

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.158 of 2024

Shri Subrata Debbarma (Maj. Retd),

Son of Shri Parendra Debbarma, resident of Mainama, P.O. Mainama, P.S. Longtharaivally, Dhalai Tripura, Pin-799275.

....Petitioner(s)

Versus

1. The State of Tripura, represented by the Chief Secretary, New Secretariat Building, New Capital Complex, Kunjaban, P.S.-New Capital Complex, Agartala, West Tripura, Pin-799010.

2. The State of Tripura, Secretary of General Administration Political Department, New Secretariat Building, New Capital Complex, Kunjaban, P.S.-New Capital Complex, Agartala, West Tripura, Pin-799010.

3. Tripura Public Service Commission, represented by the Secretary, Tripura Public Service Commission (TPSC), Akhaura Road, Agartala, West Tripura, Pin-799001.

4. The Director, Directorate of Sainik Welfare, Govt. of Tripura, Nehru Office Complex, Gorkhabasti, P.O. Kunjaban, Agartala-799006.

....Respondent(s)

5. Smt. Kakali Dhar (Maj.Retd), Daughter of Pijush Kanti Dhar, resident of Kadamtali, Krishnanagar, Agartala-799001 (Private Chamber).

....Proforma Respondent(s)

For the Petitioner(s) : Mr. Anthony Debbarma, Advocate

For the Respondent(s) : Mr. D. Sarma, Addl. GA
Mr. Raju Datta, Advocate
Mr. P. Majumder, Advocate
Mr. D. Saha, Advocate

Date of hearing & delivery : **21.11.2024**
of judgment & order

Whether fit for reporting : **Yes**

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

By means of filing the instant writ petition, the petitioner has prayed for following reliefs:

- "i. Issue notice upon the Respondents.*
- ii. Call for the relevant records.*

iii. Issue Rule calling upon the Respondents to show cause as to why the Selection process for the post of Assistant Director under the Respondents vide advertisement dated 11/08/2023 shall not be set aside and quashed.

AND

Issue Rule Calling upon the Respondents to show cause as to why the appointment of the private respondent in the post of Assistant Director under the Respondents pursuant to advertisement dated 11/08/2023 shall not be set aside and quashed;

AND/OR

In the alternative, issue Rule Calling upon the Respondents to show cause as to why the Petitioner shall not be considered for appointment to the post of Assistant director, Group-B Gazetted, Directorate of Sainik Welfare under General Administration (Political) Department, Govt. of Tripura and thereby appoint the petitioner to the said post of Assistant Director, Directorate of Sainik Welfare under General Administration (Political) Department, Govt. of Tripura under the respondents.

AND

iv. And after hearing the parties be pleased to make the Rule absolute.”

2. Facts:

Pursuant to an advertisement dated 11.08.2023(Advt. No.12/2023) issued by Tripura Public Service Commission (for short, TPSC) to fill up one vacant post of Assistant Director at the office of the Directorate of Sainik Board under the Political Department, Govt. of Tripura, the petitioner being a willing candidate had applied for the said post. He along with other candidates were invited to appear before the Interview Board. Accordingly, all appeared before the Selection Committee constituted by the TPSC. After completion of the selection process, result was declared where the petitioner found that the respondent no.5, Smt. Kakali Dhar (Maj.Retd) was selected for the said post of Assistant Director. The petitioner not being happy with the selection of the respondent no.5 challenged the marks awarded in favour of the respondent no.5 in the viva-voce test.

3. Heard Mr. Anthony Debbarma, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. GA appearing for the respondents-State, Mr. Raju Datta, learned counsel appearing for the

respondents-TPSC and Mr. P. Majumder and Mr. D. Saha, learned counsel appearing for the respondent no.5.

4. Contentions of the petitioner:

Mr. Debbarma, learned counsel appearing on behalf of the petitioner has submitted that in the API score, the petitioner was awarded 100 marks and the respondent no.5 obtained 90 marks. The petitioner has no grievance as regards the awarding of marks in regard to the API score. However, the grievance of the petitioner is that the respondent no.5 was awarded 14 marks out of 15 marks, which is excessively high and the Selection Board has arbitrarily awarded only 5 marks in favour of the petitioner. As such, the entire selection panel had acted arbitrarily against the petitioner.

5. Contentions of the respondents-TPSC:

Mr. Datta, learned counsel for the respondents-TPSC has submitted that the selection panel had selected the best candidate out of all the candidates appeared before the Interview Board. There was no arbitrariness. The respondent no.5 performed well and for that reason she was awarded 14 marks out of 15 and in total she secured more marks than that of the petitioner. The selection process was conducted on the basis of merit. Mr. Datta, learned counsel for the respondents-TPSC has further submitted that this is not a case where the writ Court can exercise its power of judicial review. In support of his submission, Mr. Datta, learned counsel for the respondents-TPSC has placed reliance upon the case of *Tajvir Singh Sodhi and Ors. vs. State of Jammu and Kashmir and Ors.*, reported in *2023 SCC OnLine SC 344* (paras 66, 67 and 89).

6. Contentions of the respondents-State:

Mr. Sarma, learned Addl. GA for the respondents-State has adopted the submission of Mr. Datta, learned counsel appearing for the respondents-TPSC.

7. Contentions on behalf of respondent no.5:

Mr. Majumder, learned counsel for the respondent no.5 has drawn the attention of this Court to a chart in tabular form reflected in the counter affidavit as regards the modes of computing the API score and made submissions in similar tune to that of Mr. Datta, learned counsel appearing for the respondents-TPSC.

