

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Krishna Rao**

FMA 1155 of 2021

with

IA No. CAN 1 of 2021

Koushik Chakraborty Thakur

Versus

The Hon'ble High Court at Calcutta & Ors.

For the Appellant	: Mr. Debabrata Saha Roy Mr. Indra Nath Mitra Mr. Pingal Bhattacharyya Mr. Subhankar Das Mr. Neil BasuAdvocates
For the High Court Administration	: Mr. Jaydip Kar, Sr. Adv. Mr. Saikat BanerjeeAdvocates

Heard on : 21.03.2022

Judgment on : 20.05.2022

Krishna Rao, J.:- This appeal is directed against the order passed by the Hon'ble Single Judge in WPA No. 4164 of 2021 (Koushik Chakraborty

Thakur – versus- The Hon'ble High Court at Calcutta & Ors.) dt. 12th April, 2021 wherein the Writ Petition of the appellant was dismissed.

Vide Notification No. 3350-G.S. dt. 29th August, 2018 an application was invited from the willing incumbents, belonging to the Cadre of Additional Court Keeper, Section Officer, Special Assistant (Legal) and Superintendent Grade-II on the Appellate Side Establishment of the Calcutta High Court having LLB Degree for filling up the 2 (two) vacant posts of Stamp Reporter/Additional Stamp Reporter.

As per the Notification Selection Test for filling up the 2 (two) vacant posts, to be conducted by the Hon'ble Selection Committee constituted for the said purpose. The Selection Committee stipulated the following modalities of selection :

- i. *The selection Test will carry 50 marks, out of which 30 marks are allotted for written test whereas viva voce and ACR will account for 10 marks each.*
- ii. *In the written test, questions shall be set from the following Acts namely : (a) The Court Fees Act, (b) Indian Stamp Act, (c) Registration Act, (d) Limitation Act, (e) Code of Civil Procedure and (f) Evidence Act.*
- iii. *The candidates shall be provided with the Bare Acts of the abovementioned acts at the time of examination.*

The appellant along with two other applicants have participated in the selection process. The appellant secured 14 marks out of 30 marks in the written test, 8 marks out of 10 marks in the ACR valuation and 3.5 mark out of 10 in viva voce and accordingly, the appellant had secured total 25.5 marks out of 50 marks.

The Selection Committee by considering overall assesment of all the three candidates recommended the name of Debabrata Bandyopadhyay for promotion and have not recommended the name of the appellant and other candidate due to lack of minimal knowledge.

The recommendation of the Selection Committee was approved by the Hon'ble Chief Justice and promoted Shri Debabrata Bandyopadhyay to the Post of Stamp Reporter on 19th September, 2018.

After about two and half years the appellant has filed writ petition before the Ld. Single Judge praying for consideration of his case for promotion to the Post of Stamp Reporter/Additional Stamp Reporter.

Mr. Debabrata Saha Roy, Ld. Counsel representing the appellant submits that the High Court Administration in not publishing any result of either the written test or the viva- voce test or even the panel of selected candidate, which actually caused delay, for which the petitioner cannot be blamed. Mr. Saha Roy further submits that to obtain all required information of the selection process the appellant had applied under Right to Information Act and lastly the authorities have furnished information only on 20.01.2021 and the appellant had filed writ petition on 08.02.2021 and thus there is no delay in filing the writ application.

Mr. Saha Roy further submits that the appellant being the 2nd empanelled candidate secured more than 50% marks in total and there are two remaining vacancies in the promotional post, the appellant ought to have been promoted in the said post. Ld. Counsel futher submits that no

bench mark either in the written test or in the viva-voce is fixed in the promotional rules and thus the Selection Committee cannot throw out the 2nd empanelled candidate who had secured more than 50% of marks on the ground of having no minimal knowledge.

Mr. Saha Roy further submits that under the promotion rules/notification the Selection Committee is not empowered to make any comments towards the appellant that the appellant is not fit for promotion having lack of minimal knowledge. Mr. Saha Roy further submits that the Selection Committee rejected the candidature of the appellant contrary to the rules of promotion/ notification.

Ld. Counsel for the appellant in support of his argument has relied upon the judgment reported in *AIR 2008 (SC) 1470 (K. Manjusree etc. -versus- State of A.P. & Anr.) at Paragraphs 24 and 25*, *AIR 2008 (SC) 2103 (Himani Malhotra – versus- High Court of Delhi)*, at Paragraphs 9, 11 & 12 and *AIR 2001 (SC) 152 (Praveen Singh -versus- State of Punjab & Ors.) at Paragraphs 11 and 13*.

