

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.14906 of 2014

Date of Decision: 6.5.2016

Gurvir Singh Sidhu

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.S.Gill, Advocate for the petitioner

Mr.Vaibhav Sharma, DAG, Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The short but interesting point raised in this petition relates to the tie-breaking rule adopted by the Punjab Public Service Commission, Patiala (for short “the Commission”). The petitioner and the third respondent competed for appointment to the post of Sub Divisional Engineer (Civil). They were both General Category candidates. At the beginning of the recruitment process, the existing tie-breaking method in the Commission was made dependent on the marks scored in the *viva voce* test. For instance, where two candidates secured the same marks in the written examination and the *viva voce* test, then the candidates who secured higher marks in the interview were given preference, and failing which, the tie would be broken by age, the older taking precedence over the younger candidate. On 14th May, 2014, the Commission decided to rationalize the formula as follows:-

“In the event that the aggregate marks obtained

in the written and interview parts of the examination taken together of two or more candidates are equal, the candidate securing higher marks in the written part of the examination shall be ranked higher. Should the marks in the written part of the examination of such candidates are still equal, the candidate older in age shall rank higher.”

2. The tie-breaking rule was changed from stress on *viva voce* marks to those secured in the written part of the examination and if that did not result in success to break the tie, the candidate older in age would rank higher in merit.

3. The written examination was held on 27th April, 2014 and the result was declared on 20th June, 2014 as displayed in the Official Website of the Commission. The petitioner has lost out to the third respondent who has been selected and appointed as Sub Divisional Engineer (Civil). The petitioner has approached this Court for issuance of writ of certiorari to quash the impugned decision of the Commission changing the rules of the game when the game was being played out. A mandamus is sought to the respondents to appoint the petitioner to service being older in age than the third respondent.

4. The first and foremost question that strikes the mind is that when the written examination was held on 27th April, 2014 could it then be imputed in the mind of the Commission that it tailored the rule in favour of the third respondent as it knew the result of the written examination on 14th May, 2014 when the impugned decision was taken. It is common ground that the result was declared afterward on 29th June, 2014. In paragraph 5 of the writ petition

or elsewhere in the body of the petition, the petitioner has not raised this issue,

though this Court permitted the issue to be argued to satisfy itself on this angle. I think it too far-fetched to impute in the Commission that they had set about in the meeting held on 7th May, 2014 to tailor the result to deprive the petitioner and unduly benefit the third respondent. If the decision taken on 7th May, 2014 was not actuated by mala fides, corruption, nepotism or favouritism, then the decision is not open to criticism only because it was taken after the written test was conducted. No such foundation has been laid in the petition to activate this Court to hold that the selection *vis-a-vis* the petitioner and the third respondent was based on an extraneous consideration to give undue favour to the third respondent. There is no allegation of mala fide levelled against the Commission or its members in the recruitment process of Sub Divisional Engineers. If the argument of Mr.Gill is to be accepted that in four earlier recruitment processes, the viva voce method was followed then it does not mean that the Commission cannot change the tie breaking rule for all times. The tie breaking rule has no reference to criteria of the selection. It is not a condition of eligibility. Its purpose is only to overcome a contingency where two candidates secure the same marks. This is an event which may or may not happen. It is still a salutary rule which may be far fairer in breaking the deadlock to evaluate inter se merit on standards achieved in the written examination and not leave the rule to the vagaries of interview which part of the selection is more subjective and less objective than a written test normally is perceived. The Commission in paragraph 5 of the reply have explained the philosophy of the change over which is best put in the words of the Commission itself which read as under:-

“It is further submitted that the above said decision was taken by the Commission in continuation of its earlier decision dated 3rd April,

2014 which was to the effect that in case more than one candidate gets the same marks in his/her grand total, the same rule should be followed as has been notified by the Department of Personnel in PCS Exam. However, there was mention of General Studies marks in those rules which were not relevant for any other Group-A and Group-B posts, therefore, the Commission deemed it fit to modify the decision dated 3rd April, 2014 which is more rational and appropriate.”

5. Judicial review of a decision of the kind taken in this case by the constitutional body while testing its validity and correctness is very limited. So long as the decision is not arbitrary, capricious and whimsical or in net result ends in diluting the standards of the selection then interference, in the considered view of this court, is not warranted. The Commission may be right when it says that the modification of the tie breaking rule by the impugned decision was thought more rational and appropriate to the object sought to be achieved. The Commission shifted the axis from interview to the written examination to work the tie breaking rule more meaningfully and dispassionately. It is evident that the causa causans of the grievance of the petitioner is that he secured more marks in the *viva voce* than the third respondent, but that is not enough to bring relief in this case when the decision of the Commission is found far from arbitrary, unreasonable or discriminatory. I would, therefore, not it proper to interfere being a policy matter within the jurisdiction of the Commission which has absolutely nothing to do with the eligibility criteria and therefore it cannot be said that the decision deserves to be faulted only because it was taken after the written examination was held but

before the final result was declared. The modification of the old tie breaking rule was not designed or fashioned only to oust the claim of the petitioner nor can it be perceived as one changing the rules of the game after play had begun. It was a decision uniformly cutting across board. I find lack of substance in the contentions of Mr. Gill for him to succeed by quashing the appointment of the third respondent and replacing him with the petitioner. The petition is accordingly dismissed.

6.5.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE