

SUPREME COURT OF INDIA

D.G.,Indian Council For Agri.

Vs.

D.Sundara Raju

C.A.No.2714 of 2005

(Dalveer Bhandari and Deepak Verma,JJ.,)

30.03.2011

JUDGMENT

Dalveer Bhandari,J.,

1. This appeal emanates from the judgment and order of the Division Bench of the High Court of Karnataka at Bangalore delivered in Writ Petition No. 19516 of 2004.

2. Brief facts which are relevant to dispose of this appeal are recapitulated as under:

3. The controversy in this appeal pertains to the promotion to the post of Principal Scientist under the "Career Advancement Scheme" formulated by the Indian Council for Agricultural Research (hereinafter referred to as `ICAR'). There are two streams from which selections are made to the post of Principal Scientist: (i) Direct recruitment; and (ii) Promotion from the post of Senior Scientist on the basis of personal merit.

4. The ICAR had formulated the "Career Advancement Scheme" in consultation with the Department of Personnel & Training and Ministry of Finance, Government of India laying down guidelines for promotion of a Scientist from one grade to another in the Agricultural Research Services (ARS) cadre, which were made effective from 27.7.1998. The promotion of scientist to the next higher grade (Principal Scientist) is independent of the occurrence of vacancies and is based only when the applicant secures the requisite merit.

5. The procedure for promotion to the post of Principal Scientist is contained in Para 2.4 of the Career Advancement Scheme. The relevant rule is set out as under:

"In addition to the sanctioned posts of Principal Scientists as per cadre strength already fixed, which is to be filled through direct recruitment through All India advertisement, promotions will be made from posts of Senior Scientist to the posts of Principal Scientists after 8 years of service as Senior Scientist. This promotion will be personal to the Scientist who is promoted.

A senior Scientist will be promoted to the post of Principal Scientist if he/she:

i. has completed 8 years of service; and ii. he/she presents himself/herself before the Selection Committee constituted by ASRB with some of the following:

a) Self appraisal reports (required).

b) Research contribution/books/ articles/ research papers published.

c) Any other academic contributions. The best three written contributions of the Sr. Scientist (as defined by him/her) may be sent in advance to the experts to review before coming for the selection. The candidate should be asked to submit these in 3 sets with the application.

d) Seminars / conferences attended.

e) Contribution to teaching/academic environment/institutional corporate life.

f) Extensions and filed outreach activities."

6. A Selection Committee was constituted under the Career Advancement Scheme for considering eligibility of applicants for promotion from the post of Senior Scientist to Principal Scientist. The Selection Committee consisted of a Chairman, Agricultural Scientists Recruitment Board (hereinafter referred to as "ASRB"), Director General, ICAR or his nominee, three experts and the Director of the Institute of the applicant. For different disciplines, different Selection Committees were constituted with three experts from the relevant discipline so that the merit of the applicant could be comprehensively and accurately assessed. The said Selection Committee allocated marks for the assessment procedure for promotion as under:-

Research Publication/Achievement 30 marks
Recommendation of Superiors 20 marks
Personal Interview 50 marks

7. The minimum required marks to qualify for promotion to the post of Principal Scientist was 60 marks out of 100 marks. The candidates were accordingly assessed and the recommendation for promotion or otherwise was submitted to the Minister of Agriculture for his approval in his capacity as the President of ICAR.

8. The respondent is a Senior Scientist in the service of the ICAR at the National Research Centre for Cashew at Puttur, Karnataka. Upon the respondent submitting information as per the prescribed assessment proforma, the ASRB addressed a letter to the Respondent calling upon him to present himself for assessment and interview for the Career Advancement Scheme. Accordingly, the respondent appeared for an interview before Selection Committee

on 3.5.2001. However, the respondent secured only 49 marks out of 100 and was found unfit for promotion to the post of Principal Scientist. The recommendation of the Selection Committee was approved by the competent authority, i.e., the Union Minister for Agriculture. The respondent was accordingly intimated of his non-promotion as a Principal Scientist on 14.8.2001.

9. The respondent made representations to the appellant Institute for review of the decision of not promoting him, but, when the respondent did not get any relief from the appellant institute, he filed a case (original application) before the Central Administrative Tribunal, Madras Bench. The Tribunal clearly held that the ICAR had acted in an arbitrary manner to allocate 50% marks for a personal interview and on this ground alone the non-selection of the applicant ought to be set aside.

10. The Central Administrative Tribunal, Madras Bench quashed the order of the ICAR and the appellants were directed to consider the case of the respondent for promotion to the higher grade of a Principal Scientist with effect from 27.07.1998. The Tribunal also observed that the respondent would be entitled for notional fixation of pay but would not be entitled for arrears of back wages.

