
(2007) 07 DEL CK 0053

In the Delhi High Court

Case No : Writ Petition (C) No's. 4998-07 of 2005

Shri Raghuvarsh Nag and Others

APPELLANT

Vs

AIR India and Others

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Mysore State Civil Services (General Recruitment) Rules, 1957 — Rule 4(3)

Citation : (2007) 07 DEL CK 0053

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Keshav Kaushik, for the Appellant; Sandeep Sethi Krishan Kumar and Divya Jain, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this common order the writ petition bearing Nos. 4998-07/2005 and 11058-74/2005 are being disposed of. Petitioners who have been working as Assistant Managers with the respondents feeling aggrieved with the impugned order dated 08.11.2004 issued by the respondents have moved the present writ petition seeking quashing of the Promotion Policy of the respondents dated 15.06.1988 and the order dated 06.07.2004 vide which the percentage promotability from the grade of Assistant Managers to Deputy Managers was brought down from 90% to 30% and for quashing of all the promotions of the persons junior to the petitioners with further directions to promote the petitioners to the grade of Deputy Managers with all consequential benefits.

2. The facts necessary for the disposal of the present writ petition in brief are that the petitioners have been working on the post of Assistant Managers for the last more than 25 years. The petitioners have claimed that they are entitled to be promoted to the grade of Deputy Managers in terms of the Promotion Policy formulated by the respondents but the lawful claim of the promotion to the post

of Deputy Manager has been ignored by the respondents by promoting the persons junior to the petitioners. The petitioners have also seriously challenged the allocation of 40% marks in the hands of the Interview Board under the Promotion Policy of the respondents dated 15.06.1988 on the ground that such high percentage of discretionary marks in the hands of the Interview Panel gives them ample power to manipulate in a manner where candidates scoring high percentage in their annual performance appraisal reports can be denied the promotion by awarding them lower marks in the interview and at the same time, persons scoring lower percentage in the annual performance of the appraisal reports can be made successful by awarding them higher percentage in the interview marks. The allocation of 40% discretionary marks as per the petitioners is, thus, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The petitioners have also contended that in order to keep the petitioner out of the criteria, the respondents have tampered with the appraisal reports of the petitioners more particularly in the case of petitioner No. 2 - Mr. Ashok Tyagi in W.P.(C) No. 4998-07/2005. The respondents have lowered the percentage promotability of eligible officers from the post of Assistant Manager to the grade of Deputy Manager, initially, from 90% to 50% and thereafter by further reducing the same from 50% to 30% without getting any approval from the Competent Authority and without circulating the same in advance amongst the eligible persons. The petitioners have claimed that all of them were to be taken into consideration for promotion to the grade of Deputy Manager as they duly fulfilled the eligibility and requisite criteria in terms of the Promotion Policy. The petitioners have also challenged the action of the respondents in downgrading the appraisal report of Mr. Ashok Tyagi - petitioner No. 2 in W.P. (C) No. 4998-07/2005 from Grade "A" to Grade "B+" for the period 01.01.2003 to 31.12.2003 and 01.01.2004 to 30.06.2004 in order to deny him the promotion in violation of law and principles of natural justice. The communication dated 25.08.2004 made in this regard by the respondents through their Commercial Director, namely, Mr. V.K. Verma has been termed as malafide and arbitrary on the part of the respondents. The petitioners have also seriously challenged the allocation of marks in interview quite contrary to the marks given in the appraisal reports although five attributes which form part of the personal interview are more or less the same for allocating marks against appraisal report. The promotion vide impugned order dated 08.11.2004, has thus been challenged by the petitioners as the persons junior to the petitioners have been promoted under the said wrong policy and manipulative exercise of the respondents. The petitioners have also contended that all the petitioners had scored much more than the successful persons in their annual appraisal reports and by giving more marks in the interview the respondents have favored their own persons although they scored much less in the rating against the annual appraisal reports. The petitioners, thus, claimed the following reliefs in this writ petition:

(a) to summon the original record, including original appraisal report and the interview board proceedings, conducted by the respondents for promotion from

Assistant Managers to Deputy Managers, held in the month of August, 2004, in the interest of justice;

(b) to quash the promotion policy of the respondents, which gives 40% discretionary marks in the hands of the interview panel, which are arbitrary, unreasonable, manipulated and are violative of Article 14 of the Constitution of India.

(c) to quash the Order dated 6.7.2004 vide which the percentage promotability from the grade of Assistant Manager to Deputy Managers has been brought down from 90% to 30%, as is envisaged in the Promotion Policy, in the interest of justice.

