

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD**

O.A. No. 34 of 2008

Date of Order: 20-02-2009

Between:-

B. Amrutha Lakshmi D/o Late Vithal Das
Acharya, aged 47 years, working as Dy. Commissioner
of Commercial Taxes, Abids Division, Nampally,
Hyderabad. ...Applicant

And

1. Union of India, rep. by Secretary,
Department of Personnel & Training,
M/o Home Affairs, North Block, New Delhi.
2. Union Public Service Commission
rep. by its Chairman, Dholpur House,
New Delhi.
4. P. Lakshminarasimha, Administrator,
GP's Office, High Court of AP, Hyderabad.
5. P. Satyanarayana Reddy, Joint Commissioner
of O/o Commissioner of Commercial Taxes,
C.T. Complex, M.J. Road, Nampally, Hyderabad. Respondents

Counsel for the Applicant: Sri M. Surender Rao

Counsel for the Respondents: S/Sri G. Jayaprakash Babu, Sr.CGSC for R-1

MC Jacob for BN Sharma for UPSC for R-2

D.Y. Setti, SC for State of AP for R-3

M.V. Krishna Mohan for R-4

M. Venkatarami Reddy for R-5

CORAM:

THE HON'BLE JUSTICE MR P.LAKSHMANA REDDY :VICE-CHAIRMAN

THE HON'BLE SRI R. SANTHANAM : MEMBER
(ADMN.)

(Order per Hon'ble Sri R. Santhanam, Member (A))

This application has been filed by an officer belonging to non-State Civil Services aggrieved by her non-selection to IAS against one of the two vacancies for the year 2006-07.

2. The facts of the case in brief are as follows :-

The applicant belongs to the Commercial Taxes Department and is working as Dy. Commissioner. She was one of the aspirants for selection to the IAS under IAS (Appointment by Selection) Regulations, 1997. The State Government identified two vacancies for the year 2006-07 to be filled by persons belonging to non-State Civil Services. According to the applicant, the State Government, after examining the record of around 100 officers shortlisted about 10 officers of outstanding merit and ability for consideration for selection. The applicant is one of the 10 candidates shortlisted. As required under Regulation 3, the Government constituted a committee for selecting the candidates. The Committee, at its meeting in New Delhi on 31.12.2007, had considered the entire service record of the 10 officers and awarded marks for the service / track record to each one of them. The same day, the Committee called the shortlisted officers for an interview and awarded marks to the candidates on the basis of their performance. It is the applicant's contention that only one person among the 10 officers secured more marks on an aggregate (marks awarded for record of service and interview) than the applicant. The applicant should therefore have been placed at Sl. No. 2 in the ranking list. As there were only two vacancies, applicant should have been included in the select list by the Committee but her name was not included and she has therefore questioned the selection as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

3. According to the applicant, IAS (Appointment by Selection) Regulations, 1997, are silent about the method of selection, zone of consideration and several other factors involving the selection. According to her, the method and procedure adopted for selection is not transparent. If it was considered necessary to have an interview, then the marks allocated to the interview should have been made public. The applicant came to know that 50% marks were allotted for interview. The allocation of such a high percentage for interview is arbitrary since the selection will not be based on any objective criteria. That will depend on the subjective satisfaction of the members of the Committee. Even assuming that allocation of 50% marks for interview would be justified, the ultimate selection should depend on the aggregate of the marks awarded for record of service and interview. It is the contention of the applicant that though she secured second highest marks, she was not included in the list on the ground that she has secured less marks in the interview than a person whose aggregate of marks is equal to that of the applicant. This, according to the applicant, amounts to allocating more than 50% marks to the interview. By this method, what is visible and perceivable was given less credit than what was invisible and unperceivable. The marks allocated for

interview should be less as is being done in the case of direct recruitment to IAS. The applicant has therefore filed this OA on the following grounds :-

1) The action of the respondent in not conferring IAS to the applicant is illegal and arbitrary;

2) The Respondents have adopted a procedure which is not contemplated under the Rules;

3) The action of the Respondents in allocating 50% of the marks for interview is illegal and arbitrary;

4) The action of the Respondents in adopting the procedure which is not contemplated under any rules is illegal and arbitrary;

5) The action of the respondents is therefore illegal, arbitrary and discriminatory and violative of Articles 14 & 16 of the Constitution of India;

6) The procedure adopted by the Respondents does not achieve any object sought to be achieved ;

