

PETITIONER:
SIYA RAM

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 16/12/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

THE 15 DAY OD DECEMBER, 1997

Present:

Hon'ble Mrs.Justice Sujata V.Manohar

Hon'ble Mr.Justice D.P.Wadhwa

Raj Kumar Gupta, H.V.D.Sharma, Rajesh, Advs. for the
appellant

V.C.Mahajan, Sr.Adv., Rajiv Nanda, Ms.Sushma Suri, C.V.Subba
Rao, A.K.Sanghi, Advs. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
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.

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

- (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.

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, Lucknow. 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:

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

Though 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.

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.

As far 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	
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i) Professional ability	50	30
ii) Personality, address, leadership and academic/technical qualification	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 be placed on the panel even if on the total marks secured he qualifies for a places. 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.

(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.

(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 vs. Khalid Mujib Sehravardi 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 changes of arbitrariness, bias and the like minimal as observed by the Hon'ble Supreme Court in *Ajay Hasia vs. Khalid Mujib* [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 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 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 principal 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 vs. State of Rajasthan and others* [AIR 1081 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 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:

"Nor do we think that the Court intended any wide construction of their observation. As already observed by us the weight to be given to 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 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."

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 that in the case of service to which recruitment had necessarily to be made from persons of mature personality, 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 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.

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 or recruitment to any particular public service.

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.