

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

*Judgment reserved on July 07, 2015*

*Judgment delivered on July 14, 2015*

+ **W.P.(C) 5307/2014, CM No. 10554/2014**

DIPAK KUMAR SHARMA

..... Petitioner

Through: Ms.Anu Mehta, Advocate  
with Mr.Rubinder Ghumman,  
Advocate

versus

U.O.I. ANR.

..... Respondents

Through: Mr.J.P. Sengh, Sr. Advocate  
with Ms.Zubeda Begum,  
Ms.Sana Ansari and  
Ms.Vanessa Singh,  
Advocates for R-2

**CORAM:**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J.**

1. The present writ petition has been filed by the petitioner seeking the following reliefs:-

*(a) Issue a Writ of Certiorari quashing the selection/result dated 25.06.2014 and alongwith with the entire selection process or alternatively;*

*(b) Revaluate the candidates who participated in the third stage of the Entrance Test and declare the result of the SIT based on merit and proper marks sheet under the*

*supervision of a competent independent panel for such revaluation and further hold the interview as per the revised marks obtained in the SIT.*

**The facts:**

2. The respondent Nos.1 and 2, in the month of November 2011 advertised various posts including the post of Junior Parliamentary Interpreter (Hindi/English) in Pay Band III in the scale of Rs.15,600-39100 with Grade Pay of Rs.5400/-. The total number of vacancies were four, the break up being 1 for SC, 1 for OBC and 2 for un-reserved.

3. The petitioner also applied for the said post. The advertisement also contemplated a scheme of examination for filling up the post. Clause 6 relating to scheme of examination also stipulated that the said scheme is also available on the Rajya Sabha Secretariat website. The scheme of examination contemplated various stages i.e Preliminary Examination/Oration Test, Written Examination, Skill Test, Interview, for making selection. It also stipulated, minimum qualifying percentage of marks may be prescribed for written examination/personal interview/oration test etc. The minimum qualifying percentage of marks so prescribed were to be made available on the website of Rajya Sabha Secretariat before the written examination is conducted. The Junior Parliamentary Interpreter (English/Hindi) being a Category I post, an

oration test in Hindi and English of 100 marks with 50 marks each was prescribed. The duration of the test shall be 3 minutes each for Hindi and English. The candidate was required to speak ex-tempore in both English and Hindi for 3 minutes each in any one of the seven topics in English and in any one of the seven topics in Hindi given to him/her. The objective is to assess fluency, language content, style, pronunciation and accent, material content and voice of the candidate.

4. It is the case of the petitioner that on November 17/18, 2012, the first stage of exam viz. Oration Test was held, wherein he, had secured in Paper II (English) 29 marks out of 50, Paper II (Hindi) 40 marks out of 50, and was declared successful. According to him, the second stage of the exam viz Written Test was held on September 21, 2013. The results of the Written Test were declared on April 30, 2014. It is his case that the third stage of scheme of examination contemplated Simultaneous Interpretation Test which was held on May 28/29, 2014 and the final stage of exam viz. Interviews were held on May 30, 2014. It is his case that he was not shortlisted for interview despite having done well in the third stage i.e. SIT. According to him, the respondents did not announce the name of the candidates selected for the interview, omitted to publish the list of candidates selected for interview anywhere including on their

official website. According to him, this shows lack of transparency in the conduct of the selection process by the respondents. He has come to know that the selected candidates were telephonically informed and contacted after 10 pm on May 29, 2014. It was only on June 25, 2014, consolidated marks of successful candidates were uploaded on the official website of Rajya Sabha and it was only after the declaration of marks and the marks obtained under RTI, the said discrepancies have been noticed by the petitioner. According to him, the glaring discrepancies and illegalities occurred in the selection process revealed that the final Mark Sheet of the candidates published on the website of Rajya Sabha is fictitious, baseless as it does not borne out from the mark/evaluation sheet for SIT of many candidates and which alone was the very basis of the marks allocated/reflected in the declared result of the candidates, who appeared in the third round of the exam i.e SIT. It is his case that anomalies are apparent. He would state that one of the candidates namely Ms. Arnika Sood who has been shown to have scored 40.6 marks out of 50 in Hindi to English in SIT whereas the mark sheet obtained through RTI revealed that not a single candidate out of 32 candidates who appeared for SIT have scored/secured such marks and likewise there are three more candidates who have been shown to have

secured marks '*in decimals*' which do not tally with the corresponding mark sheets obtained through RTI. He would also state that there are certain meritorious candidates whose marks in previous rounds were far ahead of others while in the final round, they were allotted less marks and if they had been allotted passing marks, they would have made it to the merit list.

