



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: September 09, 2024**

**Pronounced on: September 23, 2024**

+ W.P.(C) 2659/2019, CM APPLs. 12342/2019, 12343/2019  
2411/2021, 8180/2021, 9173/2021, 30126/2021 & CRL.M.A.  
1945/2021

RAVI KUMAR

.....Petitioner

Through: In person

Versus

DEPARTMENT OF SPACE AND ORS.

....Respondents

Through: Mr. Harish Vaidyanathan Shankar,  
CGSC with Mr. Srish Kumar Mishra  
and Mr. Alexandar Mathai Paikaday,  
Advocates

Mr. Harsh Tikku and Mr. Manish  
Kumar, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**  
**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

**JUDGMENT**

**SURESH KUMAR KAIT, J**

1. The present petition under Article 226 read with 227 of the Constitution of India has been filed by the petitioner seeking issuance of a Writ of Mandamus or direction to set aside and quash the order dated 25.07.2018 passed by the learned Central Administrative Tribunal, New Delhi (the 'Tribunal') in OA No.2662/2017.



2. The petitioner, in the present petition, has averred that the respondent-Indian Space Research Organisation ('ISRO'), vide Notification dated 04.10.2016 invited applications for two posts of Administrative Officer under SC/ST Category. The selection process comprised of two parts, i.e. written test and interview. The petitioner applied for it under SC Category.
3. According to petitioner, five candidates were allowed to participate in the interview on the basis of their performance in written test. The final select list was issued on 16.05.2017 whereby petitioner's name was not included. Petitioner by way of application dated 19.05.2017 under Right to Information Act, 2005, sought details of marks of candidates who were invited for interview for the post of Administrative Officer. The petitioner claimed that in the reply to the aforesaid application under RTI Act, the respondent No.1-Department of Space indicated that he had secured highest in the written examination and in aggregate in the interview.
4. Being aggrieved, the petitioner preferred OA No.2532/2017 before the learned Tribunal, however, withdrew the same with liberty to file a fresh OA for the same cause of action.
5. Thereafter, the petitioner preferred OA No.2662/2017 before the learned Tribunal under Section 19 of Administrative Tribunals' Act, 1985 seeking quashing and setting aside of order of appointment and for removal of respondent No.3-Mr. Solanki Suryakant Jashwant Kumar, from the post of Administrative Officer appointed under the impugned illegal order and sought further direction to respondent Nos.1 & 2 to give him appointment.
6. Before the learned Tribunal, the petitioner pleaded that he was highest



qualified and had 5 years' experience. He had secured highest marks in the written examination i.e. 79.25 out of 100. He also pleaded that against 1 advertised post, respondent No.1 invited 5 candidates for interview despite the general rule of law restricting it to three numbers.

7. The stand of respondent No.1 before the learned Tribunal was that in the final selection process, the weightage apportionment of marks for the two elements, viz. written test and interview was 60 marks for written test and 40 marks for interview respectively. The written test marks, out of total 124 marks, were to be normalized with reference to a maximum of 60. Those, who secured minimum of 50% marks in each element of assessment, i.e. written test and interview, and an aggregate minimum of 60% marks, were considered for empanelment, in the order of merit.

8. Thus, according to respondent No.1, selection process was fair and the allegations leveled by the petitioner were baseless. It was also averred on behalf of respondent No.1, that 5 candidates were invited for interview but not against 01 vacancy but against 02 vacancies under SC & ST Category.

9. The learned Tribunal on the pleading of both the sides observed that no doubt the petitioner had fairly attempted the written examination, however, he could not perform well in the interview and the final list was made, both on the basis of marks obtained in the written test and interview. The Tribunal also observed that the allegations of *mala fide* at the hands of respondent No.1, having pre-determined mind to appoint respondent No.3, was not justified as the selection board was headed by an IAS Officer. Moreover, such allegations were not substantiated from any available record.



10. Respondent No.3, also filed his counter affidavit before the learned Tribunal wherein he averred that there was no malice or *mala fide* or any kind of corruption at the end of respondent No.1, as there was no representation on behalf of respondent No.1 at the time of interview.

11. The respondent No.3 also stated in his affidavit that the petitioner has misrepresented the fact that the written examination was out of 100 marks, whereas the call letter dated 24.11.2016 issued to him by respondent No.1, explicitly mentions that the written examination is of 124 marks.

