
(1989) 03 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 2436 of 1989

M. Papanna

APPELLANT

Vs

Hon"ble Chief Justice

RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 74, 76

Citation : (1989) ILR (Kar) 1328 : (1989) 2 KarLJ 372

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : Ravi varma Kumar, for the Appellant; R.N. Narasimha Murthy, General for R-1, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J

1. At the stage of preliminary hearing, learned Government Pleader was directed to take notice on behalf of first respondent and to produce the records. Accordingly, learned Advocate General has appeared on behalf of the first respondent and produced the records pertaining to the selection proceedings in question. Therefore the petition is heard as to whether the Rule should be issued or not.

2. In this petition under Article 226 of the Constitution the petitioner has sought for the following reliefs:

"i) Call for the records relating to promotion of respondents 2 and 3 as Judgment Writers;

ii) Declare the promotion of respondents 2 and 3 as Judgment Writers, as illegal, arbitrary and void by an appropriate Writ, order or direction;

iii) Issue a Writ, order or direction in the nature of Mandamus directing the first

respondent to consider the case of the petitioner for promotion as Judgment Writer on the basis of his performance at the first test held on 21-4-1988 and to give him all consequential benefits;

iv) Issue such other relief/s, order or direction as this Hon"ble Court deems fit in the circumstances of the case."

3. In addition to this, during the course of hearing, the petitioner also filed an application under Order 6 Rule 17 C.P.C. to raise additional grounds as grounds 16A to 16E. These grounds were also allowed to be urged. Thus, the application seeking amendment stands allowed.

4. There is also another prayer made in the petition termed as "interim prayer" to issue a direction to furnish to the petitioner copies of the documents sought for by him in the applications - Copies of which are produced as Annexures C and E.

5. The facts necessary for the purpose of deciding the contentions urged are as follows:

The petitioner and respondents 2 and 3 are working as Stenographers in the establishment of the High Court. Petitioner is junior to respondent-2 and senior to respondent No. 3. They, along with nine others, competed for the two selection posts of Judgment Writers. For the purpose of selection, a written test and also an interview were held. The first written test was held on 21-4-1988. They were also interviewed by the Hon"ble the Chief Justice with the assistance of a brother Judge (NVJ) on 25-4-1988. All the candidates except one by name Sirajuddin attended the interview. No selection was made and it was deferred for holding a fresh test as it was considered that the performance of the candidates was poor and the candidates were not still fit for promotion as Judgment Writers. Thereafter, they were given training in English and another test was held on 29th July, 1988. All the twelve attended. In both the tests a passage was got dictated to the candidates by the Registrar. The candidates took it in shorthand and transcribed it. On the basis of the test held on 29th July, 1988, the interview was held on 30th July, 1988, by the Hon"ble the Chief Justice with the assistance of a brother Judge (NVJ). All the twelve candidates attended the interview. Considering the performance of the candidates in the test as well as the interview and on perusing their confidential reports, respondents 2 and 3 were selected for promotion as Judgment Writers.

6. Having regard to the contentions urged on behalf of the petitioner, the following points arise for consideration:

1) Whether the petitioner is entitled to the copies of the records of the selection proceedings as prayed for by him in Annexures C and E?

2) Whether it was open to abandon the test and the interview held on 21-4-1988 and defer selection for holding a fresh test?

3) Whether the case of the petitioner for promotion by selection has been considered in accordance with law?

4) What order?

7. Point No. 1:- It is contended on behalf of the petitioner that as he has a right to be considered for promotion by selection to the post of Judgment Writer, and he appeared for the test and attended the interview on both the occasions; that as he has not been selected he is entitled to have copies of the performance of each candidate in the tests held on 21-4-1988 and 29-7-1988 and the orders passed thereon after the interview by the selection authority and he is also entitled to inspect the transcription of the two tests since he has not been selected; that it is necessary to inspect and have the copies to protect his interest in order to know whether his case has been considered. Therefore, he made the applications as per Annexures C and E, but they were not granted. Learned Counsel for the petitioner has based this contention on the ground that the selection proceedings are public proceedings recorded by the public authority, therefore the records of those proceedings become public documents u/s 74 of the Evidence Act. Therefore, the petitioner is entitled to the copies of the same on payment of necessary fee.