11. The appellants, aggrieved by the said order of the Tribunal filed a writ petition before the Karnataka High Court. The High Court observed that it is not in dispute that the respondent was entitled to be considered for promotion to the post of Principal Scientist under the Career Advancement Scheme. It was also not in dispute that he was invited for such consideration by the concerned authorities. The only question which, according to the High Court, fell for consideration was whether the claim of the respondent was considered was in consonance with the Scheme? The Selection Committee constituted by the appellant had devised a method of evaluation of the candidates according to which it had allocated 30 marks for research publication/achievement, 20 marks for recommendation of superiors and 50 marks for personal interview out of a total of 100 marks.

12. The High Court held that the Career Advancement Scheme does not however sanction any such procedure. It does not refer to or even remotely indicate that an interview of the candidate can provide a basis for determining his entitlement to promotion. The High Court also observed that the Central Administrative Tribunal, Madras was justified in allowing the petition of the respondent. The High Court relied on a judgment of this Court in the case of Ashok alias Somanna Gowda and Another v. State of Karnataka (1992) 1 SCC 28 in which it has been laid down that 50% marks in the interview was excessive and rendered the process of selection arbitrary.

13. The High Court has also observed that the Central Administrative Tribunal, Bangalore, correctly came to the conclusion that the Scheme did not envisage holding of any interview.

14. The High Court also relied on para 2.4(ii) of the Scheme and observed that Senior Scientists are eligible to the post of Principal Scientist if they have completed eight years of

service and if he/she presents himself/herself before the Selection Committee constituted by ASRB with the documents indicated therein. The fact that the eligible officer appears before the Selection Committee with the relevant documents does not necessarily imply that the process of evaluation of his merit has to be on the basis of an interview nor does it indicate that the weightage to the interview can go to the extent of 50% of the total marks. The High Court upheld the judgment of the Tribunal.

15. The appellants, aggrieved by the order of the Tribunal, as upheld by the Division Bench of the High Court, has preferred this appeal on the following grounds before this Court.

“A) Whether the Division Bench erred in holding that award of 50% of marks for interview was excessive and rendered the selection process arbitrary?

B) Whether the inclusion of an interview process is a material irregularity that vitiated the selection process?

C) Whether the Division Bench was justified in holding that the Career Advancement Scheme precluded the Selection Committee from adopting an appropriate method of evaluation?

D) Whether a distinguished body of experts constituting the Selection Committee appointed under the Career Advancement Scheme had no power to assess and interview the applicants for promotion?

E) Whether the High Court was justified in not appreciating that appointment to the post of a Principal Scientist was not on the basis of seniority but on the basis of merit alone through a process of assessment by a high powered Selection Committee.

F) Whether, under the Career Advancement Scheme, the promotion to the post of a Principal Senior Scientist is merely upon the completion of 8 years of service or is based exclusively on the individual merit of the applicant?

G) Whether the Central Administrative Tribunal, Bangalore was bound to follow an erroneous Order rendered by the Central Administrative Tribunal, Madras.”

16. Learned counsel appearing for the appellants submitted that the Division Bench erred in directing the appellants to reconsider the case of the respondent as he had secured only 49 out of 100 in the selection process and was not found fit for promotion to the post of Principal Scientist under the Career Advancement Scheme.

17. The impugned judgment was also challenged on the ground that the Division Bench ought to have appreciated that the Career Advancement Scheme provides for an interview procedure in para 2.4 (ii), where it states that "the applicant shall present himself/herself before the Selection Committee".

18. The appellants also submitted that the Division Bench has erred in holding that award of 50% of marks for interview was excessive and rendered the entire selection process arbitrary. The appellant further submitted that Division Bench erred in holding that the inclusion of an interview process is a material irregularity that vitiated the selection process.

19. The appellants further submitted that the Division Bench of the High Court ought to have appreciated that the post of Principal Scientist is a very senior post which requires many personal and intellectual qualities and attributes which can be evaluated only through a personal interview of the applicant.

20. The impugned judgment was also challenged on the ground that the Division Bench of the High Court ought to have appreciated that the weightage to be given for the interview procedure had been determined by a body of experts constituting the Selection Committee based on the post for which promotions were being considered.

21. Mr. Kush Chaturvedi, learned counsel appearing for the appellants submitted that the inclusion of an interview could not be treated as material irregularity that vitiated the entire selection process. Mr. Chaturvedi further submitted that the Division Bench seriously erred in holding that award of 50% of marks for interview was excessive and rendered the selection process arbitrary.

