

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

Judgment reserved on July 08, 2016

Judgment delivered on July 18, 2016

+ W.P.(C) 5771/2016, CM No.23764/2016

VIVEK KUMAR JAISWAL & ORS

..... Petitioners

Through: Ms. Jyoti Singh, Sr. Adv.
with Mr. Joby P. Varghese,
Adv.

versus

AIRPORT AUTHORITY OF INDIA

..... Respondent

Through: Mr. Digvijay Rai and Ms.
Chetna Rai, Advs. with Mr.
V.K. Tanwar, DGM (HR)
and Sachin Yadav, AM
(Law)

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in the Writ Petition is to the selection list dated 17th June, 2016 issued by the respondent selecting 50 departmental candidates for interview out of 154 candidates appeared in the written examination which according to the petitioners resulted in their exclusion for interview.

2. The brief facts relevant for a decision in the Writ Petition are, the

respondents issued a departmental circular dated 19th March, 2015 whereby they have called for applications for filling up 126 vacancies in the Grade of Junior Executive (Electronics) E-1 in the pay scale of 16,400 – 40,500 having qualifications of Full time regular Bachelor's Degree in Engineering / Technology in Electronics / Telecommunications / Electrical with specialization in Electronics with 60% marks. It is the case of the petitioners that these vacancies are against 25% E-1 level vacancies to be filled through promotion from the departmental candidates subject to they possessing prescribed induction level qualification on the basis of selection and passing of written test and by meeting other norms.

3. It is the case of the petitioners that the circular dated 19th March, 2015 had nowhere stated that the selection of candidates for interview will be based on their performance in the written test or subject to any prequalifying criteria or benchmark. According to them the advertisement had only stated that selection of candidates will be through administering a written test and personal interview meaning thereby that the selection of 139 candidates was based completely on their cumulative performance in the written test and interview. In other words, 139 overall candidates were to be selected from the total number of candidates based on the total marks obtained in the written test and

interview.

4. It is averred that as per the guideline no. 8 of the Recruitment and Promotion Guidelines, 2005, the weightage of marks for the examination was prescribed in the ratio of 70:30 between questions on subjects relating to the educational qualifications prescribed for the purpose i.e on technical aspects and questions on General Knowledge, General Intelligence, General Aptitude and English. However, vide letter dated 30th September, 2015, the weightage of the technical portion was reduced from 70% to 50%. They admit that the syllabus for the examination was accordingly set. It is their case that the petitioners sat in the written examination, but it is noted that the questions on the technical aspects in the written examination were either irrelevant for the job or were completely out of syllabus. In other words the questions asked do not even found mention in the study material provided to them. Accordingly, objection in the nature of representations were preferred by the candidates with the respondent Authority. On the representations of the candidates, a Review Committee was appointed to look into the correctness of the objections raised by the candidates including the petitioners. It is their case that one more Committee was constituted in that regard, but till the filing of the petition, the decisions rendered by the Committees have not been made available to them. According to them

on 17th June, 2016, a list of 50 candidates who were shortlisted for interview was issued on the basis of the test conducted on 24th January, 2016.

5. Respondent has filed counter-affidavit on 8th July, 2016 in the Court and the same was taken on record. The advance copy of which was given to the counsel for the petitioners on 5th July, 2016, who stated, he does not want to file rejoinder. The stand of the respondent in the counter-affidavit primarily is that the number of vacancies were only 126, which was circulated vide circular dated 19th March, 2015. That apart it is their case that these vacancies were against 25% posts in direct recruitment quota earmarked for the post of Junior Executive (E-1) level and is not through promotion, but through departmental examination limited to departmental candidates. That apart it is the respondent's stand that in terms of the Minutes of the 157 Board Meeting held on 18th December, 2013, it was decided that in future recruitment, the cut-off marks shall be applicable at the written test stage, i.e., 50% for General and OBC and 40% for SC and ST and the said instructions have been followed by the respondents uniformly in all the recruitment exercises carried out by the respondent since then. On the aspect of the questions being out of syllabus or irrelevant to the job, it is the stand of the respondent that after the receipt of the representations from the

