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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9275/2016**

Date of Decision : 21st November, 2016

NARENDER SINGH Petitioner
Through: Mr. S.R. Sharma, Advocate

versus

UNION OF INDIA & ANR. Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. Narender Singh, in this writ petition, impugns the order dated 24.05.2016, whereby OA No.1028/2013 has been partially allowed.
2. For the sake of completeness, we would like to reproduce the reliefs sought by the petitioner before the Tribunal, which read:

“a) Quash the condition to have 25% minimum marks in interview/personality test for general candidates as being illegal and arbitrary.

b) Declare fixing/allotting 100 marks out of total 500 marks, being 20% of total marks of the examination, for interview as excessive, unconstitutional, arbitrary, illegal, irrational, unjust and violative of Articles 14 and 16 of the Constitution of India and quash the result of interviews and the select list prepared on the

basis thereof.

c) Direct the respondents to fix 12.2% of the total marks for interview as per the decision of the Hon'ble Supreme Court mentioned above and after fixing such marks for interview hold fresh interviews on the basis of such fixed marks and prepare/redraw fresh select list or

d) Direct the respondents to prepare the select list on the basis of 12.2% of the total marks for interview and declare the applicant as a successful candidate and include his name in the select list and also direct the respondents to appoint the applicant on the post of sub-inspector of Delhi Police.

e) Declare the awarding of 10 marks out of 100 marks in interview as an arbitrary exercise of discretion by the respondent No.2

f) Declare the whole exercise of holding interview as not being in conformity with the concept and purpose of interview and personality test and also for not holding personality test as envisaged in the interview letter dated 11.1.2013 as unconstitutional and illegal and thus bad in law.

g) Pass such further orders as this Hon'ble Court may deem fit and necessary."

3. The first prayer of the petitioner has been allowed and the condition that candidates must secure 25% minimum marks in the interview/personality has been test struck down.

4. The petitioner is aggrieved and submits that allocation of 100 marks out of 500 marks to the interview stage was excessive, unconstitutional and arbitrary, as it violates Articles 14 and 16 of the Constitution of India. The petitioner prays that a direction should be issued, fixing 12.2% weightage for the interview.

5. The petitioner, a general category candidate, had applied for selection to the post as Sub-Inspector ('SI') in the Delhi Police, pursuant to the advertisement published on 9.6.2012. As per the Advertisement, the candidates had to undergo a written examination and then an interview. Candidates were also required to clear the physical endurance test and undergo medical examination. The written examination comprising Paper-I and Paper-II was allocated 400 marks. 100 marks were allocated to the interview.

6. The Recruitment Rules for the post of SI in the Delhi Police, however, not been placed on record. They are not under challenge.

7. The Tribunal, in the impugned order, has held that the requirement that candidates must secure a minimum of 25% marks in the interview was contrary to law. The effect thereof was that the marks obtained by the petitioner, both in the written examination and the interview, were clubbed

without the stipulation that the petitioner should have obtained 25% marks in the interview. Even after the clubbing of the said marks, the petitioner did not qualify in the order of merit.

8. The contention of the petitioner that the interview/personality test should not exceed or allocated more than 12.25% is flawed and untenable. Reliance placed by the petitioner on *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417 and *Mohinder Sain Garg v. State of Punjab*, (1991) 1 SCC 662 would not aid and support the petitioner. The said decisions have been considered and explained by the Supreme Court in subsequent decisions. In *Bishnu Biswas & Ors. v. Union of India & Ors.*, (2014) 5 SCC 774, elucidating on the correct legal position, it has been held:-

“14. This Court in *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417 held that allocation of 22.2% marks for the viva voce test was excessive and unreasonably high, tending to leave room for arbitrariness. (See also *Munindra Kumar v. Rajiv Govil*, (1991) 3 SCC 368, *Mohinder Sain Garg v. State of Punjab* (1991) 1 SCC 662, *P. Mohanan Pillai v. State of Kerala*, (2007) 9 SCC 497 and *Kiran Gupta v. State of U.P.* (2000) 7 SCC 719.

15. In *Satpal v. State of Haryana* 1995 Supp (1) SCC 206 this Court disapproved allocation of 85% of total marks for interview observing that such fixation was conducive to arbitrary selection.

