

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 17478/2004

Reserved on: September 30, 2011

Decision on: October 24, 2011

S K SACHDEVA & ORS.

..... Petitioners

Through: Mr. Sunil Kumar, Senior Advocate
with Mr. C. S. Yadav and
Mr. Prem Ranjan Kumar, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Mukesh Kumar and
Ms. Meenakshi Sood, Advocates for Air India.
Mr. Ashwani Bhardwaj, Advocate for UOI.

With

W.P. (C) 11247-50/2006 & CM APPL No. 8567/2006

NARESH KUMAR & ORS.

..... Petitioners

Through: Mr. Sunil Kumar, Senior Advocate
with Mr. C. S. Yadav and
Mr. Awanish Sinha, Advocates.

versus

AIR INDIA & ORS.

..... Respondents

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Mukesh Kumar and
Ms. Meenakshi Sood, Advocates
for Air India.
Mr. Vinay Navare with
Mr. Manu Beri, Advocates for
24, 37, 42, 45, 51 and 53.
Mr. Nitin S. Tambwekar with
Mr. B.S. Sai, Advocates for R-27, 32,
35, 41 and 54.
Ms. Kiran Bhardwaj, Advocate for
R-4, 6, 9, 10, 11, 16, 17, 18, 19, 20,
21, 22, 23, 25, 29, 30, 33, 34, 36, 38,
40, 43, 44, 49 and 50.
Mr. D.K. Thakur with Mr. Alok
Rai, Advocates for impleader.

And

W.P. (C) 733/2007

ANAND PANDE & ORS.

..... Petitioners

Through: Mr. Sunil Kumar, Senior Advocate

with Mr. C.S. Yadav and
Mr. Awanish Sinha, Advocates.

versus

AIR INDIA & ORS.

..... Respondents

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Mukesh Kumar with
Ms. Meenakshi Sood, Advocates
for Air India.
Mr. Nitin S. Tambwekar with Mr. B.
S. Rai, Advocates for R-27, 32, 35,
41 and 54.
Mr. Vinay Navare with Mr. Manu
Beri, Advocates for 24, 37, 42, 45,
51 and 53.
Ms. Kiran Bhardwaj, Advocate for
R-4, 6, 9, 10, 11, 16, 17, 19, 21, 22,
23, 25, 29, 30, 31, 33, 34, 40, 43, 44 and 50.

CORAM: JUSTICE S. MURALIDHAR

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|---|-----|
| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
24.10.2011

1. These three writ petitions challenge the appointments made by Respondent No. 1, Air India Limited ('AIL'), to the post of Assistant Manager (Security) from amongst its serving permanent employees of the Security Department pursuant to a Staff Notice dated 2nd May 2003.

Factual background

2. On 26th July 2002, the AIL invited applications from the permanent employees of Security Department for filling up vacancies in, as well as maintain a wait list for, the post of Assistant Manager (Security). The eligibility criteria was that the applicant had to be a graduate in the category of Officer-Security/Assistant Officer-Security with a minimum of ten years of experience in the Security Department of AIL or possess a post-graduate qualification with a minimum of five years of experience in the Security Department of AIL. The procedure for selection was that all eligible candidates were to be called for a written test. Those qualifying in the written test would be required to

appear in a group discussion/ interview. Based on the performance in the written test and group discussion/personal interview, a selection list of suitable candidates would be prepared for appointment to the post of Assistant Manager (Security).

3. Although there were roll numbers issued for the written examination to some of those who applied pursuant to the Staff Notice dated 26th July 2002, it is not clear whether any written examination was in fact held pursuant thereto. Nevertheless, another Staff Notice dated 2nd May 2003 was issued by AIL again inviting applications for the post of Assistant Manager (Security). Those who had applied pursuant to the earlier notice dated 26th July 2002 were required to apply afresh. Both Staff Notices dated 26th July 2002 and 2nd May 2003 stated that reservations as per the Presidential Directive would be applicable in respect of SC/ST/OBC in the percentage of SC -15%, ST-7½ % and OBC-27%.

4. The eligible serving employees, including the Petitioners, who applied pursuant to the aforementioned Staff Notices, were issued roll numbers for the written examination together with an 'Information Handout'. In terms of the Information Handout, the written test was to comprise of three papers:

- | | | |
|------|-------------------------------|-------------------------|
| I. | Professional Knowledge | : 75 marks |
| II. | English language | : Only qualifying marks |
| III. | Reasoning & Numerical Ability | : 50 marks |

5. The candidates were to be given a composite time of two hours to answer all the three papers. The Information Handout stated that for Papers I and III minimum pass marks were required to be obtained, and for Paper II (English) only qualifying marks were required. No minimum qualifying marks for Papers I and III were indicated. On 6th May 2003 the maximum marks for Paper III was changed to 25 marks for 25 questions. Subsequently, unknown to the Petitioners, and after they had taken the written test, an overall qualifying mark and a weightage system was prescribed by AIL. As will be discussed hereafter, this fact emerged much later when the Petitioners sought information under the Right to Information Act, 2005 ('RTI Act').