5. It is also the case of the petitioner that the entire exam consisted of 500 marks in which the marks allocated to Oration Test were 100 marks (50+50), Written Examination 260 marks (Paper I-160 and Paper II-100 marks), SIT (Hindi/English) 50+50 and Interview was of 40 marks. Whereas at the time of advertising the post, the recruitment rules required as minimum criteria of passing marks as 50% for General Category, 45% for OBC and 40% for SC/ST and that too, component wise, which meant that in order to clear the exam, the candidate was required to obtain minimum passing marks in each component which was duly followed in first stage of the test viz. Oration Test. Even up to the commencement of the second stage, viz. Written Test, the given requirement of minimum qualifying marks in the written exam were clearly mentioned in the call letters issued to the candidate were 50% for Unreserved (General), 45% for OBC and 40% for SC/ST. According to

the petitioner, the respondents issued an undated notice containing an amendment of the abovesaid recruitment rules dispensing with the subsisting requirement of obtaining minimum qualifying marks for clearing the test whereby entry was given to some of the candidates who failed to score even minimum qualifying marks in paper I of written test. Similarly, the respondents posted a notice on their website dated September 19, 2013 pertaining to minimum qualifying percentage of marks which quotes '*if the main/written examination involves more than one paper, the candidate would be required to secure qualifying percentage of marks in overall aggregate of all such papers*'. The said rule was not followed in the case of a candidate named Remya Ramesh (General Candidate) mentioned at serial No.35 of the result list displayed on April 30, 2014 who despite having secured less than minimum prescribed marks for qualifying the test by scoring 64.75 out of 160 and 55 out of 100, thus making an aggregate score of 119.75 out of 260, which is less than 50% was shown as having passed the Written Test. It is the case of the petitioner that the selection process conducted by the respondents was violative of recruitment rules for the said post and hence was in violation of Article 309 of the Constitution of India. The respondents have indulged in favouritism, nepotism and corrupt practices

to accommodate a few candidates at the cost of meritorious candidates, which is also indicated by the fact that the top four candidates in the merit list hail from the pool of Rajya Sabha/Lok Sabha.

6. The respondents have filed their reply. It is their case that the petitioner having failed to clear the Simultaneous Interpretation Test, which is a very specialized test and forms a crucial component of recruitment to the post, has filed the present petition by making gross misrepresentation of facts, suppressing relevant facts and making baseless, unfounded and mischievous allegations. It is their case that the selection process was wholly transparent, fair and objective and merit has been the sole consideration in selection of the candidates.

7. It is also the stand of the respondents that in terms of the advertisement issued in November 2011, as per para 6, the minimum qualifying percentage of marks were to be prescribed for written examination/personal interview/oration test etc before the written examination is conducted. They state that the written examination for the said post was conducted on September 21, 2013. It is also their stand that the scheme with minimum qualifying percentage of marks for Oration Test, Paper-II of the Written Test and Simultaneous Interpretation Test was notified on March 19, 2013. Simultaneously,

minimum qualifying marks for interview were approved by the competent authority on August 16, 2013 and the same was notified on the website of the Rajya Sabha Secretariat on September 19, 2013. The prescription of minimum qualifying marks under the scheme is in furtherance of the original scheme and there is no conflict between the original scheme and the scheme notified on March 19, 2013. They would state that there is an inconsistency in the stand of the petitioner. According to them, the petitioner is deliberately comparing the marks awarded by one particular evaluator to candidates of Group-I of Hindi to English Simultaneous Interpretation Test with actual marks to show inconsistency whereas actual marks obtained by a candidate is the average of individual marks awarded by the three evaluators who constituted the Evaluation Board for Group I. If the average is taken as final marks, there is no inconsistency. They also state that while furnishing the information under the RTI, the respondents have, inadvertently, given marks of an evaluator for Group I of Hindi to English Simultaneous Interpretation Test, instead of giving the consolidated mark sheet. When the applicant Satish Kumar Sharma preferred an appeal, the error came to notice and he was supplied with the evaluation sheet of other two evaluators of Group I of Hindi to