12. Respondent No.3 also stated in his counter affidavit that according to respondents No.1 & 2, the weightage apportionment of marks of written test and interview, is 60 and 40 respectively and written marks out of 124 were normalized with reference to maximum of 60 marks, however, the petitioner has not made any averment on this aspect in his OA. Respondent No.3 also pleaded in his counter affidavit that there were two other persons in the wait list, who were not impleaded by him and the OA filed by the petitioner deserved dismissal.

13. Based upon the pleading of the parties, the learned Tribunal vide impugned judgment dated 25.07.2018 on the aspect of selection criteria, held that the same was scrupulously followed by the officials of respondent Nos.1 & 2. By observing so, the learned Tribunal dismissed the OA filed by the petitioner.

14. Being aggrieved, the petitioner preferred W.P.(C) 8725/2018 on 19.08.2018 before this Court, however, withdrew the same on 13.02.2019 with liberty to file a better petition.



15. By filing the present petition, the petitioner has challenged the impugned judgment dated 25.07.2018 on the ground that the normalization claimed by respondent Nos.1 & 2 to justify the selection of respondent No.3, is fabricated and non-existent.

16. In the present petition, the petitioner has alleged that respondent No.3 did not secure the minimum necessary marks, i.e. cut off marks to qualify the written examination and the rule adopted by respondent Nos.1 & 2 that in case sufficient number of SC/ST candidates are not available, relaxation will be extended to candidates of the said category. However, the relaxation has been erroneously extended to respondent No.3, as the same has to be extended after completion of recruitment process. Petitioner has averred that no document or mandatory approval of any authority or rule has been provided showing the grant of relaxation of marks and extent of relaxation of marks to respondent No.3 to enable him to appear in the interview.

17. The petitioner has also submitted that respondent No.3 not only failed to secure minimum 40% marks in Part-B & C of the written examination but also failed to secure 50% marks in aggregate in written examination and a candidate, failing to secure cut off marks, cannot occupy the same status as a candidate who has qualified the same examination.

18. The petitioner has agitated that more than three candidates could not be invited for interview and weightage of interview could not be more than 12.2% as per law laid down by Constitution Bench in the case of ***Ashok Kumar Yadav Vs. State of Haryana*** 1985 (4) SCC 417.

19. Lastly, the petitioner has averred that the marks secured by candidates



cannot be tempered with, to favour any candidate, in absence of any authority or rule. Thus, setting aside of impugned order dated 25.07.2018 passed by the learned Tribunal is sought by the petitioner.

20. The submissions advanced by both the sides were heard at length and the impugned order as well as material placed before this Court has been carefully perused.

21. The undisputed facts of the case are that the advertisement dated 04.10.2016 notified two vacancies for recruitment to the post of Administrative Officer, out of which one pertained to SC category and the other to ST category. The petitioner had applied for the post under SC category. The advertisement in Para-8 thereof notified the criteria for Selection Process, which reads as under:-

*“Those who secure minimum 50% marks separately in both objective and descriptive type questions in written test with minimum 40% in each part, will be considered short listed for interview. However, depending upon the vacancies to be filled up, a higher cut of percentage may be prescribed. Those who secure minimum 50% marks each in written test and interview with an aggregate minimum of 60% marks will be considered for empanelment in the order of merit, subject to number of vacancies notified. In case sufficient number of SC/ST are not available for filling up the vacancies reserved for these categories, relaxation will be extended to candidates belonging to the respective category.”*

22. The petitioner had appeared in the selection process and the result of the written test was notified as under:-



*“RESULTS OF THE WRITTEN TEST HELD ON 11.12.2016 FOR RECRUITMENT TO THE POST OF ADMN. OFFICERS (ISRO)”*

<i>Sl. No</i>	<i>Roll No.</i>	<i>Roll No. PRL</i>	<i>Name</i>	<i>Part_ a</i>	<i>Part_ b</i>	<i>Part_ c</i>	<i>Marks</i>	<i>De s</i>	<i>Total</i>
1	1710078		RAVI KUMAR	24.75	18.25	22.25	65.25	14	79.25
2	1210044		SUPRIYA PANDEY	19.00	17.75	20.50	57.25	12	69.25
3	1210058		RUPALI V ALONE	18.25	15.50	14.00	47.75	14	61.75
4	1110037	4110088	SOLANKI SURYAKANT JASVANTKUMAR	19.25	12.50	13.75	45.50	13	58.50
5	1510050		UGALE KESHAV KISAN	17.50	10.25	17.25	45.00	12	57.00

23. The candidates under SC category, who had secured more than the prescribed marks in the written examination, and were entitled to appear in the interview, are as under:-

