

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

Date of decision: 29th November, 2011.

+ **LPA 839/2011**

% **RAJYA SABHA SECRETARIAT & ORS. Petitioners**

Through: Mr. J.P. Sengh, Sr. Adv. with Ms.
Zubeda Begum, Ms. Sana Ansari &
Ms. Ankita Gupta, Adv.

Versus

SUBHASH BALODA & ORS. Respondents

Through: Ms. Jyoti Singh, Sr. Adv. with Mr.
Amandeep Joshi & Ms. Tinu Bajwa,
Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The question which has arisen for adjudication is, when,

- (a) the advertisement inviting applications for recruitment prescribes personal interview of 25 marks and requires the candidates to secure minimum qualifying marks of 50%, 45% and 40% for General Category, OBC and SC/ST category

candidates respectively therein;

- (b) the advertisement, in “desirable” qualifications, provides for “ ‘C’ certificate in NCC or sportsmen of distinction who have represented a State or the Country at the National or International level or who have represented a University in recognized inter-university tournament” and “certificate in computer course recognized by AICTE/DOEACC or courses equivalent to ‘O’ Level in terms of syllabus and duration of course as prescribed by DOEACC”;
- (c) subsequently in response to an RTI query, it is disclosed that the 25 marks in the interview were distributed as under:-

(i)	Dress Manners and Appearance	6 marks
(ii)	Behaviour in communication (whether Courteous and disciplined)	6 marks
(iii)	General Awareness and knowledge of Duties involved in security service	6 marks
(iv)	NCC & Sports	5 marks
(v)	Certificate in Computer Operations	2 marks
	Total	25 marks

(d) the counsel for the appellants admits that the 5 marks for NCC/Sports and 2 marks for certificate in Computer Operations were not even allocated by the Interview Board but were allocated to all those candidates who produced the documents of participating in NCC/Sports and/or the certificate in Computer Operations,

whether the 50% (or 45% or 40% as the case may be) eligibility marks in the personal interview are to be counted out of the entire 25 marks or only out of the 18 marks which the Interview Board was to and did allocate and excluding the marks for NCC/Sports and/or Certificate in Computer Operations, with allocation whereof the Interview Board was not concerned and which were allocated at clerical level to whosoever produced the requisite documents.

2. The learned Single Judge in the judgment impugned before us has held that the eligibility marks of 50% in personal interview have to be computed out of 18 marks only and not out of 25 marks and has given the following reasons therefor:-

“He points out that in the evaluation sheets given to the interviewers for assessing different trades/skills of the candidate, there were only three columns. The first was: “Dress Manners and Appearance (six marks)”; the second was: “Behaviour and Communication (whether courteous and disciplined) (six marks)” and the third was: “General Awareness and Knowledge of Duties involved in Security Services (six Marks)”. Each of the candidate was evaluated by the interview board only against the above three criteria which carried a total of eighteen marks. The personal interview, therefore, covered only the above three parameters. Seven marks out of the twenty-five marks in the interview comprised of five marks for NCC/Sports Certificates and two marks for Computer Operations. For allocating these seven marks, the interview was of no relevance. Admittedly, the candidates had to simply produce the certificates which would be checked by a clerk outside where the interview was held and marks allocated accordingly. Consequently, the actual interview component itself was reduced from twenty-five to eighteen marks.

As rightly pointed out by Mr. Saini, this was meant to be an exercise for the qualification of candidates and not their elimination. The allocation of seven marks for certificates resulted in ‘elimination’ of those candidates who despite having scored the minimum qualifying marks in the actual interview were unable to make the cut. Even if marks were to be given for the certificates, they ought to have been in ‘addition’ to the qualifying marks in the interview and not meant to eliminate those who had otherwise qualified in the interview. This was not envisaged by the Lok Sabha Rules, the Rajya Sabha

Order or the advertisement.

The action of the Respondents in applying the criteria of minimum qualifying percentage to twenty-five marks and not to 18 marks which related to the actual interview and that too without disclosing this change either in the advertisement or to the candidates before the interview is arbitrary and violative of Article 14 of the Constitution. It has resulted in the unfair elimination of those Petitioners who have scored the minimum qualifying percentage (50% for General category, 45% OBC and 40% SC/ST) in both the written test as well as in the actual interview.”

