

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

Date of decision: December 14, 2015

+ W.P.(C) 6436/2015 & CM No.11715/2015
RAJESH DAGAR

..... Petitioner

Through Mr.Rajiv Manglik, Advocate
versus

CHAIRMAN AND MANAGING DIRECTOR OF AIR
INDIA

..... Respondent

Through Mr.Lalit Bhasin, Advocate
with Ms.Ratna D. Dhingra &
Ms.Bhavna Dhami,
Advocates

+ W.P.(C) 6705/2015
RAHUL PANCHAL

..... Petitioner

Through Mr.Rajiv Manglik, Advocate
versus

CHAIRMAN AND MANAGING DIRECTOR, AIR INDIA
LTD.

..... Respondent

Through Mr.Lalit Bhasin, Advocate
with Ms.Ratna D. Dhingra &
Ms.Bhavna Dhami,
Advocates

+ W.P.(C) 6487/2015 & CM No.11825/2015
PRASANNA C. NIKHADE & ANR

..... Petitioner

Through Mr.Rajiv Manglik, Advocate
versus

CHAIRMAN AND MANAGING DIRECTOR OF AIR
INDIA

..... Respondent

Through Mr.Lalit Bhasin, Advocate
with Ms.Ratna D. Dhingra &
Ms.Bhavna Dhami,
Advocates

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. As these three writ petitions involve a similar issue with identical facts, are being decided by this common order. The petitioners in these petitions belong to OBC and SC categories.

2. The facts are being culled out from Writ Petition No.6436/2015. The respondent Air India Limited had issued an advertisement dated February 27, 2015 for filling up post of Senior Trainee Pilot with A-320 Endorsement to be recruited after being declared successful in Simulator Proficiency Assessment Check (SPAC) and personal interview only. The appointment was to be on contract basis for 5 years. The petitioners applied for the said post. They were informed vide e-mail dated March 28, 2015 to have been provisionally shortlisted for conduct of tests and were intimated to be present for SPAC test at Secunderabad on April 09, 2015 by depositing fee of Rs.20,000/- towards the test and verification of documents. The respondent published the result of SPAC in April, 2015 and the petitioners were declared successful. Accordingly, the petitioners were called for interview on April 22, 2015 (petitioner in W.P.(C) No.6436/2015), April 23, 2015 (petitioner in W.P.(C) No.6705/2015) and April 22, 2015 & May 05, 2015 (petitioners in W.P.(C) No.6487/2015).

The petitioners were interviewed on the respective dates, referred to above.

3. Mr. Rajiv Manglik, learned counsel for the petitioners would submit, that in terms of the advertisement, the selection was to be based on SPAC and personal interview. It is his submission that the information gathered by the petitioner(s) through media was that the respondent also conducted the psychometric test without following the procedure laid down for the psychometric test worldwide and only resorting to by incorporating a Psychiatrist in the panel of interviewers. When the results were declared, the petitioners' names were not included in the list of successful candidates primarily on the basis of psychometric evaluation. Despite representation by the Air Corporations' SC/ST Employees Association to the respondent providing relaxation to the candidates belonging to the reserved categories, their request has not been acceded to. He would also state, that the criteria for selection was 80 marks weightage for SPAC and qualifying marks being 70% and 20 marks weightage for personal interview. According to him, the petitioner in W.P.(C) No.6436/2015 had obtained 10.80 marks out of 20 marks in personal interview. Similarly, petitioner in W.P.(C) No.6705/2015 had obtained 12 marks and the petitioners in W.P.(C) No.6487/2015 had scored 10 & 10.2 marks respectively out of 20 marks. He would draw my

attention to para 8 of the counter-affidavit to contend the stand of the respondent that the reasons for not getting selected was primarily the petitioners had not secured the qualifying marks of 13 i.e. 65% in the interview for SC/ST/OBC candidates. According to him, the requirement of qualifying marks in the interview was neither the criteria nor stipulated in the advertisement. It is his case, that the stipulation of such a criteria, that too after the selection process has started, is illegal and contrary to the settled position of law by the Supreme Court in the following cases:-