Per Contra, Mr. Jaydip Kar, Ld. Senior Advocate representing the High Court Administration, submits that promotion is not a matter of right but consideration of promotion can be prayed. The Post of Stamp Reporter/Additional Stamp Reporter is of vital importance and Stamp Reporter/Additional Stamp Reporter must have adequate and appropriate level of knowledge.

Mr. Kar further submits that the Selection Committee after considering the candidature of the appellant came to the finding that the appellant is lacking in minimal knowledge and is not fit for such promotion to the Post of Stamp Reporter/Additional Stamp Reporter.

Mr. Kar also submits that as regard the relevant rules are concerned there is no mandate that every candidate who is successful in the written test is required to be appointed even if the Selection Committee finds that at the stage of final selection the candidate is not suitable for the post.

Ld. Counsel for the respondent in support of his submission relied upon the judgments reported in *(1987) 4 SCC 486 (State Bank of India & Ors. -versus- Mohd. Mynuddin)* at Paragraphs 4 & 5, *(2006) 12 SCC 317 (Union Public Service Commission -versus- L.P. Tiwari & Ors.)* at Paragraphs 12 and 13, *(2019) 4 SCC 500 (Sarvepalli Ramaiah (Dead) As Per Legal Representatives & Ors. -versus- District Collector, Chittoor District & Ors.)* at Paragraphs 40 to 43 and *(2018) 14 SCC 129 (Taniya Malik -versus- The Registrar General of the High Court of Delhi)* at Paragraphs 16 and 17.

Having heard Ld. Counsel for the parties had considered the documents available on record as well as the judgments relied by the parties, this Court arrives at the following findings.

As per the Recruitment Rule of 1986, the Post of Stamp Reporter is Selection Grade Category.

As per Clause 5 (3) of the Recruitment Rule, the criterion for promotion to the Selection or to Super Selection Grade Post shall be merit only.

As per Clause 9, the requisite qualification for the post of Stamp Reporter shall be LLB Degree.

Provided that when no qualified person is available in the feeder posts, the seniormost person in U.D. Assistant Category having a LLB Degree may be considered for appointment to the Post of Stamp Reporter.

During hearing of the instant appeal, proceedings of the selection process were called for and after perusing the records of selection process this Court finds that after considering the performance in the Written Test, Viva-Voce and ACRs of the three candidates the following list denoting their performance has been prepared :

NAME	WRITTEN (30 marks)	A.C.R (10 marks)	Harish Tandon, J	Sabyasachi Bhattacharyya, J	Average	Total (50 marks)
			VIVA (10 marks)	VIVA (10 marks)	VIVA (10 marks)	
<i>Shri Debabrata Bandyopadhyay</i>	19	8	7	8	7.5	34.5
<i>Shri Raj Ghosh</i>	11	8	5	5	5	24
<i>Shri Koushik Chakraborty Thakur</i>	14	8	4	3	3.5	25.5

After considering the over all assessment of the candidates appeared in the selection process the Selection Committee decided as follows :

“Though the examination for promotional post was concluded to fill up 2 (two) posts of Stamp Reporter/ Additional Stamp Reporter but the Committee thinks that only 1 (one) candidate deserves for such

promotional post. The Committee did not find the other 2 (two) candidates namely Shri Raj Ghosh and Shri Koushik Chakraborty Thakur on overall assessment to be fit for such promotional post having lack of minimal knowledge and, therefore, Shri Debabrata Bandyopadhyay is suitable for appointment as Stamp Reporter/ Additional Stamp Reporter.

Accordingly, we recommended to the Hon'ble Chief Justice the name of Shri Debabrata Bandyopadhyay, Superintendent for promotion to 1 (one) of the 2 (two) vacant posts of Stamp Reporter/ Additional Stamp Reporter, Appellate Side."

As per the recommendation of the Selection Committee the Hon'ble Chief Justice approved the recommendation of the Selection Committee and issued an order of appointment of Shri Debabrata Bandyopadhyay as Stamp Reporter.

The judgment referred to by the Ld. Counsel for the appellant reported in AIR 2008 (SC) 1470 at Paragraphs 24 and 25 reads as follows :

"24. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them [P. K. Ramachandra Iyer v. Union of India](#) 1984 (2) SCC 141, [Umesh Chandra Shukla v. Union of India](#) 1985 (3) SCC 721, and [Durgacharan Misra v. State of Orissa](#) 1987 (4) SCC 646.