8. Whether the records of selection proceedings are public documents or not and if so, whether the entire records or some of them are public documents need not be examined in view of the submission made on behalf of the first respondent by the learned Advocate General that the case may be considered even assuming and without deciding that they are the public documents.

9. The contention of the learned Advocate General is that the extent of the right of the petitioner to inspect the records of the proceedings and the test papers is limited to the interest he has in the selection proceedings; that the interest of the petitioner cannot be more than his right in the selection; that the right of the petitioner is that he should be considered for promotion by selection. Therefore, it is submitted that his right does not extend to get the copies of the test papers and interview proceedings except that he is entitled to an order of promotion to know as to who are selected and promoted as Judgment Writers. Thus, it is submitted by learned Advocate General that the petitioner is not entitled to either inspect or have copies of all the records as prayed for by him in Annexures C and E.

10. The selection in question is made under the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973 (hereinafter referred to as "the Service and Recruitment Rules") which are framed in exercise of the powers conferred by Articles 229(1) and (2) of the Constitution and all other powers enabling the Hon'ble Chief Justice with the approval of the Governor of Karnataka.

11. The Service and Recruitment Rules do not provide either for inspection of the records of selection, or obtaining copies thereof, by the candidates. Thus, the

right to inspect and take a copy of the selection proceeding is not expressly conferred by the Service and Recruitment Rules. Therefore, the right of the petitioner in this regard is based on the common law right in so far it is necessary to protect his right or interest. This common law right is incorporated in Section 76 of the Evidence Act, which reads thus:

"Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation - Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

Section 76 of the Evidence Act applies to that class of public documents which any person has a right to inspect. In other words, it gives a right to obtain certified copies of the public documents to only such person who has a right to inspect on payment of prescribed legal fee. The scope of Section 76 of the Evidence Act came up for consideration before a Division Bench Of this Court in *M.N. KRISHNA RAO v. BOARD OF TRUSTEES* 1972(1) MysLJ.101, CITB. After referring to the two English decisions, this Court held thus:

"The next question is whether and if so, what interest or right the petitioner could make out to sustain his claim for inspection.

As already stated, the approach must be through the principle enunciated in Sections 74 and 76 of the Evidence Act. The right to inspection of a public document is limited to the interest a person has in it. Lord Justice Lindley, dealing with this question, has stated as follows in the case of *Mutter v. Eastern and Midlands Rly., Co.* (1) at page 106:

"When the right to inspect and take a copy is expressly conferred by statute. When the right to inspect and take a copy is not expressly conferred, the extent of such right depends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this principle, as is shown by the Judgment in *Rex v. Justices of Staffordshire* (1937) 6 Ad&E. 84, at 99 & 101)."

Dealing with this proposition, Justice Shephard, pronouncing the opinion of a Full Bench of the Madras High Court, has observed as follows in *Queen Empress v. Arumugam* (2) at page 196:

"It may be inferred that the Legislature intended to" recognise the right

generally, (that is, the right to inspect public documents) for all persons who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given."

We think that the proposition so stated should be accepted as correctly laying down the essential principle on the basis of which the right to inspect public documents may be claimed by any person. The foundation of that principle is that the document must be a public document i.e., it should form an act or the record of an act of a public body or official body and that the extent of the right of inspection must be determined by the nature of the right claimed by a person and the extent it is necessary for the protection of such right."

12. In that case the applicant for allotment of a site sought for inspection of the papers of the City improvement Trust Board, Bangalore, relating to allotment of site. On considering the extent of interest the applicant had in the proceeding, this Court further held that:

"A public document is something which forms an act or the record of act of an official body."

"The final order or decision of the Board in regard to allotment, whichever form it may take, may be regarded as a document forming the act of the Board or the record of its act."

"The essence of the matter is that only the act of a public body is one which could not be kept away from the scrutiny of the public. If and to the extent it affects the interests of any person, he will be entitled to ask for copies thereof."

XX XX XX XX "We think therefore that the right of inspection extends to the resolution or resolutions of the Board together with the recommendations of the Committee relating to all the sites in the layout, for which applications were invited.The petitioner is not entitled to inspect any other supporting documents like the applications, etc."