6. The Petitioners state that although the written test was held on 29th June 2003, the results were not declared thereafter. On 8th July 2003, a representation was made by

some of the Petitioners to the AIL pointing out that in terms of the Office Memos ('OM') dated 8th September and 22nd October 1993 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training ('DOPT'), Government of India ('GOI'), reservations for OBC category would be applicable only in the case of direct recruitment and not in promotion. Further, the candidates in the OBC category had to establish that they did not belong to the creamy layer as envisaged in the judgment of the Supreme Court in *Indra Sawhney v. Union of India AIR 1993 SC 477*. A further representation to the same effect was made on 9th September 2003. By its reply dated 19th September 2003, the AIL stated that the selection to the grade of Assistant Manager (Security) was a special exercise and not a promotion exercise. It was further stated that if a candidate did not have the OBC certificate in the proper format, she/he would be treated as a General category candidate.

7. The Petitioners state that a Staff Notice dated 8th December 2003 was issued by the AIL again inviting applications from the permanent staff "to prepare a wait list for the post of Assistant Manager" stating that the exercise was being undertaken "as per para 8 of promotion policy" issued on 8th May 1996. Further, the letters written to the successful candidates stated that the candidates had been promoted as Assistant Managers in the Security Department. One such sample letter dated 19th September 2003 has been placed on record.

8. W. P. (C) No. 17478 of 2004 filed in this Court on 3rd November 2004 by Mr. S.K. Sachdeva and another is on the limited issue of 27% reservation being provided for OBCs in the promotional post of Assistant Manager (Security). The petition prays for a writ of mandamus to the AIL to consider the Petitioners on par with three candidates who were promoted purportedly under the OBC quota. On 8th November 2004 while directing notice to issue in W.P. (C) No. 17478 of 2004, this Court directed that the promotions/appointments made would be subject to the decision in the writ petition.

9. W. P. (C) No. 11247-50 of 2006 by Naresh Kumar and three others and W. P. (C) No. 733 of 2007 by Anand Pande and eleven others raise more or less common grounds of challenge to the procedure for selection of Respondent Nos. 4 to 54 in both petitions for promotion as Assistant Manager (Security). W. P. (C) No. 11247-50 of

2006 seeks the quashing of the impugned seniority list of the newly promoted Assistant Managers (Security) released by AIL on 25th July 2005 which showed the names of Respondents 4 to 54. They were stated to have been promoted as such with effect from 1st October 2004. The prayer in W.P. (C) No. 733 of 2007 is the same but is by certain other employees who obtained further relevant information under the RTI Act. The grounds of challenge are that the procedure disclosed at the time of issuance of the Staff Notice and Information Handout was not followed by AIL. Moreover, the excessive weightage of 70% given to group discussion and interview rendered the procedure arbitrary and irrational.

10. Counter affidavits have been filed by AIL as well as the private Respondents. Additional affidavits have been filed by the Petitioners placing on record information obtained by them through the RTI Act. Pursuant to the deliberations in Court, AIL has placed charts which will be discussed hereafter. The parties also filed their respective written submissions after the conclusion of arguments.

Submission of counsel

11. Mr. Sunil Kumar, learned Senior counsel with Mr. C.S. Yadav and Mr. Awanish Sinha, learned counsel appearing for the Petitioners submitted as under:

(a) There ought to have been no reservation, much less 27%, for the OBC category since the post of Assistant Manager (Security) was a promotional post. In any event the creamy layer of the OBC had to be excluded from the benefit of such reservation. AIL's subsequent clarification that no benefit of reservation was extended to any OBC candidate contradicted the Staff Notices and the orders granting promotion issued pursuant thereto.

(b) The Information Handout clearly stated that only those candidates who qualified in the written test would be called for the group discussion and interview. However, after the conclusion of the written test, the AIL did not declare the result and called all the candidates who appeared in the written test for the group discussion and the interview. Consequently even those who failed in Paper II (English), failed in Paper III (Reasoning and Numerical Ability) or those who failed to secure the overall qualifying marks in the written test were called for group discussion and interview.

(c) The Information Handout stated that only qualifying marks in English were required thereby implying that those marks would not be taken into account while compiling the results of the written test. Yet, the marks obtained in the English test were also included in the overall marks in the written test;

(d) No weightage of marks for the written test, group discussion and interview was indicated in the Information Handout. Yet, subsequently, a weightage of 20% for the group discussion and 50% for the interview and only 30% for the written test was introduced for the first time after the conclusion of the written test. This was impermissible in law and rendered the exercise illegal. Reliance was placed on several decisions of the Supreme Court in *Munindra Kumar v. Rajiv Govil* (1991) 3 SCC 368, *Vikram Singh v. Subordinate Services Selection Board, Haryana* (1991) 1 SCC 686, *K. Manjushree v. State of Andhra Pradesh* 2008 (3) SCC 512, *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417, *Mohinder Sain Garg v. State of Punjab* (1991) 1 SCC 662, and *Madhukar Bakru Pinga v. Rajendra D. Gaikwad* (1995) 6 SCC 42.

(e) Notwithstanding the above, the excessive weightage to the interview and group discussion gave an unfettered discretion to the interview panel constituted by the AIL and was a prescription for arbitrariness. There was no rational basis for the skewed weightage for the interview and group discussion which was twice the weightage for the written test. This resulted in candidates who had scored low marks in the written test being selected and promoted as Assistant Manager (Security) on the basis of their purported better performance in the group discussion and interview. This completely defeated the object of not only having a written test but making it a qualifying test for the group discussion and interview.

(e) Respondents 4 to 54 who had been promoted by means of an arbitrary and illegal procedure could not plead equities particularly since their promotions were subject to the result of these petitions.