22. Mr. Chaturvedi also submitted that the interview Board consisted of academicians and they were justified in formulating the criteria which should not be disturbed by the court. He submitted that according to the Career Advancement Scheme, the promotion to the post of Principal Scientist is not dependant merely on completion of 8 years of service. He placed reliance on the judgment of this court in *K.A.Nagamani v. Indian Airlines and Others*¹ to strengthen his submission. According to him, for the post of Upper Managerial cadre, allocation of 50% marks for interview cannot be termed as arbitrary. In this case, 25% marks were kept for viva voce which were not found to be excessive. This case has no application to the facts of the instant case because in the instant case, 50% marks have been kept for interview. This case does not support the case of the appellants in any manner.

23. Learned counsel for the appellants also placed reliance on the judgment of this court in *Kiran Gupta and Others v. State of U.P. and Others*². In this case, this court has taken the view that it is difficult to accept the omnibus contention that selection on the basis of viva voce only was arbitrary and illegal since allocation of 15% marks for the interview was not held to be arbitrary by this court, this case also provides no assistance to the appellants because in the instant case 50% marks have been kept for the interview.

24. Mr. Manu Mridul, the learned counsel for the respondent submitted that the Career Advancement Scheme did not envisage conducting of any interview for the eligible candidates and introduction of interview itself was arbitrary and against the Career Advancement Scheme.

25. He also submitted that the candidates were never informed that 50% marks would be allocated for interview. Therefore, there was no occasion for the respondent to have challenged the aspect of allocating marks for interview before his appearing for the interview.

26. He also contended that allocation of 50% marks for interview out of a total of 100 marks was highly excessive, hence arbitrary. He submitted the allocation of 50% marks for interview is clearly contrary to a large number of judgments of this court.

27. Mr. Mridul further contended that the respondent was considered for selection to the post of Principal Scientist on the basis of his work and performance from 1985 to 1998. According to him, the nature, work, duties and responsibilities of a Senior Scientist and Principal Scientist are almost identical in nature, but in order to remove stagnation, the promotion is envisaged under the Career Advancement Scheme. He submitted that the stand of the respondent is fortified, reinforced and strengthened by the Career Advancement Scheme 2004 and 2005 of the appellants. According to the `Information Handbook of Agricultural Scientists' Recruitment Board under Right to Information Act, 2005, the criteria for promotion is that the Board evaluates the contribution made by the concerned Scientist in academic research. The Board also evaluates the confidential reports for the last eight years while granting benefit of the scheme.

28. According to the procedure of the Career Advancement Scheme of 2004, the allocation of marks for personal interview has been reduced from 50% to 10% because the appellants themselves realized that allocation of 50% marks was highly excessive and in clear contravention to the series of judgments of this court.

29. He also submitted that in 2007, the Career Advancement Scheme has undergone a further change and for personal interview, 20% marks have been allocated. According to him, in any event, allocation of 50% marks was highly excessive and in contravention of the law declared by this court in a series of judgments.

30. Mr. Mridul fairly submitted that in exceptional cases if the nature of job is such then even 50% allocation of marks for interview could be justified. But, in the instant case, the promotion to the post of Principal Scientist is primarily dependant on the length of service as Senior Scientist, publication and evaluation of confidential reports. The promotion to this post is granted predominantly to remove stagnation. For the selection to the post of Principal Scientist, by no stretch of imagination, 50% marks can be justified. He placed reliance on the judgment of this court in *Dr. S.M. Ilyas and Others v. Indian Council of Agricultural Research and Others*³ In the Career Advancement Scheme, the seniority is the important criteria apart from the publication and the evaluation of the confidential reports. Therefore, there cannot be any justification in allocating 50% marks for interview.

31. Mr. Mrudil also argued that the appellants in their wisdom reduced the allocation of marks for interview from 50% to 10% to eliminate or reduce the arbitrariness for the subsequent selections for the post of Principal Scientist.

32. Learned counsel for the respondent, Mr. Mridul submitted that 50% marks allocated for interview were highly excessive and rendered the selection of the candidates arbitrary. He placed reliance on a judgment of this court in *Ashok Kumar Yadav & Others v. State of Haryana & Others*⁴ wherein the Court observed as under:

"..the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the Court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test."

33. This Court further observed that the Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in *Lila Dhar v. State of Rajasthan and Others*⁵ observed that the exaggerated weight has been given with proven or obvious oblique motives.