13. In the light of the aforesaid, decision, the question that necessarily arises for consideration is as to whether the petitioner has a right of inspection of the proceeding of selection in question and if so to what extent the right of inspection extends? At the out set, it is necessary and relevant to hear in mind that the selection proceeding is neither a "lis" between the Selection Committee and the applicants and between the various contending applicants, nor a judicial or quasi-judicial proceeding. The Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, considered the nature of the proceeding of the Selection Committee and held that:

"It was difficult to conceive of any "lis" between each candidate and all the others."

It also further held that:

"The process of selection could hardly be spoken of as akin to the process of

litigation, where two or more parties, who prefer claims to the same subject matter, have to be informed of each other's cases and issues on points in dispute are framed and then decided. Even if such a process of selection by assessment of merits could conceivably be viewed as a whole series of disputes as to comparative claims, it is quite impracticable to hear each candidate as against all the others after giving each the results of assessments of merits of all the others with access to the materials on which these are based. Candidates are not expected to sit in Judgment over evaluations of their own merits and of others. The "Cult of the Quasi" as it has been derisively called by those who are skeptical of its extensions beyond certain reasonable and practical limits, cannot be carried to such absurd lengths as to make it necessary for candidates at an examination to put forward their own assessments of their own merits as against those of rival candidates. Just as the answers given by candidates at a written test reveal respective merits so also the service records, during the preparation of lists by selection, speak for those whose records are examined. The process of selection by evaluation of respective records of service is more akin to that of an examination of candidates than to any quasi-judicial proceeding."

14. Thus the right of inspection of the petitioner depends upon the extent of interest he has in the selection proceeding. There is no right in a candidate that he should be selected and appointed. His right is only to have his case considered for selection. In *Gurdayal Singh Fiji Vs. State of Punjab and others*, the Supreme Court while dealing with the preparation of I.A.S. select list held thus:

"The petitioner cannot claim to be included in the select list as a matter of right.

The Select List is prepared by the Selection Committee on consideration of the merits on the basis of suitability of the officer concerned and recommendations made by the Selection Committee have to be approved by the Union Public Service Commission.

As the Selection Committee has not considered the petitioner to be suitable to be included in the select list and the Union Public Service Commission has agreed with the recommendation of the Selection Committee, the claim of the petitioner for inclusion in the select list must fail."

Again in *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, the Supreme Court considered Rules 4 and 8 of the Indian Administrative Service (Recruitment) Rules, 1954 and Regulations 3, 5, 6, 7 and 8 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, as amended in 1977. It held that:

"When merit is the criteria for selection amongst members of the Service, no officer has legal right to be selected for promotion except that he has only right to be considered along with others."

The Supreme Court also affirmed its earlier view in *Gurdayal Singh Fiji*'s case. It

also further held that:

"No vested legal right of a member of the State Civil Service who after being considered is not included in the select list, is adversely affected. Non-inclusion in the select list does not take away any right of a member of the State Civil Service that may have accrued to him as a Government Servant, therefore no opportunity is necessary to be afforded to him for making representation against the proposed supersession.

15. That being so, the right of the petitioner in the selection proceeding is only to be considered for promotion by selection. Therefore, to the extent it is necessary to protect his right to be considered for promotion by selection, he is entitled to have inspection of the records. Thus, he is entitled to know the decision as to selection and the candidates selected and not beyond that. Therefore certified copies of an act or the records of an act of the Selection Authority comprising the decision as to selection and the list of the selected candidates, if it does not form part of the decision as to selection and is separately prepared and an order of promotion, are to be furnished on payment of prescribed legal fee. The right of the petitioner does not extend to all the records of the selection proceeding except to the extent indicated above.

The question as to whether the case of the petitioner has been properly considered or not, if challenged before the Court, and a prima facie case is made out, it is for the Court to summon the records and satisfy as to whether the case of the petitioner has been considered and the grievance made by him is justified.

16. However, learned Counsel for the petitioner has placed reliance on a decision of the Supreme Court in *S.P. Gupta Vs. President of India and Others*, A specific stress was laid on paras 58, 62, 64 and 66 of the decision. At the out set it may be noticed that the decision in that case regarding disclosure was in the context of Article 74 of the Constitution relating to performance of the executive activities of Union Government. Therefore, it is not possible to apply the principles laid down therein to the proceedings of the Selection Committee wherein the right of a candidate is confined to a right to be considered.

