

(1991) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ petition No. 6534 of 1986

S.V. Subba Rao. Divl. Manager, APSRTC and Others

APPELLANT

Vs

The Board of Director, APSRTC and Others

RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Service) Regulations,
1964 — Rule 11, 4
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1992) 1 ALT 70

Hon'ble Judges : Sivaraman Nair, J;M.N. Rao, J

Bench : Division Bench

Advocate : M. Panduranga Rao, for the Appellant; D. Reddappa Reddy, S.C. for Respondents 1 and 2 and G. Raghuram, for Respondents 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—Our learned brother Ramanujulu Naidu, J. referred this Writ Petition division bench, the question whether

"once an employee of the A.P.S.R.T.C. is found fit for promotion to a selection category by the Selection Committee constituted therefor, his seniority in the lower category can never be disturbed and shall be maintained in the higher category. In other words, the expression "merit" employed in Rule 4 (b) of the Regulations does not permit further division or classification such as "outstanding", "very good", "good" and "satisfactory"."

Our learned brother held that "the question affects a large body of employees of the A.P.S.R.T.C. and there is no authoritative pronouncement of this court on this question". That is how this writ petition is before us.

2. The controversy involved in this Writ Petition relates to promotion to the post of Divisional Managers in the A.P.S.R.T.C. Petitioners and respondents 3 to 5

were Assistant Mechanical Engineers/Assistant Traffic Managers, in the Corporation. All of them are graduates in Engineering or hold equivalent qualifications. Respondents 3 to 5 have in addition, post-graduate degrees or diplomas. Petitioners have longer service in the Corporation than respondents 3 to 5. Records of service of all of them were untarnished. They were eligible for promotion to the category of Divisional Managers in accordance with the A.P.S.R.T.C. Employees Service Regulations (Service Regulations for short), except the 4th respondent who had not completed three years of service as Depot Manager. Clause (b) (i) of Regulation 4 which is relevant provided that

"promotion in a service or class to a Selection Category to a Selection Grade shall be made on grounds of merit, seniority being considered only where merit is approximately equal."

Petitioners submit that they and respondents 3 to 5 were selected for promotion as Divisional Managers by the Selection Committee in its proceedings dt. 10/11-8-1984. Petitioners who were seniors in the feeder category were ranked lower than the respondents who were their juniors. Petitioners 1, 3 and 4 were ranked as numbers 3, 2 and 6 as Assistant Mechanical Engineers. The 2nd Petitioner belonged to another feeder category viz., Assistant Traffic Manager, wherein he was ranked as No. 2. Respondents 3, 4 and 5 were serial Nos. 11, 12, and 20 in the category of Assistant Mechanical Engineers. But in the promotion list, respondents 3, 4 and 5 were ranked as Nos. 1, 2 and 3 respectively, whereas petitioners were ranked as Nos. 5, 4, 6 and 7. Petitioners submit that since they were selected, they were entitled to be ranked in the same order in which they appeared in the seniority list of Assistant Mechanical Engineers. In other words, respondents 3, 4 and 5 shall rank below the petitioners in the category of Divisional Managers. It is their submission that unless it be done, their further promotion prospects will be damaged. They also submit that the process of selection cannot be so manipulated as to deny the petitioners their rightful due in managerial posts after having served the Corporation for a longer time with excellent service record and not too infrequent commendations.

3. Counsel for the petitioners submits that Clause 4 (b) of the Service Regulations itself provides for seniority being relevant consideration when merit is approximately equal, and that being the case, the mandate of the rule cannot be nullified by issue of circulars or guidelines defining merit and interfering with the intent of the rule that seniority should be duly respected. He submits that even assuming the guidelines apply, the respondent corporation was guilty of altering the marks for the purposes of treating respondents 3 to 5 as "outstanding" by reducing the eligibility criterion from 80 marks to 75, so as to favour the respondents, since that alteration was operative only for the selection conducted in the year 1984. He submits that the reduction of marks for "outstanding" for one selection alone was a clever manoeuvre adopted by the 1st and 2nd respondents to outwit the petitioners. Counsel submits further that it involved undue favouritism and amounted unjust discrimination and

arbitrariness. Yet another submission of counsel is that 10 marks were allotted for qualifications at this selection alone, so as to enable the Selection Committee to award higher marks for post-graduation. According to him, award of such higher marks for post-graduation was totally irrelevant and vitiated the process of selection. Another submission is that allotment of 25 marks for interview has resulted in arbitrariness, in that it allowed purely subjective considerations to outweigh the objective assessment of candidates for selection.