candidates, a Committee was constituted to examine their grievances. The said Committee submitted its report wherein it was observed that 18 questions in the written examination were out of syllabus and another 14 questions were based on the topic contained in the syllabus, but were not from the perspective of CNS personnel or the level of questions is high or are not covered in B.Tech curriculum also. It is also averred that after lot of deliberations at the higher level and also with the recruitment agency, it was finally decided on 5th April, 2016 that only 18 questions which were out of syllabus would be deleted and the results will be prepared accordingly. It is also averred that accordingly those candidates belonging to the General category and OBC who had secured 50% marks in the written test and 40% marks secured by the candidates belonging to SC and ST category were called for the interview.

6. Ms. Jyoti Singh, learned Sr. Counsel appearing on behalf of the petitioners would submit that the respondent had only deleted 18 questions and retained 14 questions which were not relevant from the perspective of CNS personnel, or the level of questions is high and not covered by the B.Tech curriculum should have been deleted. She also states, even otherwise, the deletion of 18 questions resulted in the distortion of the weightage of marks in as much as weightage for the non-technical aspect of the written exam was more than the weightage

for the technical aspect of the written exam, which caused prejudice to the petitioners. That apart it is her submission that the circular dated 19th March, 2015 did not stipulate that the passing off marks for the written examination is 50%. The respondent could not have prescribed the same after commencement of the selection process. In this regard, she would rely upon the judgment of the Division Bench of this Court dated 18th November, 2015 in the case of *Airports Authority of India v. Vikas Singh and Ors. LPA 648/2013* and connected Appeals. That apart she would rely upon the judgment of the Supreme Court in the case of *Barot Vijay Kumar Balakrishna and Ors. V. Modh Vinaykumar Dasrathlal and Ors. MANU/SC/0726/2011*. That apart she would state that being a promotion post, respondent was required to call for interview candidates 2.5 times, the number of vacancies.

7. On the other hand, Mr. Digvijay Rai, learned counsel for the respondent would submit that there is a fallacy in the argument of learned Sr. Counsel appearing for the petitioners in as much as the vacancies in question are to be filled through direct recruitment amongst the departmental candidates working in non-executive cadre subject to possessing the qualification and not by promotion. According to him, a promotion post contemplates, a feeder cadre from a particular/one grade or more than one grade, clearly prescribed in the Rules. In this case, the

Rules/circular makes all departmental candidates having qualification for the post eligible to apply for being considered. That apart it is his submission that in so far as the 18 questions which were out of syllabus is concerned, same were deleted from the question paper for every candidate. That apart it is his submission that the technical and non-technical aspect of the test consisted of 60 questions each, i.e., 120 questions in all. After the deletion of 18 questions, results were declared for the balance 102 questions. Those candidates belonging to general category who secured 50% of 102 questions were declared successful and those SC and ST candidates securing 40% marks out of 102 questions were declared successful. Hence, in total 50 candidates were found to be eligible for interview. In so far as 14 questions are concerned, he has submitted that after due deliberation, it was decided to retain those 14 questions as the same were based on the topics contained in the syllabus and it is inconsequential that they were not relevant from the perspective of CNS personnel or the level of question is high or are not covered in B.Tech curriculum. Hence no prejudice has been caused to the petitioners. That apart, he has drawn my attention to the Minutes of the 157th Board Meeting held on 18th December, 2013 to contend that the Board had decided that for future recruitment, the cut-off marks shall be applicable at the written test stage only, i.e., 50% for General and

