

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

+ **WP(C) No.4368/2012**

% **29th April, 2015**

SHRI SUBRATA BHAUMIK Petitioner

Through: Ms. Anju Bhattacharya, Advocate with
Mr. Elgin Matt John, Advocate.

Versus

RESERVE BANK OF INDIA SERVICES BOARD Respondent

Through: Mr. Suhail Dutt, Senior Advocate with
Mr. K.S. Parihar, Advocate, Mr. H.S.
Parihar, Advocate and Ms. Karishma
Singhania, Advocate.

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 filed under Article 226 of the Constitution of India, the petitioner who was a candidate in the selection process for the post of Officer in Grade-B in Reserve Bank of India, seeks the relief that the final marks which have been given to him of 177 be increased to 183 marks and therefore he should be selected as per the selection process instead of his candidature being rejected as has been done by the respondent.

2. The facts of the case are that with respect to employment with the Reserve Bank of India, the respondent/Reserve Bank of India Services Board conducted examination pursuant to advertisement no.2A/2010-11. The selection process consisted of written examination and interview. The written examination was held in two phases viz Phase 1-preliminary examination (objective type test). The paper consisted tests of i) General Awareness ii) English Language iii) Quantitative Aptitude and iv) Reasoning. Candidates were required to secure minimum marks separately for each test as prescribed by the respondent/Services Board. The candidates were shortlisted for Phase II of the written examination, based on the aggregate marks obtained in the objective test. Phase II-written examination consisted of three descriptive type papers-(i) Paper I-English (ii) Paper II-Economic and Social Issues and (iii) Paper III-Finance and Management each carrying 100 marks. The last stage of selection was interview. For each of these papers in the Phase-II written examination, the respondent/Services Board appointed an expert in the respective subject as the paper setter who was also appointed as the chief examiner. Final selection was based on the performance of the candidate in the Phase II-written examination and interview.

3. In the aforesaid examination alongwith petitioner 1750 candidates qualified in the preliminary examination and were shortlisted for

the Phase II-written examination. A total of 1300 candidates actually appeared for the Phase II-written examination in all the three papers. Since the number of candidates was large and the time available for evaluation of answer papers was limited, the chief examiner was allowed to appoint co-examiners to carry out the evaluation of answer papers, alongwith the chief examiner. The number of answer papers to be evaluated by each of the co-examiner was decided by the chief examiner. There was more than one co-examiner for evaluating the answer papers of a particular paper. With a view to ensure uniformity in the standards of evaluation, there was a system of moderation by the chief examiner moderating some of the answer papers evaluated by the co-examiners. The system of moderation is governed by the guidelines issued by the respondent/Services Board, a copy of which was made available to the chief examiner. The guidelines, inter alia, provide for categorization of answer papers into 3 categories based on the marks scored by the candidates and the sample size was required to be selected in such a way that more number of answer papers from those scoring high marks get selected for moderation. These guidelines are applicable to all the examinations conducted by the respondent/Services Board for direct recruitment.

4. In respect of the abovesaid three papers in the written examination for the year 2010, the number of co-examiners appointed were 4 each for English, Economic & Social Issues and Finance & Management papers. The answer papers were moderated by the respective chief examiners on sample basis. The answer paper of the petitioner in Economic and Social Issues was in the category, which was taken up for moderation, and there was moderation in marks by the chief examiner during the process of moderation i.e from 58 marks awarded by the co-examiner to 52 marks moderated by the chief examiner.

5. In order to maintain the fair evaluation of answer papers, the part of the answer paper having the roll number, name of the candidate and centre of written examination was detached from the answer paper and a random code number was given to such answer paper, before sending it for evaluation or moderation. Thus the answer paper handed over to the co-examiner/chief examiner for evaluation or moderation contains only the code number and no other details of the candidates.

6. After evaluation of the answer papers by the co-examiner and moderation of answer papers on sample basis by the chief examiner, the marks awarded were tabulated. As per the policy, the marks awarded by the chief examiner are the final marks secured by the candidates in any given

paper. Once the evaluation and moderation is over in respect of all the three papers, marks scored by each of the candidates in the three papers were tabulated and the total marks scored by the candidate out of total marks of 300 were computed. Based on the aggregate marks scored by any candidate in all the papers, a decision regarding eligibility of the candidate to be called for interview was taken. The tabulation of marks was done code number-wise and did not contain any identity of the candidate. The different cut off marks were fixed for different category of candidates, viz, General, SC, ST, OBC, and Persons with Disability (PWD). The number of candidates called for interview were roughly four times the total number of vacancies. In the process, it may happen that in some of the categories, the number of candidates may be a large multiplier of number of vacancies. This happens because the respondent/Services Board follows the policy whereby the cut off marks fixed for calling candidates for interview is less in case of OBC candidates by at least 5% of the maximum marks and in case of SC/ST candidates, at least 7% of the maximum marks, compared to the cut off marks fixed for General category candidates.

