by the Commission. If in the opinion of the Head Examiner there has been erratic marking by an additional examiner, for which it is not feasible to have statistical moderation, the scripts of the additional examiner are revalued by the Head Examiner or by another additional examiner whose norms of marking are similar to that of the Head Examiner.

14. After carefully noting the method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination, the Court found the said method to be perfectly legal and valid. The relevant discussion contained in the said decision is being reproduced herein below:-

“We are afraid that it can hardly be contended that where number of candidates appearing at the Civil Services (Main) Examination is increasing every year and was as large as about 10,000 in the main examination with which we are concerned in this

petition, where again each candidate has to appear in eight subjects with as many as 46 optional subjects and having option to answer General Studies and non-language optional subject in any of the regional languages specified in the VIIIth Schedule to the Constitution, the moderation is not necessary. The Commission was perfectly justified in urging that in a competitive examination with 46 different optional subjects it is not only necessary to ensure reasonable degrees of uniformity inter se the examiners but also inter se subjects. It does not require much of imagination that in an examination where there are number of examiners in a subject there is bound to be what is known as "Examination Variability". This situation, therefore, necessitates the moderation to ensure reasonable degree of uniformity inter se the examiners. Similarly, in order to curtail this Examination Variability arising as a result of number of optional subjects being allowed and they being permitted to be answered in as many as 14 regional languages, the Commission is under an obligation to have the moderation for purposes of achieving uniformity inter se subjects. If there is no moderation in such situations, a candidate may not be able to compete with the other candidates on account of fortuitous circumstance of his Paper-Setter or Examiner being conservative or liberal. The Commission, having regard to the statistical position of each subject finds that the valuation has been strict or liberal by the Head Examiner or Paper-setter and does statistical moderation by linear transformation, wherever necessary....." (Emphasis Supplied)

15. Relevant would it be to note that while discussing the merits/de-merits of method of moderation of marks it was observed by the Court that method of scaling of marks is also a suitable method for achieving a common standard of assessment of marks and that UPSC should consider applying the said method in evaluating answer-sheets of candidates of Civil Services Examination in future.

16. In the year 2006, legality of method of moderation of marks applied by UPSC in evaluation of answer sheets of candidates of Civil Services (Main) Examination was challenged in this Court by way of filing a writ petition bearing No.1271/2006 titled 'Neel Ratan v Union of India & Ors' under Articles 226 and 227 of Constitution of India.(At this juncture, it may be remembered that the affidavit of UPSC filed in this Court, on which great reliance was placed by the petitioners in the present case and relevant extract whereof has been noted in para 9 above, was filed in the said case.) Vide judgment dated 16.03.2006 a learned Single Judge of this Court dismissed the aforesaid petition in the following terms:-

“7. The wisdom and method of Moderation must be left to the experts concerned. So far as this Petition is concerned, I do not find any scope to conclude that the marks obtained by the Petitioner were deliberately downgraded in order to favour some third parties; or to displace him from the order of merit....”

17. Aggrieved by the judgment dated 16.03.2006 passed by a learned Single Judge of this Court in W.P. (Civil) No.1271/2006, a Letters Patent Appeal was filed before a Division Bench of this Court, which appeal was dismissed vide order dated 21.04.2006.

18. In the decision reported as U.P. Public Service Commission Vs. Subhash Chandra Dixit (2003) 12 SCC 701 Uttar Pradesh Public Service Commission (herein after referred to as “UPPSC”) conducted various competitive examinations and applied a system of scaling of marks awarded by the examiners who evaluated the answer sheets in the said examinations. Some of the candidates, who could not secure selection in the said examinations assailed the examination

system adopted by UPPSC mainly on the ground that the introduction of method of scaling of marks was arbitrary and illegal by filing writ petitions under Articles 226 and 227 of Constitution of India before Allahabad High Court, which petitions were allowed. Aggrieved by the aforesaid judgment of the Allahabad High Court, UPPSC filed a Petition for Special Leave under Article 136 of Constitution of India before Supreme Court.

