

**(1997) 07 PAT CK 0061**  
**In the Patna High Court**  
**Case No : LPA No. 59 of 1990 (R)**

Coal India Limited

APPELLANT

Vs

Rajib Ranjan Kumar and Others

RESPONDENT

**Date of Decision :** 07-07-1997

**Acts Referred:**

**Citation :** (1998) 1 BLJR 102 : (1997) 2 PLJR 450

**Hon'ble Judges :** S.K. Chattopadhyaya, J;M.Y. Eqbal, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## **Judgement**

M.Y. Eqbal, J.—This Appeal has come before us for hearing after (sic)emand by the Supreme Court in Civil Appeal No. 4705 of 1991.

2. In the original writ application being CWJC No. 415 of 1989(R), the espondent writ petitioner had prayed for issuance of an appropriate writ/order/direction for quashing the order dated 22.12.1988 as contained in Annexure-4 to the writ application, whereby and whereunder the petitioner was informed that the selection committee had not recommended him for appointment. The said writ application was allowed by learned single Judge of his Court and the learned Single Judge gave certain direction while disposing of the writ application. Aggrieved by the said judgment, the appellant filed this (sic)etters patent appeal which was heard and finally disposed of by a Division 3ench of this Court on 9th May, 1991. By the said judgment, the judgment and order of the learned Single Judge was modified so far as the relief was concerned, inasmuch as the appellant was directed to give appointment to the petitioner in the post of junior executive trainee. The present appellant then moved the Supreme Court of India in Civil Appeal No. 4705 of 1991 against the aforesaid judgment of the Division Bench passed in the instant appeal. The Supreme Court finally heard the appeal on 22.11.1991 and allowed the same. The Division Bench judgment of this Court was set aside with the direction to his Court to restore the letters patent appeal and to dispose of the same in accordance with law. It appears that before the

Supreme Court, certain documents and materials were produced and the Supreme Court observed that these documents are necessary to come to a proper conclusion. However, the supreme Court directed this Court to examine the records in the light of the contentions made by the parties. Hence, this letters patent appeal has been heard afresh in the light of the direction and the order of the Supreme Court.

3. The short facts of the case are as follows:

4. The appellant issued an advertisement inviting applications for filling up the posts of junior executive trainees. The writ petitioner, being eligible for appointment in the post, filed an application and he was asked to appear in the written test. The petitioner passed the written test and was called for an interview on 26.11.1988. A copy of the letter calling the petitioner for the interview is Annexure 3 to the writ application. After the said interview, the petitioner was intimated that he had not been recommended for appointment in the said post by the selection committee. The petitioner's case was that the written test was of three hours duration, whereas the interview was hardly for five to seven minutes. Curiously enough, neither the advertisement, nor the communication discloses the allocation of marks in the written test and the interview. Even in the question paper at the written test, no mention was made of the total marks. However, the candidates were required to answer 180 questions at the written test. The petitioner claimed that he had correctly answered about 140 questions out of 180. It was alleged that the appellant kept everything secret and even the communication made to the petitioner does not disclose the marks obtained by him either in the written test or the interview.

The petitioner's further case was that on an inquiry from the office of the appellant, he could come to know that written test was for 200 marks and the interview was for 50 marks, but later on the total marks at the written test were reduced from 200 to 50 and then equal weightage was given to the written test and interview. The petitioner further claimed that the decision of the selection committee and the order of the appellant was unjust and arbitrary and, further the appointments made on the basis of such recommendations are illegal, arbitrary and without jurisdiction. The learned Single Judge in his judgment, after hearing the parties, held that the allotment of 35 marks for oral interview was against the principles laid down by the Supreme Court. From perusal of the judgment of the learned Single Judge, it appears that when the writ application was admitted, the counsel for the appellant Coal India Limited was asked to keep with him the original records of the marks contained in the mark-sheets for perusal of the court hearing the matter, but the counsel for the appellant stated that the records were not with him. The learned Single Judge deprecated the attitude of the appellant Coal India Limited regarding the statement made in the counter affidavit. The learned Single Judge therefore disposed of the writ application with the direction to the appellant to adopt a fresh policy decision keeping in view the observations of the Supreme Court in Ashok Kumar Yadav's

