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

+ **W.P.(C) 4805/2011**

13th December, 2013

NAVEEN BARAK

..... Petitioner

Through Ms. Seema Salwan, Adv.

versus

THE ORIENTAL INSURANCE COMPANY LTD Respondent

Through Mr. K.K.Rai, Sr. Adv. with
Mr. Rahul Ranjan Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition the petitioner seeks the relief for being appointed to the post of Administrative Officer (Group D) post with the respondent pursuant to the selection process commenced by the advertisement dated 27.2.2010. The petitioner essentially has taken up two basic heads of pleadings in the writ petition. The first pleading is of arbitrary marking of the petitioner in the interview where the petitioner has only been given 1.5 marks out of 30 marks, which cannot be as per the petitioner because the petitioner had received 114 out of 150 marks in the first written exam paper

of reasoning; General Knowledge and English, and 20 out of 50 marks in the second written exam of descriptive paper. The petitioner, therefore, states that if he received 134 out of 200 marks in the written exam, he has been arbitrarily given a very low marking of 1.5 out of 30 marks in the interview. The petitioner in this regard further contends that in the interview, which was of just of 2-3 minutes, only academic qualifications were asked and that there was no other queries put to him. The second pleading/issue which is urged on behalf of the petitioner is that since in the advertisement the passing marks for the interview were not specified, the respondent cannot subsequently specify the minimum marks of 5 out of 30 marks for clearing the interview because it would amount to changing the rules of the game midway by introducing the new criteria which does not exist at the commencement of the selection process.

2. On behalf of the respondent, following defences are raised for seeking dismissal of the writ petition:

- (i) Out of 257 candidates which were called for the interview as many as 110 persons received only 1.5 marks and it is not as if only the petitioner has been marked 1.5 marks in the interview. This argument is buttressed by the argument and the fact that as many as

11 other persons exist who received 1.5 marks in the interview, and who had received higher marks than the total marks of the petitioner but since these 11 persons had got only 1.5 marks in the interview hence they too have not been selected. But for these 11 persons failing to get passing marks of five in the interview, they would also have been selected. It is thus argued that there is no discrimination which exists against the petitioner as alleged by him by giving him only 1.5 marks in the interview out of 30 marks.

- (ii) It is argued that there is no arbitrary action of the respondent of marking the petitioner only 1.5 out of 30 marks in the interview inasmuch as the interview Board did not comprise the employees and officers of the respondent organization but comprised of an independent Board comprising of persons who not only were not the employees of the respondent but also that such persons were high ranking officials as under:

“(a) Mr.D. Sengupta, Chairman-Retd., Chairman, Gen.Insurance Corporation of India.

(b) Mr. M.R. Sharda, Member,-Retd. General Secretary, Govt. of India.

(c)

(d) Dr. A.S. Narang, Member, Faculty of Management, Delhi University.

It is, accordingly argued that no mala fides or arbitrariness can be imputed against the selection Board which conducted the interviews of the candidates.

(iii) It is argued that there is no change of the rules of the game midway inasmuch as the rules of the game could only have been changed if there is requirement in law for fixing passing marks for the interview at the time of the advertisement. It is argued that the minimum marks for the interview can and are fixed differently for each batch of different years because of the different nature/pattern of the results which come out of the written tests. It is, however, confirmed that the minimum marks for passing an interview are fixed before commencement of the interview. It is argued that once a candidate has to appear in an interview then surely there can be fixed minimum criteria for passing in the interview because otherwise there is no purpose of calling of the candidates for being examined in the interview, especially because it is the oral test in the interview which shows how the person is faring with respect to capacity to take prompt decision, display of suitable qualities for the job, personal qualities of alertness; reasonableness; dependability and leadership

etc etc. Therefore, it is argued that there is no changing of the rules of the game midway by giving passing marks for the interview and the respondent has acted fairly in the selection process. Extensive reliance is placed by the respondent on a judgment of the learned Single Judge of the Patna High Court dated 11.08.2011 in which more or less identical issues with respect to the same selection process as raised in the present writ petition were canvassed, and that writ petition was dismissed by the judgment dated 11.08.2011 and also the appeal filed before the Division Bench against that judgment was dismissed on 08.05.2012.