4. Yet another contention of counsel is that the 4th respondent Sri Y. Vijaya Kumar did not have sufficient period of qualifying service as per the service Regulations as a Depot Manager and he should not therefore have been invited for interview or selected for promotion. Another submission is that assuming that there was power to grant exemption, that power could be exercised only by the Corporation and not by the Selection Committee. Counsel submitted further that the very fact that at least one ineligible person who was not exempted was called for interview and was selected by granting exemption indicates the absence of bona fides. He submitted as an instance to make out his case of absence of bona fides the fact that the first petitioner who was rated as "excellent" in his merit rating report was awarded lesser marks than respondents 3 to 5 who were rated far below him. Counsel submitted that the present is a case of deliberate manipulation of the process of selection for conferring unmerited benefit on juniors with inferior service records.

5. Counsel placed reliance on the decisions in *Rajan v. Kerala State*, 1983 LIC 1868, *S.K. Nair v. S.I.D.E.C.O.*, 1985 (3) SLR 166, *State of A.P. v. Dr. N. Ramachandra Rao and Ors.*, 1990 (4) SLR 267 in support of his submission that classification based on higher educational qualification is itself discriminatory. Reference was also made to the decisions reported in *Mohinder Sain Garg and Ors. v. State of Punjab*, 1991 SLR 546, *Vikram Singh and Ors. v. The Subordinate Services Selection Board, Haryana*, 1991 SC 1011, in support of the contention that not more than 12% marks should have been allotted for interview, and weightage in excess of that allotment would render invalid the selection based on interview.

6. Sri Reddappa Reddy, standing counsel for the R.T.C. on the other hand submitted that the process of selection for promotion is intended to choose the best among the eligibles and does not involve any supersession of seniors. According to him, seniority pales into insignificance except for the purposes of inclusion of a person in the field of choice. Seniority in the feeder category may become relevant only in the event of merit being approximately equal as provided in Clause 4 (b) of the Regulations. He submitted that the term "approximately equal" being vague and uncertain, the Corporation sought to define it with greater precision by issue of circulars, whereby persons obtaining rating as "outstanding" were to be preferred for ranking without reference to comparative ranking in the feeder category; whereas persons found eligible for inclusion in a lesser grade than "outstanding" were to be considered as of

approximately equal merit irrespective of individual marks obtained by each of them. In those cases alone, seniority in the feeder category has to be considered. Counsel submitted that in the present case, respondents 3 to 5 were rated as "outstanding" and therefore the Corporation did not have to consider comparative seniority in the feeder category as between those persons vis-a-vis the petitioners who obtained only lesser grades. According to the Corporation, higher educational qualifications which have nexus with the promotion posts are relevant and allotment of higher marks on the basis of possession of higher qualifications cannot be treated as irrelevant or extraneous. Yet another submission was that award of 25% marks for interview cannot be considered as arbitrary or discriminatory. The nature of the post, the duties attached thereto, the method of selection, the personnel forming the selection committee and such other relevant factors have also to be taken into consideration for deciding the issue. Counsel stressed the distinction between classification based on educational qualifications as between persons belonging to a common feeder category and the provision for higher marks for better qualifications which are otherwise relevant to the promotion post. He sought to distinguish the decisions cited by counsel for the petitioner on that basis. Dealing with the question of marks allotted for interview he invited our attention to the decision in *Lila Dhar Vs. State of Rajasthan and Others*, ; *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, *Mahmood Alam Tariq v. State of Rajasthan*, 1988 (2) SLR 595 and *State of U.P. v. Rafiquddin and Ors.*, 1988 (1) SLR 491. The Principle deducible from the decisions rendered by these benches including *Lila Dhar's* case (6 supra) and *M.A. Tariq's* case (8 supra) is said to be that award of higher marks than 12% or 15% by itself, will not affect the validity of the selection.