(d) to quash all the promotions of the persons junior to the petitioners made by the respondents, pursuant to the Promotion Policy dated 23rd Feb, 1996 and 28th July, 2000, held in August, 2004, in the interest of justice.

(e) to quash the impugned Order dated 8th November, 2004, in the interest of justice.

(f) to direct the respondents to promote the petitioners to the grade of Deputy managers from the date their juniors have been promoted and with all consequential benefits arising out of the same, in the interest of justice, along with the costs; and

(g) any other order/direction, which this Hon'ble Court may deem fit and appropriate, may kindly be passed in favor of the petitioners and against the respondents, in the interest of justice.

3. The respondents in their counter affidavit have seriously disputed the contentions raised by the petitioners. The respondents have contended that the respondent company, i.e., Air India had proposed to carry out one time time-bound promotion exercise to the next higher grade of incumbents in the grade of Assistant Manager to Deputy Manager and Deputy Manager to Manager and from Manager to Senior Manager and this exercise of granting one-time promotion in the year 2004 was undertaken strictly in accordance with the laid down promotion procedures and guidelines. The respondents have also stated that the main criteria for selection was outlined in the circular issued by the Director, Human Resource Department of the respondents vide Circular dated 06.07.2004, salient points of which have been set out by the respondents in their counter affidavit are as under:

(a) The promotion exercise for General Cadre Officers will be carried out with the cut-off date of July 1, 2004, and will be applicable for promotion to the grade of Dy. Manager, manager and Senior Manager.

(b) All the incumbents who have completed 6 years in their present grade as on the cut-off date will be eligible.

(c) The percentage promotability on the number of eligible incumbents will be as

given in the table. Fractions will be rounded off, subject to a minimum of one promotion viz. 1.6 will be rounded to 2, 1.4 will be rounded to 1 and 0.4 will be rounded to 1.

Table

Promotion from Promotion to Percentage promotability Assistant Manager Deputy Manager 30% Deputy Manager Manager 20% Manager Senior Manager 10% (d) The Appraisal Reports to be considered for the purpose of this Promotion exercise will be of the years 2002, 2003 and the interim appraisal report up to June, 2004.

(e) The promotions will be subject in the percentage promotability specified for the grade and the suitability of the eligible incumbents as per the existing framework of promotion policy & procedure....

4. By adhering to the above said criteria, the Commercial Department had carried out the promotion exercise from the post of Assistant manager to the grade of Deputy Manager to fill up 95 vacancies in the Promotion Panel after considering the marks in the respective appraisal report as well as in the interview and ultimately recommended the names of 95 suitable officers. These recommendations of the Promotion Panel were duly approved by the Chairman-cum-Managing Director of the respondents' company. The last officer recommended by the Promotion Panel was at seniority No. 206. As per the Promotion Policy the Assistant Managers who had obtained 70 marks or more on the basis of the Annual Performance Appraisal Reports and personal interview were considered suitable for promotion and those who secured less than 70 marks rated as unsuitable for promotion. As regards the case of Mr. Ashok Tyagi - petitioner No. 2, the respondents have contended that the Commercial Director as the Countersigning Officer assessed the overall rating of the said officer as "B+" against the overall grading of "A" given by the Reporting Officer for the period 01.01.2003 to 31.12.2003 and 01.01.2004 to 30.06.2004 and this change of overall rating to "B+" was duly communicated by the Commercial Director to Mr. Ashok Tyagi vide letter dated 25.08.2004 with a copy of the same to the Reporting Officer. No representation or grievance was made by Mr. Ashok Tyagi at the time of the said change in overall rating and it is for the first time the grievance is being made in the present petition. The respondents have also submitted that for the year 1999 to 2001 (except for the period July 2001 to December 31, 2001), Mr. Ashok Tyagi was rated "B+" in the appraisal reports and to this position he had agreed without any protest and there is nothing wrong on the part of the Countersigning Officer disagreeing with the assessment of the Reporting Officer as such a disagreement is permissible in terms of the conditions laid down in the appraisal form itself. The allegations of tampering or fudging of appraisal reports have been denied as totally false and baseless. As regards decrease of percentage promotability of eligible officers from 90% to 30%, the respondents have contended that the same is only indicative as the percentage can be increased or decreased as per the need of the respondent and at the discretion of the Managing Director. The decision to take appraisal reports

for two and a half years into consideration was in terms of the policy decision of the respondent dated 28.07.2000 which policy decision was taken after review of the promotion policy and as per the respondents no fault can be found with the same. The respondents, then, maintained their decision as absolutely legal and in conformity with the policy decisions.