12. Mr. Sandeep Sethi, learned Senior counsel appearing for the AIL first submitted

that the writ petitions were barred by laches. W.P. (C) No. 11247-50 of 2006 was filed on 15th July 2006 and W.P. (C) No. 733 of 2007 was filed on 24th January 2007 whereas the written test pursuant to the Staff Notice dated 2nd May 2003 was held on 29th June 2003 and the seniority list was published on 25th July 2005. Secondly, the filling up the posts of Assistant Manager (Security) was not a purely promotional exercise but a “promotion by selection.” The mention of reservation in the Staff Notices was by inadvertence and no benefit of such reservation was in fact given to a selected OBC candidate. Thirdly, it was submitted that since in the first place no qualifying mark for the written test was indicated in the Staff Notices dated 26th July 2002 and 2nd May 2003, it was decided by the management to call all the candidates who appeared in the written test for the group discussion and interview. There was nothing illegal in introducing a qualifying mark subsequently; since the vacancies were limited some method of filtering had to be introduced. Fourthly, the Petitioners had no vested right to promotion but only a right to be considered for promotion if they qualified in the selection. The Petitioners having participated in the written test, group discussion and interview, were estopped from challenging the legality of the procedure subsequently. It was denied that the allocation of 70% marks for group discussion and interview was arbitrary, unreasonable or violative of Article 14 of the Constitution.

13. Mr. Vinay Navare, learned counsel appearing for Respondent Nos. 24, 37, 42, 45, 51 and 53, Mr. Nitin S. Tambwekar, learned counsel appearing for Respondent Nos. 27, 32, 35, 41 and 54 and Ms. Kiran Bhardwaj, learned counsel appearing for the remaining Respondents also submitted that the writ petitions were barred by laches. They contended that not all of them were promoted as a result of the selection exercise undertaken by the AIL pursuant to the Staff Notices dated 26th July 2002 and 2nd May 2003. Many of them were in fact selected and promoted as a result of the Staff Notice dated 8th December 2003 through a different channel of ‘Corporate Examination’ since they did not possess the qualification of MBA. Their promotion was as such not challenged by the Petitioners. A few of them had even been further promoted as Deputy Managers (Security), which was again not challenged by the Petitioners. It was pointed out by these private Respondents that the Petitioners were on the one hand contending that the written test should be the qualifying test and on the other questioning the weightage of 70% for the group discussion and interview. If indeed

the written test was a qualifying test then it would have 100% weightage and since thereafter the group test and interview would have 100% weightage. Some of the Petitioners herein had joined in the filing of an earlier writ petition in the Bombay High Court seeking declaration of the results and could not be permitted to file repeated writ petitions in different courts. Reliance was placed on the decisions of the Supreme Court in *Lila Dhar v. State of Rajasthan (1981) 4 SCC 159*, *P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152*, *Indian Airlines Corporation v. Capt. K.C. Shukla (1993) 1 SCC 17*, and *Ghulam Rasool Lone v. State of Jammu & Kashmir (2009) 15 SCC 321*.

Laches

14. The first issue to be considered is whether the writ petitions are barred by laches. W.P. (C) No. 17478 of 2004 was filed at a stage when the results had not been declared. AIL replied to the Petitioners' representations dated 8th July 2003 and 9th September 2003 only on 19th September 2003. W.P. (C) No. 17478 of 2004 was filed on 3rd November 2003. It cannot, therefore, be said that the said writ petition was barred by laches.

15. As regards W.P. (C) No. 11247-50 of 2006, to begin with the results of the written test were not declared by AIL. This prompted some of the candidates to approach the Bombay High Court. Even after the selection process was completed the results were not announced. The seniority list dated 25th July 2005 does not appear to have been circulated. The Petitioners' letters dated 6th January 2006 and 28th February 2006 elicited a reply by AIL dated 3rd April 2006 disclosing the marks obtained by the candidates in the written test, group discussion and interview. However, the information sought at items 5 and 6 of the letters dated 6th January and 28th February 2006 was not provided. This necessitated a further reminder dated 18th April 2006 to which the AIL replied on 4th May 2006. It was only through these replies that the Petitioners learnt of the impugned seniority list dated 25th July 2005 promoting Respondents 4 to 54 as Assistant Manager (Security). The Petitioners filed the writ petition on 7th July 2006 not long after the reply dated 4th May 2006. Therefore, W.P. (C) No. 11247-50 of 2006 cannot also be stated to be barred by laches.

16. As far as W. P. (C) No. 733 of 2007 is concerned, the crucial information

concerning the procedure adopted by the AIL was supplied by it to Mr. Anand Pande only on 14th July 2006 pursuant to his application under the RTI Act. This became the basis for questioning the entire selection process adopted by the AIL. Prior to this the Petitioners were not informed of the procedure that was actually followed. The writ petition was filed on 22nd January 2007. This Court is in the circumstances not persuaded to hold that this writ petition was barred by laches. The facts in ***P.S. Sadasivaswamy*** and ***Ghulam Rasool Lone*** are distinguishable and those decisions can have no application to the present cases.

17. The objection raised by counsel for the private Respondents that the affidavit in support of W.P. (C) No. 733 of 2007 by Mr. Anand Pande gave the same particulars as regards the father's name and address as the first Petitioner in W.P. (C) No. 11247-50 of 2006 has been clarified by the subsequent affidavit of Mr. Anand Pande filed on 1st August 2011 stating it to be as a result of an error in typing the affidavit and on account of inadvertence.