case and the selection committee shall proceed to make recommendations strictly in accordance with the merits of the candidates after taking into consideration their performance. As stated above, against the judgment of the learned Single Judge, the appellant preferred this appeal, which was disposed of by the judgment dated 9.5.1991 with the direction to the appellant to give appointment to the petitioner in the post of junior executive trainee. However, the said judgment of the Division Bench was set aside by the Supreme Court. After this appeal was remanded by the Supreme Court, the appellant filed an affidavit alongwith certain documents, i.e. copies of the proceedings of the selection committee and the marks obtained by the candidates who had appeared in the examination.

5. Now, the only question for consideration is as to whether the relief claimed by the petitioner in the writ application is justified keeping in view the documents filed by the appellant.

6. Mr. N.K. Prasad, learned Senior Counsel appearing for the appellant Coal India Limited firstly submitted that the selection committee of the Coal India Limited which consisted of experts and representatives of Scheduled Castes/Scheduled Tribes members conducted the selection proceedings including interviews of the candidates for selection of the Junior Executive Trainees in which the name of the petitioner was not recommended for appointment and, accordingly, a regret letter was sent to him. According to the learned Counsel, the prevailing norms at that time for selection of the executives was that out of total marks of 100, 60 marks were assigned for written examination, 35 marks for interview and only 5 marks were assigned for extra-curricular activities by the selection committee. Referring to the counter affidavit, the learned Counsel submitted that it was the specific case of the appellant, Coal India Limited, that the duration of the interview was dependent on the performance of the candidates in the said interview. The learned Counsel has drawn my attention to the report of the selection committee in different centres, where examinations and interviews were held, which has been filed and annexed as Annexures 1 to 1/D to the affidavit filed by the appellant. It is submitted that the total number of 459 candidates appeared at the written test and the petitioner had secured only 36 marks and was awarded 15 marks for the performance in the interview and was awarded, "nil" mark for the extra-curricular activities. Thus, the petitioner secured only 51 marks as compared to various other candidates, which would be evident from the said report of the selection committee. The learned Counsel further drew my attention to paragraph 9 of the affidavit, wherein it was stated that there were only 39 vacancies including the reserved vacancies for the SC/ST candidates. The minimum qualifying mark was fixed at 60 and as the petitioner had secured only 51 marks as aforesaid, he was found outside the zone of consideration for appointment. On the other hand, Mr. R.B. Mahato, senior counsel for the petitioner-respondent submitted that the very process of selection adopted by the selection committee and the allocation of marks for written test and interview was wholly illegal and arbitrary. The learned Counsel

also drew my attention to the report of the selection committee and submitted that from the said report, it will appear that although the petitioner got 35 marks at the written test, but he was not selected, while the other candidates who secured less than 34 marks were selected for the reason that they were allotted 90-95 marks in their interview. The learned Counsel submitted that even the candidates who obtained less than 60 marks were appointed and the contention of the appellant Coal India Limited that the qualifying marks was fixed at 60 is false and incorrect.