7. For the year 2010, the cut off marks fixed for the General category candidates to be called for interview was 171 (aggregate marks of all three papers of Phase II-Written Examination) and for the OBC candidates, it

was 156 i.e 15 marks (5% of the maximum of 300 marks) less than 171. In the case of SC/ST candidates, the cut off fixed was 150 i.e 21 marks (7% of the maximum of 300 marks) less than the cut off of 171 applicable for General category candidates. In case of PWD candidates, the cut off marks were still lower at 131.

8. Once the cut off marks for different categories of candidates were determined by the respondent/Services Board, the code numbers of the candidates were mapped with the roll numbers of the candidates and the eligible candidates were called for interview at their respective centres. The interview marks were awarded to the candidates at the time of the interview itself, without the Interview Board being aware of the marks obtained by the candidates in Phase-II-written examination. After the interview of all the candidates at all centres was over, the marks scored by candidates in the interview were added to their marks scored in the written examination (Phase-II). Based on the total marks scored during the interview and the written examination (Phase-II), selection criteria for candidates belonging to various categories is fixed as per the category-wise vacancies notified in the said advertisement.

9. In case of the petitioner only one of the papers i.e Economic and Social Issues came under the process of moderation carried out by the chief

examiner. The moderation of the Economic and Social Issues papers was done before the marks of the candidate were tabulated to determine his eligibility to be called for interview. Thus, a rationale, fair and systematic method for conducting the examination, evaluation of answer papers, moderation, tabulation of results, conduct of interview etc was followed and till both written examination and interview were over, nobody including the respondent/Services Board was aware of the likely candidates to be selected for being recommended to the Reserve Bank of India for appointment for the abovesaid post.

10. The total marks secured by the petitioner in the Phase-II written examination and interview taken together are 177 and which is less than 181 marks secured by the last candidate in the OBC category. It may be noted that the petitioner applied for appointment in the OBC category. The answer paper of the petitioner in Economic and Social Issue was moderated and the marks awarded in the process of moderation were 52. Out of the five candidates referred to by the petitioner to allege illegality and arbitrariness in the selection process, three candidates were from Mumbai, one from Nagpur (whose interview centre was Mumbai) and one from Kolkata. All the five candidates who scored 181 marks in total (Phase-II written examination and interview taken together) secured marks between 43 and 54 in the Economic

and Social Issues paper. Hence petitioner was not successful in the selection process and which is questioned by him through the present writ petition.

11. On behalf of the petitioner, his counsel argued that there was admittedly a moderation policy and respondent has wrongly not acted in accordance with the moderation policy because all papers across the board should be examined when moderation is done. It is also argued on behalf of the petitioner that moderation qua the petitioner has been wrongly done by arbitrarily reducing the marks of the petitioner from 183 to 177 whereas for various other candidates marks have been increased. Counsel for the petitioner drew the attention of this Court to running pages 305 and 306 of the paper book which is a chart with respect to the list of 75 candidates selected and it is argued that there is no rationale why some candidates have been given more marks and some candidates have been given lesser marks. Finally, it is argued that reduction of marks of the petitioner is considerably high and which resulted in his being eliminated in the selection process and therefore the selection process is to be faulted with. Reliance is placed by the petitioner upon the observations of the Supreme Court in paras 19 and 20 of the judgment in the case of *Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another (2007) 3 SCC 720* and also the observations made by a learned Single Judge of this Court (VIKRAMAJIT

SEN, J as he then was) in paras 3 and 4 in the case of *Neel Ratan Vs. UOI & Ors. 2006 IV AD (Delhi) 29*. These paras read as under:-

“Paras 19 & 20 of the judgment in the case of *Sanjay Singh and Another (supra)*

19. Rule 20(3) provides that the final list of selected candidates in order of their proficiency as disclosed by the aggregate of '*marks finally awarded to each candidate in the written examination and the interview*'. Note (i) to Appendix II of the Judicial Service Rules provides that the "marks obtained in the interview" will be added to "*the marks obtained in the written papers*" and that the candidate's place will depend on the aggregate of both. Though Judicial Service Rules refers to 'marks finally awarded', the said Rules do not contain a provision similar to the proviso to Rule 51 of PSC Procedure Rules, enabling the Commission to adopt any method, device or formula to eliminate variation in the marks. It is not possible to read the proviso to Rule 51 or words to that effect into Rule 20(3) or Note (i) of Appendix-II of Judicial Service Rules. It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or rule making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules. Therefore, Rule 20(3) and Note (i) of Appendix-II has to be read as they are without the addition of the proviso to Rule 51 of PSC Procedure Rules. If so, what can be taken into account for preparing final list of selected candidates, are 'marks finally awarded to a candidate' in the written examination and the interview. The marks assigned by the examiner are not necessarily the marks finally awarded to a candidate. If there is any error in the marks awarded by the examiner it can always be corrected by the Commission and the corrected marks will be 'the final marks awarded to the candidate'. Where the Commission is of the view that there is 'examiner variability' in the marks (due to strict or liberal assessment of answer scripts) or improper assessment on account of erratic or careless marking by an examiner, they can be

corrected appropriately by moderation. The moderation is either by adding (in the case of strict examiners) or deducting (in the case of liberal examiners) a particular number of marks which has been decided with reference to principles of moderation applied. If there is erratic or careless marking, then moderation is by fresh valuation by another examiner. Therefore, the marks assigned by the examiner as moderated will be the marks finally awarded to the candidates or marks obtained by the candidates. Moderation, it has to be held, is inherent in the evaluation of answer scripts in any large scale examination, where there are more than one examiner.

