

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

Date of decision: 15th February, 2012

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LPA 502/2011

MADHU KUKRETI

....Appellant

Through: Mr. Harish Pandey, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ravinder Agarwal, Adv. for R-1.
Mr. Chetan Sharma, Sr. Adv. with
Ms. Madhu Sweta & Ms. Shreya
Verma, Adv.
Mr. Naushad Alam & Mr. Jitendra
Bharti, Adv. for R-3.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court Appeal impugns the judgment dated 11th March, 2011 dismissing W.P.(C) No. 4723/2008 preferred by the appellant. Notice of the appeal was issued and the same was admitted for hearing. The counsels have been heard.

2. The respondent no.2 Security Printing & Minting Corporation of India Ltd. (SPMCIL), a Public Sector Undertaking wholly owned by the Government of India had vide advertisement published on 29th July, 2006

invited applications *inter alia* for the three posts of Executive Assistant with the following qualification:-

“The candidate should be a Graduate from a recognized University with a shorthand speed of 100 wpm and a typing speed of 50 wpm (in computer environment). The candidate should be a multi-skilled one with analytical mind and proficient in drafting and noting.

Experience – Working experience of five years shall be required. Knowledge of Hindi Stenography and Hindi Typing will be an added qualification.”

3. The appellant applied for the said post, was called for and appeared in the objective type written test on general awareness and skill test in shorthand and typing and was thereafter called for an interview on 29th October, 2006. The appellant claims to have learnt on 8th December, 2006 that the respondent no.3 Shri Raghubir Kaintura had been given an offer of appointment to the said post. The appellant on 9th January, 2007 enquired under the Right to Information Act, 2005 about the selection process and was on 19th January, 2007 informed that five candidates had been called for interview and had scored as under:-

				Steno Skill Test (60 Marks)	Test Written (40 Marks)	Test Total (100 Marks)	Interview (20 Marks)	“Total (120 Marks)
1	Ms. Renu Bala Bhasin			48	14	62	10.60	72.60
2	Shri Kamal Kishore			34	14	48	12.00	60.00

3	Ms. Madhu Kukreti	25	11	36	07.20	43.20
4	Shri Raghubir Singh Kainturia	10	16	26	11.40	37.40
5	Shri Sunil Kumar	04	13	17	10.80	27.80

4. The appellant claims that the respondent no.2 SPMCIL thereafter with an intent to place the respondent no.3 above her reduced the weightage given to the steno skill test and written test and as a result whereof the marks of the five candidates aforesaid were worked as under:-

	Steno skill Test (20 Marks)	Written Test (20 Marks)	Interview (20 Marks)	Total (60 Marks)
1 Ms. Renu Bala Bhasin	16	7	10.60	33.60
2 Shri Kamal Kishore	11.33	7	12.00	30.33
3 Ms. Madhu Kukreti	8.33	5.5	07.20	21.03
4 Shri Raghubir Singh	3.33	8	11.40	22.73
5 Shri Sunil Kumar	1.33	6.5	10.80	18.63

5. The appellant on 2nd February, 2007 sought some further information regarding work experience and upon not receiving the same, on 16th March, 2007 complained to the Central Information Commission and whereafter the said information was furnished to her; the appellant claims that as per the said information also the work experience of all the five candidates aforesaid was more or less the same.

6. The appellant on 12th September, 2007 filed a petition under Section 19 of the Administrative Tribunals Act, 1985 impugning the selection process/appointment aforesaid. However upon the respondent no.2

SPMCIL disputing the jurisdiction of the Central Administrative Tribunal, the appellant on 27th February, 2008 withdrew the said petition. Though the appellant thereafter in April, 2008 filed the writ petition from which this appeal arises but the defects in filing thereof were cured and the writ petition got listed only on 18th July, 2008. Notice of the writ petition was issued. The respondent no.2 SPMCIL in its counter affidavit pleaded:-

- A. that in the absence of any allegations of malafide the Court could not in exercise of powers under Article 226 sit in appeal over the selection made by the respondent no.2 SPMCIL;
- B. that the selection process was uniformly applied to all the candidates and thus could not be said to be arbitrary or discriminatory;
- C. that it was not as if the selection process was changed midway in as much as it was never specified how the marks will be allocated for different stages of selection and the weightage to be given to interview in the selection process depends on the requirement of service to which recruitment is to be made;
- D. that the Executive Assistant was required to have multi-skilled ability with analytical mind and proficiency in drafting and

notings and which qualities can be analyzed and assessed only in an interview;