19. While dealing with the legality of the method of scaling of marks applied by UPPSC in the evaluation of answer sheets of the candidates in examinations in question, the Supreme Court touched upon the method of moderation of marks applied by UPSC for achieving common standards of assessment in evaluation of answer sheets of candidates in Civil Services (Main) Examination. In said regards, the relevant portion of the said judgment reads as under:-

“28. U.P.PSC in its special leave petition as well as the rejoinder-affidavit filed before us has stated in detail as to how the scaling system was applied and the circumstances which necessitated the adoption of such a formula. At the outset, we must say that the scaling system, which was adopted by U.P. PSC was not similar to the scaling system adopted by the Union Public Service Commission. The system adopted by UPSC was challenged by certain candidates in a writ petition before the High Court of Gujarat. The Division Bench of the Gujarat High Court considered the question in detail in *Kamlesh Haribhai Goradia v. Union of India*⁵ and held that the process of moderation was necessary to find out the merit of the candidates *inter se* and the marks cannot be awarded till such uniformity is achieved in the matter of assessment of the performance of the candidates at the examination. It, therefore, cannot be said that there is any deviation so that the Commission would not have any authority or power

to moderate the valuation of the performance of the candidates at the written examination.” (Emphasis Supplied)

20. After carefully noting the method of scaling of marks applied by UPPSC in evaluating the answer-sheets of the candidates pertaining to examinations in question, the Court found the said method to be perfectly legal and valid. The relevant discussion contained in the said decision is being reproduced herein below:-

“31. There is a vast percentage difference in awarding of marks between each set of examiners and this was sought to be minimized by applying the scaling formula. If scaling method had not been used, only those candidates whose answer-sheets were examined by liberal examiners alone would get selected and the candidates whose answer-sheets were examined by strict examiners would be completely excluded, though the standard of their answers may be to some extent similar. The scaling system was adopted with a view to eliminate the inconsistency in the marking standards of the examiners. The counsel for the respondents could not demonstrate that the adoption of scaling system has in any way caused injustice to any meritorious candidate. If any candidate had secured higher marks in the written examination, even by applying the scaling formula, he would still be benefited.

32. The Division Bench of the High Court observed that the process of scaling was done examinerwise only and the scaling formula did not take into consideration the average of mean of all the candidates in one particular paper but took the mean of only that group of candidates which has been examined by one single examiner. The counsel for U.P. PSC submitted that the observation made by the High Court is incorrect. The scaling formula was adopted to remove the disparity in the evaluation of 14 examiners who participated in the evaluation of answer-sheets and the details have also been

furnished as to how the scaling formula was adopted and applied. Therefore, we do not think that the observation of the Division Bench that the Commission did not take care of varying standards which may have been applied by different examiners but has sought to reduce the variation of the marks awarded by the same examiner to different candidates whose answer-sheets had been examined, is correct. The Division Bench was of the view that as a result of scaling, the marks of the candidates who had secured zero marks were enhanced to 18 and this was illegal and thus affected the selection process. This finding is to be understood to mean as to how the scaling system was applied. 18 marks were given notionally to a candidate who secured zero marks so as to indicate the variation in marks secured by the candidates and to fix the mean marks.

33. In that view of the matter, we do not think that the application of scaling formula to the examinations in question was either arbitrary or illegal. The selection of the candidates was done in a better way. Moreover, this formula was adopted by U.P. PSC after an expert study and in such matters, the court cannot sit in judgment and interfere with the same unless it is proved that it was an arbitrary and unreasonable exercise of power and the selection itself was done contrary to the Rules. Ultimately, the agency conducting the examination has to consider as to which method should be preferred and adopted having regard to the myriad situations that may arise before them."