OBC and 40% for SC and ST and the said minutes of the Board Meeting have been consistently followed thereafter. He has drawn my attention to the circular dated 12th November, 2009 to contend that Recruitment and Promotions Regulations in respect of Executives have been modified to include that 25% of the Junior Executive (E-1) posts to be filled up by non-executive from all trades (disciplines) having the qualification prescribed for direct recruitment to the post of Junior Executive (E-1) subject to passing the written test, interview and meeting other norms. In other words, it is his submission that the written test shall have the passing marks was known to the petitioners and are precluded from challenging the impugned action on the ground that the 50% cut off marks for the written test were not prescribed in the advertisement / circular. He would state that the judgment relied upon by the learned counsel for the petitioners in the case of *Airports Authority of India v. Vikas Singh and Ors. (Supra)* shall not be applicable in as much as the respondent has filed SLP wherein the Supreme Court was pleased to stay the operation of the judgment of the Division Bench dated 18th November, 2015. That apart, he would rely upon the judgment of the Supreme Court in the case of *Ramesh Chandra Shah and Ors. V. Anil Joshi and Ors. Civil Appeal Nos. 2802-2804 of 2013 decided on 3rd April, 2013.*

8. In the rejoinder, Ms. Jyoti Singh, learned Sr. Counsel for the petitioners would urge that the petitioners had no occasion to challenge the criteria of 50%, as it was only through the counter-affidavit, they have come to know that the respondent has called for interview, candidates who had secured 50% marks in the written examination. That apart, she states, the reliance placed by Mr. Rai on the amendment of 2009, to contend, that a candidate need to pass the written examination is concerned, even then the respondent should have prescribed the passing marks in the circular dated 19th March, 2015, calling for applications, prescribing the marks after the process had started is untenable and contrary to law.

9. Having heard the learned counsel for the parties, insofar as the issue of retaining 14 questions is concerned, it is not contested by the learned Senior Counsel for the petitioners that these 14 questions were part of the syllabus for the written examination as given to the candidates. If that be so, it would be inconsequential that the same were not relevant from the perspective of CNS personnel or the level of questions were high or are not covered in B.Tech curriculum. It is not a case like the 18 questions, which were out of syllabus, which were deleted. No prejudice has been caused to the petitioners. It is noted a stand has been taken in the counter-affidavit that on deliberations at

higher level with the recruitment agency, it was decided that only 18 questions need to be deleted and not the 14. In such circumstances, this Court cannot dwell into the issue of relevancy/non-relevancy of the questions, to be part of the written examination. The said plea is rejected.

10. Insofar as the plea of Ms. Jyoti Singh, learned Senior Counsel for the petitioners that the deletion of 18 questions has resulted in prejudice to the petitioners, inasmuch the petitioners have not been evaluated qua those 18 questions, which have been deleted, which could have made a difference in the result is concerned, the said questions were deleted for all the candidates and the results have been declared on the basis of 102 questions. No doubt, the weightage of 50% specific to the technical aspect of the written examination, has not been adhered to and the plea that, if the weightage had been given, in other words, if 18 questions had been asked from the syllabus, they would have scored better marks, is in the realm of speculation. The evaluation of all the candidates has been on the basis of 102 questions, the action cannot be faulted as no prejudice has been caused to the petitioners nor any candidate got advantage.

11. Insofar as the plea of the learned Senior Counsel for the petitioners that the respondents could not have changed the criteria for selection in

the midst of selection process is concerned, before I deal with that issue, I need to answer the submission of Mr. Rai, that the said plea of the petitioners is an afterthought. Suffice to state, there was no occasion for the petitioners to have known that the candidates, who have secured 50% marks have only been called for the interview. This aspect has come to their knowledge through the counter-affidavit. He concedes to the position that the circular dated 19th March, 2015, did not prescribe the cut off marks nor does the amendment to R&P Regulation prescribe 50% as the passing marks. The submission of Mr. Rai is not tenable. Be that as it may, on the issue, whether the respondent could have prescribed 50% as the cut off marks for calling the candidates for interview after the process has been initiated, Ms. Jyoti Singh, who relied upon the judgment of the Division Bench of this Court in the case of *Airports Authority of India vs. Vikas Singh (connected matters)*, which has been stayed by the Supreme Court in a SLP filed by the respondent authority. No doubt, Ms. Jyoti Singh is right in contending that staying of the operation of the order of this Court in *Airports Authority of India vs. Vikas Singh (supra)* dated 18th November, 2015, would, not amount to setting aside the order of this court in the aforesaid case, by relying on judgments of the Supreme Court in *Shree Chamundi Mopeds Ltd vs. Church of South India Trust Association CSI Cinodsecretariat*,