3. We had issued notice and admitted the appeal for hearing being of the view that when 5 marks and 2 marks respectively are prescribed for NCC/Sports and/or Certificate in Computer Operations respectively, it was not necessary that each candidate who produces the documents of participation in NCC/Sports and/or Certificate in Computer Operations would be entitled to 5 & 2 marks prescribed therefor. It was believed by us that mere participation in NCC/Sports and/or undergoing a course in Computer Operations would not entitle a candidate to the maximum marks of 5 & 2 respectively prescribed therefor and it was for the Interview Board to assess the proficiency and extent of participation of the candidate in the respective fields and the marks to be allocated therefor may vary from zero

to five in case of NCC/sports and zero to two in case of certificate in Computer Operations. It was felt that the said judgment/evaluation of proficiency/extent of participation was possible in the interview only. However during the hearing the senior counsel for the appellants on instructions has stated that it was not so in the selection process to the post of Security Assistant, Grade-II in the Lok Sabha and Rajya Sabha Secretariat with which the writ petition/this appeal was/is concerned. The senior counsel for the appellants confirms that the marks for NCC/Sports and for Certificate in Computer Operations were allocated to whosoever produced documents in that regard. That being the position, we are of the opinion that the learned Single Judge was correct and justified in reaching the conclusion that the marks prescribed for NCC/Sports and for Certificate in Computer Operations could not be considered while computing the 50% (or 45% or 40% as the case may be) eligibility in the interview. What was not part of the interview conducted by the Interview Board could not form part of the marks allocated to those interviewed.

4. The senior counsel for the appellants has contended –
- (i) that the respondents / writ petitioners having participated in the selection process could not challenge the process thereof after failing to succeed therein;
 - (ii) that the matter was fully covered by the judgment dated 12th March, 2009 in LPA No.346/2008 titled ***Mahesh Kumar v. Union of India*** pertaining to the same recruitment process of the year 2006;
 - (iii) that the question was rather *res judicata*; reliance in this regard is placed on ***Forward Construction Co. v. Prabhat Mandal (Regd.)*** AIR 1986 SC 391;
 - (iv) that no challenge in the writ petition was made to the allocation of marks;
 - (v) that if the criteria were to be so changed, large number of candidates who had participated in the selection process would be affected and the respondents alone cannot be given benefit of the judgment.

5. We are not impressed with either of the aforesaid arguments. The senior counsel has been unable to show that the information as furnished to the respondents / writ petitioners in pursuance to their RTI query was available to them before they participated in the selection process. A reading of the advertisement inviting the applications shows that it was nowhere disclosed that the marks for the “desirable” qualification of NCC/Sports and/or Certificate in Computer Operations were to be part of the 25 marks allocated to the interview or that the said marks were to be clerically given to all those who produced the documents without the same being adjudged by the Interview Board. The principle sought to be invoked thus is not applicable.

6. We are unable to fathom as to how the principle of *res judicata* is invoked. The respondents / writ petitioners were admittedly not parties to the earlier litigation in ***Mahesh Kumar’s*** case.

7. As far as the binding dicta of ***Mahesh Kumar*** is concerned, the learned Single Judge has rightly held that the question as was raised before the Single Judge by the respondents / writ petitioners and had not been

raised in the case of ***Mahesh Kumar*** and the said judgment is *sub silentio* on the said aspect.

8. The judgment of the learned Single Judge clearly records that additional affidavit was filed by the respondents / writ petitioners bringing out the aforesaid challenge. The senior counsel for the appellants has also not pressed the aspect of the plea having not been pleaded.

9. There is however merit in the contention of the senior counsel that the benefit of the judgment cannot be given to the respondents / writ petitioners only as has been done by the learned Single Judge and the principle laid down of the eligibility marks for interview to be computed out of 18 marks only has to be applied across the board to all those who had participated in the selection process. The senior counsel for the respondents / writ petitioners has also not disputed the said position.

10. We therefore dismiss this appeal, however with a clarification that the principle aforesaid is not to be applied to cases where the proficiency in NCC/Sports or in Computer Operations etc. is also to be judged by the

Interview Board and where discretion is exercised by the Interview Board as to the marks to be allotted to such desirable qualifications.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

NOVEMBER 29, 2011
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