21. In the decision reported as Sanjay Singh Vs U.P. Public Service Commission (2007) 3 SCC 720 petitions under Article 32 of Constitution of India were filed before Supreme Court by the unsuccessful candidates who appeared in the examinations conducted by Uttar Pradesh Public Service Commission (herein after referred to as the "UPPSC") in the year 2003 for recruitment to the posts of Civil Judge (Junior Division). The said examination comprised of two successive stages; namely, Preliminary Examination and Main

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Examination. The preliminary examination was 'objective type' consisting of two papers; namely, General Knowledge and Law. The Main Examination was descriptive (conventional) type and consisted of five papers. The answer sheets relating to each subject were distributed to several examiners for evaluation, as it was not possible to get the large number of answer sheets by a single examiner. The marks assigned by the examiners were subjected to 'statistical scaling' and the results of the Examination were based on such scaled marks. On behalf of the petitioners, amongst others grounds, it was contended that conversion of their raw marks into scaled marks is illegal as the same was done by applying an arbitrary, irrational and inappropriate scaling formula. It was further submitted that the method of scaling of marks applied by UPPSC has resulted in meritorious candidates being ignored, and less meritorious candidates being awarded higher marks and selected, thereby violating the fundamental rights of the meritorious candidates. On behalf of UPPSC, it was contended that the 'statistical scaling' method adopted in regard to Civil Judge (Junior Division) Examination is legal, scientific and sound and is based on experts' opinion as also the experience gained in conducting several examinations.

22. While dealing with the legality of the method of scaling of marks applied by UPPSC in the evaluation of answer sheets of the candidates in Civil Judge (Junior Division) Examination, a three-Judge Bench of the Supreme Court touched upon the method of moderation of marks used in similar types of examinations for achieving common standards of assessment in evaluation of answer sheets of candidates in said examinations. In said regards, the relevant portion of the said judgment reads as under:-

“23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer-scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiners evaluate the answer-scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer-scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer-scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is “hawk-dove” effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to different examiners, there is all likelihood of different marks being assigned. If a very well-written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is “reduced valuation” by a strict examiner and “enhanced valuation” by a liberal examiner. This is known as “examiner variability” or “hawk-dove effect”. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of “examiner subjectivity” or “examiner variability” is minimized. The procedure adopted to reduce examiner

subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/judges. Where the case is of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer-scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer-scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answer-scripts and some answer books selected at random from the batches of answer-scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such

corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks, etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer-scripts valued by such examiner are revalued either by the Head Examiner or any other examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the examiners. In such a situation, one more level of examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of “moderation” would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are

several examiners and the effort is only to achieve maximum uniformity. (Emphasis Supplied)

23. The differences between the methods applied by UPPSC and UPSC in evaluating answer-sheets of candidates pertaining to Civil Judge (Junior Division) Examination and Civil Services (Main) Examination was pointed out by Supreme Court in following terms:-

“26. The Union Public Service Commission (“UPSC”, for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in Civil Service Preliminary Examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer-scripts are evaluated by computerised scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer-scripts of descriptive/ conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them.”

24. After carefully noting the method of scaling of marks applied by UPPSC in evaluating the answer-sheets of the candidates pertaining to Civil Judge (Junior Division) Examination it was held by Supreme Court that the said method is arbitrary and illegal and that the decision of Supreme Court in Subhash Chandra Dixit's case (supra) was incorrect. In said regards, the relevant portion of the

discussion contained in the said decision is being reproduced herein under:-

“24. In the Judicial Service Examination, the candidates were required to take the examination in respect of all the five subjects and the candidates did not have any option in regard to the subjects. In such a situation, moderation appears to be an ideal solution. But there are examinations which have a competitive situation where candidates have the option of selecting one or few among a variety of heterogeneous subjects and the number of students taking different options also vary and it becomes necessary to prepare a common merit list in respect of such candidates. Let us assume that some candidates take Mathematics as an optional subject and some take English as the optional subject. It is well recognised that marks of 70 out of 100 in Mathematics do not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate an outstanding student whereas in Mathematics, 70 out of 100 may merely indicate an average student. Some optional subjects may be very easy, when compared to others, resulting in wide disparity in the marks secured by equally capable students. In such a situation, candidates who have opted for the easier subjects may steal an advantage over those who opted for difficult subjects. There is another possibility. The paper-setters in regard to some optional subjects may set questions which are comparatively easier to answer when compared to some paper-setters in other subjects who set tougher questions which are difficult to answer. This may happen when for example, in Civil Service Examination, where Physics and Chemistry are optional papers, Examiner ‘A’ sets a paper in Physics appropriate to degree level and Examiner ‘B’ sets a paper in Chemistry appropriate for matriculate level. In view of these peculiarities, there is a need to bring the assessment or valuation to a common scale so that the inter se merit of candidates who have opted for different subjects, can be ascertained. The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts

is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalised equipercentile method are some of the recognised methods for scaling.