5. I have heard learned Counsel for the parties at length. The main thrust of arguments advanced by Mr. Keshav Kaushik, counsel representing the petitioners, revolves around the following issues:

- (i) Applicability of the Promotion Policy being arbitrary and unreasonable;
- (ii) Percentage promotability;
- (iii) 40% interview marks placed in the hands of Interview Panel;
- (iv) A.C.R. Tempering or lowering down of the A.C.Rs; and
- (v) Letter dated 6th July, 2004 vide which the Director H.R.D. Superseded the Promotion Policy of the respondents and the act of the respondents being coupled with malafide, arbitrariness and "pick & chose" policy.

6. In support of his submission on first ground, the counsel has contended that as per Clause 2.5.1 of Promotion Policy the basis of promotion has been clearly laid down, i.e., merit and seniority. The merit of the eligible employee was to be determined strictly on the basis of annual performance appraisal reports, personal records as well as personal interview.

7. In Para 7 of the judgment of the Supreme Court in K. Samantaray Vs. National Insurance Co. Ltd., the Hon"ble Court has explained the concept of seniority-cum-merit and merit-cum-seniority which is as under:

7. The principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the former, greater emphasis is laid on seniority, though it is not the determinative factor, while in the latter, merit is the determinative factor. In State of Mysore v. Syed Mahmood it was observed that in the background of Rule 4(3)(b) of the Mysore State Civil Services (General Recruitment) Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit; that the rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not.

8. The number of marks to be assigned for merit in the Annual Performance Appraisal Report for each year in terms of the Promotion Policy is as under:

Overall Rating For Appraisal Reports in the present grade A 20 marks B+ 15 marks B 10 marks C Nil

9. In the personal interview, the employee has to be assessed in terms of the following five factors and points to be assigned to each factor will be as under:

Factor Maximum Marks Professional Knowledge 15 Managerial Ability 10 Communication Ability 5 Interpersonal Skills/General Awareness 5 Professional qualifications relevant to 5 the job attained while in the present grade (only recognized diplomas and degrees will be considered) OR special assignment/projects undertaken

10. In the format of Performance Appraisal Report the appraisal factors delineated are (1) Knowledge, (2) Decision making, (3) Results Produced, (4) Power of Analysis, (5) Personality, (6) Human Relations, (7) Resourcefulness and (8) Communication. Counsel for the petitioners has contended that once the attributes in the Performance Appraisal Report as well as in the interview are almost similar, then, how, one can be given higher marks in the Appraisal Report and lower marks in the interview. The counsel contended that there has to be correlation while awarding marks in the interview with the marks obtained by the candidate in the Appraisal Report otherwise Interview Panel, arbitrarily can nullify the higher scoring made by the candidates in the Annual Appraisal Report and, Therefore, this allocation of 40% marks in the hands of Interview Panel, smacks of arbitrariness, unreasonableness and can place psychophancy to an advantageous position. The counsel has also contended that the persons at seniority Nos. 11, 19, 21, 26, 35, 46, 50, 54, 56, 101, 130, 131, 147 are the candidates who secured only 45% marks if their appraisal report grading is quantified in terms of numericals but with the help of interview marks they became successful as they were awarded 25 marks or more so as to qualify 70 marks in the aggregate while the petitioners who were at seniority Nos. 13, 22, 36, 67, 78, 80, 85, 91, 104, 109, 117, 121, 167 and 187 are all those candidates who have secured 50 or more marks in their ACRs grading but they have been given less marks in the interview and they are unable to reach the target level of 70 marks to become successful candidates. Counsel for the petitioners has also contended that persons with seniority Nos. 501, 502, 516, 518, 552, 569, 575, 601, 604, 625, 638, 681, 683, 697, 698, 705, 712, 713, 714, 716, 717, 727, 723 and 734 are even junior to the petitioners but with the help of interview marks they could become successful and in this manner the right of the petitioners who have secured high marks in the Appraisal Reports have been seriously violated and jeopardized.

11. Counsel for the petitioners thus, contended that the promotion policy has been applied by the respondents in a most arbitrary and unreasonable manner and the respondents have allocated marks in the interview in such a manner to give preference to their own favorites.

12. Counsel for the petitioners with a view to show mala fides on the part of the

respondents has cited the case of one of the petitioner Mr. Ashok Tyagi in CWP No. 4998-07/2005 in whose case, the respondents have downgraded the appraisal report from "A" to "B+" for the period w.e.f. 01.01.2003 to 30.06.2004. As per counsel for the petitioners, in the case of Mr. Ashok Tyagi, the Reporting Officer had graded "A" for the aforesaid period of 1 1/2 years but graded "B+" by the Countersigning Officer on 14.08.2004. This change in appraisal report for the period 01.01.2003 to 31.12.2003 and 01.01.2004 to 30.06.2004 from "A" to "B+" was communicated by the respondent vide their letter dated 25.08.2004. The contention of counsel for the petitioners is that with a view to keep Mr. Ashok Tyagi out from the said promotion, his appraisal report for the said period was deliberately downgraded and the said report was taken into consideration by the Selection Committee for which the petitioner was interviewed on 22.07.2004. The counsel further contended that the action of the respondents was not only illegal but was tainted with mala fide firstly because the said downgrading was deliberately done on 14.08.2004, secondly, the same was wrongly taken into consideration by the Selection Committee and thirdly, the same remained uncommunicated by the respondents till 25.08.2004, although the same was already taken into consideration by the Selection Committee.

