

SIYA RAM
v.
UNION OF INDIA AND ORS.

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DECEMBER 16, 1997

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

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Service Law :

Promotion—Through Departmental Promotion Committee—Plea of bias against one of the Members of DPC—Allegations of patronage or favouritism for a particular candidate. leveled against one of the Members of the DPC by the Appellant—No evidence on record to corroborate the allegations—Tribunal on examination of Mark sheets, however, found, that Member of DPC awarding more marks to Appellant than the marks awarded to so called patronised candidate—Making of unsubstantiated allegations against Member of the DPC deprecated—Administrative law—Natural justice—Bias.

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Promotion—Selection criteria—Promotion for the post of Chief Personnel Inspector—Selection made solely on the basis of viva voce—Validity of—Under the Guidelines issued by the Railways, separate marks prescribed for different attributes of the candidates—Qualifying marks also prescribed for professional ability for the aggregate—Members of Selection Board well versed with the requirements of the post—Norms laid down for the Selection Board to follow—In these circumstances appellant's plea that selection based solely on viva voce could not be fair, rejected—Recruitment process—Selection—Interview—Viva voce as the sole test—Propriety of.

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For two posts of Chief Personnel Inspectors in Railways, four persons including the appellant, were eligible. After selection procedure, Respondents Nos. 4 and 5 were selected/empennelled. The criteria adopted by the Selection Board was allocation of separate marks for (i) professional ability, (ii) personality, leadership, technical and educational qualifications, (iii) record of service and (iv) seniority.

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Though Respondent No. 4 was lower in the seniority to the appellant but it was admitted that both of them were promoted to the post of Divisional Personnel Inspector on the same day. The appellant challenged his non-selection before the Tribunal, which was dismissed by it.

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A Hence this appeal.

B Two principal contentions were raised by the appellant, viz. (1) one of the Members of the Selection Board was favourably inclined towards Respondent No. 4, and (2) the Rules regarding selection permitted only oral test in the form of *viva voce* and no written examination was held and hence, result of the selection test only on the basis of *viva voce* could not be reasonably fair and was liable to lead to arbitrariness.

Dismissing the appeal, the Court

C HELD : 1. As far as the contention of bias against one of the Members of the Selection Board in favour of Respondent No. 4 is concerned, the appellant could not substantiate the same. Apart from his bald assertion that the Member had patronised Respondent No. 4, there is nothing on record to corroborate the same. As a matter of fact the Tribunal examined the marks-sheets given by the three members of the
D Selection Board and found that in fact that Member (against whom allegations were leveled) had given more marks to the appellant than given by him to the 4th Respondent. This Court does not appreciate such types of allegations against the members of the Selection Board. It is not proper to do so in the absence of any material and so the allegations of patronage
E or favouritism alleged against that Member of the Selection Board are rejected. [517-G-H; 518-A]

F 2. Chief Personnel Inspector in Railways is a selection post. The Selection Board consisted of high ranking officials, well versed with the requirements of the post to which promotion was to be made. Norms have
G been laid for the Selection Board to follow. No fault can be found with the same. Apart from the objection that excessive marks have been allocated for *viva voce*, the appellant has been unable to point out any illegality or irregularity in the selection process. Functions and duties attached to the post of Chief Personnel Inspector have nowhere been set out. It is not for
H the Court to suggest as to what marks should be allocated for interview in a case like the present one. Sometimes, only interview is considered to be the best method for certain posts. The selection made for two posts of Chief Personnel Inspector in the present case was according to the rules. There is no infirmity in the selection process. [520-H; 521-A-B]

H *Lila Dhar v. State of Rajasthan & Ors.*, AIR (1981) SC 1777, relied on.

Ajay Hasia v. Khalid Mujib Sehravardi & Ors., AIR (1961) SC 487 and *Javid Rasool Bhat v. State of J. & K.*, AIR (1984) SC 873, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3409 of 1988.

From the Judgment and Order dated 29.6.87 of the Central Administrative Tribunal, Allahabad in O.A. No. 244 of 1986. B

Raj Kumar Gupta, H.V.D. Sharma and Rajesh for the Appellant.

V.C. Mahajan, Rajiv Nanda, Ms. Sushma Suri, C.V. Subba Rao and A.K. Sanghi for the Respondents. C

The Judgment of the Court was delivered by

D.P. WADHWA, J. On his failure to succeed in the Central Administrative Tribunal ('Tribunal' for short), (Allahabad Bench) in OA No. 244 of 1986 decided on June 29, 1987 the appellant has come to this Court in appeal. The appellant had prayed in his petition before the Tribunal for quashing the panel dated April 28, 1986 for promotion to the post of Chief Personnel Inspector in the Northern Railway. While D.K. Srivastava and P.N. Tripathi respectively respondents 4 and 5 were empanelled, the appellant could not make it. He also sought direction that he was entitled to appointment to this post of Chief Personnel Inspector. D E