Reservation for OBCs

18. The Petitioners are right in their contention that there can be no reservation in promotion for OBCs after the judgment of the Supreme Court in the ***Indira Sawhney*** case. AIL has in its reply dated 4th May 2006 to the Petitioners' representation stated that the 200 point roster was followed and that a total 51 candidates were appointed, out of which 6 were SC, 2 ST and 4 OBC. It has been however been clarified by AIL subsequently that it extended the benefit of reservation in the promotions to only SC/ST candidates and "no such benefits have been extended to OBC candidates". It further stated that OBC reservation which was indicated in the Staff Notice dated 8th December 2003 was "an inadvertent error" and that "while promoting the candidates for the post of Assistant Manager, no reservation benefits were extended to the OBC candidates". Further, in the written submissions by AIL it is categorically stated as under:

"It is reiterated that the exercise undertaken pursuant to the staff notice dated 02.05.2003 was a selection exercise and accordingly in compliance of the Presidential Directives the benefit of reservation was accorded to the candidates belonging to OBC category. However, after receipt of clarifications from Department of Personnel &

Training (DOPT) Appointment Letters were issued to candidates who were selected based on the availability of vacancies without any OBC Reservations.”

19. The above explanation merits acceptance in the absence of anything contrary being shown by the Petitioners. Consequently, the challenge to the promotions on the solitary ground urged in W.P. (C) No. 17478 of 2004 should fail.

Non-disclosure of the criteria for selection

20. The main ground of challenge in these writ petitions is to the procedure followed in making the selection for promotion to the post of Assistant manager (Security). Neither the Staff Notice dated 26th July 2002 nor the Staff Notice dated 2nd May 2003 indicated what weightage was going to be given for the marks obtained in the written tests, the group discussion and the interview. In fact, AIL on 11th November 2002 wrote a letter to each of the candidates who applied pursuant to the notice dated 26th July 2002 asking them to appear in the written test. With the said letter AIL enclosed an Information Handout describing “the kinds tests of which will be given to you in the written test”. It was therein indicated as under:

“Objective tests

Test	No. of question	Marks	Time
I. Professional knowledge	50	75	Composite 2 hours (120 minutes)
II. English language	50	*	
III. Reasoning & Numerical Ability	25	50	

* Only qualifying.

All these three tests will be given in a composite booklet. You will be given a composite time of two hours to answer all the three tests. You may attempt the question/tests in any order you like. However, in your own interest you are advised not to spend too much time on any one test as minimum passing in each is required.”

21. In para 3 of the said letter it was stated: “In case, you qualify in the written test, you will have to appear for Group Discussion/Personal Interview. The date, time and venue of the same will be informed to you at the appropriate time.” By a further letter dated 14th November 2002 the AIL enclosed another Information Handout

incorporating model questions on numerical ability. For those who applied pursuant to the Staff Notice dated 2nd May 2003, a similar Information Handout was sent with the call letters for the written examination. What emerges is that the written test was to be a qualifying test for the group discussion and interview which were to follow. Secondly, the candidate had to only qualify in the English written test (Paper II). There was no minimum qualifying mark indicated for either Paper I or Paper III. There was no overall qualifying mark indicated either. Nothing was said about the weightage to be given to the written test, group discussion or the interview.

22. Through information obtained under the RTI Act it transpired that in a letter dated 6th May 2003 written by the Director (HRD) to the Director (Security) it was stated that the Institute of Banking Personnel Selection ('IBPS') would be conducting the written test for the post of Assistant Manager (Security) and the test structure would be as under:

"Sl. No.	Test	No. of items	Weightage	Total marks
1.	Professional Knowledge Security	50	1.5	75
2.	English	50	Only qualifying	-
3.	Reasoning & Numerical Ability	25	1	25

3. The method of selection would comprise of the written test/group discussion/personal interview. The merit ranking of the suitable candidates would be made separately for each grade, i.e., Officer Security, Assistant Officer, Security etc. Within each grade, the merit ranking will be based on the overall performance of the candidates. The vacancies of Assistant Manager-Security would be first filled by the suitable candidates in the order of merit ranking in the grade of Officer-Security and then by subsequent candidates in the order of merit in the grade of Assistant Officer-Security and so on."

23. This was followed by a record note dated 16th June 2003 in which it was stated as under:

"Keeping in view the threat perception and the present security scenario, it was decided that to maintain the basic necessary standards in the Security Department, the following would be the overall qualifying marks in the different categories of staff:

General	:	65 marks
OBC	:	60 marks
SC	:	55 marks
ST	:	50 marks”

24. Thereafter, the written test was conducted on 29th June 2003. However, for some reason, the candidates who took the written tests were not informed of the above ‘overall qualifying’ marks prior to the tests. Also, as will be noticed presently, after the written tests were completed, AIL decided to depart from the procedure outlined in the Information Handout according to which only those who qualified in the written test were to be called for group discussion and interview. The above criterion was not complied with and all the candidates who had failed in the written test were also called for the group discussion and interview.

25. A note dated 8th September 2003 was written by the Recruitment Section, AIL to the Director, HRD in which it was stated as under:

“Sub: Selection for the post of Assistant Manager (Security)”

A staff notice No. SCZ/02-17/365 dated 2nd May 2003 was issued by the Security Department for the staff candidates for the post of Assistant Manager (Security).