English Simultaneous Interpretation Test and was also informed that the marks obtained by the candidates were the average of the marks awarded by the three evaluators, which aspect has been concealed by the petitioner. The respondents would state that the petitioner has secured only 18 marks out of 50 in Hindi to English Interpretation Test while he secured 30 marks in English to Hindi Interpretation Test out of 50. Thus, the petitioner scored total 48 marks out of 100 in Simultaneous Interpretation Test as a whole and did not qualify, even if 50% marks is applied for each of the two tests separately or it is applied for the test as a whole. According to the respondents, the cumulative marks obtained by the petitioner in Oration Test, Written Test and SIT were 287.50 while the last candidate of the General category who made it to the merit list, scored a cumulative total 302.75 in these three tests. They would state that the respondents have been maintaining transparency in the process of recruitment. According to them, though the recruitment agencies ordinarily declare marks only after the final stage of recruitment process is over, in case of Rajya Sabha Secretariat, as the entry to the next stage of recruitment process depends upon the results of the previous stage of recruitment process, result of each stage of recruitment process had in most of the cases been declared well before the next stage

of recruitment process. As regard Simultaneous Interpretation Test and Interview is concerned, for convenience of the out-station candidates, it was decided to hold the interview on the very next day of the conclusion of the SIT as from experience, it was known that not many candidates would qualify in the SIT and it should be possible to complete interview of selected candidates in a day. SIT was scheduled 28<sup>th</sup> and 29<sup>th</sup> May, 2014, SIT of last group viz Group-IV was scheduled at 2.30 pm on May 29, 2014 and Interview was scheduled on May 30, 2014. It was anticipated that by the time, the test is concluded and result compiled, it would be late evening and the technical assistance required to upload the results on website would not be available. Moreover, even after the results were uploaded in the late evening, some of the candidates, particularly out-station candidates may not have internet facility available to them at night to view it. It was accordingly decided that the selected candidates would be informed on phone in the late evening to come for interview, the next day. All candidates including the petitioner were informed during SIT that the selected candidates would be informed on phone in the late evening on May 29, 2014 for the interview.

8. The petitioner had filed rejoinder to the reply filed by the

respondents. Insofar as the issuance of notification regarding minimum qualifying marks on March 19, 2013 is concerned, the same has been responded by petitioner in his rejoinder as under:-

*'It is denied and disputed that there was no conflict between the original scheme and the scheme notified subsequently as claimed by the respondents to have issued on 19.3.2013'.*

That apart, it is his case in the rejoinder that the respondents, on the discrepancy with regard to the mark sheets, have propounded a new theory of three evaluators. The petitioner had also contended that the evaluation/assessment for all the candidates including the other three groups has to be uniform. It is his case, the respondents are making gross misrepresentation of facts and suppressing relevant facts. The petitioner would state that the respondents be put to strict scrutiny as there is no such indication from the evaluation sheets and the same should ideally bear the signature of the evaluator in ordinary course. The stand of the respondents have to be authenticated, supported or established by a proof or signature by the purported evaluators and under such circumstances, the respondents' stand lacks substance and transparency and is under cloud of suspicion. According to him, it becomes pertinent to know that why the minimum percentage of 50%

marks was not made applicable to each of the two tests/components of Simultaneous Interpretation Test, whereas the same was applied in Oration Test for each of the two test/components. This, according to the petitioner, is clear irregularity and arbitrary.