20. We cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refers only to the actual marks awarded by the examiner. 'Valuation' is a process which does not end on marks being awarded by an Examiner. Award of marks by the Examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20(3) specifically refers to the 'marks finally awarded to each candidate in the written examination', thereby implying that the marks awarded by the examiner can be altered by moderation.

Paras 3 and 4 of the judgment in the case of *Neel Ratan (supra)*

3. As has been explained, Moderation may be called for in at least two contingencies. Firstly, one or more of the subjects chosen may inherently be advantageous in the amount of marks obtainable by the candidate. This is obvious by comparing Mathematics or Science papers against any of the Humanities papers. It would not be fair for Humanities students to have a slender or no chance of success when compared with students opting for the other subjects. Therefore, Moderation would require the reduction of marks in such subjects and perhaps a correspondingly an increase in the other subjects. This would then result in a uniform and fair assessment of the knowledge and aptitude of all the candidates and would place them on a common platform. In carrying out Moderation individual answer books may have not required to be seen, since the upward or downward revision would be carried out across the Board for all candidates in the same group.

4. The second contingency would be with the objective of overcoming the disparity that may result from a liberal or strict evaluation which, because of human nature and behavior, is bound to occur. In this case also, individual answer books would not need to be looked at.”

12. To the principles of law which are urged on behalf of the petitioner relying upon the observations in the cases of *Sanjay Singh and Another (supra)* and *Neel Ratan (supra)* there is no dispute but in fact the observations which are relied upon by the petitioner in these two judgments go against the petitioner and not in favour of the petitioner. The ratios of these judgments is that moderation has to be applied as per the policy without any arbitrariness, however, these judgments do not lay down the law that the court would substitute itself for the examiners and decide the marks which are to be given to a candidate whether originally or after moderation. In an exercise where there are hundreds and thousands of candidates, surely there is bound to be more than one examiner of the question papers and consequently there is no illegality in having a moderation policy. Also, it is nothing illegal as per the moderation policy only to pick out some sample papers and not all the papers across the board. I do not agree with the contention of the petitioner that all papers across the board have to be picked up. It is also relevant to mention that petitioner claims that his marks have been wrongly reduced at the stage of moderation, however, it is noted that no *malafides* of general or any specific nature have been pleaded by the petitioner against the

examiner or the moderator, and nor could such averments have been made because as per the counter affidavit which is filed by the respondent/Services Board names of the candidates do not exist at the stage of original marking of the examination papers or even thereafter at the stage of moderation. Only a code number exists and which strictness is strictly maintained in the examination process. Therefore, once the process of moderation is uniformly applied, this Court cannot substitute its view for that of the moderator by giving a particular number of marks in an examination and hold that actually the moderator has wrongly reduced the marks given in a paper. Giving of final marks in a paper falls in the exclusive realm of the moderator, and which giving of marks cannot be questioned, much less when no *malafides* are alleged by the petitioner as against the moderator. Obviously this Court also cannot go into the comparison of marks of different candidates as is sought to be argued by relying upon running pages 305 and 306 of the paper book inasmuch as courts do not sit to decide what marks should be given to the candidates by the examiner whether at the initial stage or at the stage of moderation. Accordingly, once a uniform process is followed by the respondent/Services Board and marking is done as per the selection process by the examiner, it is not open to the petitioner to question giving of marks by the examiner and which falls within the exclusive prerogative of the examiner and the moderator. I may in fact, at this stage, refer to para 7 of the

judgment in the case of *Neel Ratan (supra)* and this para clearly holds that wisdom and method of the moderation must be left to the expert and it is not open to a candidate to conveniently contend that his marks have been reduced much less when there are no allegations of *malafides* and that it is done to displace the petitioner specifically as against any other candidate who is sought to be specifically preferred over the petitioner. This para 7 in the case of *Neel Ratan (supra)* reads as under:-

“7. The wisdom and method of Moderation must be left to the experts concerned. So far as this Petition is concerned, I do not find any scope to conclude that the marks obtained by the Petitioner were deliberately downgraded in order to favor some third parties; or to displace him from the order of merit.”

13. In view of the above, the prayer of the petitioner to increase his marks to 183 cannot be granted. Once the marks given by the moderator and the examiner in the selection process have to be taken as final, and which is taken as final by this Court, the petitioner is not entitled to be selected because his final marks were below the cut off marks of the last selected candidate in the OBC category.

14. Dismissed.

APRIL 29, 2015

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VALMIKI J. MEHTA, J.