2. In response to the Staff Notice, a written test was conducted on June 29, 2003 at Mumbai, Delhi, Kolkatta, Chennai and Cochin, simultaneously. A total of 163 staff appeared for the written test.

3. Subsequently, in the discussions with the Security Department, it was decided that all the candidates who appeared for the written test will be called for Group Discussion and Personal Interview, and the selection will be done on the basis of considering the marks of the written test, group discussion and personal interview together.

4. It is suggested that the following weightage of marks should be considered for deciding the total marks obtained by the candidate and to prepare a consolidated merit list as per procedure enumerated in letter No. DHRD:80:270 dated May 06, 2003 (copy enclosed):-

Written Test	:	30%
Group discussion	:	20%
Personal Interview:		50%

5. The cut-off marks of wait-listing for the suitable candidates will be on the below mentioned percentage in totality:

General	:	40%
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OBC	:	35%
SC/ST	:	30%

6. The Group Discussion and the Personal Interview are scheduled to be held from September 13-30, 2003 at Trivandrum, Delhi and Mumbai.

7. Submitted for approval, please.”

26. It is significant that the above documents were disclosed only in response to applications made by the Petitioners under the RTI Act. These documents show that the idea of having an ‘overall qualifying’ mark was thought of only after the Staff Notice dated May 2, 2003 was issued and in any event that was not disclosed to the candidates prior to the written test or even thereafter. Secondly, the said ‘overall qualifying mark’ which had initially been fixed on 16th June 2003 as 65%, 60%, 55% and 50% marks for the General, OBC, SC and ST was re-named in the note dated 8th September 2003 as ‘cut-off’ marks and reduced to 40%, 35% and 30% for General, OBC and SC/ST. A weightage for the written test, group discussion and interview was introduced for the first time by the note dated 8th September 2003. It is possible that the group discussions and interviews were perhaps held even prior to the above note of 8th September 2003. It is indeed inexplicable how the criteria kept changing from time to time without the candidates being told of it.

27. Further, interestingly, in response to a question as to the guidelines/parameters for distribution/allocation of marks during personal interview, the AIL by its letter dated 14th July 2006 disclosed for the first time that:

“The candidates were assessed in the personal interview on the following parameters with the distribution of marks as given below:

Academics	:	20 marks
Experience	:	15 marks
Aviation awareness	:	15 marks
Job knowledge	:	10 marks
General knowledge	:	10 marks
Skill/aptitude	:	10 marks
Personality	:	10 marks
Proficiency in Hindi	:	5 marks
Achievements	:	5 marks
Total marks	:	100 marks”

28. The failure on the part of the AIL to disclose the criteria for selection at the

beginning of the exercise rendered the entire exercise arbitrary and violative of Article 14 of the Constitution. In several decisions of the Supreme Court, some of which will be discussed hereafter, it has been held that the criteria including cut-off marks, minimum qualifying marks and relative weightage to the written test and interview ought to be disclosed at the start of the selection process and not introduced midway.

29. In *K. Manjusree v. State of Andhra Pradesh (2008) 3 SCC 512*, the exercise of selection by way of direct recruitment for the posts of District and Sessions Judges (Grade II) in Andhra Pradesh was challenged. The Administrative Committee (AC) of the High Court resolved to conduct written examination for 75 marks and interview for 25 marks. However, after the two tests were conducted a composite list was made which had marks for the written examination out of 100 and for the interview out of 25. This skewed the prescribed ratio from 3:1 to 4:1 between written examination and the interview. Therefore, a sub-committee was appointed to resolve the matter. This sub-committee did two things; one, it decided to scale down the marks for written examination, and two, prescribe a minimum percentage for passing the interview. The minimum percentage for passing the written examination was 50% for open category, 40% for Backward Classes and 35% for SC and ST, but not for the interview. The second list contained 5 out of 10 candidates recommended in the first list and 5 got eliminated as they had failed to secure the minimum marks now prescribed for the interview. K. Manjusree was one such candidate and challenged the introduction of the requirement of minimum marks in the interview after the entire selection process was completed. The Supreme held the scaling down to be proper, but struck down the introduction of the requirement for minimum marks in the interview. It explained as under: (SCC @ 526-527)

“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.”

The Court directed that the merit list be redrawn without applying any minimum marks for the interview.

30. In *Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11*, the procedure for recruitment to the Delhi Higher Judicial Service was challenged principally on the ground that a minimum qualifying mark for the interview could not have been introduced after the written exam was held. In that case, the selection process comprised of two stages: a written examination for 250 marks, followed by interview. The advertisement disclosed the minimum qualifying marks in the written examination as 55% for general candidates and 50% for Scheduled Caste and Scheduled Tribe candidates. There was no cut off mark for the interview at that stage. The interviews were postponed on six occasions. Before they were finally conducted, a cut off mark for the interview was introduced. The Supreme Court held this to be illegal and observed as under: (SCC @ 17)

“if minimum marks are not prescribed for vive-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 vive-voce, test was illegal.”

