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

+ **W.P.(C) 2023/2017**

AMAN CHAHAL

..... Petitioner

Through: Mr. N.D. Pancholi, Mr. Ravinder
Kumar and Ms. Shalu Nigam, Advs.

versus

**THE NEW INDIA ASSURANCE COMPANY
AND ANR**

..... Respondents

Through: Mr. Saurabh Prakash and Mr. Kunal
Gosain, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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28.08.2017

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the facts and circumstances stated above, it is prayed that this Hon’ble Court may be pleased:

1. *To issue Writ of mandamus or any other appropriate order, direction to direct the Respondents to honour and comply with the terms of agreement of service.*
2. *To issue a Writ of mandamus or any other appropriate order, direction to direct the Respondents to allow the petitioner to join the duty at the appropriate place;*
3. *Any other order or direction which this Hon’ble Court deems fit and proper in the circumstances of the case may be issued;*

4. *To direct the respondent to pay the cost of litigation.”*

2. Some of the facts are, the petitioner who belongs to a Jat Community had applied for appointment to the post of Administrative Officer Scale-I against OBC category pursuant to an advertisement issued by the respondents. He appeared in the written test, the result of which was declared on January 16, 2015. It is his case that he participated in the interview held on February 20, 2015. He submitted his Caste certificate issued by the Tehsildar, Gurgaon, Haryana. A selection letter was received by him on March 20, 2015. He also appeared in the pre-employment medical examination on the same date. It is his case that service agreement was executed on March 24, 2015 by virtue of which the petitioner was appointed as Administrative Officer on probation for a period of one year and the respondents agreed to keep the petitioner in employment at least for four years. It is his case that despite his selection and the service agreement, he was not allowed to join the duties on the plea that in terms of the judgment of the Supreme Court, the caste “Jat” was de-reserved from OBC category. It is also his case that the petitioner secured 119 marks out 200 marks in online examination which is 59.5% whereas he was given eight out of twenty marks i.e. 40% marks in the interview, which is arbitrary and

unjust. Learned counsel for the petitioner reiterates the stand of the petitioner in the petition. That apart, she states that respondents could not have put the weightage for interview beyond 15%. She would rely upon the following judgments in support of her contention:

- 1. Civil Appeal No. 5329/1990 Mohinder Sain Garg v. State of Punjab and Ors. and connected Civil Appeals**
- 2. AIR 1981 Supreme Court 487 Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors. etc.**
- 3. AIR 1995 Supreme Court 1371 R.K. Sabharwal and Ors. v. State of Punjab and Ors.**

3. On the other hand, Mr. Saurabh Prakash, learned counsel appearing for the respondents has drawn my attention to the counter-affidavit filed by the respondents to contend that in terms of the judgment of the Supreme Court in the case of **Ram Singh v. Union of India, 2015 (5) SCJ 83** decided on March, 17, 2015, the Supreme Court has quashed the Notification of the Central Government including the Jat Community in the OBC category. He also states that in a subsequent order dated April 12, 2016, while dealing with certain applications filed by the persons / applicants appointed as Probationary Officers prior to the judgment dated March 17, 2015 and those who have commenced diploma training course for banking prior to the date of judgment dated March 17, 2015, the Supreme Court had protected the

rights of the applicants therein. Further with respect to the 3rd category of applicants before it who had commenced training / diploma course after the date of judgment dated March 17, 2015 no protection has been granted. According to him, the appointment of the petitioner being on March 20, 2015, i.e., after the judgment of the Supreme Court, the said judgment of the Supreme Court dated March 17, 2015 has a bearing on the appointment of the petitioner inasmuch as he cannot be treated as a candidate belonging to the OBC category. That apart, in so far as the submission made by the learned counsel for the petitioner on the aspect of marks given to the petitioner in the interview is concerned, Mr. Prakash states there is no arbitrariness in the same and was on the subjective satisfaction of the Interview Committee, which cannot be faulted. That apart, he states the last selectee under the general / open category had scored 58.6% as against 55.6% by the petitioner in the final merit list. Hence the petitioner was rightly not allowed to join the duties. He seeks the dismissal of the writ petition.

4. Having heard the learned counsel for the parties, in so far as the issue of benefit as an OBC candidate is concerned, I agree with the submission made by Mr. Prakash that the appointment of the petitioner being after

March 17, 2015, the judgment of the Supreme Court in ***Ram Singh (supra)*** shall be applicable on all fours. The notification issued by the Central Government having been quashed the petitioner cannot seek appointment as an OBC candidate belonging to Jat Community. In so far as the plea of the learned counsel for the petitioner that the petitioner could not have been given eight marks in the interview is concerned, the same is on the subjective satisfaction of the members of the Interview Committee. The petitioner having appeared before the Interview Committee cannot now challenge the very basis of marking in the interview. That apart, the plea of the learned counsel for the petitioner that he could not have been given eight marks in the interview is a plea of malice and cannot be considered until and unless the members of the Selection Committee have been impleaded as party / respondents. That apart if the plea of the petitioner is to be accepted, then the rights of those general / open candidates who have secured more than 55.6%, but less than 58.6% , shall be affected and no order can be passed against them, or against their interest, when they are not party in these proceedings.

