

SUPREME COURT OF INDIA

Rajya Sabha Secretariat

Vs.

Subhash Baloda

C.A.No.1099.of 2013

(G.S.Singhvi and H.L.Gokhale JJ.)

11.02.2013

JUDGEMENT

H.L. GOKHALE J.

1. Leave Granted.

2. This appeal raises the question with respect to the scope of judicial review in the matter of selections and appointments made by Public Authorities. A learned Single Judge of the Delhi High Court has found-fault with the process of selection of Security Assistants Grade-II, conducted, in the year 2009, by the Joint Recruitment Cell of the Parliament of India (Appellant No. 3), for the Rajya Sabha Secretariat and Lok Sabha Secretariat (Appellant Nos. 1 2). By his judgment and order dated 1.9.2011, rendered in Writ petition (C) 4835/2011 filed by the Respondents (unsuccessful candidates) he has directed the appellants to consider the claim of the Respondents for selection, by the process approved by him. The appeal therefrom, filed by the appellants herein, being LPA No. 839 of 2011 has been dismissed by a Division bench of that High Court by its judgment and order dated 29.11.2011, which has led to the present appeal by special leave.

Facts leading to this appeal:-

3. This appeal arises on the background of following facts. Sometime in the year 2009, Appellant No. 3 issued an advertisement bearing No. 04/2009, inviting applications for various posts such as those of Research Assistants, Junior Parliamentary Reporters, Stenographers, Translators, Security Assistants Grade-II, and Junior Clerks. In the present matter we are concerned with the posts of

Security Assistants Grade- II. In this advertisement, 37 vacancies were advertised in the cadre of Security Assistants Grade-II, in the Lok Sabha Secretariat, and 19 vacancies in the Rajya Sabha Secretariat.

4. The scheme of the examination for these posts was also incorporated in the advertisement. The examination for the recruitment of Security Assistants Grade-II was to be conducted in four stages. They were as follows:-

- (1) Preliminary Examination,
- (2) Physical Measurement and Field Tests,
- (3) Descriptive Type Written Papers,
- (4) Personal Interview

The candidates were expected to be graduates in any discipline, provided they met the requisite physical requirements as per the Lok Sabha and Rajya Sabha Rules. As per the approved scheme of the examination, the recruitment of the candidates depended on their performance in each of the four stages. Each test was an elimination round for the subsequent test. The candidates were required to attain the prescribed standards, and to qualify in each of the stages. However, the marks secured by them in the third and fourth stage, viz. descriptive type written paper and personal interview, were to be considered for determining the inter-se seniority in the merit order for selection.

5. (i) The advertisement specified as ‘desirable’, certain additional qualifications, which were as follows:-

“Desirable: ‘C’ Certificate in NCC or sportsmen of distinction who have represented a State or the Country at the National or International level or who have represented a University in recognised inter-university tournament.

Note: In case of vacancies in Rajya Sabha Secretariat: i) Certificate in computer course recognised by AICTE/DOEACC or courses equivalent to ‘O’ Level in terms of syllabus and duration of course as prescribed by DOEACC, is also a desirable qualification.

(AICTE- All India Council for Technical Education)

(DOEACC- Department of Electronics Accreditation of Computer Courses)”

(ii) The advertisement specifically stated that for these posts:

“Personal interview will carry 25 marks. Candidates will have to secure the minimum qualifying marks in the Personal Interview.”

(iii) Para XV of the advertisement laid down the cut off percentage of marks. This para reads as follows:-

“XV.CUT OFF PERCENTAGE OF MARKS: The minimum cut of percentages of marks in Written Test and Personal Interview in an examination is 50%, 45% and 40% for vacancies in GENERAL, OBC and SC/ST categories respectively. The above percentages are relaxable by 5% in case of physically handicapped persons of relevant disability and category for appointment against the vacancies reserved in Lok Sabha Secretariat for physically handicapped persons. These percentages are the minimum marks which a candidate is required to secure in each paper/component and aggregate in the written test and in aggregate in the personal interview. However, the cut-off percentages may be raised or lowered in individual component/paper/aggregate to arrive at reasonable vacancy: candidate ratio.”