Divisional Manager, Northern Railway, issued a letter on March 17, 1986 for holding interviews for two posts of Chief Personnel Inspector from Divisional Personnel Inspectors. At the relevant time only four persons were eligible for filling up the post of Chief Personnel Inspector. They were : F

- (1) Rajkumar (S.C.)
- (2) P.N. Tripathi (respondent No. 5)
- (3) Siya Ram (the appellant)
- (4) D.K. Srivastava (respondent 4)

At that time Rajkumar and P.N. Tripathi were working as Chief Personnel Inspector on *ad hoc* basis. H

A Post of Chief Personnel Inspector is a selection post. Selection Board was comprising of three officials namely : Aslam Mehmood, Senior Divisional Personnel Officer, Northern Railway, Lucknow; Raghuram, Senior Divisional Personnel Officer, Allahabad; and R.B. Srivastava, Senior Divisional Mechanical Engineer, Northern Railway, Locknow. The Selection Board interviewed all the eligible candidates and respondents 4 and 5 were selected to the posts of Chief Personnel Inspector. The criteria which the Selection Board adopted for selection was as follows :

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| B | (a) Professional ability | - 50 marks |
| C | (b) Personality, Leadership, technical and educational qualifications | - 20 marks |
| | (c) Record of service | - 15 marks |
| D | (d) Seniority | - 15 marks" |

E Though D.K. Srivastava was lower in the seniority list to the appellant but it is admitted that both of them were promoted to the post of Divisional Personnel Inspector on the same day. Interviews were held on April 12, 1986 and selection list was prepared on April 28, 1986. The appellant challenged his non selection in the Tribunal by filing petition on May 14, 1986 which, as noted above, was dismissed by the Tribunal by judgment dated June 29, 1987.

F Two principal contentions were raised by the appellant : (1) one of the members of the Selection Board namely, Raghuram was favourably inclined towards D.K. Srivastava and (2) the Rules regarding selection permitted only oral test in the form of *viva voce* and no written examination was held and result merely on the basis of *viva voce* could not be reasonably fair and was liable to lead to arbitrariness and that out of 100 marks 50 were allotted for professional ability without prescribing any norms.

G As for as the first contention is concerned, the appellant could not substantiate the same. Apart from his bald assertion that Raghuram was patronising D.K. Srivastava, there is nothing on the record to corroborate the same. As a matter of fact the Tribunal examined the marks sheets given by the three members and found that in fact Raghuram gave more marks to the appellant than given by him to 4th respondent. We do not appreciate

such types of allegations against the members of the Selection Board. It is not proper to do so in the absence of any material. We, therefore, reject the allegation of patronage or favouritism alleged against Raghuram.

Railway administration has laid down procedure which would apply to selection to the posts in the services. Selection to the post is to be made on the basis of the recommendations of the Selection Board. Before the Board assembles to make the selection all papers connected with the proposed selection, the confidential reports, if any, on each of the candidates and other relevant data concerning them is to be circulated for information of the members of the Board as also the qualifications prescribed for the particular post under consideration. The Selection Board then examines the service record and confidential reports of the eligible candidates. Other relevant guidelines are as under :

"(1) Selection should be made primarily on the basis of over all merit, but for the guidance of selection boards the factors to be taken into account and their relative weight are laid down below:

	Max. Marks	Qualifying marks
(i) Professional ability	50	30
(ii) Personality, address, leadership and academic/technical qualifications	25	--
(iii) Record of service	25	--

Note : (1) The item "Record of Service" should also take into consideration "Seniority" of the employees but no separate allotment of marks need be made on this account.

(2) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks on the aggregate for being placed on the panel.

(2) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not

A be placed on the panel even if on the total marks secured he qualifies for a place. Good work and a sense of public duty among the conscientious staff should be recognised by awarding more marks both for record of service and for professional ability.

B (3) For general posts, i.e. those outside the normal channel of promotion, for which candidates are called from different categories, the selection test is an open competitive test. The number of candidates to be called for written and or *viva voce* tests will ordinarily be limited to the senior eligible staff to the extent of four times the number to be placed on the panel, the number to be called from each category being regulated by a quota to be prescribed by the railway.

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D (4) The names of selected should be arranged in order of seniority but the securing a total of more than 75% marks will be classed as 'outstanding' and will be placed at the top of the list, in the order of their seniority."

Mr. Gupta, learned counsel for the appellant, strongly relied on a decision of this Court in *Ajay Hasia v. Khalid Mujib Shrivardi and others*, AIR (1981) SC 487 and to the following observations of the Tribunal: "On the other hand the practice followed in the Railway Department is altogether different and for promotion from lower grade/post to higher post or post in variably trade tests and selection tests consisting of written examination and *viva-voce* and sometimes *viva-voce* tests alone have been prescribed. The ability of a person who is already in service can be better judged by his past performance in the Department and as such, insistence for *viva-voce* test for each promotion can hardly be appreciated. In any case, the allocation of as high as 50% marks for *viva-voce* test to judge the Professional ability of a candidate may sometimes lead to arbitrariness and may not achieve the object behind it. Having different pattern or set of rules for service requiring technical skill may be justified but even for such services, for the sake of expediency interview test should not be relied upon as an exclusive test and the marks assigned for interview/personality test should be minimal to avoid charges of arbitrariness, bias and the like minimal as observed by the Hon'ble Supreme Court in *Ajay Hasia v. Khalid Mujib*, AIR (1981) SC 487 and *Javid Rasool Bhat v. State of J & K*, AIR (1984) SC 873. In the matter of promotion for other services in the Railway Department, more importance has to be given to record of service and