3. Ordinarily I would have examined the issues argued before me in great detail, however, since I entirely agree with the reasoning given by the learned Single Judge of Patna High Court in the judgment dated 11.08.2011, instead of reproducing it in my language, I would at this stage seek to reproduce the relevant paragraphs of the judgment dated 11.08.2011, because I think I can do no better than the exhaustive discussion and reasoning given by the learned Single Judge of the Patna High Court in the judgment dated 11.08.2011. The relevant paragraphs of the judgment dated 11.08.2011 are as under:

2. In all the writ petitions, the writ Petitioner(s) were applicants for the post of Administrative Officer (for short A.O.) for which applications were invited by the Respondent Oriental Insurance Company Ltd. (for short "the Insurance Company") by advertisement/employment notice dated 27.2.2010 (Annexure-1). According to the aforesaid employment notice, minimum educational qualifications for different groups were prescribed. For the posts in question in Group-D (Code No. 4) Graduation with minimum 60% marks or 55% in Master degree for General Category from recognized University was prescribed. As per the advertisement, total number of posts including all categories was 165 out of which 44 posts was/were reserved for OBC. Petitioners claiming themselves under OBC category applied for the said post as they fulfilled educational qualification/criteria therefore. Admit Cards (Annexure-2) were issued whereafter they participated in the written test conducted on 9.5.2010. The Respondents thereafter shortlisted candidates for interview and a list of shortlisted candidates was published on 25.6.2010 (Annexure-3). They were called in for interview. The call letter is Annexure-4. Petitioners, in the light of instructions contained therein, appeared before the Interview Board armed with all certificates. They were interviewed whereafter the list of selected candidates was put up on the website of the Respondent Insurance Company on 19.8.2010. To utter surprise of the Petitioners, they did not find themselves in the select list. According to the Petitioners, they had performed extremely well at the written test and the interview yet they were not selected by the Respondent Insurance Company. Certain information thereafter was sought under Right to Information Act by the Petitioners which was/were supplied wherefrom it was revealed that for written test, 45% marks for general/O.B.C. in Paper-I and 40% marks in Paper-II of Group-D was applied as cut-off marks. Details of marks obtained by the Petitioners at the written test/descriptive test and interview are as under:-

SI. No.	Name	Roll No.	Marks obtained in objective paper (150 marks)	Marks obtained in descriptive paper (50 marks)	SI. No. of the candidate in the list of successful candidate at the written test	Interview
1	Yogesh	354169	125	20	251 246 247 248	1.5 1.5
2	Kumar					
3	Ranjeet	354130	128	32		1.5 1.5
4	Kumar Reena					
	Kumari	354132	128	20		
	Pramila					

	Kumari	354145	124	25		
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3. The Petitioners thus knocked the doors of this Court seeking quashment of the final result of the candidates for appointment to the post of Administrative Officer in Group-D for which results were published on 19.8.2010. Such challenge has been made on the ground that the selection" process was tainted with regional bias and that awarding abysmally low marks in interview was irrational which shocked the conscience of the Petitioners. They also assail the selection process on the ground that application of cutoff marks at interview would amount to changing rules of the game when it was over. Petitioners also alleged discriminatory treatment at the interview by awarding them excessively low marks in interview particularly when they had performed extremely well in the written test having secured more than 80 marks. According to the Petitioners, such discriminatory treatment meted out to them at the interview would militate against Articles [14](#) and [16](#) of the Constitution of India and is thus unsustainable in the eyes of law. Awarding of excessively low marks at the interview has also been challenged on the ground that persons constituting the interview panel/Board was suffering from regional bias against the applicants who hailed from State of Bihar. Award of abysmally low marks to them was an artifice to show them exit-door.

..... I have considered the rival submissions made by the parties and perused the pleadings made in the writ petition, the counter affidavit and reply/rejoinder thereto. Adverting to first ground of attack that the entire selection process stand vitiated on account of changing the Rules of Game midway, this Court would first enlist the facts which are not in dispute. There is no statutory provision and/ or Rule governing the present selection process. It is also not the case of the writ Petitioners that in the earlier selection process carried out by the Respondents, any such cut-off marks at the interview was not imposed. The selection process was, therefore, required to be carried out in terms of stipulations made in the advertisement or notice inviting applications for selection to the post(s) in question. Petitioners, in this regard, highlighted the stipulations in the said notice inviting application (Annexure-A) which has already been extracted hereinabove. It declares that selection will be made on overall performance in written examination and interview. The Petitioner, in order to substantiate his stand has relied on the ratio laid down in K. Manju Shree (supra). The stand of the Respondents, per contra, is that the ratio laid down in K. Manju Shree (supra) would not be applicable to the