6. Out of the candidates who wrote the descriptive type written paper, 68 candidates secured the minimum qualifying marks, and were called for the personal interview of 25 marks. The break-up of marks for Personal Interview was as follows:-

”

a) Dress, manners and appearance 6 marks

b) Behaviour in communication 6 marks (whether courteous and disciplined)

c) General awareness and knowledge of duties involved security service 6 marks

d) Skill and Extra-curricular activities 5 marks I. NCC C- Certificate 5 marks

II. Sports

International level/national level 5 marks

University Level 4 marks

e) Certificate in computer operations 2 marks”

7. It is the case of the appellant that the breakup of these marks for the personal interview was approved by the Secretary Generals of both Lok Sabha and Rajya Sabha, in 2001. The candidates who were called to appear for the personal interview were sent call-letters, specifically informing them that they had to bring the original certificates of NCC/Sports or the certificate of the computer course. Specimen call-letter dated 3.5.2011 sent to a candidate is reproduced herein below. It reads as follows:-

“PARLIAMENT OF INDIA (JOINT RECRUITMENT CELL)
RECRUITMENT TO THE POST OF SECURITY ASSISTANT GRADE-II
IN LOK SABHA AND RAJYA SABHA SECRETARIATS

PARLIAMENT HOUSE ANNEXE,

NEW DELHI-110001

No. 7/3/SA-II(open)-JRC/2010

Dated: the 3rd May 2011

CALL LETTER

On the basis of your performance in the Physical Measurement Tests, Field Tests and Descriptive Type Written Papers held in December 2010, you have been declared successful for appearing in the Personal Interview to be held on Sunday, the 29th May, 2011 in Parliament House Annexe, New Delhi.

2. Your Roll Number is 105999.

3. You are requested to be present at 9.30 A.M. sharp at the Reception Office, Parliament House Annexe, New Delhi, from where you will be conducted to the venue of interview.

4. You are also required to bring the following documents/testimonials for verification at the time of Personal Interview:-

(i) Original certificates of Matriculation or equivalent examination as proof of date of birth.

(ii) All original certificates of Educational and other qualifications.

(iii) All original certificates of NCC/Sports.

(iv) Original certificate of Hill area resident, if any, issued by the competent authority.

(v) Original Caste Certificate issued by the competent authority (in case of SC, ST and OBC candidates).

5. In case, a candidate has done a computer course, he/she should bring the original certificate thereof at the time of Personal Interview. However, the credit for the same shall be given only if it is accompanied by a declaration by the concerned institute that the computer course done by the candidate is recognised by the All India Council for Technical Education (AICTE)/Department of Electronic Accreditation of Computer Courses (DOEACC) or the course is equivalent to 'O' level in terms of syllabus and duration of course as prescribed by DOEACC.

6. The minimum qualifying marks in Personal Interview are 50%, 45% and 40% for vacancies in General, OBC and SC/ST categories, respectively.

7. Selection will be made on the basis of overall performance of the candidates in the descriptive type written papers and the personal interview, subject to the availability of vacancies.

8. The decision of the Joint recruitment Cell regarding allocation of the successful candidates to either the Lok Sabha or the Rajya Sabha Secretariat shall be final.

9. You should bring this call letter to the venue of Personal Interview without fail.

Sd/-

(A.S.K. DAS)

Under Secretary”

(emphasis supplied)

8. It was pointed out on behalf of the appellants that at the time of the interview the exercise of checking the certificates was undertaken by the officers of the Joint Recruitment Cell, by verifying the documents prior to the personal Interview. The officers simply assisted the interview board, and saved their time. This exercise was done in the presence of all the candidates, and they had the full knowledge thereof. A candidate producing the ‘C’ Certificate of NCC was entitled to full 5 marks. Similarly a candidate producing the computer course certificate was entitled to 2 marks. There was no discretion in awarding these marks. These marks were deemed to be awarded by the members of the interview board. After the checking of the certificates and the oral interview, 27 candidates were selected for the posts of Security Assistants Grade-II for Lok Sabha as against 37 vacancies, and 13 were selected for Rajya Sabha as against 19 vacancies.