- E. that the appellant had scored only 7.2 marks out of 20 in the interview which was indicative of her not meeting the criteria of suitability;
- F. that the challenge in August, 2008 to the appointment made in December, 2006 was barred by laches;
- G. that the steno skill test and written test comprised of 100 marks with 60 marks being apportioned for steno skill test and 40 marks for written test but while preparing the final merit list of shortlisted candidates the marks of the steno skill test and written test moderated to 20 marks each to bring it at par with 20 marks allocated for interview;
- H. that similar criteria was also applied for the post of Executive Secretary, applications wherefor were also invited vide the same advertisement – however no such moderation was done in case of recruitment for the post of Data Entry Operator-cum-Office Assistant as only requirement for the said post was typing speed and proficiency in office applications like Word

Processing and Spread Sheet; that it was specified in the advertisement in pursuance to which the appellant had applied that mere fulfillment of the eligibility requirements will not entitle a candidate to be called for the interview;

- I. that the appellant being not amongst the first three candidates in the merit list was not offered appointment and was placed at serial no.1 in the waiting list but since the first three candidates accepted the offer for appointment the occasion for resorting to waiting list did not arise.

7. The respondent no.3 also filed a counter affidavit additionally pleading that by the time the appellant had filed the writ petition he had been confirmed to the post of Executive Assistant.

8. The Learned Single Judge dismissed the writ petition holding that, the advertisement inviting applications did not mention any process of selection or the marks to be allocated for steno skill test, written test and interview and thus it could not be said that the rules of selection had been changed midway; that the modus of selection evolved by the respondent no.2 SPMCIL cannot be said to be unreasonable; that the Court cannot substitute its own views as to what is the proper procedure for recruitment,

in preference to those formulated by the employing authority; that the post of an Executive Assistant is different from the post of a Stenographer and the advertisement inviting applications having listed the requirement of an analytical mind and proficiency in drafting and notings, was indicative the respondent no.2 SPMCIL not giving weightage to the steno skill test and written test only but to the interview during which the mind and the other skills could be tested.

9. The appellant in this appeal finds fault with the finding of the Learned Single Judge of the rules of selection having not been changed midway. It is contended that it was nowhere mentioned that such moderation would be applied. It is further contended that allocation of 33.33% marks as finally done, to the interview is contrary to law. It is also contended that the transparency and fairness has been lacking in the selection process. The counsel for the appellant during the hearing has also handed over response of the respondent no.2 SPMCIL to yet another query under the RTI Act made by the appellant in October/November, 2011 to show that the said moderation process was applied for the first time during the appointment aforesaid and had not been applied in any earlier appointments.

10. The senior counsel for the respondent no.2 SPMCIL besides supporting the judgment of the Learned Single Judge has also relied upon ***Dalpat Abasaheb Solunke v. Dr. B.S.Mahajan*** (1990) 1 SCC 305 in support of the argument that it is not the function of the Court to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of candidates.

11. Mention may be made of the fact that upon the appellant, during the course of hearing informing that there were still vacancies in the respondent no.2 SPMCIL for the post of Executive Assistant, we had asked the senior counsel for the respondent no.2 SPMCIL about the same but were informed that the said vacancies are only in the OBC category.

12. Though on first blush it does appear that with the change in the allocation of marks for steno skill test, written test and interview the rules of the game have been changed after the game has begun (and which as per ***Hemani Malhotra v. High Court of Delhi*** (2008) 7 SCC 11 is not permissible) but on closer scrutiny it is not found so. The Learned Single Judge is correct in observing that the applicants for the post were not informed, neither in the advertisement nor during the selection process, as

to what weightage was to be given to the steno skill test, written test and interview respectively. Merely because the respondent no.2 SPMCIL while holding the steno skill test and written test and in which 14 candidates had appeared, allocated 60&40 marks respectively thereto, probably for the sake of convenience, cannot be held to bind it to retain the said allocation till the end of the selection process. The Learned Single Judge is also correct in holding that as per the description and requirement of the post, the same was not merely of a Stenographer for the respondent to be required to give higher weightage to the steno skill test only and that the state of the mind and personality could be judged in the interview only.