17. During the course of hearing, the petitioner was furnished with a copy of the order of appointment of respondents 2 and 3 as Judgment writers which was not furnished to him. The decision of the Selection Committee, on the basis of which respondents 2 and 3 are selected also contains the names of respondents 2 and 3. It was made available to the Court and along with it the other records of the proceeding were also made available. The decision was made known to learned Counsel for the petitioner, in the light of that an application for amendment seeking permission to raise additional grounds was filed. The petitioner was permitted to urge the additional grounds. The records of the selection proceeding will be considered during the course of this order while considering the other points. Therefore, in this case the purpose for which the petitioner entitled to have a copy of the decision as to selection is accomplished, hence it is not now

necessary to furnish a copy of the decision as to selection. The right of the petitioner does not extend to secure copies of the test papers and other records which consist of not only the test papers but also the records of interview and service records of the petitioner and other candidates. The right of the petitioner does not extend to get the copies of the same. Accordingly, point No. 1 is answered as follows:

"The petitioner is entitled to be furnished with a certified copy of an act or the records of an act of the Selecting Authority comprising the decision as to selection and the list of the selected candidates, if it does not form part of the decision as to selection and is separately prepared and an order of promotion, and they are to be furnished on payment of prescribed legal fee. The right of the petitioner does not extend to all the records of the selection proceeding except to the extent indicated above. A copy of the order of appointment has already been furnished to the petitioner. As the contents of the decision as to selection are made known to the petitioner and he has put forth additional grounds in that regard, therefore, the purpose for which a copy of the decision is required to be furnished is accomplished in the instant case. Hence, no separate copy need be furnished in the facts and circumstances of the case."

18. Point No. 2:- The contention of the petitioner is that as the posts of Judgment Writers are to be filled up by promotion by selection from among the Stenographers working in the High Court Establishment who have put in not less than one year of service as such, or, Judgment Writers or Selection Grade Stenographers working in Subordinate Courts, the promotion has to be made on the basis of the selection made on merit. Therefore, it was not open to abandon the test and the interview held on 21-4-1988 and 25-4-1988 respectively for the purpose of selection. In this regard, it is relevant to notice that it is not incumbent upon the Selection Committee or the Appointing Authority, as the case may be, to select the candidates merely because the test and interview for selection are held. If the Selection Committee is satisfied that no candidate has come upto the expected level, and no one is found fit for selection, it is open to, and permissible, not to select any one and defer the selection to hold a fresh test after some time. The selection post is required to be filled up by the capable and suitable persons in the public interest. The same principle holds good even in the case of promotions by selection.

19. In *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*, the Supreme Court has specifically held that where promotion is by seniority, merit takes the second place but when it is a selection, merit takes the first place and it is implicit in such selection that the man must not be just average. When responsible posts are filled by selection, cases are known where selections are not made because candidates of the required merit were not available.

In the instant case there is a specific recording made to the effect that out of the 12 candidates 11 candidates appeared for the test and interview held on

3-11-1987 and no selection could be made. Again the test was held on 21-4-1988 and the interview was conducted on 25-4-1988. They were found still not fit for promotion as Judgment Writers, therefore the selection was deferred and it was also further ordered to arrange the training course in English with the help of Regional Institute of English to the candidates and a fresh test was held on 29-7-1988 and the interview on 30-7-1988. The power of the Selection Committee, to select a candidate or candidates only when it is satisfied that a candidate/s is/are fit for selection, is not in any way affected or abridged merely because it conducts the test and interview. Therefore it does not follow that it must necessarily make a selection. If in the view of the Selection Committee no candidate is found upto the mark it can very well abandon or defer the selection proceeding and call for fresh applications for holding a fresh selection. That is what has been done in the instant case.