9. The respondents were some of the candidates who participated in this process but were not selected. They filed a Writ Petition in the High Court of Delhi bearing Writ Petition (C) No. 4835 of 2011. The respondents principally raised two contentions: (1) firstly, that the splitting of the marks, in the interview, was not indicated to them in advance, and (2) secondly, attainment of minimum cut-off marks (say 50% for the general category) be adjudged out of 18 marks ear-marked for the oral interview, and the marks for the NCC or the computer course certificates be considered only thereafter.

10. The appellants herein pointed out before the Learned Single Judge that the issue was no longer res-integra, and had been decided in a judgment rendered by a Single Judge of the Delhi High Court in the case of Mahesh Kumar Anr. Vs Union of India 151 (2008) Delhi Law Times 353. It was a case of selection to the very cadre of Security Assistants Grade-II in the Rajya Sabha Secretariat, in the year 2006. The judgment of the Learned Single Judge, which was confirmed by a

Division Bench, had held that prescribing the minimum cut-off for the skills in the interview could not be faulted. The Learned Single Judge had also observed that the decision to assign minimum 50% marks for the interview was arrived at ‘in a thorough and scientific manner.’

11. In the present matter, the Learned Single Judge, however, distinguished the case before him from the decision in Mahesh Kumar (supra) by holding that no arguments were advanced in that case that the splitting up of the interview marks (as 18 +7) was not justified, and that in any event it was not specified in the advertisement. The Learned Single Judge held that the question of fairness of the selection process was not raised in that matter and therefore, he could go into it, since the doctrine of sub-silentio operates as an exception to the rule of precedent. He relied upon two decisions of this Court in State of U.P. Vs. Synthetics and Chemicals Ltd. reported in 1991 (4) SCC 139 and Union of India Vs. Dhanwanti Devi reported in 1996 (6) SCC 44 in support.

12. Having decided to go into this issue, the Learned Single Judge in terms held, in para 25 of his Judgment, that allotting 7 marks for the certificates out of the 25 marks for the interview had resulted in elimination of those candidates who had otherwise obtained the minimum qualifying marks out of 18 marks. He further held that even if marks were to be given for the certificates, they ought to have been in addition to the qualifying marks, and ought not to have been used to eliminate those who had otherwise qualified as per the marks in the remaining portion of the interview.

13. The Learned Judge, thereafter, held in paragraph 26 as follows:-

“26. The action of the Respondent in applying the criteria of minimum qualifying percentage to twenty-five marks and not to 18 marks which related to the actual interview and that too without disclosing this change either in the advertisement or to the candidates before the interview is arbitrary and violative of Article 14 of the Constitution. It has resulted in the unfair elimination of those Petitioners who have scored the minimum qualifying percentage (50% for General Category, 45% OBC and 40% SC/ST) in both the written test as well as in the actual interview.”

14. The Learned Single Judge allowed the petition by his judgment and order dated 1.9.2011, but confined the benefit of his judgment and order to the petitioners before the court, and directed that on applying the criteria as suggested by him, if

any of the petitioners are found to have qualified, they be offered appointments to the posts either in Lok Sabha or in the Rajya Sabha Secretariat.

15. The appellants carried the matter in Letters Patent Appeal to the Division Bench which accepted the view-point that had appealed to the Learned Single Judge. The Division Bench dismissed the L.P.A No. 839 of 2011 by its judgment and order dated 29.11.2011. The Division Bench, however, extended the benefit of the principle laid down by the Learned Single Judge across the board to all those who had participated in the selection process. The Division Bench went further ahead in another aspect. With respect to the marks for participation in NCC or having done the computer course, it observed as follows:-

“3..... It was believed by us that mere participation in NCC/Sports and/or undergoing a course in Computer Operations would not entitle a candidate to the maximum marks of 5 2 respectively prescribed therefor and it was for the Interview Board to assess the proficiency and extent of participation of the candidate in the respective fields and the marks to be allocated therefore may vary from zero to five in case of NCC/Sports and zero to two in the case of certificate in Computer Operations.....”

16. The Division Bench, therefore, accepted the proposition laid down by the Single Judge that the eligibility marks for interview were to be computed out of 18 marks only. It further directed that where the proficiency in NCC/Sports or in computer course was to be judged by the Interview Board, those marks be added in the range of zero to five as per its observations in paragraph 3 quoted above. Being aggrieved by these two judgments this appeal has been filed.