4. Following the publication of the notification No. 14015/01/2007-AIS(I)-A dated 22.2.2008, the applicant filed an MA 110/2008 seeking to amend the OA, challenging this notification also. The MA was allowed on 18.3.2008. The amended prayer is as follows :-

"It is therefore prayed that this Hon'ble Tribunal may be pleased to declare that :

(a) (1) non-inclusion of the applicant in the select list prepared under I.A.S., (Appointment by Selection) Regulation, 1997 for appointment to I.A.S., in pursuance of the selection process held by the Committee on 31.12.2007 from non-state civil services quota of the State of Andhra Pradesh is illegal, arbitrary, unreasonable and discriminatory and is therefore violative of Articles 14 & 16 of the Constitution of India;

(2) the notification No.14015/01/2007-AIS (I)-A dated 22.02.2008 wherein respondent 4 & 5 are included in the select list for appointment to IAS for filling up 2 existing vacancies in A.P. Cadre as illegal and arbitrary violative of Articles 14 & 16 of Constitution of India;

(b) the procedure adopted by the Committee for making selection, to the extent of holding interview as illegal and unauthorized and consequently declare that the applicant is entitled to be included in the select list on the basis of her performance and grading based on her service / track record;

(c) giving more credit to marks at interview than the marks awarded for service record / track record is arbitrary and unreasonable and is therefore violative of Articles 14 & 16 of the Constitution of India ; and

(d) allocation of 50% marks to interview is arbitrary and unreasonable and therefore violative of Articles 14 & 16 of the Constitution of India and direct not to allocate more percentage of marks for interview than that is being allocated in the case of direct recruitment to the I.A.S.

5. Respondent No.2 has filed a detailed reply statement. The other Respondents have also filed reply affidavits. No rejoinder has been filed by the applicant.

6. The Respondent No.1, in his reply statement submitted that the department of Personnel and Training is not concerned with the selections made by the selection committee. The role of the Department is confined to determination of the vacancies in consultation with the State Government, nomination of members to the selection committee and appointment of select list officers to IAS. Respondent No.1 has also stated that selections / selection procedure directly come under the purview of the UPSC.

7. Respondent No.2 in his statement has stated that the mode of induction to the IAS does not confer any right of consideration / appointment to the non-SCS officers, and is to be resorted to only in special circumstances that the State Government have non-SCS officers of outstanding merit and ability and that the State Government decided to earmark vacancies to be filled up by these officers. He has stated that the Government of Andhra Pradesh vide its letter dated 27.12.2007 furnished proposals for convening meeting of Selection Committee for selection of non-SCS Officers for appointment to the IAS in the year 2007. The number of vacancies was two. The Selection Committee meeting was convened by the UPSC on 31.12.2007 and the State Government was requested to ensure the attendance of the ten non-SCS Officers for the interview to be held on the same day. The applicant was one of the ten candidates who appeared for the interview. The Selection Committee, on an examination of the records of the officers and on the basis of the interview, recommended two eligible / suitable officers of the Andhra Pradesh Cadre. The officers who secured the highest marks on the basis of Service Record and performance at the interview was included at Sl. No.1 in the select list. The next highest marks were secured by five officers and out of these five officers, one officer was included at Sl. No.2 in the select list against the second vacancy in accordance with the procedure adopted by the Commission in such cases where there is a tie of marks. The procedure adopted by the Commission in such cases is applied uniformly to all States / Cadres. The Respondent has also stated that while recruiting candidates for various posts / services, there are many instances where more than one candidate obtain the same marks and the number of vacancies cannot be increased to accommodate all such candidates. Therefore, the Commission have adopted certain methods to resolve such cases where there is tie of marks. In the instant case also, such a procedure was adopted and the applicant could not be selected. Respondent No.2 has extensively quoted from the IAS (Appointment by Selection) Regulations, 1997, to drive home the point that the selection has been done

strictly in accordance with the Regulations. He has also cited the case of UPSC Vs. H.L. Dev & Others wherein the Hon'ble Supreme Court have pronounced that "how to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection Committee" (AIR 1988 SC 1069). Therefore, in the light of the provisions of Selection Regulations and judicial pronouncements on the subject, selection has been made. The 2nd Respondent has also relied on the following case laws on the subject of powers of expert bodies like Public Service Commission in making selections :

- (i) Lila Dhar Vs. State of Rajasthan (1981 (4) SCC 159);
- (ii) All India State Bank Officers Federation & Others Vs. Union of India & Others (1997 (9) SCC 151);
- (iii) Secretary (Health) Vs. Dr. Anita Puri & Others (1996 (6) SCC 282);
- (iv) Ashok Kumar Yadav Vs. State of Haryana (AIR 1987 SC 593);
- (v) Mehmood Alam Tariq & Others Vs. State of Rajasthan & Others (1983 (3) SCC 241);
- (vi) K. Jeevanandan Vs. Union of India & Others in WP No. 17858/2002 in the High Court of Judicature of Madras ;

Relying on the decisions in the above case laws, the Respondent has submitted that the applicant's contentions are baseless and the OA should be dismissed.