facts of the present case. From perusal of the judgment rendered by Hon'ble Supreme Court in K. Manju Shree (supra) it would appear that the criteria adopted during the selection process was sought to be changed inasmuch as the ratio between the written examination marks and interview marks was also changed. This fact would appear from paragraph 8 of the report. It also appears therefrom that a cut-off percentage was also applied for interview which was not the contemplation in the Andhra Pradesh State Higher Judicial Service Rule, 1958 (for short "the Rules"). The Respondents had resolved to impose a cutoff marks subsequent to the selection process and preparation of select list in the teeth of the provision contained in the Rules. The Hon'ble Supreme Court thus took into consideration that the aforesaid amendment/modification in the criteria to be adopted in the matter of selection of Judicial Officers was being sought to be enforced after the selection process was completed and the results were placed for approval. In these factual scenario, the Hon'ble Supreme Court held introduction of requirement of minimum marks for interview after the entire selection process (consisting of written examination and interview) was completed would amount to changing the rules of the game which was held impermissible in law. Respondents, in the counter affidavit, have stated that maximum marks for written examination and the interview was 200 and 30 respectively. The candidates were considered for selection on the basis of marks secured at written examination and interview. After the written test, the Respondents followed a uniform procedure for shortlisting the candidates. The names of candidates who had appeared in the written test and cleared the same was/were listed in descending order of the marks obtained by them group-wise, post-wise, category-wise and paper/subject-wise. A cut-off mark was thereafter applied to shortlist candidates for interview. The said cut off marks was paper wise and category wise. For general/OBC such cut-off was higher than the cut-off mark fixed for S.C./S.T.. Similarly, cut off marks for S.C./S.T. category was same in all cases. By adopting the aforesaid procedure, candidates three times the number of vacancies in each group was/ were empanelled for interview. While doing so, all candidates who secured marks equal to the last qualifying candidate was/ were also called in for interview. As about the procedure adopted at the interview, the Respondents have stated that out of the candidates who attended interview, those general/OBC categories candidates who secured at least five (5) marks in the interview and those S.C./S.T. category candidates who secured at least four (4) marks in interview was/were shortlisted for final selection. After preparing the list in accordance with the aforesaid procedure, the same was arranged in descending order of the

total marks obtained by the candidates in written test and interview and candidates equal to the number of vacancies against each post/group were given offer of appointment. It is the stand of the Respondents that prescribing cut-off marks cannot be pre-determined as the performance of the candidates varies from batch to batch. So, per the practice, the candidates are not informed about the required cut-off marks to be adopted at the interview. They are, however, emphatic in stating that in all the recruitment processes of the Respondent Company, similar process of prescribing cut-off marks for interview has been applied before shortlisting candidates for final selection (refer paragraph 8 of 2nd supplementary counter affidavit in C.W.J.C. No. 5324 of 2011). It thus appears that notice inviting application for selection disclosed that selection of a candidate would be made on overall performance in written examination and interview. The Respondents have stated in detail the procedure which they adopted in shortlisting the candidates for interview and thereafter for the final selection. I have also noticed that no statutory provision or rule governs the present selection process. It is the unambiguous stand of the Respondents that in all previous selection/recruitment process of the Company, similar process of applying cut-off marks for interview had been applied before shortlisting of candidates for final selection. Considering the submission(s) of the parties and perusing relevant pleadings in this regard, this Court is satisfied that by applying a minimum cut-off marks at the interview, the Respondents have not changed the rules of the game. The ratio laid down in K. Manju Shree (supra) would not be applicable to the facts of the present case. Challenge on that count fails.

..... The Respondents, on the other hand, have disputed and controverted the aforesaid stand of the Petitioner. It has been stated in the reply affidavit(s) that such allegation springs from the fact that the Petitioner secured only 1.5 marks at the interview out of 30 marks. The counter affidavit, in this regard, states that the selection was to be made on all India basis and interview marks were awarded on the basis of performance of the candidate in the interview. A person or candidate may have good bookish knowledge and thus faired well at the written test but he or she may be lacking required knowledge/skills, adaptability, capacity to take prompt decision and displaying qualities suitable for job. The interview is aimed at evaluating these qualities. Relying on Lila Dhar (supra), the Respondents have substantiated the aforesaid stand. In Lila Dhar (supra), the Hon'ble Supreme Court observed as under in paragraph 5 relevant part thereof is extracted hereinbelow:-

It is now well recognized that while a written examination assesses a candidate's knowledge and intellectual ability, an interview-test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview-test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview-test, much depending on the constitution of the Interview Board.

11. The same view has been taken by the Supreme Court in *K.H. Siraj v. H.C. of Kerala* (supra). It appears that the panel of Interview Board consisted of four persons who are men of high integrity and caliber. This Court deems it germane to enlist hereinbelow the members constituting the Interview Board:

(a) Mr. D. Sengupta, Chairman, Retd. Chairman, Gen. Insurance Corporation of India.