25. In *Ramachandra Iyer (supra)*, this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining minimum marks in the interview also. This Court observed that the power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the rules for the Selection Board to prescribe the additional qualification of securing minimum marks in the interview, the restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed :

“Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtaining minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtaining qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained.”

In the said case the Hon’ble Supreme Court considered the question: Whether the procedure adopted by the Full Court in preparing the fresh selection list by applying the requirement of minimum marks for interview also, is legal and valid ?

In the instant case the Selection Committee has not fixed the minimum marks in the viva-voce but, after considering the overall assessment of the marks obtained in the Written Test, ACRs and Viva-Voce, the Selection Committee held that the appellant and Shri Raja Ghosh having

lack of minimal knowledge and thus the judgment referred by the appelllant is not applicable in the instant case.

The judgment referred by the Ld. Counsel for the appellant reported in AIR 2001 (SC) 152 at Paragraphs 11 and 13 reads as follows :

“11. A close look at the qualification as prescribed and the information sheet, however, in our view would depict otherwise. The qualifications prescribes that the candidates will be required to qualify for the following written test at the time of recruitment and the qualification standard in the test has been fixed to be at 33% pass marks in each paper with 45% however in the aggregate (emphasised) and paragraph 4 of the Information sheet, as above, in no uncertain term records that no candidate shall be eligible to appear in the viva voce test unless he obtain 33% marks in each paper and 45% marks in the aggregate.

13. Further, in the event, the interview was the sole criteria and the written test being treated as qualifying test, the Public Service Commission ought to have clearly stated that upon completion of the written elimination test, selection would be made on the basis of the viva voce test only as is available in the decision of Ashok v. State of Karnataka (1992 (1) SCC 28. (1991 AIR SCW 2764 : AIR 1992 SC 80 : 1991 Lab IC 2407). Be it noted that there is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. Of course, there are posts and posts, where interviews can be a safe method of appointment but to the post of a Block Development Officer or a Panchayat Officer wherein about 4,500 people applied for 40 posts, interview cannot be said to be a satisfactory method of selection though however it may be a part thereof - In the factual score we have the advantage of having the Rules prescribing the mode and method of appointments and specific marks are earmarked for written examination of various subjects together with totality of marks for viva voce test. As a matter of fact out of 450 marks only 50 marks have been allotted for interview by the Service Commission itself - why these 400 marks allotted for a written examination in four different subjects, if interview was to be the guiding factor; there has been however, no answer to the same excepting that the Court ought not to interfere in the matter of selection process in the absence of mala fides true it is that in the event the selection is tainted with mala fides, it would be a plain exercise of judicial power to set right the wrong - but is it also realistic to assume that when the Commission in clear and categorical language recorded that 450 marks would be the total marks for the examination and out of which only 50 marks are earmarked for viva voce test, the Commission desired that

these 50 marks would be relevant and crucial and the other 400 marks would be rendered totally, superfluous and of no effect at all. The language used is rather plain and is not capable of the interpretation as is being presented before us during the course of hearing and as has been held by the High Court. Reliance on 50 marks only and thereby avoiding the other 400 marks cannot in our view having due regard to the language used, be said to be reasonable or devoid of any arbitrariness.

The action of the respondent Commission thus is wholly unreasonable, unfair and not in accordance with the declared principles. Appointment procedure is evident from the documentary evidence disclosed in the proceedings and the Commission ought to have taken note of the written examination results as well. As a matter of fact the High Court while recording its acceptance to the method of selection on the basis of the viva voce test only, was pleased to observe as below :

“However, we consider it absolutely imperative to observe that the Government should get the rules examined and make proper amendment so that its intention of making distinction between qualifying test and viva voce test does not remain obscure. We also direct the PPSC to take extra precautions while issuing any future advertisement so that no inconsistency remains between the rules and the contents of the advertisement.”