8. I have considered the submissions of learned counsel appearing for the parties.

9. Discussion and conclusion:

9.1. Keeping in mind the facts and submissions of learned counsel appearing for the parties, it will be profitable to reproduce the table showing the awarding of marks in computing total API score of the petitioner and respondent no.5. The API score calculation of the petitioner and the respondent no.5 is reproduced hereunder in tabular form:

| NAME | Age as on 25.09.2023 | Academic qualification | | | | Type of previous defense service | | | Length of Defense service and age | | | Total API Marks |
|------------------|--------------------------|------------------------|-----------------------|-----------------|-------|----------------------------------|----------------|-------|---------------------------------------|---|-------|-----------------|
| | | Matriculation passed | Higher Secondary Pass | Graduation Pass | Marks | SSC O/R SCO | JCO/Equivalent | Marks | More than 10 years and below 45 years | Less than 10 years and above 45 years age | Marks | |
| Kakali Dhar | 49 years 11 month 1 day | Yes | Yes | Yes | 50 | Yes | No | 30 | No | Yes | 10 | 90 |
| Subrata Debbarma | 39 years 4 month 19 days | Yes | Yes | Yes | 50 | Yes | No | 30 | Yes | No | 20 | 100 |

It is noticed that in course of interview, assessment of the candidates were made on consideration of his/her intellectual ability, social traits, interest in current affairs, critical power of judgment, variety and depth of interest, ability for leadership moral integrity etc. and marks were awarded on the basis of consensus of the members of the Board.

Thereafter, the final merit list was prepared on the basis of marks awarded in the interview/personality test and the 85% of API marks. The marks of API and interview/personality test are as follows:

| Sl No. | Name of candidate | Total API Score | 85% of API Score | Marks obtained in the interview (Out of 15) | Total marks obtained (out of 100) |
|--------|-------------------|-----------------|------------------|---|-----------------------------------|
| 1 | Kakali Dhar | 90 | 76.50 | 14 | 90.50 |
| 2 | Subrata Debbarma | 100 | 85.00 | 5 | 90.00 |

9.2. In my opinion, this is not a fit case where this Court can exercise its extraordinary and discretionary jurisdiction as vested upon it under Article 226 of the Constitution of India. *The Court's power to overstep the decision of the Selection Committee is very limited. It is settled proposition of law that when a Selection Committee recommends the selection of a person, the same cannot be presumed to have been done in an erroneous or mistaken manner in the absence of any allegation of bias or favouritism. In the absence of allegation of malafides against the members, selection by a Selection Committee should not be interfered with. Further, this Court cannot act as an appellate authority over the selection of the candidates in exercise of its jurisdiction under Article 226 of the Constitution of India. In the case of Madan Lal vs. State of J&K, (1995) 3 SCC 486, the Hon'ble Supreme Court held that it was in the exclusive domain of the expert committee to evaluate the merits of the candidates appearing before it and the marks to be awarded against each of the candidates after assessing their*

merits. In the process, some candidates may secure more marks than the unsuccessful candidates. In such a case, *the Court cannot sit as a Court of Appeal over the assessment made by such expert committee.*

[emphasis supplied]

9.3. Here, I may gainfully refer the case of *Tajvir Singh Sodhi (supra)* where the Hon'ble Supreme Court has delineated the principle of Court's power while dealing with similar questions of facts. The relevant paras are reproduced hereunder:

“66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.

89. Only 20 out of 100 marks were allocated for interview/viva-voce. The same is only 20% of the total marks which cannot be said to be an excessive proportion out of the total marks. Further Courts cannot sit in judgment over the award of marks by an interview panel. That is best left to the judgment and wisdom of the interview panel. In the above premise, we do not think there is any merit in the contention of the writ petitioners regarding the award of marks to the candidates who appeared for viva-voce before the panel. Moreover, the award of 80% of the total marks is on

objective criteria depending upon the educational qualification of the individual candidates.”

10. In the instant petition, the petitioner has not pleaded or alleged any bias or malafides or favouritism, neither against the Selection Board nor against any of its members. Only allegation which has been averred in the present writ petition is that the petitioner had performed very well in the interview, but, he was not awarded the marks he deserved. *This statement cannot be accepted by the Court in absence of any substance or materials that evaluation or assessment of merits of candidates was made erroneously. The assessment and evaluation of the performance in such interview or viva-voce test should be left to the members of the selection panel itself. The Court in exercise of its power of judicial review cannot sit in appeal to arrive at an alternative view other than the view taken by the experts. The members of the Interview Board have sufficient expertise and the evaluation of the candidates appearing before such Board is entirely within the domain of those experts in the panel.*

[emphasis supplied]

11. Mr. Debbarma, learned counsel for the petitioner has urged this Court that there must be a CCTV camera at the place where the interview was conducted. According to me, this submission has no relevance to reach to a decision as regards the question raised in this petition. The petitioner may agitate this aspect in the appropriate forum. In furtherance thereof, Mr. Datta, learned counsel for the respondents-TPSC has candidly submitted that there is no system of installation of CCTV camera inside the room where the interview is conducted. This Court will not enter into this question while dealing with the merits of the instant writ petition.

12. In the instant writ petition, the Court will only decide whether the petitioner has been able to establish his case for issuance of mandamus upon the respondents and to quash the selection and appointment of the respondent no.5.

13. In the light of the above discussion on facts and law and for the reasons recorded here-in-above, I find no merit in the present writ petition calling for interference with the selection of the respondent no.5 and her recommendation for appointment to the post of Assistant Director by the TPSC.

14. Accordingly, the instant writ petition stands dismissed. However, there shall be no order as to costs.



JUDGE

Snigdha

SANJAY Digitally signed by
SANJAY GHOSH
Date: 2024.11.22
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