

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

% Judgment delivered on 19.12.2011

+ **LPA No. 71/2010**

VIKAS PAREEK ... Appellant
versus

UNION OF INDIA & ORS. .. Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Aishwarya Bhati, Adv.

For the Respondent : Mr S.B. Upadhayay, Sr. Adv. with Mr Pawan Upadhayay, Adv. for R-2
Mr V.K. Rao, Sr. Adv. with Mr Ayushya Kumar, Adv. for R-3 to 10.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

BADAR DURREZ AHMED (ORAL)

1. This appeal is directed against the judgment delivered by a learned single Judge of this court in W.P.(C) No. 6555/2007 on 19.08.2009. By virtue of the impugned judgment the petitioner's writ petition was dismissed. The petitioner was aggrieved by the fact that although he had applied for the post of Executive Trainee-XIII Batch (IT) in pursuant of an advertisement issued by the respondent No.2 dated 28.02.2007, he was not selected despite the fact that he secured more marks in the aggregate of the written test and the interview than some of the selected candidates. The main grievance of the petitioner was that he had not been selected on the ground that he had not obtained the "minimum qualifying marks" in the interview which comprised of a personal interview and group discussion. It is his case that there is no minimum qualifying mark prescribed in the advertisement

and the minimum marks of 40% of the interview which came to 6 marks out of the total of 100 marks was stipulated only after the selection process had begun and that too after the written examination had been conducted.

2. The learned counsel appearing on behalf of the appellant/petitioner submitted that the learned single Judge has gone wrong by placing reliance on clause 4 of the general information contained in the advertisement dated 28.02.2007. The said clause 4 reads as under:-

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

The learned counsel for the appellant contended that this clause does not apply at all inasmuch as it relates only to the eligibility standard prior to the start of the selection process. It has no applicability once the selection process has started. It was also submitted that the minimum marks that have been prescribed for the interview in this case cannot be equated with the question of raising the eligibility standard. In any case, she contended, it has not been urged on behalf of the respondents that because there was a very large number of applicants therefore the minimum percentage has been prescribed for the interview. Consequently, she submitted that the impugned judgment ought to be set aside and the petitioner's prayer ought to be allowed in view of the decisions of the Supreme Court in the cases of **K. Manjusree v. State of Andhra Pradesh & Anr. (2008) 3 S.C.C. 512**, **Hemani Malhotra v. High Court of Delhi: (2008) 7 S.C.C. 11** and **Ramesh Kumar v. High Court of Delhi & Anr. (2010) 3 S.C.C. 104**.

3. On the other hand the learned counsel appearing on behalf of the respondent

No.2 (Power Grid Corporation of India Limited) submitted that in the Supreme Court decision in the case of **Manjeet Singh, UDC & Ors. v. Employees State Insurance Corporation & Anr.** (1990) 2 S.C.C. 367, although a minimum percentage had not been prescribed for the interview, the Supreme Court permitted such a prescription following the minimum of 40% which had been prescribed for the written examination. He also referred to the Supreme Court decision in the case of **Munindra Kumar & Ors. v. Rajiv Govil & Ors.** AIR 1991 S.C. 1607, wherein, in paragraph 11 thereof it has been indicated that marks for interview and group discussion should not be kept exceeding 10% and 5% of the total marks, respectively. The learned counsel for the appellant states that this is exactly what has been done in the present case.

4. Mr Rao, appearing on behalf of the respondent Nos. 3 to 10 who are the successful candidates and who have been selected and have been working satisfactorily with respondent No.2 since 2007, submitted that whatever may be the result of the petitioner's prayer, the said respondents ought not to be disturbed in as much as they have been functioning satisfactorily for over four years.

5. We have considered the arguments advanced by the counsel for the parties and have also examined the documents on record.

6. We note that the advertisement was issued on 28.02.2007. The relevant portion of the said advertisement which pertains to the selection process is as under:-

“Selection Process

Eligible candidates will have to appear for written Test of Objective Type (OT) on 06.05.2007. The Objective Test consists of two parts, viz:

1. Part -1, Technical Knowledge Test (TKT)
2. Part-II, Executive Aptitude Test (EAT)

Short listed candidates based on the performance in the written test thereof will be called for Group Discussion and Personal Interview. The candidate will have the option to appear for written test/Group Discussion/Interview in Hindi or English. Those candidates who opt for HINDI as the medium of test shall only be provided test paper in HINDI.”

“GENERAL INFORMATION

1.	x	x	x	x	x	x	x	x	x
2.	x	x	x	x	x	x	x	x	x
3.	x	x	x	x	x	x	x	x	x

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

It is apparent from the above that there was no prescription with regard to the minimum percentage marks to be obtained by a candidate in the interview which was to consist of group discussion and personal interview.