7. Sri Raghuram appearing for respondents 3 to 5 supported these submissions and stated that in the absence of specific allegation of malafides and atleast prima facie proof of influence of vitiating circumstances, the selection mean by the respondent Corporation cannot be lightly upset by this court in proceedings under Article 226 of the Constitution of India. He submits that it is not for this court to weigh the qualifications in golden scales and come to conclusions different from that of the Selection Committee or the employer. Counsel for the respondents submits that the guidelines followed by the Selection Committee are those that were followed in the earlier selections upto 1984, wherein 10 marks were awarded for qualifications. He submits further that specific reasons were mentioned by the Selection Committee to reduce the marks for outstanding" from 80% to 75%. It is his submission that unless the change in the guidelines is proved to be for the purpose of enabling ineligible candidates to steal a march over the seniors, this court cannot countenance any challenge against the managerial decision, or review the selection which was made by a high powered Committee which consisted of the Managing Director of the Corporation, Senior Secretary to Government and the senior Executive of the Railway administration. Counsel also submitted that the Corporation has power to relax the regulations in

favour of any person and that power was validly delegated to the Selection Committee, as authorised by Section 12 of the State Road Transport Corporation Act, 1950. The Selection Committee exercised the power to grant relaxation in view of the fact that the 4th respondent Sri Vijaya Kumar could not be posted as Depot Manager in his turn in the exigencies of service and had therefore been disabled from completing three years of service in that category as provided in the service rules, for promotion as Divisional Manager. It was in view of the above fact that the Selection Committee granted him relaxation from the rigor of the rule. Sri Raghuram submitted that during the period from 18-1-1977 till August, 1984 when the selection was taken up by the Committee, the 4th respondent had rendered 29 months of service as Depot Manager and fell short of only seven months and that too due to the fact that he was not given a posting in his turn due to exigencies of service.

8. Counsel for respondents 1 and 2 produced before us the material papers leading to the selection of candidates which is impugned in this Writ Petition. A Committee consisting of four viz., Vice-Chairman and Managing Director of the Corporation, Secretary to Government (Transport) and two members representing the railways constituted the committee. Principles of selection were evolved as basis for selection. Marks were awarded on the basis of the guidelines. This consisted of 50% for record of service, 15% for length of service, 10% for qualifications and 25% for interview. 31 Mechanical Engineers and 54 Assistant Traffic Managers were called for interview, of whom 7 were absent. On the basis of the marks awarded by the Committee, petitioners, respondents 3 to 5 and a few others were selected. Respondents 3 to 5 were ranked as Nos. 1, 2 and 3 whereas petitioners were ranked as Nos. 5, 7, 4 and 6 respectively. Respondents 3 to 5 obtained higher ranks because they were graded as "outstanding" since they got 76, 75 and 75 percentage of marks respectively as against petitioners who got 62%, 61 %, 60% and 62% respectively of aggregate marks. Respondents 3 to 5 were awarded 40% marks for record of service, whereas petitioners obtained only 30%, 33%, 28% and 33% marks each under that head. Though petitioners 1 and 3 had more marks than the respondents for length of service, they had only lesser marks for qualifications. We have already adverted to the submission of counsel for the petitioners that but for the higher marks awarded for interview and post-graduate qualification in favour of the respondents, they would not have obtained 75% marks and would therefore have been in the common pool of personnel approximately equal in merit, and therefore would have been ranked in the promotion posts only the basis of seniority in the feeder category. We will deal with these aspects presently and state our reasons why this argument does not appeal to us.

9. It is far too late in the day to assert that the court exercising jurisdiction under Article 226 of the Constitution of India can order review of the entire process of selection as if it is exercising appellate jurisdiction. The scope of judicial review in this area is very limited. Unless malafides or oblique motives are specifically pleaded or can necessarily be inferred from the proof of facts, the court cannot

review the process selection in this area. A scrutiny of the pleadings of the petitioners discloses that their complaint was that they were superseded by the erstwhile juniors in the feeder category and that such supersession was illegal and unreasonable. It is elementary that in a process of selection, there is no question of supersession as the very word indicates that it involves choice of the best among the eligibles. Seniority enters into the reckoning only inter se between those whose merit is approximately equal. Even then, the concept is not one of supersession but of assignment of rank among the chosen few. The only attempt to indicate impropriety in the process of selection was to urge that seniors were superseded and such supersession without stating reasons was illegal and arbitrary.