20. In addition to this another special feature of the case is that the petitioner did not object to the second test (In fact it is the third test) being held. He nevertheless participated in the second test, appeared for the interview and thus took a chance of being selected on the second time. The conduct of the petitioner amounted to acquiescing in the matter and giving up his right if any to challenge the decision of the Selecting Authority to give up the earlier selection proceedings. In this regard, it is contended by Sri Ravi varma Kumar, learned Counsel for the petitioner that it is a fundamental right of the petitioner to have his case considered for promotion by selection and also to seek redressal as to consideration of his case for promotion by selection to the post in question. Therefore, question as to acquiescing does not at all arise as there is no question of giving up the fundamental right of the petitioner. The question is not of fundamental right of the petitioner. The question is one whether the petitioner by his conduct accepted the action of the Selection Authority in abandoning the earlier selection proceeding on the ground that the candidates were not still fit. In view of the fact that the petitioner did not raise any objection and participated in the second test without reserving his right to challenge the decision in giving up earlier selection proceedings, he cannot now be permitted to turn round and say that the abandoning of the earlier selection proceeding is impermissible in law. Such a conduct on the part of the petitioner stops him from challenging the decision of the Selecting Authority to abandon the earlier selection proceeding. Accordingly, point No. 2 is answered in the affirmative.

21. Point No. 3:- It is not in dispute that the petitioner appeared for the test so also respondents 2 and 3. A passage in question as dictated to all the candidates who on taking it in shorthand transcribed the same, the petitioner committed 20 mistakes, respondent-2 committed 23 mistakes and respondent-3 committed 13 mistakes. Thereafter they were interviewed along with other candidates. The records produced before me show that the selection was made by the Hon'ble the Chief Justice with the assistance of a brother Judge (NVJ) on taking into consideration the performance of the candidates in the test as well as the interview and also on taking into consideration the confidential records of each of

the candidates. As far as the third respondent is concerned, even accepting the contention of the petitioner that only the performance in the written test alone should be the criterion the petitioner cannot be either equated to, or placed above the third respondent because she has committed only 13 mistakes whereas the petitioner has committed 20 and the mistakes committed by the third respondent among all the candidates are minimum. The assessment at the interview made also shows that "she answered questions well and quite upto the mark." The confidential records also do not contain any adverse entry so as to reduce her merit secured in the written test as well as the interview. Therefore, the case of the petitioner when compared with the third respondent cannot be held to be superior to that of the third respondent. Hence, the selection of third respondent cannot be held to be illegal or unfair or suffering from any infirmity.

22. As far as the selection of the second respondent is concerned, no doubt, the records indicate that the second respondent committed 23 mistakes whereas the petitioner committed only 20 mistakes. In the interview the remarks made against the petitioner do not in any way place him higher than that of the second respondent. The confidential records indicate that the second respondent continuously for a period of three years from 1985 to 1987 was certified as "satisfactory", "Good" and "Good" respectively. Whereas the confidential records of the petitioner for the same period contain the remarks as "satisfactory", "Good" and "satisfactory, he is a good and dependable worker" respectively. Therefore, as far as the confidential records are concerned, the petitioner cannot be held to be superior to that of the second respondent. Under these circumstances, whatever little merit the petitioner had in the written test has been reduced and equalised having regard to the confidential records and his performance in the interview. Under these circumstances, the petitioner and the second respondent can only be treated as equal. On merit, the petitioner cannot claim to be superior to respondent-2. Hence, all things being equal, in the case of promotion by selection, the seniority will have to be taken into consideration. Looked from this point of view, the second respondent being senior to the petitioner has been rightly selected.

23. However, it is contended on behalf of the petitioner that no to marks are assigned in the interview and in the written test the petitioner has committed less number of mistakes than the second respondent and as such the petitioner has not been selected only on the basis of the performance in the interview; that interview proceedings are vitiated as no marks are assigned. Hence, there is no basis for deciding or determining that the performance of the petitioner is not in any way superior or equal to that of the second respondent. It is not an invariable rule that marks should be assigned in the interview. There are various methods, criterion or Test to assess or evaluate the performance of a candidate in the interview. Of course, if the selection has to be made only on the basis of the written test and the interview or the interview alone, awarding of marks at the interview will avoid all the criticism against the propriety, validity or otherwise of the interview; but in a case where apart from the written test and

viva voce, confidential remarks pertaining to performance of service in the lower cadre are also to be taken into account not awarding of marks but otherwise recording of assessment of the performance at the interview cannot be held to vitiate the interview. The records of the interview do indicate that the remarks made therein against the petitioner and respondents 2 and 3 go to show that the petitioner cannot be placed higher than that of the second and third respondent. Therefore, it is not possible to hold that merely because the marks are not assigned the interview is vitiated. As long as the members of the committee have recorded the evaluation of each of the candidates and that is clear and sufficient enough to decide the grades of the candidates, the interview cannot be held to have been vitiated. In this regard it is also very relevant to notice the observations of the Supreme Court in R.S. Dass v. Union of India which reads thus:

"The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection."