13. Counsel for the petitioners also contented that in a similar fashion, the respondents have done some manipulation in upgrading the appraisal report of Mr. Gaurav Pandey and Mrs. Anju Sahani from "B+" to "A" by taking the help of "correction fluid" in the relevant columns of the appraisal report. Counsel for the petitioners stated that this pick and choose policy of the respondents with mala fide designs can be well exposed if the original records pertaining to Mr. Ashok Tyagi, Mr. Gaurav Pandey and Mrs. Anju Sahani are perused by the Court, counsel for the petitioners has placed reliance on the judgment of the Division Bench of this Court in W.P.(C) No. 1035/2004 titled as Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, , Ashok Kumar Yadav v. State of Haryana reported in 1985 (4) SCC 414 , Mohinder Sain Garg Ors. Vs. State of Punjab and Others, and Munindra Kumar and others Vs. Rajiv Govil and others, . Counsel for the petitioners further made an attempt to distinguish the judgment of Apex Court in C.P. Kalra Vs. Air India through its Managing Director, Bombay and Others, by stating that even if the criteria of 40% marks for viva voce was held to be correct and valid method, still this Court can compare the original worksheets in support of the candidates mentioned in the petition to examine the fairness and non-arbitrariness on the part of the respondents. Counsel for the petitioners also made a grievance about the non-circulation and non-disclosure of the result dated 8.11.2004 by the respondents which came to the knowledge of the petitioners only after filing of the present petition pursuant to the directions given by this Court vide order dated 25.4.2005 and 13.5.2005.

14. Counsel for the petitioners has also challenged the decision of the respondents whereby the percentage promotability was brought down from 90% to 30% and a decision to reduce the period of appraisal report from 5 years to

21/2 years for consideration. The counsel also contended that the earlier promotion policy which was formulated by the competent authority has been superseded by letter dated 06.07.2004 issued by the Director, HRD, without the backing of any approval of the Board of Directors. Counsel for the petitioners, thus, submitted that all actions of the respondents inter alias in promulgating the policy dated 06.07.2004, reducing the percentage promotability from 90% to 30%, reducing the consideration period of appraisal report from 5 years to 21/2 years, taking into consideration the uncommunicated appraisal report and countersigning of appraisal report of Mr. Ashok Tyagi on 14.8.2004 and its prior consideration by the Selection Committee, promotion of juniors, excessive allocation of marks for interview, all this spells out mala fides, arbitrariness and unreasonableness on the part of the respondents in carrying out the said process of selection.

15. Counsel for the respondents, on the other hand, contended that the promotion panel of the respondents had selected the candidates strictly in accordance with the laid down promotion procedures and guidelines. Counsel for the respondents submitted that the respondents had proposed to carry out one time time-bound promotion exercise to the next higher grade, of incumbents in the grade of Assistant Manager to Deputy Manager, Deputy Manager to Manager and Manager to Senior Manager and such an exercise was basically a stagnation based promotion exercise which was carried out by the respondents in the year 2004 as a one time measure to provide promotional avenues to general cadre officers who were stagnating in their existing grades. Placing strong reliance on the judgment of Apex Court in C.P. Kalra Vs. Air India through its Managing Director, Bombay and Others, , counsel for the respondents stated that already the Supreme Court has gone into the validity and legality of the said issue of allocating 40% marks for the interview and the said judgment is applicable with all force to the facts of the present case.

16. Counsel for the respondents also submitted that grading in the appraisal report and marks in the interview have been given by different officers and no motives can be imputed to either of them in allocation of the marks in interview or for the gradings in the appraisal report.