7. The petitioner along with 1601 others had applied for the 8 posts in the general category. Only 872 persons (including the petitioner) appeared for the written examination which was held on 06.05.2007. Thereafter, an internal memo dated 18.05.2007, (annexure-C to the original writ petition), was issued within the

department. Paragraph 5.0 of the said internal memo indicated the parameters for deciding the number of candidates to be called for interview. Para 5.0 of the said internal memo dated 18.05.2007 reads as under:-

“5.0 PARAMETERS FOR DECIDING THE NUMBER OF CANDIDATES TO BE CALLED FOR INTERVIEW.”

The following points are taken into consideration while computing the number of candidates to be called for interview:-

- i) The minimum cut off marks have to be decided for General Category keeping in view the number of vacancies and the number of candidates required to be called for interview.
- ii) To call the candidates in the ratio of 1:5 i.e. 5 candidates for 1 post in all disciplines as one in the past.
- iii) A maximum relative relaxation of 25% marks over and above the cut-off marks of the last candidate in General category in respective discipline by maintaining 1:5 ration may be extended to SC/ST/OBC (NCL) category candidates vis-à-vis General category as per the prevailing practice. However, actual relaxation depends on the availability of candidates in the ratio of 1:5 in each category.
- iv) In order to maintain a minimum level of standard, even after providing for all relaxations, the cut-off percentage has not been considered below 25% marks in written examination for all categories.”

The said memo also stipulated the marking system for empanelment of candidates in paragraph 9.0 thereof. The said paragraph 9.0 reads as under:-

“MARKING SYSTEM FOR EMPANELMENT OF CANDIDATES

As per practice in the past, 85% weightage to written test and 15% weightage to interview have to be given. Out of 15% weightage to interview, 80% marks will be for Personal Interview and remaining 20% will be for Group Discussion.

Candidates with 40% minimum marks in interview and GD put together in Unreserved Category and 30% minimum marks in SC/ST/OBC (non-creamy layer)/PH categories are being proposed for empanelment.

It is in this memo dated 18.05.2007 that, for the first time, the marking system for empanelment of candidates was indicated and, more importantly, that the requirement of a minimum of 40% marks were stipulated for the personal interview and group discussion put together in the unreserved category. In other words, it is by this internal memo dated 18.05.2007 that the minimum marks for the personal interview and group discussion taken together was stipulated for the first time.

8. On 21.05.2007 the petitioner was issued an interview letter indicating that he had successfully passed the All India Written Examination held by the Power Grid Corporation of India Limited on 06.05.2007 in connection with the selection of Executive Trainees. He was also informed that, based on his performance in the written examination, he had been short listed for the next phase of the selection process i.e., group discussion and interview as per the schedule given in the said letter. The petitioner was asked to appear for the interview on 14.06.2007 at 09.00 Hrs. Even in this letter, the petitioner was not informed that a minimum of 40% marks had to be obtained by him in the personal interview and the group discussion taken together.

9. The interview and group discussion insofar as the petitioner was concerned held on 14.06.2007. In the last week of June 2007 the result of successful candidates was published on the web site of respondent No.2. The petitioner did not find his name in the said list. Subsequently, upon making an application under the Right to Information Act, 2005, the petitioner was supplied with the list of marks “written and interview” of all candidates selected finally for the post of E.T.-XIII Batch (IT)/General category and of the petitioner (Vikas Pareek). The said table of marks is as under:-

LIST OF MARKS (WRITTEN AND INTERVIEW) OF CANDIDATES SELECTED FINALLY FOR THE POST OF ET-XII BATCH (IT) IN GENERAL CATEGORY AND OF SH. VIKAS PAREEK

A SL.NO.	B NAME	C WRITTEN TEST MARKS (100%)	D WRITTEN TEST (85% weightage)	E INTERVIEW (GD+PI) (100%)	F INTERVIEW (GD+PI) (15% weightage)	D+F TOTAL MARKS (100%)
1	VIKAS PAREEK	43.52	36.99	39.5	5.925*	**
2	SUNIL KUMAR SINGH	46.85	39.82	57	8.55	48.37
3	DHIRAJ GAUR	39.26	33.37	61.5	9.225	46.85 ***
4	GAUTAM KUMAR SHRIVASTAVA	45.56	38.73	53.5	8.025	46.75
5	TARUN KUMAR MUNJAL	42.96	36.52	53	7.95	44.47
6	MANOJ KUMAR SINGH	41.30	35.11	57.5	8.625	43.73
7	ABHISHEK CHOURASIA	40.93	34.79	49	7.35	42.14
8	SACHIN KUMAR	36.11	30.69	42	6.3	40.69***
9	SHAMBHAVI PANDEY	35.56	30.23	67	10.05	40.28

* FAILED IN INTERVIEW (Qualifying Marks in GD + Interview: 6.00/15)

**Not Qualified because failed in Interview

***Total marks in respect of departmental candidates arrived at after granting additional 10% marks

Selection Methodology:

85% weightage to written test and 15% weightage to Interview (Personal Interview and Group Discussion put together).
Candidates with 40% minimum marks in Interview and GP put together in Unreserved Category are empanelled i.e. 6.00/15.