- (i) ***AIR 2008 SC 2103 (1) Hemani Malhotra vs. High Court of Delhi;***
- (ii) ***AIR 2008 SC 1470 K. Manjusree, etc vs. State of A.P. and Ann;***
- (iii) ***AIR 2014 SC 1570 Bishnu Biswas and others vs. Union of India and ors.***

4. On the other hand, Mr. Lalit Bhasin, learned counsel appearing for the respondent would justify the selection and state that the petitioners were not rejected on the basis of psychologist evaluation but it is a case where the petitioners did not secure the required 13 qualifying marks in the interview. On a specific query from the Court, whether the qualifying marks for the interview were prescribed in the advertisement, the answer was in the negative. But he would lay stress on the fact that in a subsequent advertisement, the petitioners had applied for the same post against 90 vacancies notified. The said selection comprised of written test, which included an aptitude test and technical knowledge test.

Candidates, who had qualified the same were subjected to psychometric test and further the candidates qualified/declared fit in psychometric test, were required to appear for the personal interview. All the four petitioners have applied for the said post. Mr. Rajesh Dagar, petitioner in W.P.(C) No.6436/2015 had appeared in the Aptitude and Technical Knowledge test, which he qualified but did not qualify the psychometric test. Similarly, Mr. Rahul Panchal, petitioner in W.P.(C) No.6705/2015 applied and appeared for Aptitude and Technical Knowledge test but did not qualify both the papers. Mr. Prasanna C. Nikhade, petitioner No.1 in W.P.(C) No.6487/2015 even though applied for the post but did not appear for the Aptitude and Technical Knowledge test. Similarly, Mr. Ajay Dilip Chaudhari, petitioner No.2 in W.P.(C) No.6487/2015 did not qualify the Aptitude and Technical Knowledge test.

5. It is his submission that the petitioner namely Rajesh Dagar, having failed in the psychometric test in the subsequent selection, he cannot be appointed, even if he succeeds in this petition as psychometric test has become very relevant in the process of selection in view of a recent incident happened in Germany. According to him, the said petitioner is not entitled to any relief. Similarly, the other three petitioners would also not be entitled to any relief.

6. Having heard the learned counsel for the parties, I note the primary

issue that is raised in the writ petition is that without there being a stipulation in the Rules and Advertisement for a psychometric test/ presence of a psychologist in the interview board, the rejection of the petitioners' candidature solely based on an assessment through psychometric test/psychologist is not tenable. Suffice to state, that in para 8 of their counter-affidavit, the respondent has stated as under:-

“8. I say that the candidates were not rejected on the basis of the psychologist's evaluation. Only those candidates were not selected who failed to achieve the minimum qualifying marks 70% for General or 65% for SC/ST/OBC candidates in the Personal Interview. Total marks for Personal Interview were 20. Petitioner being an OBC candidate, to qualify in the Personal Interview was required to obtain 13 marks, however, the Petitioner in the Personal Interview scored 10.80 marks out of 20 marks. Therefore, was not selected.”

7. From the perusal of the aforesaid stand, it is clear that the rejection of the petitioner's candidature was not on the basis of any input or a conclusion drawn by the psychologist. In other words, it is for other reasons other than the psychological test the petitioners were not selected. The other reasons, noted from the averments, are that the petitioners had not secured the qualifying marks in the interview. In support of this stand, the respondent in their counter affidavit has apart from para 8, in para 11 (c) (running page No. 57) and also in para 11 (f) (at running pages 59-60) has stated as under:-