17. Counsel for the respondents also stated that the petitioners have not challenged the downgrading of the appraisal report of Mr. Ashok Tyagi in the writ petition and, Therefore, the petitioner cannot be allowed to take up the issue of downgrading. Subject to the said plea, counsel also submitted that Mr. Ashok Tyagi was duly communicated change in his appraisal report from "A" to "B+" vide communication dated 25.08.2004. Counsel also made a submission that there are no specific allegations of mala fides made by the petitioners against the members of the promotion panel or against any other officer of the respondents. The contention of counsel for the respondents is that unless strong foundation is laid down in the petition itself raising specific allegation of mala fides and bias against named officials, this Court in the absence of such specific allegations will

not go into the same. Counsel for the respondents also contended that the petitioners are estopped to challenge the decision of the promotion panel after their failure to qualify the said selection. Counsel for the respondents also submitted that the Countersigning Officer has every right to disagree with the report of the Reporting Officer as per the guidelines laid down in the format of appraisal report itself and, Therefore, there was nothing wrong on the part of the Countersigning Officer disagreeing with the grading given by the Reporting Officer. As regards, guidelines dated 06.07.2004, counsel for the respondents submitted that the said guidelines are in addition to the existing guidelines dated 15.6.1988 and such revised guidelines are issued from time to time and, Therefore, no fault can be found with the said revised guidelines dated 06.07.2004 which were uniformly applicable to all the incumbents in the grade of Assistant Manager up to the grade of Manager. In support of his arguments, the counsel for the respondents has placed reliance on the following judgments:

1. C.P. Kalra Vs. Air India through its Managing Director, Bombay and Others,
2. Smt. Nutan Arvind Vs. Union of India and another,
3. Dr. Lyakat Ali Vs. Vice-Chancellor Jawahar Lal Nehru University,
4. Union of India and Another Vs. Ashutosh Kumar Srivastava and Another,
5. R.P. Bhasin and Ors. v. D.K. Tyagi and Ors. (2001) 1 AD (Del) 409

18. In the backdrop of the aforesaid facts and contentions raised by the parties, I will deal with the specific issues raised by the petitioner in the present petition. In prayer (a) of the petition, the petitioners have sought production of the original records including the original appraisal reports and the interview proceedings conducted by the respondents. I have examined the relevant records as produced by the respondents and I shall deal with the same later. In prayer (b), the petitioners have sought quashing of the promotion policy of the respondents which gives 40% discretionary marks in the hands of interview panel being arbitrary, unreasonable, manipulative and in violation of Article 14 of the Constitution of India. The prayer (b) also covers the legal contentions raised by the petitioners as reproduced in paras I and III herein above. This issue of allocation of 40% marks for interview is no more rest integra as the same has been upheld by the Hon'ble Supreme Court in C.P. Kalra's case (supra) wherein the same very promotion policy of Air India incorporating 60% marks for appraisal report and 40% marks for interview was under challenge and the Supreme Court held as under:

5. The appellant appeared at the interview in 1989 and it appears that he secured a total of 65.67 marks i.e. he fell short of the minimum requirement of 70 per cent marks for being entered in the list of candidates suitable for promotion to the next higher post. Having thus been unsuccessful in securing promotion, he filed a writ petition in the High Court challenging the decision to refuse him promotion, being Civil Writ Petition No. 1048 of 1990. A Division

Bench of the High Court considered the main argument, namely, that 40 per cent marks reserved for the interview was excessive and contrary to the ratio laid down by this Court in a number of decisions beginning from *Ajay Hasia v. Khalid Mujib* and ending with *Ashok Kumar Yadav v. State of Haryana*. The High Court took the view that this Court had clarified that there can be no hard and fast rule regarding the precise weight to be given to the viva voce test as against the weight to be given to the appraisal reports and hence, in the absence of allegations of mala fides it could not be said that weightage given to the interview test was capable of being arbitrarily exercised. In this view that the High Court took, it dismissed the writ petition and hence the present appeal.

6. Mr Rajeev Dhavan, learned Counsel for the appellant, put forward three submissions in the main. His first contention was that the viva voce test which reserves 40 per cent marks for the purpose of assessment of merit, was in fact not to assess the merit of the candidate but to eliminate candidates and, Therefore, it did not meet the requirement of the law laid down in the decisions referred to by the High Court as well as other decisions cited before us, namely, *Mohinder Sain Garg v. State of Punjab*, *Muninder Kumar v. Rajiv Govil* and *Indian Airlines Corporation v. Capt. K.C. Shukla*. According to him such exclusive interview requirement being wholly disproportionate to the level for which selection has to be made can only be described as unfair, arbitrary and wholly unconnected to the object of the exercise. We do not think that there is any merit in this submission. The promotion policy clearly envisages that merit shall be the primary consideration for promotion to the next higher post. Once the candidates falling within the zone are tested for the purpose of determining their merit on the basis of their performance emanating from the appraisal reports as well as their performance at the interview, the total number of marks secured, if not less than 70 per cent, would entitle the candidate to be placed in the group of meritorious candidates suitable for promotion to the next higher post. Once this group of meritorious candidates is determined, their arrangement in the select list has to be on the basis of the inter se seniority. This method of assessing the merit of the candidate cannot be said to be, in any manner, arbitrary or one which has no relevance to the object to be achieved. The basic idea under the promotion policy is that the managerial post should be manned by candidates of merit and once meritorious candidates are identified, seniority would assume relevance for the limited purpose of their placement in the panel. It is true that on the basis of the appraisal reports and the grading given to each candidate, marks are assigned out of 60 marks. Out of the remaining 40 marks, marks are assigned to each candidate on the basis of the performance at the interview. If a candidate secures 70 per cent and above he is taken to be meritorious enough for promotion to the next higher post. We see nothing arbitrary in the method of determining merit. We, Therefore, find it difficult to agree with the learned Counsel that the sole purpose of interviews is only to eliminate candidates. When candidates having merit are to be chosen, any method of choice employed will necessarily eliminate those without merit. A cut-