25. A. Edwin Harper Jr. and V. Vidya Sagar Misra in their publication *Research on Examinations in India* have tried to explain and define scaling. We may usefully borrow the same. A degree "Fahrenheit" is different from a degree "Centigrade". Though both express temperature in degrees, the "degree" is different for the two scales. What is 40 degrees in Centigrade scale is 104 degrees in Fahrenheit scale. Similarly, when marks are assigned to answer-scripts in different papers, say by Examiner 'A' in Geometry and Examiner 'B' in History, the meaning or value of the "marks" is different. Scaling is the process which brings the marks awarded by Examiner 'A' in regard to Geometry scale and the marks awarded by Examiner 'B' in regard to History scale, to a common scale. Scaling is the exercise of putting the marks which are the results of different scales adopted in different subjects by different examiners onto a common scale so as to permit comparison of inter se merit. By this exercise, the raw marks awarded by the examiner in different subjects are converted to a "score" on a common scale by applying a statistical formula. The "raw marks" when converted to a common scale are known as the "scaled marks". Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognised method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination.

45. We may now summarise the position regarding scaling thus:

(i) Only certain situations warrant adoption of scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer-scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer-scripts sent to every other examiner.

(iv) In the linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the “hawk-dove” effect (strict/liberal valuation).

46. The material placed does not disclose that the Commission or its expert committee have kept these factors in view in determining the system of scaling. We have already demonstrated the anomalies/absurdities arising from the scaling system used. The Commission will have to identify a suitable system of evaluation, if necessary by appointing another committee of experts. Till such new system is in place, the Commission may follow the moderation system set out in para 23 above with appropriate modifications.

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48. *S.C. Dixit¹*, therefore, upheld scaling on two conclusions, namely, (i) that the scaling formula was adopted by the Commission after an expert study and in such matters, the Court will not interfere unless it is proved to be arbitrary and unreasonable; and (ii) the scaling system adopted by the Commission eliminated the inconsistency arising on account of examiner variability (differences due to evaluation by strict examiners and liberal examiners). As scaling was a recognised method to bring raw marks in different subjects to a common scale and as the Commission submitted that they introduced scaling after a scientific study by experts, this Court apparently did not want to interfere. This Court was also being conscious that any new method, when introduced, required corrections and adjustments from time to time and should not be rejected at the threshold as unworkable. But we have found after an examination of the manner in which scaling system has been introduced and the effect thereof on the present examination, that the system is not suitable. We have also concluded that there was no proper or adequate study before introduction of scaling and the scaling system which is primarily intended for preparing a common merit list in regard to candidates who take examinations in different optional subjects, has been inappropriately and mechanically applied to a situation where the need is to eliminate examiner variability on account of strict/liberal valuation. We have found that the scaling system adopted by the Commission leads to irrational results, and does not offer a solution for examiner variability arising from strict/liberal examiners. Therefore, it can be said that neither of the two assumptions made in *S.C. Dixit¹* can validly continue to apply to the type of examination with which we are concerned. We are therefore of the view that the approval of the scaling system in *S.C. Dixit¹* is no longer valid.

49. Learned counsel for the Commission contended that scaling has been accepted as a standard method of evaluation in the following decisions and therefore it should be approved:

(i) Kamlesh Haribhai Goradia v. Union of India⁶ upheld by this Court by order dated 11-3-1987 in SLP (C) No. 14000 of 1986.

(ii) Mahesh Kumar Khandelwal v. State of Rajasthan⁷ upheld by this Court by order dated 22-1-1996 in SLPs (C) Nos. 15682-84 of 1994.

(iii) K. Channegowda v. Karnataka Public Service Commission⁸.