7. Before appreciating the submissions advanced by the learned Counsel for the parties, first of all, I would like to discuss the documents filed by the appellant. Annexure-1 is the report of the selection committee showing position of the candidates and the marks obtained by them. From perusal of Annexure-1, it appears that 60 marks were allocated for written test, 35 marks for interview and 5 marks for extra-curricular activities. It further appears that most of the candidates whose names were recommended for appointment obtained less marks in their written tests, but they were selected only because of obtaining high marks in the interviews. Some of the examples are quoted below:

| SI. No.              | Written test | Interview | Extra-Curricular activities |
|----------------------|--------------|-----------|-----------------------------|
| Total in Annexure 1. | 1            | 2         | 3                           |
|                      | 4            | 5         |                             |

1 33 28 02 63 6 35 29 0 64 09 34 27 0 61 21 36 27 0 63 23 34 28 0 62 24 33 31 0 64 26 34 29 0 63 28 34 29 0 63 40 33 27 0 60 70 33 28 2 63 73 34 28 0 62 86 33 27 3 63 88 33 28 0 61 95 34 30 0 64 8. Similarly, it further appears that the candidates who had obtained higher marks in written tests, were given less marks dis-entitling them for recommendation for their appointment. Some of the instances are quoted below:

| Sr. No.                     | Written | Interview | Extra-Curricula | Total | In |
|-----------------------------|---------|-----------|-----------------|-------|----|
| Annexure-1 Test. Activities | 1       | 2         | 3               | 4     | 5  |
|                             |         |           |                 |       |    |

14 38 15 00 53 50 37 16 00 53 53 38 18 00 52 64 37 20 00 57 67 36 18 00 54 69 36 18 01 54 90 35 17 00 52 92 36 13 00 49 111 38 14 00 52 112 37 15 02 54 113 41 18 00 59 117 36 16 02 54 118 36 13 02 51 9. On consideration of the manner of the selection adopted by the Committee, it is evident that mostly those candidates who have been given higher marks in their interviews have been selected. The very fact that out of 100 marks 35 marks were reserved for interview was itself an illegal and arbitrary action off the selection committee. The learned Single Judge noticed the decision of the Supreme Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, in which the Supreme Court deprecated this type of policy in the matter

of appointment of the candidates.

10. In the case of Vikram Singh and another Vs. The Subordinate Services Selection Board, Haryana and others, the Apex Court, while considering the validity of the criteria adopted by the Selection Board in the matter of appointment for the post of Excise Inspector has held as under:

8. The present case relates to the selection of Excise Inspectors by the Haryana Government and Ashok Kumar Yadav case was a case relating to the recruitment to the posts of Civil Services (Executive Branch), State of Haryana. It was clearly directed in Ashok Kumar Yadav case that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written test followed by viva voce test, the marks allocated for the viva voce test shall not exceed 12.2 percent of the total marks taken into account for the purpose of selection. It was also observed that when ever selections are made by the Haryana Public Service Commission in future, they shall be made on the basis of that the marks allocated for the viva voce test shall not exceed 12.2 percent in case of candidates belonging to the general category and 25 percent in case of ex-service officers. In our view the present selection made on the basis of rules making a provision for 28.5 percent of marks for viva voce test was highly excessive and is clear violation and disregarded of the principle laid down Ashok Kumar Yadav case. It is no doubt correct that in that case a section was given in respect of the selections to be made to the Haryana Civil Services (Executive Branch) and other allied services and to the selections to be made in future by the Haryana Public Service Commission, but in our view the principal and the ratio of Ashok Kumar Yadav case will apply to the selections made in the present case also though by the Subordinate Service Selection Board. Earned Counsel appearing for the respondents were unable to satisfy us that for selections for the posts of Excise Inspectors, it was just and reasonable to keep 28.5 percent marks for the viva voce test.

11. Similarly, in the case of Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, , the Apex Court was considering the validity of the selection process for recruitment of Assistant Engineer for Public Works Department. Under the recruitment rules, marks allotted for interview were 50 out of total marks of 150. Thus, the marks allotted for interview amounted to 33.30% of the total marks. The Appex Court following the earlier judgment of Ashok Kumar Yadav v. State of Haryana (Supra) and Mohinder Sain Garg Ors. Vs. State of Punjab and Others, , has held as under:

On a direction given by this Court on September 4, 1991, the record off the selection committee was produced before this Court at the time of hearing. From a perusal of the marks awarded to the selected candidates. It is clear that a large number of candidates have been selected though they had secured much lesser marks than the appellants in the qualifying examination but had secured very high marks in the viva voce out of 50 marks kept for this purpose. Thus it is an

admitted position that if the marks for interview were kept even at 15% of the total marks and merit-list is prepared accordingly then both the appellants were bound to be selected and a large number of selected candidates would have gone much lower in the merit-list than the appellants.