(b) Mr. M.R. Sharda, Member, Retd. General Manager of Oriental Insurance Company Limited.

(c) Mr. A.K. Das, Member, Retd. I.D.E.S., Addl. Secretary, Govt. of India.

(d) Dr. A.S. Narag, Member, Faculty of Management, Delhi University.

12. It appears further from the averments made in the counter affidavit that 08 candidates from different streams/groups have been selected who belong to the State of Bihar. The primal ground of attack is that although the writ Petitioners secured high marks at the written test yet they were awarded abysmally low marks at the interview. The Respondents have clarified in paragraph 10(v) and (vi) as under-

(v) The average marks awarded in interview for D Group as a whole was 5.74 and the average marks awarded to OBC candidate under D Group was 3.89. Thus, marks awarded in interview was generally low.

(vi) For illustration candidates of other states who had secured equally low marks in the interview include candidate from different States ex:-

State	Number of candidates
Haryana	2

U.P.	3
Delhi	5
Karnataka	2
A.P.	1
Punjab	1
Uttarakhand	2
Himachal Pradesh	1
Orissa	1
Kerala	1
Jharkhand	1
West Bengal	1

13. On a consideration of the submissions of the parties made in this regard and after perusal of the materials on record, this Court does not find any merit in the submission of the Petitioners that the selection process was tainted with mala fide and/or regional bias. Award of low marks to the Petitioners at the interview would not suffice to hold that a discriminatory treatment was meted out to the Petitioners at the interview which would militate against Articles 14 and 16 of the Constitution of India. This Court, while concluding so has also taken into account that the Petitioners have not been able to demonstrate any personal bias of the members of the Interview Board against them.

14. This matter may be viewed from yet another angle also. The Petitioners were found eligible for written test and was called in therefore. They participated therein and thereafter was/were shortlisted for oral interview. On being summoned, they appeared at the oral interview conducted by a team of persons of high integrity and caliber and after having failed to get the desired result, filed the present writ petitions challenging the process/procedure adopted at the interview as unfair, discriminatory and biased. The Supreme Court having noticed the aforesaid facts refused relief in Om Prakash Shukla v. Akhilesh Kumar Shukla, (1986) Suppl. SCC 285 : A.I.R. 1986 S.C. 1043. Same view has been held by the Supreme Court in the State of Bihar v. Madan Lal (supra) (sic). Ratio laid down in aforesaid cases, in my view, would also be applicable to the present case.

15. In the light of discussions made hereinabove, this Court does not find merit in the writ petitions. They are, accordingly, dismissed.

16. There shall be no order as to costs.” (underlining is mine)

4. I completely and wholly agree with the entire reasoning given by the

learned Single Judge in the judgment dated 11.08.2011 and adopt the same for the purpose of the present case also. In addition, I would also agree with the arguments which have been urged by the respondent with respect to the fact that not only the petitioner but also as many as 109 other persons received only 1.5 marks in the interview and a total of 116 out of 257 which persons who were called for the interview failed to qualify 5 cut off marks prescribed for the interview and therefore there is no discrimination which is meted out to any of the candidates including the petitioner. As also stated above, in fact 11 other persons also got 1.5 marks in the interview and they otherwise had received total higher marks than the petitioner, but these 11 persons also were not selected because they only received 1.5 marks in the interview.

5. Therefore, the facts of the present case shows that there is no discrimination against the petitioner and there is no arbitrary action on the part of the respondent. The respondent was justified in fixing the minimum cut off marks for the interview being 5 out of 30 inasmuch as the whole purpose of the interview is that there has to be a minimum qualifying mark for the interview and the interview is not a formality wherein no minimum marks can be fixed. I have noted the fact that minimum marks were fixed in

the interview and applied across the Board to each and every candidate called for the interview and there is no policy of pick and choose or any unfair action of the respondent, which has in fact acted through an independent Board being the Selection Committee. In fact as held by the learned Single Judge of the Patna High Court petitioners are estopped from raising the issue of changing of the rules of the game midway allegedly by respondent introducing the criteria of passing marks in the interview, because petitioners participated in the selection process and being unsuccessful thereafter they cannot question the selection process. The self serving *ipse dixit* of the petitioner that the interview board only asked him his academic qualification and the interview was of 2/3 minutes cannot be believed and accepted by this Court in the facts of the present case.

6. In view of the above, I find no merit in the writ petition, hence the same is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

DECEMBER 13, 2013/mg