All the three cases related to moderation and not scaling. There are, however, passing references to scaling as one of the methods to achieve common standard of assessment. The fact that scaling is a standard method of assessment, when a common base has to be found for comparative assessment of candidates taking examinations in different optional subjects, is not in dispute. In fact the Commission may continue to adopt the said system of scaling, where a comparative assessment is to be made of candidates having option to take different subjects. The question is whether scaling, in particular, linear standard scaling system as adopted by the Commission, is a suitable process to eliminate “examiner variability” when different examiners assess the answer-scripts relating to the same subject. None of the three decisions is of any assistance to approve the use of method of “scaling” used by the Commission.” (Emphasis Supplied)

25. After dealing with the method of scaling of marks applied by UPPSC in evaluating answer-sheets of the candidates pertaining to Civil Judge (Junior Division) Examination, Supreme Court observed as under:-

“52. The petitioners have requested that their petitions should be treated as being in public interest and the entire selection process in regard to Civil Judge (Junior Division) Examination, 2003 should be set aside. We are unable to accept the said contention. What has been made out is certain inherent defects of a particular scaling system when applied to the selection process of the Civil Judges (Junior Division) where the problem is one of examiner variability (strict/liberal examiners).

Neither mala fides nor any other irregularities in the process of selection are made out. The Commission has acted bona fide in proceeding with the selection and neither the High Court nor the State Government had any grievance in regard to selections. In fact, the scaling system applied had the seal of approval of this Court in regard to the previous selection in *S.C. Dixit*¹. The selected candidates have also been appointed and functioning as Judicial Officers. Further as noticed above, the scaling system adopted by the Commission has led to irrational and arbitrary results only in cases falling at the ends of the spectrum, and by and large did not affect the major portion of the selection. We, therefore, direct that our decision holding that the scaling system adopted by the Commission is unsuited in regard to Civil Judge (Junior Division) Examination and directing moderation, will be prospective in its application and will not affect the selections and appointments already made in pursuance of the 2003 examination.” (Emphasis Supplied)

26. From a cumulative reading of the aforesaid decisions, the factual/legal position which emerges can be summarized as under:-

I Moderation and scaling of marks are two different techniques used by examining authorities for achieving common standard of assessment of marks.

II UPSC does not apply the method of scaling of marks in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination and confines the application of the said method in evaluation of answer-sheets of the candidates pertaining to Civil Services (Preliminary) Examination.

III The method of moderation of marks propounded by Supreme Court in *Sanjay Singh*'s case (supra) is similar to the

one applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination.

IV The method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination has been approved by a learned Single Judge and a Division Bench of this Court.

V The method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination has been approved by a Division Bench of Gujarat High Court in Kamlesh Haribhai's case (supra), which decision has been impliedly approved by Supreme Court in Subhash Chandra's case (supra) and that the said aspect of Subhash Chandra's case has not been overruled in Sanjay Singh's case (supra).

VI The application of method of scaling of marks was held to be arbitrary and illegal by Supreme Court in Sanjay Singh's case only in respect of Civil Judge (Junior Division) Examination conducted by UPPSC. No opinion was expressed by Supreme Court regarding the legality of method of scaling of marks applied by UPSC in evaluating answer-sheets of the candidates pertaining to Civil Services (Preliminary) Examination.

27. In the backdrop of the aforesaid factual/legal position, we proceed to deal with the submissions advanced by the learned counsel for the petitioner(s).

28. With respect to the first submission advanced by the learned counsel, suffice would it be to note the legal position extracted by us in sub-paras III, IV and V of para 26 above. In view of such legal position, we find no merit whatsoever in the submission advanced by the learned counsel that the method

of moderation of marks applied by UPSC in evaluating answer sheets of the candidates pertaining to Civil Services (Main) Examination is unreasonable and arbitrary and thus violative of Articles 14 and 16 of Constitution of India.