31. In *Durga Charan Misra v. State of Orissa (1987) 4 SCC 646* the Supreme Court disapproved of the action of the State Public Service Commission in prescribing a minimum cut off mark for interview contrary to the rules which contemplated totaling the written and viva voce marks. In *Ramesh Kumar v. High Court of Delhi (2010) 3 SCC 104* the prescription of minimum cut off marks for the interview contrary to the recommendations of the Justice Shetty Commission Report, and in the absence of any statutory rule, was held to be illegal. In *Barot Vijaykumar Balakrishna v. Modh Vinaykumar Dasarathlal (2011) 7 SCC 308* the Supreme Court was dealing with a challenge to the appointment of assistant Public Prosecutors in Gujarat. The minimum cut-off marks for the interview was not indicated in the advertisement but was informed to the candidates prior to their appearing in the interview. It was observed (SCC @ 319):

“Though the Rules framed under Article 309 of the Constitution governing the selection process mandated that there would be minimum qualifying marks each for the written test and the oral interview, the cut-off mark for viva voce was not specified in the advertisement. In view of the omission, there were only two courses open. One, to carry on with the selection process and to complete it without fixing any cut-off mark for the viva voce and to prepare the select list on the basis of the aggregate of marks obtained by the candidates in the written test and the viva voce. That

would have been clearly wrong and in violation of the statutory rule governing the selection. The other course was to fix the cut-off mark for the viva voce and to notify the candidates called for interview about it.”

It was held that since the latter course was adopted, the selection procedure was legal.

32. Turning to the case on hand, at no stage through the entire selection process were the candidates informed of the overall qualifying mark or cut-off mark. They were not informed of the relative weightage to the written test, group discussion and interview, and definitely not prior to any of those stages. There was no statutory rule that prescribed such cut off marks or weightage either. Further, the only criteria disclosed in the advertisement, viz., that clearing the written test was a qualification for appearing in the group discussion and interview was also abandoned, without any notice to the candidates. To recall the observations of the Supreme Court in **K. Manjusree** changing the rules of the game “after the game has been played and the results of the game were being awaited” was both “unacceptable and impermissible.” Since the written test results were never declared, there was no way a candidate would have known that everyone who sat for the written test was being called for the interview and group discussion. In **P. Mohanan Pillai v. State of Kerala (2007) 9 SCC 497** a policy decision was taken to call three times the number of candidates for interview. However, after the written test, four times the number of candidates were called for the interview. The Supreme Court held that “the zone of consideration” cannot be enlarged but for “good and sufficient reasons”. In the present case, no such reason has been shown for deciding to call everyone who sat for the written test for interview. The illegality was not apparent and emerged only much later when the details were disclosed in bits and pieces by AIL in response to applications under the RTI Act. Consequently, on account of the failure of AIL to disclose to the candidates the criteria for selection either at the beginning or during the exercise, and abandoning from the disclosed criteria without notice to the candidates, this Court holds that the exercise undertaken by the AIL for filling up the vacancies in promotional post of Assistant Manager (Security) was illegal, arbitrary and violative of Article 14 of the Constitution.

Weightage given to the written test, group discussion and interview

33. The giving of weightage to written test and interview has been the bone of contention in matters of selections both to academic institutions as well as
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employment under the state. In the present case, to begin with, in the Staff Notices dated 26th July 2002 and 2nd May 2003 there was no indication of there being any weightage for the written test, group discussion and interview. This was introduced through an internal note of AIL dated 8th September 2003 and never disclosed till much after the selections were made. The weightage was 70% for the group discussion and interview and 30% for the written test. This was indeed a departure from the initial criteria whereby the written test was given 100% weightage since it was made a qualifying test. A similar criteria for the post of Security Assistant Grade II in the Rajya Sabha was upheld by this Court in *Mahesh Kumar v. Union of India* (151) 2008 DLT 353 and affirmed by the Division Bench by judgment dated 12th March 2009 in LPA No. 346 of 2008 with the same cause title. However, in the instant case that criteria was given up for no apparent reason. As a result those who did well in the written test were eliminated if they did not do exceptionally well in the group discussion and interview. The Petitioners have placed on record details culled out from the information provided by AIL regarding the marks secured by the candidates at different stages of the selection process. Thus eight candidates who failed in English were still called for interview. Fifteen who failed in Paper III (Reasoning and Numerical Ability) were called for interview. Four who did not qualify in the written test in terms of the overall qualifying marks as per the Record Note of 16th June 2003 were also called. Eleven candidates benefited by the marks in Paper II (English) being included whereas it was not meant to be. All this goes to show that the results could get completely distorted by changing the criteria after the selection process has begun. Further, if a disproportionate weightage is given to interview and group discussion in comparison with the written test, distortions in the results are bound to occur.

34. In *Lila Dhar v. State of Rajasthan* (1981) 4 SCC 159 the Court refused to interfere with the selection process for the post of Munsif by the Rajasthan Public Service Commission where the weightage given to interview was 25% of the total marks. The Court drew a distinction between college admissions and recruitment especially of mature persons. While stressing the importance of interview in a selection process, it held that “there cannot be a rule of thumb regarding the precise weight to be given”.