10. We feel it our duty to make it clear that in a process of selection, the question of supersession may not arise at all. The basis of the choice is merit and that does not involve any supersession. The assertion that supersession without stating reasons is unreasonable or illegal or arbitrary cannot therefore sound in realms of malafides or oblique motives. The concept being basically different, we cannot even draw any inference that the selection was vitiated by malafides or oblique motives.

11. The limit of interference by courts under Article 226 of the Constitution of India with selection for appointment and promotion in public service or private employment has been the subject-matter of consideration by the Supreme Court on a number of occasions. In *State of Mysore and Another Vs. Syed Mahmood and Others*, the Supreme Court observed-

" The High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness they should have been promoted on the relevant date when officers junior to them were promoted. Instead of issuing such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect. The High Court ought not to have issued such writs without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959."

The same dicta was followed in *State of Mysore Vs. C.R. Sheshadri and Others*, .

12. Dealing with the question whether it is open to the court or the Tribunal to categorise an employee as "outstanding", "verygood", "good" etc., the Supreme Court observed in *U.P.S.C. v. Hiranyalal Dev*, 1988 (2) SLR 148 .

"The jurisdiction to make the selection is vested in Selection Committee. The Selection Committee had to make the selection by applying the same yardstick and norm as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials".

We are not inclined to recategorise the petitioners and the respondents on a detailed scrutiny of the service records, as was fervently pleaded by counsel for

the petitioners. It is necessary and desirable that the court occasionally oversees the process of selection of employees so as to see whether extraneous considerations or oblique motives have vitiated the process of selection. To go beyond that and re-enact the entire exercise of selection over again is not ordinarily within the scope of this jurisdiction. For this very limited purpose, we have seen the merit ranking reports in respect of the four petitioners and the three respondents. We are satisfied that the award of higher marks to the respondents on the basis of merit-ranking reports was neither unreasonable nor discriminatory. We are not oblivious of the fact that it may be possible for a different set of persons perhaps to come to slightly different conclusions on the same materials; but that by itself, is no justification for holding that the categorisation and allotment of marks to the officers concerned in the selection was vitiated by malafides, personal bias, or oblique motives. We should also remember that the petitioners have not made any categorical assertion of personal bias or malice in fact or in law as vitiating the selection excepting to the limited extent of stating that petitioners who were seniors were superseded without stating any reason. We are of the opinion that that assertion, by itself, is not sufficient to sustain a finding of absence of good faith or oblique motives vitiating the selection.

13. We have scanned the decisions cited by the petitioners in an anxiety to see whether the award of higher marks for higher attainments in favour of the respondents had in any way vitiated the process of selection. We have seen the rating and marking sheets prepared by the Selection Committee and we have also heard both sides on the qualifications of the respective personnel. The four petitioners are admittedly graduates in mechanical engineering. The three respondents, in addition to that qualification had post-graduation in tool design from the Central Institute of Technology, Delhi (in the case of R-3), post-graduation in mechanical engineering (R-4) and post-graduate diploma in business management R-5). Petitioners were awarded six marks each for graduation in Engineering, whereas the three respondents were awarded 8 marks each. In other words, 2% of the marks were awarded for post-graduation in tool design, Mechanical Engineering and business management respectively to respondents 3 to 5. The question is whether award of these additional marks was totally unrelated and devoid of any nexus to the promotion post.

14. We are told by counsel appearing for the respondents that the persons promoted to the category of Divisional Managers may be posted in Personnel, Maintenance, work- shop or Traffic departments. Possession of post-graduation in tool design cannot be treated as unrelated for promotion to the post of Divisional Manager in Maintenance and work-shop departments. Possession of post-graduation in Mechanical Engineering cannot be considered as devoid of any nexus to the post of Divisional Manager in maintenance, work-shop and traffic departments; nor can it be asserted reasonably that post-graduate Diploma in business management is totally unrelated to the post of Divisional Manager in the Personnel Department. We are of the opinion that the slight edge which post-

graduates were given by reason of their higher attainments in qualifications which have nexus with the promotion post cannot be considered as totally unreasonable, discriminatory or arbitrary.