off line has to be drawn for determining merit and in this case it is fixed at 70 per cent. There is nothing arbitrary, unfair or irrational about the prescription of the minimum eligibility marks for empanelment. We, Therefore, reject this contention.

7. It was next submitted that the promotion policy was unconstitutional as the marks assigned for the interview test were far in excess of the permissible norm or limit. The 40 per cent prescription for interview is based on Rule 2.6 of the promotion policy. This 40 per cent is divided under different heads or factors as stated hereinabove. The submission of the learned Counsel for the petitioner was based on the observations of this Court in Ashok Kumar Yadav wherein this Court observed that 33.3 per cent marks reserved for oral test were excessive and would suffer from the vice of arbitrariness. The High Court has dealt with this submission and has pointed out that no hard and fast rule can be evolved in this behalf because much would depend on the job requirement for each post and the level of the post. A whole line of decisions were brought to our notice beginning from Ajay Hasia case but it would be sufficient for us to refer to the latest decision in the case Indian Airlines Corporation v. Capt. K.C. Shukla. In that case this Court after referring to the decisions in Ajay Hasia, Lila Dhar, Ashok Kumar Yadav and Rafiquddin observed that a distinction appears to have been drawn in interviews held for competitive examination or admission in educational institutions and selection for higher posts. Efforts have been made to limit the scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in, but the same standard cannot be applied for higher selections and this is clearly brought out in Lila Dhar case. It is, Therefore, clear that this Court was also of the view that no hard and fast rule can be laid down in these matters because much would depend on the level of the post and the nature of the performance expected from the incumbent. In that case the method of evaluation was based 50 per cent on ACRs and 50 per cent on interviews and this Court upheld the said method notwithstanding the fact that the weightage for interview performance was as high as 50 per cent. We are, Therefore, of the view that the contention that because in the instant case the weightage for the viva voce test is 40 per cent, it is per se excessive and hence arbitrary, cannot be accepted.

19. In view of said pronouncement of the Supreme Court upholding the promotion policy of the respondent-Air India whereby 60% marks were allocated for personal appraisal report and 40% for interview, the petitioners cannot be allowed to challenge the said criteria laid down in the promotion policy by way of the present petition. The various judgments cited by the petitioner wherein Supreme Court in the given circumstances has held particular percentage of allocation for interview/viva voce test as unreasonable and excessive are not applicable to the facts of the instant case in view of the judgment of the Supreme Court in C.P. Kalra's case (Supra) wherein the same very promotion policy of the respondent-Air India was under challenge.

20. In the judgment of the Supreme Court in K.H. Siraj Vs. High Court of Kerala and Others, , the Court has explained the importance of interview which is as under:

54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidate's academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also essential for a judicial officer.

55. We may usefully refer to a decision of this Court in Lila Dhar v. State of Rajasthan in which this Court observed as under:

The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favoritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

The ideal in recruitment is to do away with unfairness.

A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow. We venture to suggest that our recruitment procedures should be such that we can select candidates who cannot only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.

It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity.

While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power.

21. The judgment of the Division Bench of this Court in AVM Harish Masand's

case (supra) relied upon by the counsel for the petitioner cannot be made applicable in view of the said judgment of the Supreme Court in C.P. Kalra's case. Even otherwise the facts of AVM Harish Masand's case are no way similar to the facts of the present case specially when in AVM Harish Masand's case, the Ministry of defense itself had reversed the decision of allocating the board marks from 20% to 5% just within a gap of one year of their earlier promotion policy.