In the instant case the selection is made by the Hon'ble Chief Justice assisted by a brother Judge. There is no reason whatsoever for the petitioner to doubt that the selection made was not fair and impartial. Therefore, on perusing the entire records of the proceedings of the Selection Committee, I am of the view that the ultimate decision as to the selection of respondents 2 and 3 after considering the case of all the candidates including that of the petitioner, is just, proper and correct. The records amply establish that the case of the petitioner has been considered properly and in accordance with law. The decision as to selection reads thus:

"12. Senior most stenographers were called for the test on 29-7-1988. All of them took the test. In the test a passage was got dictated by the Registrar. All of them were called for interview on 30-7-1988. The candidates were interviewed by me with the assistance of Considering the performance of the candidates in the test as well as interview and after perusing the confidential reports the following candidates are promoted by selection temporarily to officiate as Judgment Writers.

1. Smt. T. Saroja

2. Smt. P. Vijayalakshmi."

The aforesaid candidates are respondents 2 and 3 in this petition.

24. However, the learned Counsel for the petitioner has placed reliance on a decision of the Supreme Court in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, In that case selection for admission to the Medical College was challenged. The interview was conducted by the Committee. No marks were allotted in the interview. It was held that the Committee had not

divided the interview marks under various heads nor were the marks given on the itemised basis. The marks were awarded in lump sum and therefore it was held as illegal. It is relevant to notice in this regard that the present case cannot be compared with the selection for admission to a Medical College. Here the selection has to be made not only on the basis of the written test and performance at the interview but also on the basis of the service records of the candidates because it is the selection made from among the in service candidates and as such their performance in the lower cadre is very much relevant. The fact that they have done well in the written test is not by itself sufficient to decide that they are entitled to be selected. Therefore, it is not possible to hold that the principle laid down in *Periakaruppan* case is applicable to the facts of the present case. A reliance was also placed on the decision in *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, That was also a case of admission to a medical college in which the interviews were conducted among candidates and each candidate was interviewed for 1 and 1/2 minutes or 2 minutes and the interview was held to be a farce. Thus, it is clear that the very facts of the said case make it clear that the enunciation made therein in the context of the facts of that case cannot be made applicable to the facts of the case on hand. As a matter of fact, in that case the decision was found to be arbitrary. The learned Counsel for the petitioner also placed reliance on the decision in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, In this case the selection made to the Haryana Civil Service Executives and other allied services by the Haryana Public Service Commission, was challenged. The marks awarded in the viva voce upset the merit of the candidates secured in the written test. On considering the whole aspect of the matter the Supreme Court held that the allocation of 22.2% of the total marks for the viva voce test as infecting the selection process with the vice of arbitrariness. It was also further directed that whatever selections are to be made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in case of ex-service officers. Thus, it was also a selection made on the basis of the competitive examination.. It was not a case of in service candidates being selected for promotion to the higher cadre wherein, the records of their performance in the lower cadre have also to be taken into consideration. Therefore, the aforesaid decision cannot be made applicable to the case on hand. In addition to this, this is not a case as already pointed out in which it can be held that the interview alone has upset the merit of the petitioner secured in the written test. Lastly, learned Counsel placed reliance on a decision of this Court in *T.K. DEVARAJU V. STATE OF KARNATAKA AND ORS.* AIR 1979 (Kar) (2) In that case the Chief Minister made the appointment. The records of the proceeding placed before the Court did not reveal the consideration of the merits and demerits of the eligible candidates. In fact in this case while considering the rights of a candidate for appointment it was specifically held that his right was only to be considered but as the records did not reveal the consideration of the