8. Respondent No.3 in his reply statement has submitted that as per Regulation 3 of IAS (Appointment by Selection) Regulations, 1997, the Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the meeting of the Committee to make the selection is held. Accordingly, the Government of India, DoP&T, have determined two vacancies for preparation of Select List for non-SCS Officers for appointment to I.A.S. for the year 2007. The Respondent No.3 has further submitted that the role of the State Government is confined to forwarding of proposals for preparation of Select List of non-SCS Officers. Selections / selection procedure directly come under the purview of the Union Public Service Commission and the State Government has no role in conducting the Selection Committee except furnishing the required material and to nominate two officers as Members of the Selection Committee.

9. Respondent No.4 in his reply statement has submitted that he is not aware about the marks allotted if any, either for Track Record / State service rendered or for interview performance as it is classified and confidential information of UPSC. He has further submitted that he is not aware about pattern of evaluation of procedure adopted by the UPSC authorities in selection and finalization of candidates for appointment to IAS cadre.

10. Respondent No.5, in his reply statement has referred to the decision of the Hon'ble Supreme Court in a case reported in AIR 1988 SC 1069 (already referred to paragraph-6 supra). He has further stated that right to consideration for

appointment is a fundamental right but right to appointment is not a fundamental right as held by Hon'ble Supreme Court. In the instant case, the applicant was considered for selection and having participated in the selection process including interview and having failed to succeed in the said process, the applicant is precluded from challenging the same, inasmuch as the theory of approbation and reprobation is applicable to the instant case. He also pointed out that no malafides or extraneous factors have been alleged by the applicant against the Selection Committee. Referring to the observations of the Hon'ble Supreme Court in a number of cases that courts should be slow in interfering with the opinion expressed by experts, as in Neelima Mishra's case (AIR 1990 SC 1402), Respondent No.5 has stated that the OA is not maintainable.

11. Heard Sri M. Surender Rao, learned counsel for the applicant, Sri G. Jayaprakash Babu, learned Senior standing counsel for Central Government for Respondent No.1, Sri M.C. Jacob, learned counsel representing Sri B.N. Sarma, standing counsel for Respondent No.2, Sri DY Setti, learned counsel for Respondent No.3, Sri M.V. Krishna Mohan, learned counsel for Respondent No.4 and Sri M. Venkatarami Reddy, learned counsel for Respondent No.5. We have perused the pleadings, heard the arguments and considered the case laws cited by the learned counsel for the applicant and the learned counsel for Respondent No.2.

12. The issues that arise for consideration are (i) whether the procedure adopted by the Committee for making selection of non-SCS to the extent of holding interview is arbitrary and illegal; (ii) whether allocation of 50% marks for interview is arbitrary and unreasonable and violative of Articles 14 & 16 of the Constitution of India; (iii) whether giving more credit to marks at interview than the marks awarded for service / track record is arbitrary and unreasonable and violative of Articles 14 & 16 of the Constitution of India; (iv) whether the non-inclusion of the applicant in the select list in pursuance of the procedure adopted by the Selection Committee at its meeting held on 31.12.2007 is illegal, arbitrary and unreasonable and (v) to what relief, if any, is the applicant entitled.

13. Issue No. (i) : The appointment of non-SCS officers to IAS is governed by the provisions of IAS (Appointment by Selection) Regulations, 1997, and not by the provisions of IAS (Appointment by Promotion) Regulations, 1955. The selection regulations lay down the eligibility criteria, method of selection, the zone of consideration etc.,. Regulation 5, which deals with the preparation of list of suitable officers states as follows :-

"The Committee shall meet every year to consider the proposal of the State Government made under regulation 4 and recommend the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the service. The suitability of a person for appointment to the service shall be determined by scrutiny of service records and personal interview".