The High Court admittedly therefore found inconsistency and obscurity in the entire process and as a matter of fact, the High Court has suggested incorporation of proper amendments in the rules so as to avoid confusion and obscurity. We are however, constrained to note that having come to a finding about the inconsistency and obscurity in the process, the High Court thought it fit to decry the claim of the writ petitioner being the appellant herein on the plea of the employer's right but the documents through which the right flows indicates a contra situation and as such the action suffers from the vice of arbitrariness and unreasonableness warranting intervention of this Court. On the wake of the above, the order of the High Court stands set aside and quashed. Consequently the appointments are also set aside. The Public Service Commission is directed to complete the process of selections in terms of the existing rules so that both the written and the viva voce test be taken into consideration for the purpose of effecting appointments. It is made clear that no further advertisement or examination shall take place but reconsideration of the entire process be effected upon due reliance on the written as well as viva voce test. The process be completed within a period of 3 months from the date thereof. It is further made clear that the appointments if any, already made shall continue, but shall be subject to the further results which may be declared by the Public Service Commission in regard to filling up of the posts of Block

Development and Panchayat Officers. The appeal thus stands allowed. There will however be no order as to costs."

Ld. Counsel for the appellant relied upon the judgment reported in *AIR 2008 (SC) 2103 at Paragraphs 9, 11 and 12* which reads as follows :

"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.

11. At this stage this Court notices that as per the information supplied by the respondent to the petitioners under the provisions of Right to [Information Act](#), the petitioner in Writ Petition Civil No. 490/2007 had secured 142 marks out of 250 prescribed for the written test and 363 marks out of 750 marks in vive voce test, whereas the petitioner in Writ Petition No. 491/2007 had secured 153.50 marks out of 250 marks in the written test and 316 marks out of 750 marks in vive voce test. There is no manner of doubt that the prescription of 750 marks for vive-voce test is on higher side. This Court further notices that Hon'ble Justice Shetty Commission has recommended in its Report that "The vive voce test should be in a thorough and scientific manner and it should be taken anything between 25 to 30 minutes for each candidate. What is recommended by the Commission is that the vive voce test shall carry 50 marks and there shall be no cut off marks in vive voce test." This Court notices that in [All- India Judges Association and ors. V. Union of India and Ors.](#) (2002) 4 SCC 247, subject to the various modifications indicated in the said decision, the other recommendations of the Shetty Commission (supra) were accepted by this Court. It means that prescription of cut off marks at vive voce test by the respondent was not in accordance with the decision of this Court. It is an admitted position that both the petitioners had cleared written examination and therefore after adding marks obtained by them in the written examination to the marks obtained in the vive voce test, the result of the petitioners should have been declared. As noticed earlier 16 vacant posts were notified to be filled up and only five candidates had cleared

the written test. Therefore, if the marks obtained by the petitioners at vive voce test had been added to the marks obtained by them in the written test then the names of the petitioners would have found place in the merit list prepared by the respondent. Under the circumstances, this Court is of the opinion that the petitions filed by the petitioners will have to be accepted in part.

12. *For the foregoing reasons both the petitions succeed. The respondent is directed to add the marks obtained by the petitioners in the written examination to the marks obtained by them in the vive voce test and prepare a combined merit list along with the other selected candidates. The respondent is directed to amend the notice dated April 10, 2007 issued by the Registrar (Vig.), High Court of Delhi, New Delhi and declare the petitioners as selected for being recommended for appointment to the post in Delhi Higher Judicial Service. It is clarified that the petitioners would neither be entitled to, seniority or salary with retrospective effect. Their seniority shall be reckoned from the date of their appointment and salary as allowable be paid from that date only. Rule is made absolute accordingly in each petition. There shall be no order as to cost."*

In the instant case the Selection Committee has *not rejected* the candidature of the appellant on the ground that the appellant has obtained less marks in the viva-voce but, the Selection Committee has *not recommended* the name of the appellant as per the overall assessment made by the Selection Committee and found that the appellant is lacking in minimal knowledge.

Ld. Counsel for the respondents relied upon the judgment reported in (1987) 4 SCC 486 at Paragraphs 4 and 5 reads as follows :

"4. *It is admitted that the posts in the Middle Management Grade Scale III in the State Bank of India are posts to which appointments are made by selection. The State Bank of India stated before the High Court that the promotion to Middle Management Grade Scale III posts depended not merely upon the eligibility but on merit and such promotion was accorded only after a proper evaluation of the service records, performance appraisal and potentiality of the officer concerned to assume higher responsibilities. The evaluation was done*

by the Selection Committee, which was expected to go into several aspects including the merits and demerits of all the candidates who were eligible. It was further pleaded that the mere absence of adverse remarks did not entitle an employee to promotion to the next higher grade automatically when promotion was by selection. It was further pleaded that after applying the relevant tests laid down by several circulars issued by the Management embodying the guidelines in respect of the selection of officers for promotion to the Middle Management Grade Scale III it was found from time to time that the respondent was not entitled to be promoted. It was further pleaded before us that in any event the High Court was not right in issuing a direction to the management to promote the respondent to the higher post particularly in the absence of any plea of mala fides. The learned counsel for the appellants, however, has very fairly stated that even now the management is willing to consider the case of the respondent for promotion on a proper appraisal of the relevant material by the Selection Committee.

5. Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds -- scientific, technical, financial, industrial, commercial, administrative, educational etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become nowadays very much refined and sophisticated and such evaluation should, therefore, in the public

interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post, to be nominated by the employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise.”

In the instant case the appellant has not raised any issue with regard to bias or mala fide since the post is to be filled up by selection on merit, it is the Selection Committee which is ultimately competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post.

Ld. Counsel for the respondents relied upon the judgment reported in (2006) 12 SCC 317 at Paragraphs 12 and 13 which reads as follows :

“12. *It is now more or less well settled that the evaluation made by an expert committee should not be easily interfered with by the courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. Such view was reiterated as late as in 2005 in UPSC v. K. Rajaiah wherein the aforesaid Regulations for the purpose of promotion to the IPS cadre were under consideration. Apart from the above, at no stage of the proceedings, either before the Tribunal or the High Court or even before this Court, has any allegation of mala fides been raised against the Selection Committee and the only grievance is that the Selection Committee erred while making assessment of the comparative merits of the respective candidates. While concluding his submissions, Mr. Rao had pointed out that the direction given by the High Court to the appellant to hold a Review Departmental Promotion Committee was also erroneous since the Regulations provided for selection to be made not by a Departmental Promotion Committee but by a Selection Committee constituted as per the Regulations.*

13. *Although, on behalf of the respondents it has been urged that there was no bar which precluded the Tribunal from looking into the original ACRs of the respective candidates, what we are required to consider is whether it was at all prudent on the part of the Tribunal to have adopted such a procedure which would amount to questioning the subjective satisfaction of the Selection Committee in preparing the select list."*

Ld. Counsel for the respondent also relied upon the judgment reported in (2018) 14 SCC 129 at Paragraph 17 which reads as follows :

"In both the cases, Hon'ble Supreme Court held that interview is the best method of judging the performance, overall personality and the actual working knowledge and capacity to perform otherwise the standard of judiciary is likely to be compromised. In the instant case also the Selection Committee after considering overall assessment of the candidates appeared in the selection process came to know that the appellant is having lack of minimal knowledge."

Ld. Counsel for the respondents further relied upon the judgment reported in (2019) 4 SCC 500, at Paragraphs 40 to 43 which read as follows:

"40. *Administrative decisions are subject to judicial review under [Article 226](#) of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extra ordinary power of judicial review.*

41. *In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.*

42. *A decision may sometimes be set aside and quashed under [Article 226](#) on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root*

of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.

43. *Judicial review under Article 226 is directed, not against the decision, but the decision making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.”*

In the instant case the the appellant had participated in the selection process and appeared in the written test and interview conducted by the Selection Committee and the Selection Committee, after considering overall assessment of the candidates appearing in the selection process have taken a decision and thus this Court under Article 226 of the Constitution of India cannot sit over the decision of the expert body.

As per record it reveals that on 14.09.2019 the Selection Committee has taken decision and on 19.09.2019 out of three candidates one candidate namely Mr. Debabrata Bandyopadhyay was appointed as Stamp Reporter. The appellant has filed an application under Right to Information Act firstly on 24.12.2019, i.e. after the period of three months. The respondents have supplied information to the appellant on 27.01.2020. On 28.01.2020 the appellant has applied for information under the Right to Information Act for the second time. The respondents have furnished reply to the appellant on 12.02.2020. On 15.12 2020, the appellant had again applied information under the Right to Information Act and the same was furnished to the appellant on 20.1.2021. The Ld. Single Judge taking note of the same had

dismissed the writ petition of the appellant on the ground of delay but this Court had considered the case of the appellant on merit also.

In view of the discussion made above, this Court is of the view that the impugned judgment and the the decision of the Selection Committee do not require any interference.

FMA 1155 of 2021 with IA CAN No. 1 of 2021 stand accordingly dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)