12. The next document filed by the appellant has been marked as Annexure-2 by which the appellant has tried to show that even if the allocation of marks are converted in the ratio of 80 for written test, 15 for interview and 5 for extra-curricular activities, on a calculation, the marks obtained by the writ petitioner comes to a total of 54 or 55. It was therefore, stated that even on conversion, the marks obtained by the writ petitioner is less than 60, which was the qualifying marks and even on that basis, he cannot be selected. The stand taken by the appellant vide Annexure-2 is falsified from the fact that some of the candidates who have been shown selected in the selection committee report have obtained less than 60 marks, if the marks allocated are converted into the ratio of 80:15:5. For example, serial No, 40 of Annexure-1, Sri Satyendra Singh obtained 33 marks in written test out of 60 and 27 marks in the interview out of 35, the total comes to 60. On conversion, the marks obtained by that candidate in the written test comes to about 45 in the written test out of 80 and 11.5 marks in the interview, out of 15. The total marks obtained by the said candidate, therefore, on conversion comes to about 56 which is less than 60 marks and that candidate has been selected for appointment. Similarly, the candidate at serial No. 1. Bishwajit Shaw obtained 33 marks in the written test and 25 marks in interview. On conversion, the marks obtained by that candidate comes to less than 60, but he was selected Likewise, from Annexure-1, I find that there are so many candidates whose marks come to less than 60 on conversion, but they have been selected and appointed. The document (Annexure-2), therefore, is of no help to the Appellant.

13. As stated above, from perusal of the marks awarded to the selected candidates, it is abundantly clear that a large number of candidates have been selected, though they had secured much lesser marks than the appellants in the written test, but had secured very high marks in the interview and the reason was that 35 marks was kept for this purpose. I am, therefore, of the view that the allocation of marks in such a way by the appellant Coal India Limited was wholly illegal and arbitrary. I further hold that in view of the fact that on conversion of marks in the manner as stated above, when the candidates having obtained less than 60 marks have been selected and appointed, then there was no reason to deprive the writ petitioner from setting an appointment. I have, therefore, no hesitation to hold that the petitioner has succeeded in proving the arbitrariness on part of the selection committee in not recommending the case of the petitioner for appointment.

14. Now, the only question remains is whether this Court can, at this stage, issue direction to the appellant for giving an appointment to the petitioners. As stated above, the appellant Coal India Limited has admitted in paragraph 9 of the

affidavit that there were 139 vacancies, including the reservation vacancies for Scheduled Castes/Scheduled Tribes candidates. It appears that 134 vacancies out of 139 have been filled up. In the affidavit filed before the Supreme Court, it was stated by the appellant that 136 candidates have been appointed. Whatsoever be the position, the fact remains that the petitioner was denied appointment on the basis of an illegal, arbitrary and discriminatory decision taken by the selection committee. In that view of the matter, it would be fit and proper for the ends of justice to issue mandamus directing the appellant Coal India Limited to give appointment to the petitioner. During the course of hearing of this appeal, the respondent petitioner was directed to file an affidavit stating as to whether he is in employment anywhere since 1988. Pursuant to the said order, the petitioner filed an affidavit stating that he is sitting idle and is fighting litigation for his legitimate claim.

15. Having regard to the facts and circumstances of the case, the judgment of the learned Single Judge is modified by directing the appellant Coal India Limited to give appointment to the petitioner within four weeks from the date of this order. With this observation, this Appeal is dismissed. However, it is made clear that this order shall be confined to the writ petitioner only.