While promotion Regulations specify that non-SCS officers are to be selected by the Selection Committee only on an overall relative assessment of their service

records, Selection Regulations specify that selection of non-SSCS officers is to be determined by scrutiny of service records and personal interview. As Respondent No.2 has pointed out in his reply affidavit, the emphasis on personal interview for non-SCS officers is therefore the major difference between the Promotion Regulations and the Selection Regulations. The applicant has referred to direct recruitment to IAS and pleaded that the marks allocated for interview should be minimum. Direct Recruitment through the IAS through an interview and examination has no relevance to the mode of appointment by selection of non-SCS officers because the candidates for direct recruitment are mostly freshers without any experience. On the other hand the non-SCS officers have sufficient years of working experience in different departments and are shortlisted by the State Government because of their outstanding merit and ability and the Selection Committee is free to adopt a different yardstick for assessing their suitability. Therefore we do not think that the procedure adopted by the committee for making selection to the extent of holding interview is arbitrary and illegal. Therefore the first issue is found against the applicant.

14. Issue No. (ii) : It is not disputed that the Selection Committee comprised experienced administrators and experts with adequate experience in the matter of recruitment to Public Services. In this case, the selection committee has not assigned any reasons with regard to allocation of marks for scrutiny of record of service and for personal interview. But the selection committee can be expected to keep in mind the experience the candidates have gained in their departments and assess their ability to deal with the problems that are likely to be faced by an IAS officer. Respondent No. 2 in his reply affidavit has referred to some of the decisions of the Hon'ble Supreme Court upholding the right of the Commission to evolve their own criteria and mode of evaluation of merit and selection of candidates. In the case of Ashok Kumar Yadav Vs. State of Haryana (supra), the Hon'ble Supreme Court has held as follows :-

"In the case of Services to which recruitment has necessarily to be made from persons of matured personality, the interview-test may be the only way subject to basic and essential academic and professional requirements being satisfied. There may also be services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and in the case of such Services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the Written Examination. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted to an a host of other factors. It is essentially a matter of determination by experts".

15. The specific question whether allocation of 50% marks for interview and other 50% for confidential records can be regarded as arbitrary fell for consideration in WP 17858/2002 filed by K. Jeevanandan in the Hon'ble High Court of Madras. The relevant paragraphs of the Hon'ble High Court's order dated 11.12.2002 are reproduced below which will answer the question conclusively :-

"8. The fifty per cent of the marks has been allocated for the interview conducted by a High Level Committee. The composition of the Committee is such as to ensure the presence of persons with long years of experience in the field of administration and persons who have attained high status within the hierarchy, and whose knowledge of the requirements of administration and whose ability to assess the officers outside the Indian Administrative Service for being appointed to the Indian Administrative Service is beyond any dispute or question. The Committee had also on it a Member of the Public Service Commission which is the expert body in the matter of recruitment to the public services, and which has accumulated expertise in the matter of assessment of the suitability of candidates for recruitment to the various posts in the public services of the Union.

9. The assessment of the candidates made by this Interviewing Committee certainly is an important part of the total process of evaluation. If the confidential reports alone are adopted as the criteria, then, the assessment made by the officers who wrote the reports would become the determining factor. The officers who assess the performance of the candidates had done so, not with a view to decide as to whether the person assessed would be suitable at a later point of time for being made a Member of the Indian Administrative Service. The limited purpose of the assessment was to evaluate the work done during the year and his suitability for promotion to the immediately higher post to which he was eligible. A larger vision required to decide on the suitability of the candidate for entry into the Indian Administrative Service which would entail the person recruited to that service being called upon to discharge posts of far higher responsibility and contribute to the policy making, is better done by an expert body like the interviewing Committee, the composition of which has already been referred to. The assignment of 50% for the interview and other 50% for the confidential records which records would show the past performance of the candidate, as also his strengths and weaknesses, cannot be regarded as arbitrary.

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11.The determination made by the expert body with regard to the extent of marks to be assigned to the interview for selection to the Indian Administrative Service

from among the officers in the services of the State Government to be applied uniformly for all such selections from all the States and all other eligible cadres, is a decision which cannot be regarded ex facie arbitrary, or whimsical."

It is obvious from the above that the courts have very clearly and unambiguously held that allocation of marks to interview as considered necessary by the selection committee is neither arbitrary nor unreasonable. Nor is it violative of Articles 14 & 16 of the Constitution of India. We are therefore unable to agree with the contentions of the learned counsel for the applicant. Thus the second issue is also found against the applicant.