10. The petitioner has also stated that for Group-I, there were three separate evaluation sheet duly signed by the individual evaluator but for other groups, there were only consolidated sheets and no separate sheets. He states that for Group-I also, there must have been a consolidated list. According to him, the list, which was displayed on the notice board was not supplied to the petitioner, even though request was made through RTI. In other words, it was his case that the theory of the best of three is highly suspicious and merely an afterthought and a creation of the respondents to crease out visible anomalies in conducting the exam and assessment of merit of candidates. He also raised an issue of conducting the interview in quick succession to the exclusion of the other candidates participating in the other exam indicates foul play on the part of the respondents. The process in the final stage was highly opaque and kept within confines of an exclusive club well-guarded from the other candidates till a long time thereafter and made it public much later after the conclusion of the entire selection process.

11. Ms. Anu Mehta, learned counsel for the petitioner, apart from reiterating the submissions made in the writ petition and rejoinder, would draw my attention to the advertisement issued in the month of November 2011 and para 6 of the scheme of examination. That apart, she has drawn my attention to annexure P-4 to contend that the minimum qualifying percentage of marks in the written examination for the post of Junior Parliamentary Interpreter (English/Hindi) was 50%. She has also drawn my attention to annexure P-5 (colly) at page 42 of the paper book wherein a note was given stipulating that there is no minimum qualifying percentage of marks in Paper-I (objective type multiple choice answers) of Written Test. It is her submission that this annexure P-5(colly) is a deviation from the earlier notification of September 4, 2013 wherein it was specifically stated that the minimum qualifying percentage of marks in the written examination was 50%. According to her, the note at page 42, stipulates, there is no minimum qualifying percentage of marks in Paper-I (objective type multiple choice answers) of written test, is a deviation and could not have been prescribed. That apart, she would state that even in Oration Test, the eligibility marks were 50% in both components of the Oration Test. She states, that the scheme of examination prescribing minimum qualifying marks vide notification

dated March 19, 2013 is a doubtful document as the said notification did not have a date on which it was issued. It is her case, that the reliance now placed by the respondent on the notification purported to have been issued on March 19, 2013 is clearly an afterthought only to bring in certain candidates, who have secured less than 50 marks in paper I (objective type multiple choice answers) of written test. She has also highlighted the call letter, issued to the petitioner on September 4, 2013 wherein it was clearly mentioned that qualifying percentage of marks in the written examination for the post of Junior Parliamentary Interpreter (English/Hindi) as 50% for unreserved, 45% for OBC and 40% for SC/ST. She states that in the call letter, it was not prescribed that there is no minimum qualifying percentage of marks in Paper I (objective type multiple choice answers) of written test. She would also highlight the manner in which the SIT was conducted and the results, thereof, were not published and the candidates were called on phone to appear in the interview shows the mala fide intent with a purpose to select their own candidates. According to her, the mark sheet which was received in the RTI, does not reflect the position of the results, so reflected in the so-called consolidated Statement of Marks. She would rely upon the judgment of the Supreme Court in the case of ***JT 2009 (9) SC 70***

***Tamilnadu Computer SC B.Ed G.T. Welf. Society Vs. Higher Secondary School Computer Tech Assn. and ors*** to contend that reducing the minimum qualifying marks after the examination, is illegal and would rely upon para 15 of the said judgment.

12. On the other hand, Mr. J.P. Sengh, Learned Senior Counsel for the respondents would submit that the petitioner, having appeared in the written examination cannot challenge the process undertaken by the respondents for conducting the same. In this regard, he would rely upon the judgment of the Supreme Court in the case reported as ***1995 (3) SCC 486 Madan Lal and ors Vs. State of J & K and ors*** in support of his contention. On merit, it is his contention that the selection process was transparent in accordance with the terms of the advertisement issued for filling up various posts including the post of Junior Parliamentary Interpreter. He would state, that the advertisement did stipulate that the minimum qualifying marks shall be prescribed before the written examination. The written examination was conducted on September 21, 2013 whereas, the minimum qualifying marks for Orator Test, Paper II of the written test and SIT were notified on March 19, 2013. He would state, the contention of the petitioner that no such minimum qualifying marks were notified on March 19, 2013 is incorrect. He also states, that