Madras Manu/SC/0501/1992; Bristol Squibb Company and ors vs. J.D. Joshi and ors Manu/DE/1889/2015; UOI vs. Central Information Commission and Anr. 2012 SCC online (Del) 3574, this Court is of the view, the judgment of this Court in *Airports Authority of India vs. Vikas Singh (supra)* would not be applicable to a selection made in 2015-16, as the said judgment relates to a selection process carried out by the respondent authority, which resulted in the selection list of July 2011, selecting 75 candidates for the post of Manager (Electronics) as against 112 posts advertised in various categories, to the exclusion of the petitioners therein from appointment to the post of Manager (Electronics). Initially, writ petitions were filed by some of the candidates in this Court being Writ Petition (C) No. 5767/2011 and Writ Petition (C) No. 3216/2012. It was the stand of the respondent authority before this court that out of 317 candidates called for the interview, only 210 candidates appeared, out of which 14 candidates did not submit certain essential documents. It was also stated that keeping in view the nature of work, availability of candidates and cut off percentage in the previous recruitment for the same post, which was much higher than the present, the management of the answering respondent decided that the cut off percentage would be 55 for the General categories, which would be aggregate of their marks obtained in the written examination and

interview and for the reserved categories, the cut off marks was fixed as 50%. This Court had vide order dated August 2, 2013, held that entire selection process could not have commenced, gone ahead, concluded and selection list published without the candidates not even knowing, what would be the passing marks for written test or for the interview and then for the written test and the interview taken together, which were to be taken as the total marks for passing the selection process and that on so achieving the qualifying criteria for being selected stands satisfied. This Court held that since the authority did not specify or publish or intimated what would be the passing marks qua candidates till the selected list was actually published, no estoppel would apply to the writ petition and holding the action of the authority to be illegal, issued directions to the authority to fill up the remaining vacancies securing the rights of the higher ranked candidates to be appointed in preference to the rights of the writ petitioners and granting reasonable time to join, and in case higher ranked candidates did not join the post, thereafter the same could be given to the writ petitioners in the respective categories. The Division Bench upheld the order of this Court and distinguished the judgment of the Supreme Court in the case of *Yogesh Yadav vs. Union of India and others (supra)*. While upholding, the Division Bench has held that none of the affidavits filed by the authority disclosed that the eligibility

criteria or the practice in vogue or the requirement of minimum marks was informed to the candidates either in the advertisement or thereafter. It was also observed by the Division Bench that the learned counsel for the authority has not been able to show that either in the advertisement or in the question paper or by way of notice, the candidates were informed about the criteria.

12. Whereas, in the case in hand, between the date of the judgment of the Division Bench and the present recruitment, the Board of the Authority in its 157th meeting, has prescribed cut off marks applicable at the written test stage as 50% for General and OBC and 40% for SC and ST. In fact, a perusal of the minutes, reveal, that the Board has referred to the judgment of the Division Bench in *Airports Authority of India vs. Vikas Singh (supra)*.

13. That apart, it appears the position under the Regulations, was not the same as in the case in hand. Further, the criteria was prescribed through internal notings. On facts, the judgment is distinguishable. The plea of the learned Senior Counsel for the petitioners that the said decision is not applicable for promotions, inasmuch as the decision itself suggest, that it would be for direct recruitment, by referring to pages 79 and 81 of the paper-book is concerned, no doubt, the position of law, when a recruitment is effected through limited departmental competitive

examination, the recruitment must be held to be a promotion but on a closure look of the Rules, it is noted that the zone of consideration is not from a defined feeder cadre but from all the non-executives, working in Airports Authority of India, subject to the candidate having the qualification for direct recruitment. The aspect that whether the recruitment is by direct recruitment, promotion has no effect on the issue under consideration, as the circular dated November 12 2009, in terms of para 4 (ii), which is reproduced hereunder, does indicate that a candidate has to pass a written test for the recruitment in question.