13. We may also notice that though the appellant impugned the selection process but did not implead Ms. Renu Bala Bhasin and Shri Kamal Kishore the first two candidates in the merit list nor Shri Sunil Kumar placed at serial no.2 in the waiting list.

14. We may further notice that though the respondent no.3 had scored considerably more than the appellant in the written test but upon the moderation aforesaid being effected by the respondent no.2 SPMCIL he was also adversely affected, his marks in the written test having stood considerably reduced. It is thus found to be a mere coincidence that on such

moderation being effected the total marks scored by the respondent no.3 came to be slightly higher than those of the appellant.

15. We may at this stage also notice that though the respondent no.2 SPMCIL as well as Learned Single Judge have used the expression “moderation” but what was done by the respondent no.2 SPMCIL in changing the weightage cannot be said to be moderation as is commonly understood. What the respondent no.2 SPMCIL did was to change the weightage given to each of the three. The respondent no.2 SPMCIL having not laid down the weightage for the three tests at any time, and no malafide being found, the principle of changing the rules after the game has begun is not attracted. As far as the contention of the appellant of the respondent no.2 SPMCIL giving undue weightage to the interview is concerned though undoubtedly the Apex Court in *Ajay Hasia v. Khalid Mujib Sehravardi* 1981 SCR (2) 79 held that the weightage to the interview should not be more than 15% but subsequently in *Ashok Kumar Yadav v. State of Haryana* AIR 1987 SC 454 it was held that no hard and fast rule regarding the precise weightage to be given to viva voce test/interview as against written test can be laid down and it must vary from service to service according to requirements of service, minimum qualification

prescribed, body to which task of holding viva voce test is entrusted and a host of other factors. In *Mehmood AlamTariq v. State of Rajasthan* (1988) 3 SCC 241, interview was described as an aid to selection designed to give selectors evidence of personality and character of candidates. We are convinced with the arguments of the respondent no.2 SPMCIL that an Executive Assistant is much more than a Stenographer. In today's day and time of easy access to communications through internet and telecommunications and voice to print applications available, Stenography is a dying art. The famous Pitman's Shorthand schools which could earlier be seen in every nook and corner seem to have shut shop. In fact the present generation is more used to punching the keys of the computer/laptop themselves rather than dictating to a Stenographer. The role of an Executive Assistant which was earlier confined to handling the correspondence and thus to taking dictation, is now transformed to taking the load of mundane chores to enable the officers to whom he/she is attached to concentrate on other matters. An Executive Assistant, to be able to so take off the load from the officer, will have to be a thinking one who is something more than merely performing what he/she is told. The respondent no.2 SPMCIL while prescribing eligibility requirements appears to have emphasized on

analytical mind and multi-skilled personality for this reason only. The respondent no.2 SPMCIL and the Learned Single Judge are also correct in holding that the same could be gauged only in the interview and not otherwise. Undoubtedly the respondent no.3 fared much better than the appellant in the interview and which shows that he was found by the interview board, against whom and with respect where to there are no allegations, to be much more suitable for the job. The decision of the respondent no.2 SPMCIL to appoint a go-getter, even if not so good a steno, considering the nature of the job cannot be faulted with.

16. We are also concerned with the long delay of nearly 1 ½ year on the part of the appellant in challenging the appointment/selection. Though the appellant could not know the selection criteria earlier, but it is clear that upon receipt of the information in January, 2007, she was in a position to challenge the selection but she waited for another 1 ½ year to do the same. The enquiries made by her in the interregnum are not found to be such without which challenge could not have been made. The delay occasioned on account of wrongly approaching the Central Administrative Tribunal is again attributable to the appellant alone. The appellant thereafter also did not show any anxiety and as aforesaid got the writ petition listed after

nearly five months even after filing thereof. Considering the nature of the relief claimed in the writ petition i.e. of challenging the selection of the respondent no.3 and seeking her own appointment in his place, such delay is found to be fatal.

17. We therefore do not find any merit in the appeal and dismiss the same. However considering the status of the appellant, no order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

FEBRUARY 15, 2012

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