cases of the candidates the selection was held to be bad. It was specifically held that "if appointment of an officer to a selection post is made without considering the comparative merit of officers, who under the rules of recruitment are eligible for consideration, an eligible officer whose case has not been considered can legitimately complain, before the Court that his right for consideration is violated. If, on the other hand, on proper consideration of the cases of all the eligible candidates, one of them is found suitable for promotion and others unsuitable, or any one of them is found more suitable in cases where more than one are found suitable for appointment to a selection post, such selection made cannot be a subject matter for judicial review. In such cases the candidates not selected, whether seniors or juniors, cannot complain of violation of Rule 4 of the Rules or violation of Articles 14 and 16(1) of the Constitution, However, if more than one candidate are adjudged equal in merit, then the claim of senior amongst them, for appointment, cannot be denied. In support of the aforesaid proposition in T.K. Devaraju's case, another decision of this Court in B. VIRUPAKSHAPPA v. STATE OF KARNATAKA AND ANR.ILR 1979 (Kar) (1) was relied upon. However, in this case the learned Counsel has placed reliance on the observations made in paras 5, 6, 9 and 10 which relate to the case where no recording of reason is made by the Selection Authority. As I have already pointed out such a decision cannot be made applicable to the case on hand because the merit of each of the candidates who was interviewed has been evaluated and recording of it has been made and on the basis of that and also on the basis of the confidential reports regarding the performance of the candidates in the lower cadre the selection has been made and respondents 2 and 3 are selected. Therefore, it is not possible to hold that the decision in T.K. Devaraju's case is of any assistance to the petitioner. Reliance was also placed by the learned Counsel for the petitioner on the decisions of the Supreme Court in Union of India v. M.L. Capoor and Ors., and Janaki Prasad Parimoo and Ors. v. State of Jammu and Kashmir and Ors. M.L. Capoor's case has already been referred to in the earlier portion of this order. The findings recorded by me indicate that the proceedings of the Selecting Authority are not in any way opposed to the enunciation made in M.L. Capoor's case. In Janaki Prasad's case, learned Counsel for the petitioner placed reliance on paras 17 and 19 of the decision. As far as para 19 is concerned, it has already been referred to in the earlier portion of this order. In para 17, it has been held that if the interviews are held without relevant records by the committee such an interview is bad in law. In that case the affidavit filed before the Court revealed that necessary service records in respect of the confidential or character rolls of all the eligible candidates for the last few years were not available. Moreover the number of candidates was very large. On the basis of the aforesaid statement made on oath it was held that interview was vitiated. The facts of the case on hand and the findings recorded by me are sufficient to hold that such a position does not obtain in the case on hand. Therefore, the said decision is not of any assistance to the petitioner The decision in Sant Ram Sharma Vs. State of Rajasthan and Another, also related to a case of selection made in accordance with Indian Police Service (Regulation of Seniority Rules, 1954). Learned Counsel

for the petitioner placed reliance on the proposition contained in para 6 of the Judgment. The said proposition reads thus:

"The decision of this Court in P.C. Wadhwa Vs. Union of India (UOI) and Another, is, therefore, of no assistance to the petitioner and for the reasons we have already given, we are of the opinion that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan State are selection posts and outside the junior or senior time - scales of pay. If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Graduation List. The circumstance that these posts are classed as "Selection Grade Posts" itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available. The administrative practice with regard to selection posts is laid down in a letter of the Government of India dated July 31/August 3, 1954 as follows:

"If a person, though senior in the gradation list, is appointed to the selection post later than his junior, this is presumably because he is superseded as a matter of selection. If this is so, it would certainly not be unjustified to regard the officer so selected earlier, though junior in the gradation list, as senior to the other officer, as far as the selection posts are concerned." It is not possible to hold how the aforesaid enunciation is of any help to the petitioner, it is also not possible to hold that the selection proceedings in question are in any way violation of the proposition made in the aforesaid case. In the case on hand, as already pointed out, the selection is made on the basis of the merit which has to be decided not only on the basis of the performance in the written test and the interview but also on the basis of the performance of service in the lower cadre. As the records of assessment stand, the petitioner has not secured higher place than that of the second respondent. Thus the second respondent being senior to the petitioner, she has been selected. Accordingly point No. 3 is answered in the affirmative.

26. Point No. 4:- As the case of the petitioner has been considered for promotion by selection properly and in accordance with law and respondents 2 and 3 are determined as the candidates to be selected in preference to the petitioner, the petition has to fall. Therefore, I am of the view that there is no ground for issuing Rule. The petition is, accordingly, rejected.