35. The selection for 61 posts in Haryana Civil Service (Executive) and Allied Services was challenged in *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417. 200 out of a total of 900 marks for general candidates, and out of a total of 600 marks for ex-servicemen, were allocated for viva voce. This was challenged as being excessive, introducing an irredeemable element of arbitrariness in the selection process so as to offend Articles 14 and 16 of the Constitution. Justice Bhagwati (as he then was) speaking for a four Judge Bench observed as under: (SCC @ 452-453)

“the viva voce test tended to become a determining factor in the selection process, because even if a candidate secured the highest marks in the written examination, he could be easily knocked out of the race by awarding him the lowest marks in the viva voce test and correspondingly, a candidate who obtained a the lowest marks in the written examination could be raised to the top most position in the merit list by an inordinately high marking in the viva voce test. It is therefore obvious that the allocation of such a high percentage of marks as 33.3 per cent opens the door wide for arbitrariness, and in order to diminish, if not eliminate the risk of arbitrariness, this percentage need to be reduced. But while considering what percentage of marks may legitimately be allocated for the viva voce test without incurring the reproach of arbitrariness it must be remembered that ex-service officers would ordinarily be middle aged persons of mature personality and it would be hard on them at that age to go through a long written examination involving 8 subjects and hence it would not be unfair to require them to go through a shorter written examination in only 5 subjects and submit to a viva voce test carrying a higher percentage of marks than that might be prescribed in case of younger candidates. The personalities of these ex-service officers being fully mature and developed, it would not be difficult to arrive at a fair assessment of their merits on the basis of searching and incisive viva voce test and therefore in their case, the viva voce test may be accorded relatively greater weight. But in any event the marks allocated for the viva voce test cannot be as high as 33.3 per cent.

28. The position is no different when we examine the question in regard to the percentage of marks allocated for the viva voce test in case of persons belonging to the general category.”

36. The Court thus concluded, “(w)e must therefore regard the allocation of 22.2 per cent of the total marks for the viva voce test as infecting the selection process with the vice of arbitrariness.” It held a percentage of 12.2% for general candidates and 25% for ex-servicemen who were “middle aged persons with personalities fully developed” to be proper. The Court further observed as under: (SCC @ 452)

“There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the

service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts.”

37. The selection of Excise and Taxation Inspectors was challenged in ***Mohinder Sain Garg v. State of Punjab (1991) 1 SCC 662*** on, *inter alia*, the ground that 25% marks for interview gave excessive and arbitrary powers to the Selection Committee. Following the decision in ***Ashok Kumar Yadav***, the Supreme Court held as under: (SCC @ 683)

“we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the present cases at 25% of the total marks is arbitrary and excessive. There could be no gain saying that viva voce test cannot be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview.”

38. The Court reached the same conclusion in ***Vikram Singh v. Subordinate Services Selection Board (1991) 1 SCC 686*** where it struck down 28.5 per cent marks for viva voce and held a maximum of 12.2% to be the permissible limit for viva voce marks. ***Mohinder Sain Garg*** has in turn been followed in ***Munindra Kumar v. Rajiv Goel (1991) 3 SCC 368*** where three unsuccessful candidates challenged the selection procedure for Assistant Engineers for the UP State Electricity Board after its completion alleging arbitrariness in grant of marks in group discussion and interview coupled with the fact that 80 out of 200 marks were allocated for the group discussion and interview. The Supreme Court, dealing with the question as to what percentage of marks was reasonable to be allocated for group discussion and interview in a selection process, held that 15 per cent marks can be kept for interview. However, if there was a provision for group discussion also, then marks for interview and group discussion should not exceed 10 and 5 per cent, respectively.

39. In ***Ashok alias Somanna Gowda v. State of Karnataka AIR 1992 SC 80*** the recruitment of Asst. Engineers (Civil) and (Mech.) for the Public Works Department was in question. The KSCS (Direct Recruitment by Selection) Rules, 1973 provided for 33.3% weightage for viva voce. The Appellants were unsuccessful candidates who

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challenged the Rules on the ground that the percentage of marks for viva voce was excessive and in violation of the decisions of the Court. After a perusal of the marks awarded to selected candidates, the Court concluded, “it is clear that a large number of candidates have been selected though they had secured much lesser marks than the appellants in the qualifying examination but had secured very high marks in the viva voce”. However, the Court noted that this was in accordance with the Rules and was a practice consistently being followed for 17 years. Also, the matter was being decided after five years and the selected candidates had already joined their duties. In spite of this, the Court allowed the appeal and directed appointment of the Appellants. It held 15% of the total marks to be the proper percent. In ***Madhukar Bakru Pingal v. Rajendra D. Gaikwad (1995) 6 SCC 42***, the Supreme Court once again reduced the percentage of marks allocated for interview from 50% to 15%.

40. In ***Indian Airlines Corporation***, which was relied upon by Mr. Navare, the Supreme Court upheld a promotional exercise undertaken by the Appellants where interviews had 50% weightage and reversed the decision of the Delhi High Court reducing the marks required to 12.2%. However in the facts of the case, the promotions were governed by Promotion and Recruitment Rules which were duly followed. The Supreme Court held: “So long as the rules are not violative either of the regulations or the Act or arbitrary the courts will have little jurisdiction to interfere with it. Since in this case promotion or selection to the post of Deputy Operations Manager is governed by Rules they appear to be valid and do not suffer from any infirmity.” (SCC @ 21) This is certainly not the case in the present petitions.