“4. (ii) 25% of Jr. Executive (E-1) posts will be filled by Non-Executives from all trades (disciplines) having the qualification prescribed for direct recruitment to Jr. Executive (E-1) subject to passing written test, interview and meeting other norms.”

That is only feasible if cut off marks are prescribed. Hence, it is a case where the R&P Regulations, 2005 itself indicate prescribing cut off marks. It is matter of record, the cut off marks for the written exam have not been mentioned/prescribed in the circular dated 19th March, 2015; even though the mandate of the R&P Regulations is otherwise. In such eventuality, when no cut off marks have been prescribed, whether every candidate, even securing minimum of the marks (zero in a given case) need to be called for the interview, only because the circular did not prescribe the cut off marks. The answer is ‘No’. The mandate of the

R&P Regulations need to be given effect to. The complete process of selection was not over; only the written exam was conducted. Interviews were yet to be conducted. There are no allegations that the impugned action is actuated by malafides/bias. There is a decision of the Board of the Authority of the year 2013, prescribing 50% as cut off for written exam, which has been followed while calling the candidates for interview. It is a case while calling candidates with 50% marks for interview, many vacancies would still be left unfilled. It is not the case of the petitioners, despite decision of the Board of 2013, the respondent has held recruitment, in subsequent years, with cut off marks of less than 50%. No prejudice has been caused to the petitioners, who did not secure 50% marks. The petitioners have not pointed out any anomalies which have crept in because of limiting the cut off marks at 50%. The reliance placed by Ms. Jyoti Singh on para 21 of the judgment of the Supreme Court in the case of *Barot Vijaykumar Balakrishna and ors vs. Modh Vinaykumar Dasrathlal and Ors (supra)*, would not help the case of the petitioners. In the said judgment, the Supreme Court held that in case, the statutory Rules prescribe a particular mode of selection, it has to be given strict adherence. In para 21, the Supreme Court held, there is no connection between the anomalies and the fact that the cut off marks, were fixed at a later stage, though before the commencement of

the interview. No doubt, in the said case, the cut off marks were informed to all the candidates before the interview, whereas, no such information was given to the candidates, before the written exam in the case in hand, but, that would not vitiate the process of written exam, as there are no allegation of bias/malafides; the authority followed the decision of the Board, prescribing cut off marks of 50% in the written exam; no anomalies have been pointed out; I note for benefit, in para 31 of the judgment of the Supreme Court in ***Barot Vijaykumar Balakrishna and ors vs. Modh Vinaykumar Dasrathlal and Ors (supra)***, the Court held as under:-

“31. Now coming back to the facts of the case in hand, though the rules framed under Article 309 of the Constitution governing the selection process mandated that there would be minimum qualifying marks each for the written test and the oral interview, the cut off mark for viva voce was not specified in the advertisement. In view of the omission, there were only two courses open. One, to carry on with the selection process and to complete it without fixing any cut off mark for the viva voce and to prepare the select list on the basis of the aggregate of marks obtained by the candidates in the written test and the viva voce. That would have been clearly wrong and in violation of the statutory rule governing the selection. The other course was to fix the cut off mark for the viva voce and to notify the candidates called for interview about it. This is the course that the

Commission followed. This was in compliance with the rules and it did not cause any prejudice to any candidate either. We, thus, see no illegality at all in the selection process.”

14. In view of the above discussion, I do not find any merit in the petition. The same is dismissed.

CM No.23764/2016 (for stay)

In view of the order passed in the writ petition, the application for stay is dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

JULY 18, 2016

jg/ak