34. Mr. Mridul, learned counsel for the respondent submitted that the controversy is no longer res integra. According to him, a 4-Judge Bench of this Court in *Ashok Kumar Yadav & Others* (supra) has observed 22.2% marks of the total marks allocated for the viva voce test as infecting the selection process with the vice of arbitrariness.

35. In *Ashok Kumar Yadav* (supra), the Court relied on earlier judgment of this Court in *Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others*⁶, wherein the Court took up the

view that allocation of as high a percentage as 33.3% of the total marks for the viva voce test was beyond reasonable proportion and rendered the selection of the candidates arbitrary.

36. In *Minor A. Peeriakaruppan v. Sobha Joseph*⁷, the Court observed that earmarking 75 marks out of 275 marks for interview as interview marks prima facie appears to be excessive. The Court observed that various researches conducted in other countries particularly in USA show that there is possibility of serious errors creeping in interviews made on haphazard basis. C.W. Valentine on "Psychology and its Bearing on Education" refers to the marks given to the same set of persons interviewed by two competent Boards and that is what is stated in his book:

"The members of each board awarded a mark to each candidate and then he was discussed and an average mark agreed on. When the orders of merit for the two boards were compared it was found that the man placed first by Board A was put 13th by Board B when the man placed 1st by Board B was 11th with Board A."

37. In this case, the Court also observed that even when the interviews were conducted by impartial and competent persons on scientific lines very many uncertain factors like the initial nervousness on the part of some candidates, the mood in which the interviewer happens to be and the odd questions that may be put to the persons interviewed may all go to affect the result of the interview.

38. This Court in *R. Chitralekha v. State of Mysore and Others*⁸ observed as under:-

"In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extracurricular activities, personality test, psychiatric tests, etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examination. In the ultimate analysis, whatever method is adopted its success depends on the moral standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter."

39. In *Minor A. Peeriakaruppan* (supra), the Court referred to *Ajay Hasia's* case (supra) where the Court found that the allocation of more than 15 per cent 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 Court observed that the viva voce test conducted must be held to be fair, free from the charge of arbitrariness, reasonable and just.

40. In *Nishi Maghu & Others v. State of J&K & Others*⁹ the Court observed that 50% marks out of total 150 marks allotted for interview were excessive.

41. In *Mehmood Alam Tariq v. State of Rajasthan*¹⁰, the question involved was regarding the validity of certain provisions of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1962, the Rajasthan Administrative Service Rules, 1954, the Rajasthan Forest Service Rules, 1962 which contained a provision special to the said three services and not applicable to other services, that candidates, other than those belonging to Scheduled Castes and Scheduled Tribes should secure a minimum of 33 per cent marks in the viva voce test. The rules further stipulated that the candidates for these services must also secure 50 per cent marks in the written examination, but that was not in the area of controversy. While dealing with the above questions a reference was made to cases *Ajay Hasia* (supra), *Lila Dhar* (supra) and *A.K. Yadav* (supra). It was observed as under:

"The much desired transformation from patronage to open competition is a later development, to which, now, all civilised governments profess commitment. However, though there is agreement in principle that there should be a search for the best talent particularly in relation to higher posts, however, as to the methods of assessment of efficiency, promise and aptitude, ideas and policies widely vary, though it has now come to be accepted that selection is an informed professional exercise which is best left to agencies independent of the services to which recruitment is made. The 'interview' is now an accepted aid to selection and is designed to give the selectors some evidence of the personality and character of the candidates. Macaulay had earlier clearly declared that a young man who in competition with his fellowmen of the same age had shown superiority in studies might well be regarded as having shown character also since he could not have prepared himself for the success attained without showing character in eschewing sensual pleasures. But the interview came to be recognised as an essential part of the process of selection on the belief that some qualities necessary and useful to public servants which cannot be found out in a written test would be revealed in a viva voce examination. In justification of the value and utility of the viva voce, the committee on Class I examinations in Britain said:

...It is sometimes urged that a candidate, otherwise well qualified, may be prevented by nervousness from doing himself justice in viva voce. We are not sure that such lack of nervous control is not in itself a serious defect, nor that the presence of mind and nervous equipoise which enables a candidate to marshal all of his resources in such conditions is not a valuable quality. Further, there are undoubtedly some candidates who can never do themselves justice in written examinations, just as there are others who under the excitement of written competition do better than on ordinary occasions.... We consider that the viva voce can be made a test of the candidate's alertness, intelligence and intellectual outlook, and as such is better than any other....