From the above table it is apparent that the petitioner obtained 39.5 % marks in the group discussion and personal interview taken together. According to the

respondent since he did not obtain the minimum stipulated marks of 40% in the interview (group discussion + personal interview taken together) therefore, he could not be selected for the said post. From the table this is also clear that if the written test marks and the interview marks are added together, the petitioner would be placed 6th in the order of merit just below Manoj Kumar Singh. The total of the written test marks and the interview marks of the petitioner comes to 42.915% (36.99 + 5.925).

10. From the above facts, it is clear that the stipulation of obtaining 40% marks in the interview (i.e., the group discussion + personal interview taken together) was only introduced after the selection process had begun and that, too, after the applicant had sat for the written examination. It is also clear that even in the interview letter that was sent to the petitioner there was no indication that there would be minimum qualifying marks for the interview (group discussion + personal interview taken together).

11. Thus, we feel that this case is clearly covered by the Supreme Court decision in **Hemani Malhotra** (*supra*) and the other decisions cited by the learned counsel for the appellant. The decision in the case of **Hemani Malhotra** (*supra*) followed the decision of the Supreme Court in the case of **K. Manjusree** (*supra*) wherein the Supreme observed as under:-

“33. The Resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum

marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

(Underlining added)

The Supreme Court after noting the aforesaid paragraph 33 in the case of **K. Manjusree** (*supra*) observed that prescribing minimum marks for viva voce was not permissible at all after the written test was conducted. The Supreme Court further observed as under:-

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

the opinion that prescription of minimum marks by the respondent at viva voce test was illegal.”

(Underlining added)

12. In paragraph 16 of **Hemani Malhotra** (*supra*), the Supreme Court had also noticed its earlier decisions in **Ashok Kumar Yadav v. State of Haryana: (1985) 4 SCC 417** and **K.H. Siraj v. High Court of Kerala: (2006) 6 SCC 395** and came to the conclusion that what was laid down in those decisions was that it was always open for an authority making the rules regulating the selection to prescribe the minimum marks both for written examination and interview. The Supreme Court further observed that the question whether introduction of the requirement of minimum marks for interview after the entire selection process was completed was valid or not, never fell for consideration of the Supreme Court in the decisions referred to, namely, **Ashok Kumar Yadav** (*supra*) and **K.H. Siraj** (*supra*). The decision of the Supreme Court in the case of **Ramesh Kumar** (*supra*) considered the question as to whether the rules enabled the High Court of Delhi to fix the minimum benchmarks for interview in respect of selection of officers for the Higher Judicial Service. After considering the case law on the subject, the Supreme Court observed as under:-

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

(Underlining added)

We find that there are no rules of the respondent No.2 prescribing a particular mode of selection. Therefore, it was open for the competent authority while laying down the norms for selection to specify the minimum benchmarks for the written test as well as for the interview. However, the law is well settled that while the competent authority could have specified the minimum benchmarks, it had to do so prior to the initiation of the selection process and that a change of criteria of selection in the midst of the selection process is not permissible. In the present case what has happened is that the minimum benchmarks for the interview has been prescribed only after the selection process was well underway and that, too, after the written examination has been conducted. Therefore, the same was contrary to law.

13. We also feel that the learned single Judge was not right in applying clause 4 of the general information of the advertisement to the facts of the present case inasmuch as it is not a case of raising of the eligibility standard but of prescribing benchmarks for the selection process itself. The two are entirely different. Raising of the eligibility standard could have meant prescription of a higher qualification or requirement of obtaining of a higher percentage marks in the qualifying degree. Clause 4 of the general information does not extend to prescribing minimum percentage marks in the selection process whether it be in a written examination or it be a case of interview.

14. We also find favour with the submissions made by respondent Nos. 3 to 10 that they have been satisfactorily working with the respondent No.2 for over four years and that they ought not to be disturbed. Keeping that at the back of our minds, we feel that the petitioner has also to be accommodated in the respondent

No.2 by the creation of a supernumerary post inasmuch as he had been kept out of the employment for no fault of his. It is ordered accordingly.

15. The appeal is allowed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

DECEMBER 19,2011
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