22. Prayer (b) of the petitioners is thus rejected.

23. In prayer (c), the petitioners have sought quashing of the order dated 6.7.2004 and in prayer (d) the petitioners have sought quashing of all the promotions pursuant to the promotion policy of the respondents dated 23.2.1996, 28.7.2000 held in August 2004. While dealing with these prayers, the legal contentions number I, II and V as reproduced above shall also be taken care of. As per own case of the petitioners, earlier the respondents had reduced the percentage promotability from 90% to 50%. vide their promotion policy dated 28.7.2000. This promotion policy of the respondent by which it lowered down the percentage promotability of eligible officers from 90% to 50% was never challenged by the petitioners and now when the same has been reduced from 50% to 30% vide promotion policy dated 06.07.2004, the petitioners have felt aggrieved with all the earlier promotion policies of the respondents as well. The respondents have taken a categorical stand that in the promotion policy itself, there is a clear indication that mentioning of such a percentage is only indicative and the same can be increased or decreased on the need of the company and at the discretion of the Managing Director. The respondents have further stated that in July 2004, the decision was taken by the respondents to give one time promotion based on the stagnation criteria and, Therefore, no motives can be imputed against the respondents for taking such a decision in the interest of eligible officers stagnating in the respective grades for giving them an opportunity to avail the said one time promotion. I find merit in the submissions of counsel for the respondents and I do not find any illegality in the decision of the respondents in lowering down the percentage promotability of the eligible officers from 50% to 30% by virtue of the promotion policy dated 06.07.2004.

24. The other challenge of the petitioners of considering 21/2 years appraisal report for the purpose of selection also lacks in substance. Counsel for the respondents has drawn my attention to the earlier promotion policy of the respondent dated 28.7.2000 which was announced after due deliberations with the officers of the Air India wherein the appraisal report for the last three years for carrying out the promotional exercise was decided. I, Therefore, do not find any illegality in the revised promotion policy announced on 06.07.2004 restricting the appraisal report for a period of 21/2 years to be taken into consideration for the purpose of the said promotional exercise.

25. Based on the above discussion, the said contentions of the petitioners and prayer paras (c) and (d) are also rejected.

26. In prayer (e), the petitioners have sought quashing of the order dated 08.11.2004 and in prayer (f), the petitioners have sought directions for their promotion. Prayer paras (e) and (f) cannot be granted in favor of the petitioners once prayers (a) to (d) have been rejected. No mandamus can be issued by the Court to direct the respondents to give promotion to the petitioners. In catena of decisions, the Supreme Court has held that the Courts cannot issue a writ of mandamus to promote the aggrieved officers and the Courts cannot also sit in judgment over the decision of the Selection Committee as an appellate authority. Reference is invited to the Supreme Court judgment in Smt. Nutan Arvind Vs. Union of India and another, held as follows:

6. The DPC which is a high-level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by learned Counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of the appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference.

27. The same view was reiterated by this Court in the matter reported in Dr. Lyakat Ali Vs. Vice-Chancellor Jawahar Lal Nehru University, and by the Supreme Court in the judgment reported in Union of India and Another Vs. Ashutosh Kumar Srivastava and Another,

28. It is not the case of the petitioners that they were not considered for promotion. The criteria of promotion was merit cum seniority and the promotion of even juniors cannot be ruled out in this process, if ultimately juniors are able to score higher marks than their senior incumbents. There were 95 vacancies and against these vacancies, 285 applications were received out of which 278 candidates have appeared for interview and those candidates who could score 70 Marks or more were to be declared successful in terms of promotion policy and those who could not achieve the said target of 70 marks, although, may be seniors were to be declared unqualified. Admittedly, the petitioners could not achieve the said target of 70 marks and, Therefore, this Court cannot come to their rescue in preference to those who became successful after achieving the laid down marks. Even otherwise petitioners are estopped under law to challenge the process of selection after they did not find themselves to be successful in the process.

29. Reference in this regard is made to the judgment of the Supreme Court reported in (2001) 1 AD (Del) 409 titled as R.P. Bhasin and Ors. v. D.K. Tyagi and Ors.