5. In so far as the judgment relied upon by the learned counsel for the petitioner in the case of ***Mohinder Sain Garg (supra)*** is concerned, the

Supreme Court by referring to its own judgment in the case of *Ashok Kumar Yadav and Ors. v. State of Haryana 1985 (3) SLR 200 (SC)* wherein it held that the prescription of 25% of the total marks for viva-voce is arbitrary and excessive, and it would be reasonable to have marks not more than 15% of the total marks in the selection of candidates. In so far as the judgment relied upon by the petitioner in *Ajay Hasia (supra)* is concerned, the Supreme Court was concerned with the selection of the candidates for admission to a College. The Supreme Court held the allocation of as high as percentage of $33\frac{1}{3}$ of total marks for interview should be recorded as infecting the admission procedure with vice of arbitrariness. Suffice to state in the case in hand, the allocation of marks was only 20% and not $33\frac{1}{3}$. The Supreme Court had not quashed the appointments so made in that case. In a later judgment reported as **2003 (2) SCC 132 *Jasvinder Singh and others v. State of J&K and Others***, wherein the Supreme Court was concerned with an appeal filed by some of the persons, who had challenged the selection made for appointment of Sub-Inspectors of Police. The writ petition filed by them before the learned Single Judge of the High Court was allowed on two grounds; (i) the marks allocated for viva-voce at 25 in comparison to the marks earmarked for

written test at 100, worked out to 20% and the same being in excess of 12 ½ % stood vitiated on account of the law declared by this Court in the case of ***Ashok Kumar Yadav and Ors. (supra)*** and (ii) the marks in viva-voce were not properly awarded and that not only there was a farce of an interview of every candidate within few minutes but questions put were also irrelevant and not related to the selection for the posts in question. In appeal the Division Bench had set aside the judgment. The Division Bench came to the conclusion that the prescription of 25 marks for viva-voce test cannot be held to be not in consonance with the judicial precedents. The Division Bench observed that the decision in ***Ashok Kumar Yadav's case (supra)*** has been noticed in subsequent judgments of the Supreme Court wherein even higher percentage upto 50% was also upheld. The Division Bench held, the prescription of 25 marks for viva-voce did not suffer from the vice of arbitrariness. The Supreme Court referred to ***Ashok Kumar Yadav's case (supra)***, wherein it was observed that both written examination and viva voce test are accepted as essential features of proper selection and that there cannot be any hard and fast rule regarding the precise weight to be given to the viva-voce test as against written examination, which may vary from service to service according to the requirement of that particular service, the

minimum qualifications prescribed, the age group from which selection is to be made, the body to which the task of holding the viva-voce is entrusted and a host of other factors. The Supreme Court also observed in ***Ashok Kumar Yadav's case (supra)***, the Court adverted to the pattern of marks and found that the highest marks obtained in the written examination by Officers worked out only to a ratio of 22.2% as against the marks obtained in the viva-voce worked out to an inordinately high percentage of 76, which was considered to be the vitiating factor as the spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination. The Supreme Court in ***Ashok Kumar Yadav's case (supra)***, has held that the selection made by Haryana Public Service Commission in future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in the case of ex-service officers. The Supreme Court also after referring to its judgment in ***Mahmood Alam Tariq and Ors. v. State of Rajasthan and Ors. (1988) 3 SCC 241***, ***Manjit Singh and Ors v. ESI Corporation (1990) 2 SCC 367***, ***Anzar Ahmed v. State of Bihar (1994) 1 SCC 150***, has in paras 7 and 8 held as under:-

“7. In Mahmood Alam Tariq and Ors. v. State of Rajasthan and Ors. prescription of 33% as minimum qualifying marks of

60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In **Manjit Singh, UDC and Ors. v. Employees State Insurance Corporation and Anr.** this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40% as applicable for written examination was reasonable. In **Anzar Ahmed v. State of Bihar and Ors.** this Court exhaustively reviewed the entire case law on the subject including the one in **Ashok Kumar Yadav's case (supra)** and upheld a selection method which involved allocation of 50% marks for academic performance and 50% marks for the interview. The very observations in **Ashok Kumar Yadav's case (supra)** would go to show that there cannot be any hard and fast rule of universal application for allocating the marks for viva voce viz-a-viz the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20%) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view has adopted a superficial exercise and proceeded on a misunderstanding of the real ratio of the

decision in Ashok Kumar Yadav's case (supra). Further, the learned Single Judge appears to have applied the ultimate decision in the said case, to the case on hand drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, therefore.

8. The learned Single Judge also seem to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in written test as compared to some who scored higher marks in written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in written test will or should be presumed to have fared well in viva voce test also and the Expert opinion as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart the variation of written test marks of those who were found to have been awarded higher marks in viva voce viz-a-viz those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias

against the Board constituted for selection or any one in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates all those who have obtained 56 marks in written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such (SIC) in law to call for our interference.”

6. A reading of the aforesaid judgment it is clear, the Supreme Court has upheld the Division Bench judgment, which held prescription of 25% marks in viva-voce as justified. In the case in hand, the marks for viva-voce being 20%, the same cannot be faulted.
7. In so far as the judgment relied upon by the petitioner in **R.K.**

Sabharwal & Ors. (supra) is concerned, the same does not pertain to the issue raised by the petitioner and has no applicability.

8. In view of my discussion above, I do not see any merit in the petition.

The petition is dismissed.

V. KAMESWAR RAO, J

AUGUST 28, 2017/jg