Submissions by the rival parties:

17. Mr. R.K. Khanna, Learned Senior Counsel appearing for the appellant submitted that the Learned Single Judge as well as the Division Bench have gone into an area where they ought not to have gone, while exercising judicial review. In his submission, the advertisement had clearly stated that the C-certificates in NCC or the Sport certificates or the certificates in computer course were ‘desirable’. The call letter specifically called upon the candidates to come with the original certificates. How the marks ought to be given, out of 25 interview marks, was an aspect to be decided by the interview board. He pointed out that even so, to avoid arbitrariness, the splitting of the marks was effected as per the decision of the Secretaries of Lok Sabha and Rajya Sabha, arrived at way back in 2001. Previous selections were also done on that basis in 2006, and they were upheld by a Single

Judge and a Division Bench of Delhi High court. It was, therefore, not expected of the High Court to go into that controversy once again. In any case assuming that the controversy could be gone into afresh, while deciding the petition the Court had gone into the question as to how the interview board ought to have given the marks, which was outside the scope of judicial review. Secondly, the Court ignored that the marks were given to the certificates uniformly, and in that there was no discrimination whatsoever. In his submission, there was no occasion for the court to impose its reading of the relevant requirements on to the interview board.

18. Ms. Jyoti Singh, learned senior counsel appearing for the respondents, on the other hand submitted that the Learned Single Judge of the High Court was right in holding that Mahesh Kumar (supra) had not considered the issue in the manner in which it was placed before the High Court in the present matter. The advertisement clearly meant an interview of 25 marks. The splitting of the marks of interview under various categories was not informed to the respondents anytime prior to the interview. If the oral interview was of 18 marks, then the cut-off marks ought to have been assessed out of 18 marks, and the marks for the certificates ought to have been added subsequently. The manner in which the marks for the interview were allotted was arbitrary, and it resulted into denial of equal opportunity in public employment. She, therefore, submitted that the decisions of the High Court did not call for interference by this Court.

Consideration of the submissions:

19. The first submission of Mr. Khanna has been that the procedure adopted by the appellants had been approved by the High Court earlier in Mahesh Kumar (supra) and the same procedure was being followed this time also. He submitted that if we look into the judgment in Mahesh Kumar (supra), the same pattern of allotment of marks for the posts in this very cadre is reproduced in para 14 of the judgment. In the present matter also the single Judge has accepted in para 15 of his judgment that the qualification requirements in both the cases were the same. On the format of allotting the marks the Learned Single Judge observed in Mahesh Kumar is as follows:-

“17. For recruiting candidates to a particular post a procedure is prescribed by the experts in the field after carrying out the necessary research taking into consideration the requirement of the job and nature of employment. One should not lose sight of the fact that if the selection process is divided into series of steps then each step has a purpose to serve and has been included with an objective, be it written test/physical test or an interview..... The

procedure devised by the respondent eliminates arbitrariness to a great extent as it is not just the whim of the members of the interview board. There is proper format for evaluation which is almost akin to another written examination. The format for evaluation has different marks for different traits which are detailed in earlier paragraph.

.....

29. In the present case, the norms were approved by the Secretary Generals of the Lok Sabha and Rajya Sabha and in order to minimize any arbitrariness or personal perception, separate marks were allocated for dress; manners and appearance; behaviour in communication(whether courteous and disciplined); general awareness and knowledge of duties involved in security services; skill and extracurricular activities. In the oral interview, the marks were also to be given on the basis whether the candidates had participated either in NCC or sports or paramilitary forces and the weightage was also given for knowledge of computer operations. With this detailed breakup of different heads under which, in the interview the marks were awarded to the candidates, it is reasonable to infer that while assigning minimum 50% marks in viva voce; the decision was arrived at in a thorough and scientific manner.....”

(emphasis supplied)

The judgment of the Learned Single Judge in Mahesh Kumar was left undisturbed by the Division Bench. Mr. Khanna, therefore, submitted with emphasis that once the scheme of selection was approved by the Division Bench, the Learned Single Judge in the present matter ought not to have entertained the contention that the submissions raised in the present matter were not raised earlier.