the minimum qualifying marks for interview were notified on September 19, 2013 whereas, the Written Test, SIT and the interview were held thereafter i.e on September 21, 2013, May 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> 2014 respectively. He concedes to the fact that the call letter issued to the petitioner on September 4, 2013 did not refer to the minimum qualifying percentage of marks would not be applicable in Paper I (objective type multiple choice answers) of written test. The same was inadvertent and would not infer any wrongdoing on the part of the respondents. In any case, it is his submission, the same was contrary to the notification already issued on March 19, 2013. He would also state, no prejudice has been caused to the petitioner as he was successful having secured 50% marks in both the objective type written examination and descriptive type examination and was called for SIT. He was unsuccessful in the SIT examination wherein the petitioner had secured 18 marks out of 50 in Hindi to English interpretation test and 30 marks in English to Hindi interpretation test out of 50. Thus he secured 48 marks out of 100 in SIT as a whole. Therefore, he did not qualify on both the counts, not having 50% in aggregate and also 50% marks each in the two tests simultaneously. Further, he states that the confusion which is sought to be created by the petitioner by stating that the marks received under the

RTI were at variance with the consolidated statement issued for the SIT is concerned, he would state that there is no discrepancy whatsoever between the marks made available to the petitioner under RTI and the marks uploaded on the website of the Rajya Sabha Secretariat. According to him, the petitioner is only making an issue by comparing the marks initially provided to one applicant named Satish Kumar Sharma who was inadvertently provided mark sheets containing marks awarded by a particular evaluator to candidates of Group I of Hindi to English SIT instead of their consolidated mark sheets which was prepared on the basis of average of individual marks provided by all the three evaluators who form the evaluation board of Group I of Hindi to English SIT. Even Satish Kumar Sharma, in appeal was provided with the marks sheets given by the other two evaluators also. He was also informed that the actual marks obtained by a candidate is the average of the individual marks given by the three evaluators but the petitioner deliberately and mischievously comparing the marks awarded by a particular evaluator with the actual marks uploaded on the website of Rajya Sabha Secretariat to create a false impression that there exists discrepancy in marks awarded to candidates of Hindi to English SIT. According to him, the marks obtained by Arnika Sood, a candidate in

Group I of Hindi to English SIT, were 40.6 which was the average of the individual marks of 38, 41 and 43 awarded by the three evaluators in the SIT. Insofar as the results of SIT announced by the respondents is concerned, the results were uploaded on the website on August 30, 2014 before the commencement of interview. The candidates were also informed telephonically after the results were finalized in the late evening of May 29, 2014 keeping in view their convenience as also to ensure that successful candidates do get duly informed. According to him, the date of the SIT and the interviews were fixed and informed to the candidates in communication issued on May 6, 2014. He would state, that it is not a case where the respondents had deliberately fixed the interviews immediately after conduct of the SIT on May 28/29, 2014. In fact, during the conduct of the SIT on May 28<sup>th</sup>/29<sup>th</sup> 2014, all the candidates were informed that the selected candidates would be telephonically informed of the results. He would also state that the last group of SIT viz group IV was scheduled at 2.30 pm on May 29, 2014 and Interview was scheduled on May 30, 2014. It was anticipated that by the time, the test is concluded and result compiled, it would be late evening and the technical assistance required to upload the results on website would not be available. Moreover, even after the results were

uploaded in the late evening, some of the candidates, particularly out-station candidates may not have internet facility available to them at night to view it. It was accordingly, decided that candidates would be informed on phone in the late evening to come for the interview, the next day. According to him, the case set up by the petitioner in the petition is totally baseless, concealing and distorting the facts and the writ petition needs to be dismissed.

13. Having heard the learned counsel for the parties, it is noted that there is no dispute to the fact that the advertisement issued in the month of November 2011 for making appointments to various posts including Junior Parliamentary Interpreter (English/Hindi) did contemplate prescribing minimum qualifying marks on the website before the written examination is conducted. The first stage of the examination i.e the Oration Test was held on November 17-18, 2012. The result of the said test was declared on November 21, 2012. Till this time, the petitioner had no grievance, rightly so, as he had 50% marks in aggregate or individually in both the papers i.e English and Hindi. The second stage of examination i.e the written test was held on September 21, 2013. The case of the respondents is that on March 19, 2013, notification was issued for prescribing minimum qualifying marks with a clear stipulation