16. Issue No. (iii) : When the case was heard on 25.9.2008, the learned counsel for the applicant submitted that unless the entire record relating to selection is produced before this Tribunal, this Tribunal may not be in a position to appreciate the contentions raised by the applicant. We have therefore directed the learned standing counsel for the UPSC to produce the entire file relating to the selection including the norms, if any, said to have formed by the selection committee as pleaded in the reply. Though the Respondent No. 2 initially claimed privilege to produce the file/decision/guidelines under section 123 of Indian Evidence Act, after hearing the arguments of both sides, it was decided that as far as the rules and norms applicable to the process of selection are concerned, the UPSC cannot claim privilege. Subsequently, Respondent No. 2 made available a copy of the "revised internal guidelines used for the Selection Committee Meetings for preparing the select list for appointment of non-SCS officers to the IAS under the selection regulations". These guidelines have been evolved in the meeting of the commission held on 22.12.2003, long before this OA was filed. In para-B.1 of the guidelines, 50% weightage or marks have been assigned for service records with particular reference to ACRs for the five preceding years and 50% weightage or 50 marks have been assigned for personal interview. In para-B.2, broad guidelines have been given for assessment of the individual ACRs. In para-B.3 it is stated that 50% minimum marks in each of the two components viz., ACRs and personal interview must be separately obtained by the non-SCS officer for being selected for appointment to the IAS under the selection regulations. Para-B.4 of the guidelines deals with situation where two or more officers receive the same total marks. The relevant guideline is extracted below :-

"(1)

(2) In case two or more officers receive the same Total Marks and one or more is to be included in the list of suitable officers, the tie is to be resolved as follows :

(a) The officer with the higher marks in the interview component would be placed senior to the officer (with the same Total Marks) with lower marks.

(b) If the officers having the same Total Marks also have the same marks in the interview component, the officer who is senior in age will be placed above the officer having a lower age."

We do not consider the above guidelines as arbitrary or unreasonable. The Hon'ble Supreme Court in a number of cases has recognized the specialized experience of the UPSC in determining the weightage given to interview. In *Lila Dhar Vs. State of Rajasthan* (supra), it has been observed as follows :-

"There are of course many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services where sound selection must combine academic ability with personality promise, some weightage has to be given, though not much too great weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from services to services 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. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives."

In the case of *All India State Bank Officers Federation and Others Vs. Union of India & Others* (supra) the Hon'ble Supreme Court had held that prescribing even 60% marks for the interview was neither arbitrary nor unjust. The relevant paragraphs from the judgment are extracted below :-

"It was also contended that prescribing of 60 per cent marks for the interview as an eligibility criteria was arbitrary, unfair and unjust. It was further submitted that the percentage of marks in viva voce should not have been more than 15 per cent.

We do not find any merit in this contention. There can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for viva voce or interview which can be regarded as unreasonable, will depend on the facts of each case. Decisions of this Court show that no rigid

rule relating to percentage of marks for interview of general universal application can or has been laid down. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held."

In the case of Secretary (Health) Vs. Dr. Anita Puri & Others (supra), the Hon'ble Supreme Court has held that :

"In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like the career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extra curricular activities like sports and other allied subjects; personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held".

It will be seen from the forgoing that the courts have consistently held that the Public Service Commission has the sole authority and discretion to allocate appropriate marks or give appropriate weightage for performance at the interview. Therefore, the third issue is also found against the applicant.

17. Issues (iv) & (v) : The learned counsel for the applicant argued vehemently that 50% marks should not have been allotted for interview and that in respect of candidates who scored the same aggregate marks giving more weightage to those who obtained higher marks at the interview is also arbitrary and unreasonable. His contention was that the service record should have been given more weightage. We do not agree with the contention of the learned counsel for the applicant that giving more weightage to service record would make the selection more objective. The service records mostly comprise the ACRs which reflect the subjective opinion of the officers who write these reports. These two issues have already been examined and we have made it clear why we are not able to agree with the contentions of the learned counsel for the applicant. It is seen from the minutes of the selection committee produced by the learned standing counsel for the Respondent No.2 that the applicant obtained 82 marks i.e. 44 for service record and 38 for interview. The 5th Respondent also secured 82 marks viz., 40 for service record and 42 for interview. Since the Respondent No.5 has secured more marks in the interview, he has rightly been selected as per the norms / guideline circulated to the members of the selection committee by the UPSC. We do not find anything wrong, illegal or irregular about the procedure.

Therefore, the fourth issue is also found against the applicant. Consequently the applicant is not entitled to the relief she has prayed for.

18. In the result, the OA is dismissed as devoid of merits. No order as to costs.

(R. SANTHANAM)
Member (Admn.)

(P.LAKSHMANA REDDY)
Vice-Chairman