20. It was also submitted that the respondents having participated in the selection process, it was not permissible for them to challenge the recruitment process subsequently. Reliance was placed upon the judgment of this Court in Manish Kumar Shahi Vs. State of Bihar Ors. reported in 2010 (12) SCC 576 in that behalf.

21. As against the submissions of the appellants, the submission of the respondents has been that although they secured high marks in the overall performance i.e the written test and the interview combined, they found that other candidates were selected though they had overall less merit than them, and yet they were shown as

having secured higher marks. After making an enquiry under the Right to Information Act, they came to know that the selected candidates were given more marks for their having the NCC and /or Computer Course Certificates, leading to the selection of candidates having less merit. They contended that the method of splitting up of marks was not informed to them. This was unjust, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

22. The Learned Single Judge in his impugned Judgment has referred to the cases of *K. Manjushree Vs. State of Andhra Pradesh* reported in 2008 (3) SCC 512 and *Himani Malhotra Vs. High Court of Dehi* reported in 2008 (7) SCC 11. The factual situation in these two cases is however, quite different from the one in the present case. In *Manjushree* (supra), the minimum cut-off marks were prescribed after the interviews were over, and after the first merit list was prepared. In *Himani Malhotra* (supra) there was no indication in the advertisement about the minimum qualifying marks for the interview and the same were introduced by the selecting committee after the written test was over and after the date for oral interview was postponed.

23. The question before us is whether the interview board can be faulted for making the certificate marks a component of the 25 interview marks, and whether thereby the candidates were in any way taken by surprise. In this connection we must note that the appellants had advertised that the NCC/Sports and Computer certificates were 'desirable'. The call-letter, in paragraph 5 thereof, specifically called upon the candidates to bring their certificates at the time of the Personal Interview. It further stated that credit for the same shall be given only if the certificate was accompanied by a declaration by the concerned institute that the course done by the candidate was recognized by AICTE or DOEACC. Thus, it was clear that credit was to be given to those certificates as a part of the interview. The respondents, therefore, can not make any grievance that they were taken by surprise by giving of 7 (out of 25) marks for such certificates to the successful candidates. Nor can the respondents say that any prejudice is caused to them, since all candidates having such certificates were uniformly given 5 and/or 2 marks for the certificates, and those who were not having them were not given such marks. The process cannot, therefore, be called arbitrary.

24. The decisions rendered by the High Court were erroneous for one more reason. In the present case, the interview was to be of 25 marks. The view which has appealed to the Learned Judges of the High Court would mean that the cut-off marks (say 50%) will have to be obtained out of 18 marks, whereas the advertisement clearly stated that the cut-off marks had to be obtained in the

Written Test and the Personal Interview. This meant obtaining cut-off marks out of 25 marks set out for interview as well. The consequence of the view which is accepted by the High Court will be that it may as well happen that candidates who did not have the NCC/Sports certificates or any computer course certificates will obtain higher marks out of 18 marks, and will top the list. On the other hand the candidates who have these certificates may not get the cut-off marks out of 18, or even if they get those marks, they may land at the lower level in the inter- se seniority in the merit order for selection. This was certainly not meant to be achieved by the selection process, when these certificates were declared in advance as 'desirable'.