that there is no minimum qualifying percentage of marks in paper I (objective type multiple choice answers) of written test. This notification is disputed by the petitioner. Rather, the petitioner relies upon the call letter dated September 4, 2013 wherein, it was mentioned that minimum qualifying percentage of marks in the written examination for the post of Junior Parliamentary Interpreter (English/Hindi) is 50% for unreserved category of candidates. Question would be even, if the notification dated March 19, 2013 was not issued, any prejudice has been caused to the petitioner. The answer has to be “NO”, as the petitioner did secure 50% of marks in both (i) objective type multiple choice answers; (ii) descriptive type, both in aggregate and individually, accordingly, he was called for the SIT. It is at the stage of SIT, the petitioner was found unsuccessful. The issue with regard to the manner, in which, the results of the SIT were declared and thereafter the interviews were conducted, raised by the petitioner in the present petition is concerned, suffice to state that in terms of annexure P-6, each of the successful candidates in the written test were informed much in advance, the dates of training on SIT and the SIT itself and the interview would be held on May 27, 2014, May 28, 2014 and May 29, 2014 and on May 30, 2014 respectively. I note, that the stand of the respondents with regard

to the conduct of the SIT and the interview from May 28<sup>th</sup> to May 30<sup>th</sup> 2014, in para 6 under reply to brief facts at running page No. 76 of the paper book has not been controverted by the petitioner except stating that “the act of the respondents in making a material change in the marking system in the midst of the exam and by lowering the minimum standards for qualification indicates arbitrariness, probable foul play and prejudice to the merit based candidates. The respondent has failed to explain the basis of introducing the material change in qualifying standards. Further, the manner in which the interviews were conducted is non-transparent and making private calls to select few candidates showing lack of transparency”. The petitioner did not respond to the specific averment made by the respondents that they had informed all the candidates, who appeared in the SIT on May 28-29, 2014 would be informed over the phone of the results which included the petitioner.

14. Insofar as reference is made to the case of Remya Ramesh by relying upon the notification dated September 19, 2013 is concerned, suffice to state, perusal of page 40 of the paper book, it is noted, the same relates to different post and not the Junior Parliamentary Interpreter, whose selection has been challenged by the petitioner, herein.

15. On the aspect of anomaly in the marks as shown in the mark sheet given to Satish Kumar Sharma and the consolidated mark sheet is concerned, in view of the stand taken by the respondents in their reply, I don't see any infirmity which would have a bearing on the ultimate selection. It is not the case of the petitioner that three evaluators were not associated with the SIT. In fact, I note in the appeal filed by Satish Kumar Sharma, when the error came to be noticed, he was supplied with the evaluation sheet of the other two evaluators and was also informed that the marks obtained by the candidates were the average of the marks awarded by the three evaluators individually. Insofar as the judgment of the Supreme Court in the case of *Tamilnadu Computer (supra)* relied upon by learned counsel for the petitioner is concerned, the same would not be applicable to the facts of this case. In the said case, the challenge was to the decision of the Government reducing the qualifying marks from 50 to 35 marks was justified. The Supreme Court held that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after holding the examination and at the time when the result of examination was to be announced as arbitrary and unjustified. The Supreme Court by relying upon its own judgment reported as *JT 2008*

**(4) SC 640 Hemani Malhotra Vs. High Court of Delhi** wherein the Supreme Court has held in recruitment process, changing rules of the game during the selection process or when it is over, is not permissible. In the case in hand, the advertisement itself contemplated the prescribing of minimum qualifying marks before the written test. The said judgment has no applicability in the facts of the case as it is the case of the respondents that on March 19, 2013 notification prescribing qualifying marks was issued which contemplated no minimum qualifying percentage of marks in paper I of the written test. It is not the case of the petitioner that any candidate who has secured less than 50% marks in the paper-I exam has been selected. Further, as held above, no prejudice has been caused to the petitioner. I do not see any merit in the writ petition. The same is dismissed.

**(V.KAMESWAR RAO)  
JUDGE**

**JULY 14, 2015/ak**