“11 (c) The criteria for selection was as follows:-

<u>Criteria for selection</u>	<u>Weightage</u>
A) Simulator Proficiency Assessment Check (note: Qualifying marks for SPAC is 70% for all Categories including SC/ST/OBC)	80 marks
B) Personal Interview Personality 10 marks General 10 marks Knowledge & awareness about present scenario of civil Aviation in India. (Note: The minimum qualifying marks for the SC/ST/OBC category in the personal interview was 13 marks out of 20 marks.)	20 marks
Total	100 marks

Candidates with minimum qualifying marks in the Personal Interview were considered as 'Qualified'. The qualifying marks were 14 for General Candidates and 13 for the SC, ST and OBC candidates, which is the relaxed standard laid down for the reserved category of OBC to which the petitioner belongs.

11(f) The petitioner belonging to OBC category, applied for the post of Sr. Trainee pilot (with endorsement of A-320) vide his application dated 02.03.2015. On scrutiny of the Petitioner Application, petitioner was found eligible and was informed to appear for SPAC on 10.04.2015, at Central Training Establishment, Air India Ltd, Hyderabad. Petitioner after qualifying the SPAC, vide email dated 22.04.2015, was directed to appear for Personal Interview on 07.05.2015. The Petitioner in the Personal Interview was required to obtain the above minimum qualifying marks - i.e 13 (65% for SC/ST/OBC) out of 20mark in the Personal Interview. The Petitioner in the Personal Interview scored 10.80 marks out of 20 marks and thus failed to qualify the interview. The respondent refers to and relies on the record of the selection exercise in this regard."

8. From the aforesaid stand, it is clear that the qualifying marks of 13

were prescribed for interview, which the petitioners have not secured. The submission of Mr. Manglik, by relying on the reply dated July 31, 2015 to the RTI application made by one Mr. Chandra Shekhar Barua dated against points No.3 and 10, that no cut off marks for the interview were ever stipulated and even if stipulated, the same were after the advertisement was issued whereby the selection process had commenced are concerned, on the first aspect, the counter-affidavit filed by the respondent is very clear; it reiterates at different places, the fact, that they had prescribed 13 marks as the qualifying marks for interview. Even if, it is the case of the petitioners, based on the judgments in **Hemani Malhotra (supra)**, **K. Manjusree (supra)** and **Bishu Biswas (supra)**, that the qualifying marks have been prescribed after the advertisement/selection process has been initiated, firstly, in the case of **Hemani Malhotra (supra)**, the Supreme Court in para 9, has held as under:-

“9. From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was conducted. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.”

9. In the case of **K. Manjusree (supra)**, the Supreme Court in para 29

has held as under:-

“29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

10. Insofar as the judgement in the case of **Bishnu Biswas and ors (supra)** is concerned, the Supreme Court, in para 20 has held as under:-

“20. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so called selected

candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.”

11. Even though Mr. Manglik had referred to the aforesaid judgments neither such a case has been set up by the petitioners in their petition nor in the rejoinder, that the Rules pertaining to the selection have been changed during the selection process or after the selection process to the prejudice of the petitioners to benefit persons, who did not fare well in SPAC. The case as set up in the petition has already been referred to and dealt with in the previous paragraphs. The petitioners in their rejoinder affidavit have primarily highlighted the reply given to the RTI application to Mr. Chandra Shekhar Barua and the alleged contradictions in the reply to the RTI application and the counter affidavit. Surely, a petitioner canvassing a particular case must necessarily plead the same to enable the other party meet the case. In the case in hand, what has been argued by Mr. Manglik, has not been pleaded even in the rejoinder. In the absence of such a case, having been pleaded, this submission is also rejected.

12. Accordingly, the challenge of the petitioners to the rejection of their candidature is without any merit and the petitions are liable to be dismissed. I order so accordingly. No costs.

CM No.11715/2015 in W.P.(C) 6436/2015
CM No.11825/2015 in W.P.(C) 6487/2015

13. In view of the order passed in the writ petitions, the present applications are dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

DECEMBER 14, 2015
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