30. Counsel for the petitioners has very strongly urged issue of downgrading of petitioner No. 2 Mr. Ashok Tyagi by the Countersigning Officer with regard to his appraisal report w.e.f. 1.1.2003 to 31.12.2003 and 01.01.2004 to 30.06.2004. The contention of counsel for the petitioners is that the said downgrading from "A" to "B+" was never communicated to the said petitioner No. 2 and, Therefore, the promotion panel has wrongly taken into consideration the said uncommunicated adverse report into consideration thereby violating the principles of natural justice. Counsel for the petitioners also contended that in the case of Mrs. Anju Sahani and Mr. Gaurav Pandey, the respondents have carried out some manipulative exercise using fluid in their respective columns of appraisal reports. The counsel for the petitioners has made serious charge of tampering of appraisal reports of one Mr. Gaurav Pandey and Ms. Anju Sahani from "B+" to "A". The contention of counsel for the petitioners is that pick and choose policy has been adopted by the respondents so as to select their own favorites in a most arbitrary and mala fide manner. Counsel for the petitioners also want this Court to examine the original records containing the appraisal reports of Mr. Gaurav Pandey and Ms. Anju Sahani specially to find out whether fudging has taken place or not with a view to upgrade their appraisal reports from "B+" to "A". Before examining the original records placed by the respondents, I could find that no such allegations have been made by the petitioners either in the petition or in the rejoinder. The allegation of fudging and tampering of the records with a view to upgrade the appraisal reports of two candidates amounts to very serious charge but in the absence of any pleading this Court will be hesitant to go into this question. The petitioners have also failed to impute these allegations of mala fide and fudging of reports against any particular officer of the respondents and, Therefore, also this Court will be reluctant to go into the said vague and bald allegations pertaining to such serious charges which are not even backed by any material muchless sufficient material. Reference is invited to following paragraph of the judgment in the case of Purushottam Kumar Jha Vs. State of Jharkhand and Others,

23. It is well settled that whenever allegations as to mala fides have been leveled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the last refuge of a losing litigant".

31. Counsel for the petitioners also contended that the persons who had scored 45 marks in the appraisal report for the said period of 21/2 years could achieve the target of 70% marks as the promotional panel had generously awarded them the marks in the interview while some of the petitioners had even scored 50 or more marks in their appraisal report who could not achieve the target of 70 marks because of award of less marks by the promotional panel in their favor. This attack of the petitioners is again to the excessive allocation of marks of 40% for interview, validity of which has already been upheld in C.P. Kalra's case (supra) and once the power of awarding up to 40% marks has been given to the interview panel, no fault can be found in the same simply because of the fact that certain persons have been given more marks than the petitioners. There were 3 members in the interview panel who gave their respective marks against laid down different parameters and unless very strong case of mala fide is set up against the members of the interview panel, this Court would not interfere or sit over the judgment of the interview panel simply because some of the candidates were awarded less marks and the others were awarded more marks out of the total allocated marks of 40%.

32. I also do not find any force in the submissions of counsel for the petitioners that once the parameters in the appraisal report and the interview are almost same, Therefore, the awarded marks in the interview should either be exactly the same or near to the marks given in the appraisal report. There cannot be comparison of gradings given in the appraisal report by the reporting officer and countersigning officer and the marks given by panel members of the interview panel. It is well recognized that interview tests cannot be compared with the written examination or with the gradings in the Annual Confidential Report/ Appraisal Report. One is able to assess the candidate's overall intellectual and personal qualities in the interview and, Therefore, it cannot be said that the gradings in the appraisal report should match the marks given by the interview panel.

33. Counsel for the petitioners also sought to challenge the downgrading of petitioner No. 2 from "A" to "B+" for the said period of 11/2 years as an act of arbitrariness on the part of the respondents. At the first blush, I found force in the submissions of counsel for the petitioners but after perusing the original records, I found that various candidates although rated "B+" for the said 21/2 years could still make it and, Therefore, simply the said petitioner was given "B+" for 11/2 years, the same cannot be taken in itself as an act of arbitrariness and mala fide. The non communication of downgrading in the case of petitioner No. 2 would have some bearing, had the selection process solely comprised of taking into consideration ACR gradings of past 2 1/2 years with no interview marks. The said criteria has been uniformly applied in the case of all candidates and, Therefore, the same cannot be held as arbitrary or irrational.

34. Petitioner No. 2 - Mr. Ashok Tyagi was given "A" grading for the year starting from 1.1.2002 to 31.12.2002 in his appraisal report and "B+" in his appraisal

report for 11/2 years w.e.f. 1.1.2003 to 30.6.2004. He could score 45 in his appraisal report for the said period of 21/2 years and many candidates who have scored 45 could still make it after scoring better marks in the interview. This is also a matter of fact that Mr. Ashok Tyagi/petitioner No. 2 in W.P.(C) No. 4998-07/2005 did not raise his voice or make any representation when he was conveyed the change of his rating from "A" to "B+" vide communication dated 25th August 2004, although this communication was inconsequential as regards meeting of Selection Committee in question is concerned.

35. The petitioner has not sought any specific relief as regards petitioner No. 2 in the present petition as the petitioners have challenged the promotion policy of the respondents in general and have sought direction for promotion of all the petitioners who could not achieve success in the said selection.

36. In view of the said discussion, the prayer paras (e) and (f) are also rejected.

37. Accordingly the writ petitions are dismissed.