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seniority than the professional ability to be judged at the time of interview. This will bring uniformity with the other department of Government of India and minimise the chances of complaint as made in the present case. The Rule under which the selection for the post of CPI has been made in the instant case, therefore, requires a change." In *Ajay Hasia's* case there was challenge to the validity of admission to the Regional Engineering College, Srinagar. On merit of the case various contentions were raised and it was submitted that marks obtained by the candidates at the qualifying examination were ignored and as many as 50 marks were fixed for *viva-voce* examination as against 100 marks allocated for the written test and relying on *viva-voce* examination as a test for determining comparative merit of the candidate was arbitrary. On the question of allocation of marks for oral interview this Court observed that allocation of as high a percentage as $33\frac{1}{3}$ of the total marks for the oral interview should be regarded as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure could not be sustained. This Court said that under the existing circumstances 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. The principle laid by this Court in *Ajay Hasia's* case is not of universal application in all circumstances and in all cases though the court also touched upon the excessive marks allocated for *viva voce* in recruitment and promotion in public employment. In *Lila Dhar v. State of Rajasthan and others*, AIR 1981 SC 1777 this Court considered the decision in *Ajay Hasia's* case and explained the use of the expression "or even in the matter of public employment" in the context of allocation of marks for oral examination of the candidates seeking employment or promotion. In this case the High Court had struck down the selection for the post of Munsifs on that ground that more than due weightage was given to the interview test in that 25% marks were allocated to *viva-voce* under the Rules and thus holding that the selection was arbitrary and violative of Articles 14 and 16 of the Constitution. This Court said that the words "or even in the matter of public employment" were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment in the public service and that the observation relating to public employment was *per incuriam* since the matter did not fall for the consideration of the Court in that case. The Court then went on to observe as under :

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A "Nor do we think that the Court intended any wide construction
of their observation. As already observed by us the weight to be
B given to the interview test should depend on the requirement of
the service to which requirement is made, the source-material
available for recruitment, the composition of the interview Board
and several like factors. Ordinarily recruitment to public services
is regulated by rules made under the proviso to Art. 309 of the
C Constitution and we would be usurping a function which is not
ours, if we try to redetermine the appropriate method of selection
and the relative weight to be attached to the various tests. If we
do that we would be rewriting the Rules but we guard ourselves
against being understood as saying that we would not interfere
even in cases of proven or obvious oblique motive. There is none
in the present case."

D This Court held that the selection for the post of Munsifs was valid
and could not be struck down. It said that the provision for marks for
interview test need not and cannot be the same for admission to colleges
and entry into public service. It said that in the case of service to which
recruitment had necessarily to be made from persons of mature per-
E sonality, interview test may be the only way and subject to basic and
essential academic and professional requirements being satisfied and that
subjecting such persons to written test might yield unfruitful and negative
results. There cannot be any rule of thumb regarding the precise weight to
be given and that it must vary from service to service according to the
requirements of the service, the minimum qualifications prescribed, the age
F group from which the selection is to be made, the body to which the task
of holding the interview test is proposed to be entrusted and a host of other
factors. The Court said that it was a matter for determination by experts
and also a matter for research and that it was not for the Court to
pronounce upon it unless exaggerated weight had been given with proven
or obvious oblique motives.

G It is not necessary for us to multiply various decisions rendered by
this Court on the question as to how many marks should be allocated for
viva-voce test in respect of recruitment to any particular public service.

H In the present case, the appointment was to the post of Chief
Personnel Inspector in the Railways. It is a selection post. The Selection

Board consisted of high ranking officials, well versed with the requirements of the post to which promotion was to be made. Norms had been laid for the Selection Board to follow. No fault can be found with the same. Apart from the objection that excessive marks had been allocated for *viva-voce*, the appellant has been unable to point out any illegality or irregularity in the selection process. Functions and duties attached to the post of Chief Personnel Inspector have nowhere been set out. It is not for this Court to suggest as to what marks should be allocated for interview in a case like the present one. As noted above, at times for certain posts only interview is considered to be the best method for selection. We are thus of the opinion that selection made for the two posts of Chief Personnel Inspector in the present case was according to the Rules. There is no infirmity in the selection process for us to interfere in the appeal. The impugned judgment of the Tribunal is well considered one. It was, however, not necessary for the Tribunal to make observations from which the appellant sought to draw strength. We do not find any merit in the case of the appellant and would uphold the judgment of the Tribunal. The appeal is dismissed with costs.

R.K.S.

Appeal dismissed.