15. Two other aspects remain - (1) whether award of higher marks for higher attainments in a subject vitiates the process of selection or invalidates the promotion policy? and (2) whether exercise of the power of relaxation was arbitrary?

16. We have not been shown any decision in support of either of these two propositions. On the other hand in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, the fact that higher attainments were relevant in evolving promotion policy was emphasised, subject of course, to the condition that the limits of reasonableness were not transgressed. In *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, Bhagwati, J. observed that persons with higher educational qualifications may be entitled to weightage but not to the exclusion of a senior with the necessary qualifications and longer service in the feeder category only because of the quota rule. We do not understand the decision in *Rajan v. Kerala State* (1 supra) (rendered by Sivaraman Nair, J. as a judge of the Kerala High Court) as of any assistance to the petitioner, since that related to the introduction of a quota for graduates for promotion so as to deny normal chances of promotion of seniors in a common feeder category, nor does the decision in *S.K. Nair v. S.I.D.E.C.O.* (2 supra) render any assistance to the petitioner/since the facts involved in that case indicate that what was frowned upon was unreasonable exclusion by the respondent Corporation of the petitioner therein who was a diploma holder from promotions, in spite of the fact that in many past occasions diploma holders had been promoted to managerial positions. The court held that such exclusion was obviously discriminatory and arbitrary.

17. Counsel laid considerable stress on the decision of *State of A.P. v. Dr. Ramachandra Rao*, 1990 (4) SLR 266. What we find on a closer reading of that decision is that it was concerned only with promotions based on seniority. The fortuitous circumstance of a junior in the category of Civil Assistant Surgeon getting accelerated promotion earlier because of the unimportant or unpopular speciality which he chose was what the Supreme Court frowned upon in that case. It can hardly be used to support the proposition that grant of additional marks in the matter of merit-ranking for selection is illegal.

18. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, the Supreme Court held that classification on the basis of educational qualifications with a view to conditioning administrative efficiency cannot be said to rest on a fortuitous circumstances. The court observed-

"The classification of Assistant Engineers into Degree-holders and Diploma-holders could not be held to rest on any unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the

Engineering services. If this be the object, the classification is clearly correlated to it, for higher educational qualifications are atleast presumptive evidence of a higher mental equipment".

19. These observations were made in the context of a provision which insisted that Degree-holders alone would be considered for promotion to the posts of Executive Engineers. What we have in the present case is only that the Selection Committee was enabled to grant additional weightage on the basis of higher educational attainments. We hold that this process does not involve any discrimination against the petitioners.

20. The next submission of the petitioners is regarding the validity of Rule 11 of the Service Regulations dealing with the power of the Corporation to grant relaxations, its delegation to the selection committee and the manner of its exercise by the latter. Section 12 of the Road Transport corporation Act enables the Corporation to grant relaxation. The power is amplified by Rule 11 of the service rules. True it is that the Corporation itself has ordinarily to exercise the power; but the Corporation had delegated that power to the Selection Committee by valid instruments competently issued by it, viz., Resolution No. 24/58 and 142/70; dt. 7-3-1958 and 27-7-1970 respectively. The power of relaxation as delegated to the Committee is not in dispute before us. The argument is that the power to grant relaxation is uncanalised and is therefore arbitrary.

21. The Supreme Court had occasion to deal with similar submissions in *Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others*, and *R.R. Verma and Others Vs. Union of India (UOI) and Others*, The court had also upheld the validity of Rule 47 of the A.P. State and Subordinate Service Rules enabling the grant of relaxation from the rigor of the rules, in the decision in *Government of Andhra Pradesh and Others Vs. Sri D. Janardhana Rao and Another*, with specific reference to the assertion that the power of relaxation granted without any guidelines is unconstitutional. The Supreme Court held in *R.R. Verma's case* (17 supra) that the object of Rule-3 of All India Services (Conditions of Service - Residuary Matters) Rules, 1960, "was to vest a reserve power with the Central Government to deal with any unforeseen and unpredictable situation and to relieve the civil servants from the infliction of undue hardship and to do justice and equity. It does not mean that the Central Government is free to do what they like, regardless of right or wrong, nor does it mean that the courts are powerless to correct them. The Central Government is bound to exercise the power in the public interest with a view to secure civil servants of efficiency and integrity". In *Amrik Singh's case* (16 supra) the court held that "Rule 3 of the All India Services (Conditions of service-Residuary Matters) Rules, 1960, contains guidelines, Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence there of may be relieved against by relaxation of the concerned Rule or Regulation".