*While deciding the said case the Court placed reliance upon the Constitution Bench judgment in **Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722**, wherein the Court had held that allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. Thus, it is evident that the courts had always frowned upon prescribing higher percentage of marks for interview even when the selection has been on the basis of written test as well as on interview.*

16. The appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post and no straitjacket formula can be laid down. Further, there is a distinction while considering the case of employment and of admission for an academic course. The courts have repeatedly emphasised that for the purpose of admission in an educational institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post.”(emphasis supplied)

Para 16 of the aforesaid quotation, in our opinion, holds that when the selection is for the purpose of employment and is to be made by a written test as well as an interview, the appropriate allocation of marks to the interview would depend upon the nature of post, which the candidate is being considered for, as well as the nature of employment. No preconceived

or assumptive allocation or percentage can be judicially dictated, unless the allocation is unreasonable. Keeping in mind the aforesaid parameters, 20% allocation for interviews is neither high nor abnormal. The said allocation cannot be struck down, for the petitioner perceives or believes that the allocation is high and should be lower. Interview has its advantages, as it helps the Board interact and understand the candidates' perceptions, traits and suitability. Interview assessment is not inconsequential and irrelevant. Allocation for interview should not be high, as there is some element of subjectiveness and there may be apprehensions which arise.

9. In *Jasvinder Singh v. State of J & K* (2003) 2 SCC 132, an almost identical question arose for consideration. Challenge was to allocation of 20% marks for viva and 80% marks for the written examination for the post of sub-inspector in police. This judgment was referred to in Paragraph 18 of the judgment in *Bishnu Biswas & Ors. v. Union of India & Ors.* (supra), which reads:-

"18. In *Jasvinder Singh v. State of J&K* (2003) 2 SCC 132 this Court upheld the allocation of 20% marks for viva test as against 80% marks for written test for selection to the post of Sub-Inspector of Police. However, the Court cautioned observing that the awarding of higher percentage of marks to those who got lower marks in written test in comparison to

some who had got higher marks in written examination, an adverse inference from certain number of such instances can be drawn. However, in absence of any allegation of mala fides against the Selection Committee or any member thereof, a negligible few such instances would not justify the inference that there was a conscious effort to bring some candidates within the selection zone."

10. Keeping in view the aforesaid facts, we do not think that the impugned order passed by the Tribunal, upholding allocation of 20% weightage of total marks to the interview should be struck down on the ground that it, *per se* and *ex facie*, violates the mandate of the ratio of the Supreme Court in ***Ashok Kumar Yadav v. State of Haryana***(supra) and ***Mohinder Sain Garg v. State of Punjab***(supra).

11. We may add that learned counsel for the petitioner, during the course of arguments, had submitted that the petitioner was awarded low marks in the interview and, therefore, could not be selected. This aspect has been examined by the Tribunal in the impugned order and would not by itself reflect that the interview board was biased against the petitioner. In fact, the learned counsel for the petitioner states that he has not raised or alleged bias or malafides. Another contention raised by the petitioner is that some candidates who had secured less marks in the written examination have been

awarded high marks in the interview. This is possible. Without specific and clear data and a firm foundation to establish that the marks awarded by the interview board were objectionable and dishonourable we would hesitate and not accept the said statement. In the absence of the said material, it would be inappropriate to hold that the interview panel had acted arbitrarily or not in accordance with law. (See observations in ***Bishnu Biswas*** (supra) quoted above, referring to ***Jasvinder Singh*** (supra)).

12. There is another aspect which we must allude to. The petitioner was called for the interview on 11th January, 2013. He appeared for the interview on 21st February, 2013. The results of the interview were declared on 1st March, 2013, and the petitioner came to know that he had only secured 10 out of 100 marks in the interview and was not selected. It was only thereafter on 21st March, 2013 that the petitioner filed O.A. No. 1028/2013 challenging the allocation of 20% weightage of total marks to the interview as excessive and arbitrary. He did not raise any challenge to allocation of 20% to the interview during the entire selection process and only raised the contention after the selection process was completed and he found himself unsuccessful. The Supreme Court in ***Pradeep Kumar Rai & Ors. v. Dinesh Kumar Pandey & Ors.*** (2015) 11 SCC 493, has observed:-

"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See *Vijendra Kumar Verma v. Public Service Commission* (2011) 1 SCC 150 and *K.H. Siraj v. High Court of Kerala* (2006) 6 SCC 395.)"

13. We have referred to the said decision as a secondary ground. We would primarily dismiss the writ petition for the reasons elucidated and expounded earlier.

14. The writ petition has no merit and is dismissed, with no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 21, 2016
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