25. In the impugned order the Division Bench has recommended in its judgment, as quoted above that the proficiency of the candidates producing certificates be assessed on a scale of 0 to 5. That will mean holding one more test as far as computer course certificate is concerned, or asking the candidates concerned to exhibit their skill in a particular sport or as NCC Cadet. That was certainly not contemplated in the advertisement. The advertisement only stated that the NCC/Sport certificate and the computer course certificate recognised by AICTE/DOEACC were desirable. The call-letter specifically stated they will be given credit at the time of interview. The Joint Recruitment Cell did not want to go behind those certificates once they were from the proper authorities, and therefore, the interview board fairly granted all the marks to the candidates who produced those certificates, making them a component out of 25 marks. It cannot be disputed that the appellants have applied a uniform standard. The respondents who had filed the petition were all constables. The posts of Security Assistants were being filled from amongst them. Although, dress, manners and appearance was given 6 marks, behavior in communication was allotted 6 marks and general awareness and knowledge of duties involved in security service was allotted 6 marks, what was 'desirable' was having the NCC/Sports or Computer course certificate. It was for the Lok Sabha and Rajya Sabha Secretariat to decide what qualifications they expected in the Security Assistants. They did want persons with Sports/NCC and Computer course certificates. Therefore, they specifically mentioned those certificates as desirable. Specifying 5+2 marks for these certificates was in consonance with the objective to be achieved. The method followed by the interview board in giving these certificates 7 out of 25 marks cannot, therefore, be faulted as denying equal opportunity in the matter of public employment. Dissimilar candidates could not be expected to receive similar treatment. Thus, in the present process of selection, there is no breach either of Article 14 or 16 of the Constitution of India.

26. What the High Court has done is to impose its own reading of the requirements of the selection process on to the interview board. It was for the interview board to decide which method to follow. The interview board had followed a particular pattern earlier in the year 2006, which was upheld by a Single Judge and the Division Bench of Delhi High Court. The interview board was following the same pattern. We may at this stage refer to an order passed by this Court in Haryana Public Service Commission Vs. Amarjeet Singh reported in 1999 SCC (LS) 1451. In that matter the issue was with respect to the selection for the post of Agricultural Engineers and Subject Matter Specialists in the Department of Agriculture. The Haryana Public Service Commission had allocated marks for higher qualification and specialized training to the extent of 40% of the marks. The High Court had interfered therewith as being arbitrary and directed the Commission to send the names of Respondent Nos. 1 and 2 for appointment after stating as to what marks should have been allotted to them in the interview. This Court held that though the standard adopted by the Public Commission may be defective, the same standard was applied to all, and did not prejudice Respondents Nos. 1 and 2 or any of the candidates. The Court observed that:-

“3.....When uniform process had been adopted in respect of all and selections had been made, it was highly inappropriate for the High Court to have examined the matter in further detail and to have allocated marks to the two candidates and thereafter directed the appellant Commission to select them.”

27. In Barot VijayKumar Balakrishna and Ors. Vs. Modh VinayKumar Dasrathlal and Ors. reported in 2011 (7) SCC 308 the Rules framed under Article 309 of the Constitution governing the selection process for the posts of Assistant Public Prosecutor in the State of Gujarat mandated that there would be minimum qualifying marks each for the written test and the oral interview. In that case cut-off marks for viva-voce were not specified in the advertisement. As observed by this Court, in view of that omission, there were only two courses open. One, to carry on with the selection process, and to complete it without fixing any cut-off marks for the viva-voce, and to prepare the select list on the basis of the aggregate of marks obtained by the candidates in the written test and the viva voce. That would have been clearly wrong, and in violation of the statutory rules governing the selection. The other course was to fix the cut-off marks for the viva voce, and to notify the candidates called for interview. This course was adopted by the commission just two or three days before the interview. Yet, it did not cause any prejudice to the candidates, and hence the Court did not interfere in the selection process. In the present matter it was made clear in the call letters that the relevant

certificates will be given credit at the time of interview, since they were 'desirable', and therefore there was no question of any prejudice or lack of fairness on the part of the interview board in giving the specified marks for the certificates.

28. Having noted this factual and legal scenario, in our view there was nothing wrong in the method applied by the appellants in the Selection of the Security Assistants Grade-II. There was no discrimination whatsoever among the candidates called for the interview, nor any departure from the advertised requirements. One can always say that some other method would have been a better method, but it is not the job of the Court to substitute what it thinks to be appropriate for that which the selecting authority has decided as desirable. While taking care of the rights of the candidates, the Court cannot lose sight of the requirements specified by the selecting authority. What the High Court has proposed in the impugned orders amounts to re-writing the rules for selection, which was clearly impermissible while exercising the power of judicial review.

29. For the reasons stated above we allow this appeal and set-aside the impugned judgments of the Single Judge as well as that of the Division Bench. Writ Petition bearing No. 4835 of 2011 filed by the respondents will stand dismissed. In the facts of the case however, there will be no order as to costs.