42. As to the promise as well as the limitations of the viva voce, Herman Finer says:

“If we really care about the efficiency of the civil service as an instrument of government, rather than as a heaven sent opportunity to find careers for our brilliant students, these principles should be adopted. The interview should last at least half an hour on each of the two separate occasions. It should be also entirely devoted to a discussion ranging over the academic interests of the candidate as shown in his examination syllabus, and a short verbal report could be required on the subject, the scope of which would be announced at the interview. As now, the interview should be a supplementary test and not a decisive selective test. The interviewing board should include a business administrator and a university administrator. The interview should come after and not before the written examination, and if this means some inconvenience to candidates and examiners, then they must remember that they are helping to select the government of a great State, and a little inconvenience is not to be weighed against such a public duty....”

43. In *Mohinder Sain Garg v. State of Punjab & Others*¹¹, allocation of 25 per cent of total marks for viva voce test in selection was held arbitrary and excessive.

44. In *P. Mohanan Pillai v. State of Kerala & Others*¹², 50% marks were fixed for the interview.

The Court observed as under:

"16. In this case allocation of marks for interview was in fact misused. It not only contravened the ratio laid down by this Court in *Ashok Kumar Yadav* and subsequent cases, but in the facts and circumstances of the case, it is reasonable to draw an inference of favouritism. The power in this case has been used by the appointing authority for unauthorised purpose. When a power is exercised for an unauthorised purpose, the same would amount to malice in law. (See: *Govt. Branch Press v. D.B. Belliappa*¹³ *Punjab SEB Ltd. v. Zora Singh*¹⁴ and *K.K. Bhalla v. State of M.P.*¹⁵)."

45. We have heard the learned counsel for the parties at length and have carefully perused the impugned judgment and the orders of the Tribunal.

46. In our considered view, no interference is called for, on account of following reasons:-

:(A) Promotion to the post of Principal Scientist pertains to the "Career Advancement Scheme". Norms, Rules and Guidelines which are employed while granting the benefit of Career Advancement Scheme ought to be applied in the instant case.

(B) It is amply clear that the quinquennial assessment scheme for the ICAR/ARS Policies and Rules were-

a) for providing opportunities for the career advancement, irrespective of the occurrence of vacancies, through a system of assessment should lead to each scientist competing with his or her rather than with colleagues and to the acceptance of the principle the "all the rights accrue from a duty well done".

b) Enable scientists to get the highest salary possible, within the system while remaining rooted to work in their respective discipline/field, thereby eliminating both the undue importance attached in the past to research management policy and the request for such positions purely for the advancement of salary.

c) Link rights and responsibilities and instill through the five-year assessment system the conviction that dedicated and efficient discharge of responsibilities alone would be the means of securing professional advancement.”

47. The respondent was not disclosed by the appellant either that the interview would be held for evaluating personal or intellectual qualities that attribute a Scientist and that it shall carry 50% of the total marks. This is uncontroverted position. Had the appellants disclosed the method of evaluation the respondent may have challenged the same before participating in the selection process.

48. No fault can be found in the impugned judgment in view of the legal position which emerges after proper scrutiny of following cases of this Court, namely, Ashok Kumar Yadav (supra), Ajay Hasia (supra), Lila Dhar (supra) and Minor A. Peeriakaruppan (supra). 50% marks allocated for the interview were highly excessive for the post of a Principal Scientist and contrary to the settled legal position crystallized from a series of the judgments of this court.

49. The appellants were totally unjustified in allocating 50% marks for the interview particularly when the appellants did not even disclose to the respondent that the interview would also be held to evaluate suitability of the candidate for the said post.

50. The procedure evolved by the Selection Committee for evaluating the respondent was totally arbitrary and contrary to the settled legal position.

51. The appellants themselves have found 50% marks for interview highly excessive, therefore, now the criterion has been changed from 50% to 10%. This is indicative of the fact that good sense had ultimately dawned on the appellants.

52. The appeal is totally devoid of any merit and is accordingly dismissed with costs which are quantified as 50,000/-. The costs to be paid to the respondent within four weeks.

Judgment Referred.

¹(2009) 5 SCC 0515

²(2000) 7 SCC 0719

- ³(1993) 1 SCC 0182
- ⁴(1985) 4 SCC 0417
- ⁵(1981) 4 SCC 0159
- ⁶(1981) 1 SCC 0722
- ⁷(1971) 1 SCC 0038
- ⁸AIR 1964 SC 1823
- ⁹(1980) 4 SCC 0095
- ¹⁰(1988) 3 SCC 0241
- ¹¹(1991) 1 SCC 0662
- ¹²(2007) 9 SCC 0497
- ¹³(1979) 1 SCC 0477
- ¹⁴(2005) 6 SCC 0776
- ¹⁵(2006) 3 SCC 0581