41. In ***Praveen Singh v. State of Punjab (2000) 8 SCC 633*** certain unsuccessful candidates for the post of Block Development and Panchayat Officer appealed against the order of dismissal of the Punjab and Haryana High Court holding that there was no infraction of law. The Appellants contended violation of Articles 14 and 16 of the Constitution and were aggrieved by the non-consideration of the marks secured by the candidates in the written examination while determining the overall merit of the candidates. The selection procedure was governed by the Punjab Development and Panchayat Class II (Service) Rules, 1974. The qualifying standard in the test was 33% pass marks in each paper and 45% in the aggregate. The Appellants contended that there was a dual requirement, namely, written test as also the viva voce test and the

marks obtained in both ought to have formed part of the process of determining the merit and the Public Service Commission had no authority or jurisdiction to effect the selection solely on the basis of the performance of the candidates at the viva voce examination. The Court observed as under (SCC @ 639-640):

“Though interview undoubtedly is a significant factor in the matter of appointment. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings". A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In *Ashok Kumar's case* this Court however in no uncertain terms observed: There can therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact tests the man himself and is therefore regarded as an important tool along with the *written examination* [emphasis supplied].”

The Court set aside the decision of the High Court and ordered “reconsideration of the entire process...with due reliance on the written as well as viva voce test”.

42. In the present case, it is demonstrable that the allocation of 70% weightage to the group discussion and interview has distorted the results of the selection process undertaken by the AIL for filling up the vacancies for the post of Assistant Manager (Security). An unfettered discretion was given to the interview board in awarding marks in the interview and group discussion and this inevitably rendered the entire selection process vulnerable to the charge of arbitrariness. Also, there is no rational explanation given by AIL for allocating 70% weightage to interview and group discussion and 30% to the written test. This Court has not been shown an instance where the Court has upheld a weightage for interview which was twice that for the written test. This is independent of the requirement in law, which has not been met in the present case that such weightage cannot be determined during the selection process but in advance and must be disclosed to the candidate.

43. The submission that the Petitioners cannot, after going through the selection process challenge it when unsuccessful, cannot be accepted for the simple reason that the Petitioners had no occasion to suspect that the disclosed criteria for selection was

being changed and a new criteria introduced after the selection process had commenced.

Working out the consequences

44. The next issue to be addressed is the consequences as a result of this Court's decision that the entire selection process for promotion to the post of Assistant Manager (Security) pursuant to the Staff Notice dated 2nd May 2003 was arbitrary and violative of Article 14 of the Constitution.

45. This Court would at this stage like to clarify that the promotions which have resulted through the Corporate Selection that took place consequent upon the Staff Notice dated 8th December 2003 have not been challenged by the Petitioners. Such of those private Respondents who have been promoted as Assistant Manager (Security) pursuant to the Staff Notice dated 8th December 2003 would therefore not be disturbed by the following directions. If any of them have been further promoted as Deputy Managers (Security) that too would remain unaffected. In other words, the ensuing directions apply to only those who were selected and promoted as Assistant Manager (Security) pursuant to the Staff Notice dated 2nd May 2003.

46. The ensuing directions also account for the concerns expressed by some of those who have during the pendency of these petitions been further promoted as Deputy Manager (Security). They and the private Respondents were made aware by the order of this Court dated 17th July 2006 that their promotions were subject to the outcome of W. P. (C) No. 17478 of 2004. At the same time the Petitioners who succeeded in showing that the entire selection process was arbitrary and violative of Article 14 of the Constitution cannot be denied consequential relief.

47. During the course of the hearing, this Court required the AIL to prepare a chart to indicate the position that would have prevailed if 70% weightage was not given to the marks obtained by all the candidates in the group discussion and interview. The chart thus prepared by the AIL showed that the total marks for the written test were 100, for group discussion 150, and for the interview 300. This therefore continued to reflect the disproportionate weightage to the latter two stages when compared with the first.

Consequently, AIL was asked to prepare another chart on the basis of 50% weightage for the written test and 50% for the group discussion and interview. In the written submissions AIL has itself pointed out that as a result many more candidates are found 'suitable' whereas two of the selected candidates are in fact rendered 'unsuitable'.

48. Going by the Supreme Court decisions discussed earlier even a 50% weightage for interview and group discussion appears high. However, what should be the appropriate weightage, below 50%, for group discussion and interview put together and above 50% for the written test, is a decision that AIL will have to take on reviewing the entire selection process. That is the first exercise that AIL will have to undertake as far as the present petitions are concerned. Thereafter, AIL will have to recast the list of selected candidates for promotion to the post of Assistant Manager (Security) applying the re-determined weightage. Thirdly, AIL will issue consequential orders granting promotions to those found suitable, from the same date from which Respondents 4 to 54 were so promoted, i.e., 1st October 2004 and reverting those not found suitable for such promotion. However, none of the persons so promoted will be entitled to any arrears of pay. The promotion from that date would however count for seniority and continuity of service. Likewise, the reversions if any that might result will not entail the reverted employee having to refund the salary received in the promotional post of Assistant Manager (Security) or Deputy Manager (Security) as the case may be. This order will not affect the right of any employee to be considered for merit promotion (as distinguished from promotion by selection) to the post of Assistant Manager (Security) or any higher post.

Conclusions and directions

49. For the aforementioned reasons, this Court directs that AIL will, within a period of twelve weeks from today, comply with the directions issued in para 48 of this judgment. AIL will, within four weeks from today, pay through respective counsel for the Petitioners, Rs. 5,000 as costs in W.P. (C) Nos. 11247-50 of 2006 and Rs. 5,000 as costs in W.P. (C) No. 733 of 2007.

50. W.P. (C) No. 17478 of 2004 is accordingly dismissed and W.P. (C) Nos. 11247-

50 of 2006 and W.P. (C) No. 733 of 2007 along with pending applications are disposed of in the above terms.

OCTOBER 24, 2011
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S. MURALIDHAR, J.