22. We, therefore reject the contention that the power to grant relaxation as

contained in Section 12 of the RTC Act read with Rule 11 of the Service Regulations is arbitrary due to absence of guidelines.

23. The further question is about the manner of exercise of that power. Counsel for the petitioner submits that the power should not have been exercised in such a manner as to deprive the seniors of their entitlement for promotion. What we find from the pleadings is that the 4th respondent, in whose favour the relaxation was granted, had served for a period of nearly 29 months out of 36 months as Depot Manager and that he was disabled from completing the period due to orders issued by the employer in administrative exigencies. The grant of relaxation in his favour from the rigor of the rules which resulted in iniquitous consequences resulting in undue hardship was eminently just and proper.

24. Counsel for RTC submitted that the power to grant relaxation is necessary to relieve hardships in individual cases and that the delegation of such power in favour of the Selection Committee is fully justified. It is seemingly extraordinary that the Selection Committee could have called ineligible candidates for interview and then granted relaxation in favour of one of them at the time of actual selection. But we are told by the respondents that the practice of the Corporation had been to call the candidates in the field of choice without eliminating any of them and consider the question of relaxation in favour of any one if he was found to be otherwise deserving of selection, at the time when the actual selection was made. Maybe the better procedure would have been to exercise the power of relaxation before calling the persons in the field of choice for interview; but a different procedure which was being continued over the years cannot now be considered to have vitiated the process of selection. There may be some justification for the procedure adopted uniformly by the Corporation to consider persons in the field of choice and then to decide upon the grant of relaxation wherever necessary. The very fact that one of the possible alternatives was being adopted for a long period of time is good enough reason not to find fault with the same.

It is now necessary for us to consider the effect of the decisions referred to by counsel on either side. The vexed question as to whether interview or oral test shall be determinative of the process of selection for recruitment and promotion in public services and for admission to educational institutions have been the subject-matter of a number of decisions of the courts in India namely.

R. Chithralekha v. State of Mysore, AIR 1964 SC 1829 A. Periakaruppan v. State of Tamil Nadu, AIR 1961 SC 2303; Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others, ; Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; Javid Rasool Bhat and Others Vs. State of Jammu and Kashmir and Others, Lib Dhar v. State of Rajasthan (6 supra) Ashok Kumar Yadav v. State of Haryana (7 supra) State of U.P. v. Rafiquddin and Ors. (9 supra) M.A. Tariq v. State of Rajasthan (8 supra) Vikram Singh v. The subordinate Services Selection Board Haryana (5 supra) Mohinder Sain Garg v. State of Punjab (4 supra).

25. There has been seemingly discordant notes. The common thread which runs through the latter decisions has been that there cannot be any hard and fast rule as was assumed in Janaki Prasad's case (21 supra) or Chitralkha's case (19 supra) that interview or oral test should not have any significant role in the process of selection. The categorical assertion in Ajay Hasia's case (22 supra) that marks for interview above 15% should be treated as excessive was toned down considerably in its application to selection for public services, in Lila Dhar's case (6 supra). This line of thought is evident in Javid Rasool Bhat's case (23 supra) also. The court observed in Ashok Kumar Yadav's (7 supra) case with reference to Lila Dhar's case (6 supra) that:-

"There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts".

It is relevant to note that in Lila Dhar's case (6 supra) the Supreme Court upheld the selection based on the allotment of 25% of marks for viva voce test.

26. In Ashok Kumar Yadav's case (8 supra) the court considered the limit of 22.2% marks for general category and 33.3% marks for ex-service candidates in the matter of selection by Haryana Public Service Commission to Civil Service (Executive) and other allied services. On a detailed discussion of previous decisions, the Supreme Court held that -

" in cases of ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed, the percentage of marks allocated for the viva voce test may be 25%. Whatever selections are 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 the case of ex-service officers".