29. With respect to the second submission advanced by the learned counsel, we note that UPSC had stated on oath before Supreme Court in Sanjay Singh's case (supra) that it is not applying the method of scaling of marks in evaluating answer sheets of the candidates pertaining to Civil Services (Main) Examination. (See para 3 of the counter affidavit filed by UPSC in the said matter). A perusal of the report relied upon by the petitioners merely brings out that linear scaling of marks is one of the methods of statistical moderation and is not the same as linear scaling as alleged by the petitioners. It may be highlighted that no argument can be advanced that scaling, ipso facto, results in imperfection. Scaling as a concept has various hues for example, linear scaling and equi-percentile scaling. Each has its own indices and formula. In a given situation, the desired result may fail but only at the extremities of the spectrum (as was discovered by Supreme Court in Sanjay Singh's case (supra)). Thus, without showing to the court the scaling formula applied and indices used by teachers in UK to achieve common standards of assessment of marks, the deficiency found in applying scaling in UK cannot be a ground to question moderation, applying linear scaling by UPSC.

30. The matter can also be looked at from another angle. In Kamlesh Haribhai's case, Gujarat High Court noted with approval that while applying method of moderation of marks in evaluating the answer sheets of the candidates pertaining to Civil Services (Main) Examination, '*the Head Examiner does*

statistical moderation of marks by linear transformation, wherever considered necessary'. As already noted hereinabove, the decision of Gujarat High Court in Kamlesh Haribhai's case (supra) has been impliedly approved by Supreme Court in Subhash Chandra's case (supra) and that the said aspect of Subhash Chandra's case has not been overruled in Sanjay Singh's case (supra).

31. With respect to third submission, we note that UPSC has been continuously conducting Civil Services Examination every year starting from 1949 to till date. The petitioners had pointed out ten incidents of detection of irregularities in Civil Services Examination conducted by UPSC over the past "seven decades". A few stray incidents of irregularities detected in the Civil Services Examination conducted in the past seven decades do not vitiate the sanctity of Civil Services Examination. No materials whatsoever has been placed on record by the petitioners in the present case suggesting that there were irregularities in the Civil Services Examinations conducted by UPSC in the year 2007-2009.

32. In this regards, it is also significant to note that the petitioners averred in the applications filed by them before the Tribunal that '*lower marks of the Petitioners may be due to the manner of evaluation applied by the Respondent for evaluation of Answer-Books of Main's Examination*'. The aforesaid averment contained in the applications in question brings out the allegations made by the petitioners against UPSC in respect of manner of conduct of Civil Services Examination and method of evaluation of answer-sheets of the candidates are based on surmises and conjectures and that the petitioners

were throwing darts in dark with a hope that one of the darts would hit the bull's eye.

33. In dealing with fourth submission advanced by the learned counsel, we find that no question of law which arises for consideration has been set out in any petition which is pending and without recording any reasons, notice simpliciter has been issued. Since we heard arguments at length at the admission stage itself and find that the issues raised are squarely covered, we see no reason why instant petitions should not be disposed of.

34. The alternative answer to the aforesaid question lies in the decision of Supreme Court in Sanjay Singh's case (supra) wherein it was held that where an authority has acted in a bona fide manner in proceeding with the selection of the candidates for a particular post and that the appointments have been made in pursuance of said selection, any jurisdiction fault, if found, in the process of evaluation of the candidates shall require directions to be issued, to be applied in the future. The reason is simple. The affected candidates are not before the Court and in their absence, their appointments cannot be set aside.

35. Before concluding, we proceed to note a significant aspect of the present matters. It is most relevant to note that the petitioners in Writ Petitions Nos.6586, 6590, 6592 and 6602 of 2010 approached the Tribunal after a period of more than one year from the date of declaration of results in respect of Civil Services Examinations in question. Till the time the petitioners in question approached the Tribunal, the selections and appointments in pursuance of declaration of results had already been made. The petitioners in question did not implead

as respondents the persons who already stood appointed and were likely to be adversely affected by the success of the petitioners before the Tribunal. It does not stand to reason to upset the appointments made much prior to the date of filing of applications by the petitioners in question before the Tribunal. The delay in approaching the Tribunal by the petitioners in question was most fatal to the case set up by them before the Tribunal.

36. In view of above discussion, we find no merit in the above captioned petitions. The same are hereby dismissed.

37. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

OCTOBER 05, 2010
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