In view of the pronouncements in Lila Dhar (6 supra) and Javid Rasool Bhat (23 supra) rendered by a Bench of three Judges and the later decision in Ashok Kumar Yadav (7-supra) rendered by a Bench of four judges, we have now to proceed on the basis that in cases where selections are made for appointment in Public Services of persons who are middle aged and above, award of 25 marks does not transgress the reasonable limits. We have also to note that the prescription of 12.2% has applied only to cases of initial recruitment of fresh candidates from the open market.

27. Considerable stress was laid by the petitioner on the decisions in Vikram Singh's case (5 supra) and Mohinder Sain Garg's case (4 supra) in both of which, the Supreme Court held that the permissible limit of marks allotted to

interview shall not exceed 12.2%. These two judgments were rendered by a Bench consisting of two Judges. In both cases, the issue related to selection of Excise and Taxation Inspectors by written test and interview. One of the grounds of challenge was that allocation of 25% for interview ran counter to the directions issued by the Supreme Court in Ashok Kumar Yadav's case (7 supra) we do not find anything in the observations which militates against the award of 25% marks in selections when candidates who passed middle age with their personalities fully developed appear for selection, as was held in Ashok Kumar Yadav's case (6 supra). As a matter of fact an effort was made to reconcile the observations contained in Lila Dhar (6 supra) and Ashok Kumar Yadav (7 supra) with reference to the nature of the posts, the personnel of the selection committee and the fact that in both cases selection was made from among persons in service who had occasion to develop their personalities and not fresh recruits.

28. It is necessary in this context to refer to State of U.P. v. Rafiquddin (9 supra). That case dealt with appointment of Munsifs in the U.P. Judicial Civil Service. The court upheld Rule 19 of the U.P. Civil Service (Judicial Branch) Rules, 1951, providing for aggregation of marks in written test and the minimum in the viva voce as sine qua non for selection.

29. In M.A. Tariq's case (8 supra) the court held that:

"on a careful consideration of the matter we are persuaded to the view that the prescription of minimum qualifying marks of 60 (33%) out of the maximum marks of 180 set apart for the viva voce examination does not, by itself, incur any constitutional infirmity. The principles laid down in the case of Ajay Hasia, Lila Dhar, Ashok Kumar Yadav do not militate against or render impermissible such a prescription. There is nothing unreasonable or arbitrary in the stipulation that officers to be selected for higher services and who are, with passage of time expected to man increasingly responsible positions in the core services such as the Administrative Services and the police Services should be men endowed with personality traits conducive to the levels of performance expected in such services".

30. The Supreme Court did refer to Rafiquddin (9 supra) and M.A. Tariq (8 supra) and held that those cases are not cases directly dealing with the controversy raised before us and are clearly distinguishable. We have therefore to proceed on the basis that the earlier decisions of co-ordinate benches in Rafiquddin (9 supra) and M.A. Tariq (8 supra) are still good law and have to be applied to cases where similar facts emerge from the pleadings.

31. In both those cases, the Supreme Court noted in unmistakable terms with particular reference to Lila Dhar (6 supra) and Ashok Kumar Yadav (7 supra), that there cannot be any unalterable imperatives in this region and in cases where appointment/selections are to be made to fairly important positions, from among those who have fully developed their personalities allocation of even 33%

or 35% marks for interview would not perse invalidate the process of selection. In other words, there is no standard percentage of marks for interview to be adopted uniformly in all cases of selections for admission to educational institutions, initial recruitment into public services and appointment to higher and more important services or of persons fairly advanced in age and who had opportunities to develop their personalities.

32. We feel that it is safe to avoid unalterable imperatives in a region where a lot of imponderables figure in the make-up of a fairly seasoned officer claiming promotion for higher executive assignments. As between fresh and young candidates, the marks for personal interview or oral test may better be comparatively low; but in cases where seasoned and mature men are to be selected for senior assignments, comparatively higher marks may be allocated to facilitate evaluation of the personality with reference to a number of a considerations, some of which may elude precise and specific delineation with mathematical exactitude. Some amount of trust in the Selection Committee consisting of disinterested senior executives, a little elbow room for honest choice and some play in the joints in choosing the right man for the right job seem to us to be reasonably justified to maintain excellence in administration.

33. We are aware of the observations of Sabyasachi Mukharji, J. (as he then was) in R.S. Dass Ors. Vs. Union of India (UOI) and Others,

"there has been considerable erosion in the intrinsic sense of fairness and justice in the senior officers by all concerned. From the instances of conduct of many - some of senior officers and men in high position - it cannot be said that such erosion is wholly unjustified".

34. On a comprehensive consideration of the entire controversy, we are inclined to hold that the award of 25% marks has not vitiated the process of selection. This is so because the promotions had to be ordered to the posts of Divisional Managers and the promotees may be posted in personnel, maintenance, workshop or traffic departments in the Corporation. The pleading also discloses that the persons concerned were of middle age, having rendered service of 7 to 11 years at the time of selection. It cannot be assumed that they are immature youngsters blundering into the wonderland of public service. Their attainments had been duly recorded periodically. Their potentials had been assessed and evaluated. The Committee had to select candidates from among Assistant Executive Engineers and equivalent officers who had rendered service for some time. Selected persons were to be appointed as senior executives of the Corporation in future years. Award of 25% marks to assess the personal traits, the individual dynamism and other related qualities cannot therefore be considered as entirely unreasonable and arbitrary.

35. Yet another reason why we shall uphold the ranking assigned by the Selection Committee in favour of the petitioners is that respondents had evidently scored higher marks than the petitioners in other respects except

length of service, even if we assume that the respondents 3 to 5 were not entitled to higher marks for qualifications and for interview. On this reckoning, petitioners would have got 47,46,45 and 47 marks respectively, whereas respondents would have got 53,53 and 53 respectively. Even then, they would have been entitled, ordinarily, to be ranked above the petitioners. If we go entirely by the marks and do not adopt the guidelines (as emphatically urged by petitioners) that those obtaining 60% to 74% marks are of approximately equal merit, the award of higher ranks to persons who obtained higher marks for merit cannot be considered unreasonable. We may have to adopt either the guidelines which categorise candidates on the basis of merit as "outstanding" and "others" and treating persons who obtained less than "outstanding" as of approximately equal merit or to go entirely by the marks actually obtained, completely eliminating the additional marks for higher qualifications and the whole of the marks for interview. Petitioners cannot blow "hot and cold" in the same breath. They cannot appraise and reprobate in respect of the guidelines. Even on the alternative consideration de hors the guidelines, the higher grading and consequent assignment of higher ranks to the respondents cannot be treated as discriminatory or unreasonable or arbitrary. We are not persuaded to lay down any general rule that in all cases where higher marks for more than the basic qualifications are assigned, such higher marks have to be ignored; nor do we accept the proposition that assignment of 25% marks for promotion to a middle management post by selection from among persons who have rendered service for fairly long periods of time will by itself vitiate the entire process of selection. We are adverting to the aspect only to show that even if this proposition was to be accepted, petitioners have no statable case.

36. We have referred to the fact that we are not in a position to go beyond the merit-ranking reports in favour of the petitioners and respondents 3 to 5 in an anxious search to see whether the petitioners could not have been rated better. What we find from the record is that there are sufficient justification for award of higher marks in favour of respondents 3 to 5. A judicial review of the process of selection cannot travel beyond the limits of an oversight; it cannot amount to a reassessment of the minute details of all the qualifying factors. On , exercising such oversight, with an anxiety to hold the scales even between the disputants, we do not find any justification for interference at the instance of the petitioners.

37. We are not inclined to accept the submission that the marks for outstanding" were reduced from 80% to 75% only to accommodate respondents 3 to 5. Petitioners did not have any such definite plea in their affidavit. The Selection committee stated relevant and cogent reasons for reducing the marks by 5%. In the absence of a specific plea of malafides or oblique motives on the part of the Selection Committee, we are not persuaded to probe any further.

38. Sri Panduranga Rao, counsel appearing for the petitioners submitted that even in spite of and after the lower ranking assigned to some of the petitioners for promotion as Divisional Managers, they were preferred for other assignments,

and that itself indicates absence of bona fides in ranking them below the respondents. We are unable to agree. It may perhaps be that it indicates only that the respondent Corporation was giving the petitioners their due on subsequent occasions.

39. In view of the above, it is not possible to grant any relief to the petitioners. The Writ Petition fails and is hereby dismissed. In the circumstances there will be no order regarding costs.