<i>Sl No</i>	<i>SC Candidates Qualified For Interview <b>Without Relaxation</b> of Marks</i>	<i>Marks Secured In Written Exam Out Maximum Marks of 124</i>	<i>Percentage (Min. Cut-off Marks Required = 50% i.e. 62)</i>
1	Ravi Kumar	79.25	63.91 %
2	Supriya Polley	69.25	55.84 %
3	Madhumala Basu	65.75	53.02 %

24. The petitioner has alleged that respondents invited even more candidates for the interview to include respondent No.3, by relaxing the qualifying marks, who are as under:-

<i>Sl. No</i>	<i>SC Candidates Qualified For Interview <b>With Relaxation</b> of Marks</i>	<i>Marks Secured In Written Exam Out</i>	<i>Percentage (Min. Cut-off Marks</i>
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		Maximum Marks of 124	Required = 50% i.e. 62)
4	<i>Rupali V. Alone</i>	61.75	49.79 %
5	<i>Naveen Mehra</i>	60.00	48.38 %
6	<i>Deepak Dongre</i>	60.00	48.38 %
7	<i>Solanki Suryakant jashwantkumar [R-3]</i>	58.50	47.17%

25. A perusal of the afore-noted result of seven candidates, under SC category shows that petitioner had secured the maximum marks in the written examination and he along with others was eligible for appearing in interview. The petitioner has alleged that the action of respondent to call seven candidates for interview is arbitrary, as it was with an intent to benefit respondent No.3. On this aspect, this Court finds that only three candidates had cleared the Bench mark of 62 marks out of 124 and four more candidates who were next in merit were chosen for interview and for this normalization of marks in the written examination in the ratio of 60:40 was done. Generally, any appointing authority, with an intent to recruit the best candidate, interviews more number of candidates, i.e. over and above the vacancies notified or advertised. Thus, this objection of petitioner cannot be sustained.

26. The final result of the candidates for appointment to the post of Administrative Officer, under SC/ST category, depicting total marks obtained by the candidates is as under:-

Sl. No.	Roll No.	Name	Category	Marks in the written test (out of 124)	Marks in the Written test (out of 60)	Marks in the interview (out of 40)	Total	Remarks
1	1110001	DEEPAK	SC	60.00	29.03	30.54	59.67	-





		DONGRE						
2	1210051	MADHUMALA BASU	SC	65.75	31.81	28.73	60.54	-
3	1710018	NAVEEN MEHRA	SC	60.00	29.03	31.00	60.03	-
4	1710078	RAVI KUMAR	SC	79.25	38.35	21.27	59.62	-
5	1210058	RUPALI V ALONE	SC	71.75	29.88	31.36	61.24	Empanelled-3-SC
6	1110037	SOLANKI SURYKANT JASHVANT KUMAR	SC	58.50	28.31	36.55	64.85	Empanelled-1-SC
7	1210044	SUPRIYA POLLEY	SC	69.25	33.51	29.09	62.60	Empanelled-2-SC
8	1210020	CAROLINE NEMNEIMOI	ST	65.50	31.69	Not allowed	For interview	
9	1510050	UGALE KESHAV	ST	57.00	27.58	33.45	61.03	Empanelled-1-SC

27. What is required to be seen is as to why despite having secured the maximum marks in the written examination amongst all the SC category candidates, the petitioner could not make a place in the select list.

28. The respondents have averred that the petitioner has misrepresented the fact that the written examination was out of 100 marks, whereas it was out of 124 marks. But the fact remains that even after normalization of marks, the petitioner had secured the highest marks in the written examination. However, it is not in dispute that the final selection was based upon the marks obtained in the written examination as well as interview.

29. The table in afore-noted Para-26 shows that petitioner had secured 21.27 marks in the interview, whereas respondent No.3 had secured 36.85 marks.

30. The petitioner has pleaded that respondent No.3 could not qualify the written examination, yet he was selected for interview.



31. Pertinently, in the advertisement dated 04.10.2016, it has been mentioned as under:-

*“8. .... Those who secure minimum 50% marks separately in both objective and descriptive type questions in the written test with minimum 40% in each part will be considered short-listing for interview. However, depending upon the vacancies to be filled-up, a higher cut-off percentage may be prescribed. Those who secure minimum 50% marks each in written test and interview with an aggregate minimum of 60% marks will be considered for empanelment in the order of merit, subject to number of vacancies notified.*

32. The criteria laid down for selection in the advertisement clearly shows that those candidates who would secure 50% marks in the written test and interview both, and secure minimum aggregate of 60% shall be considered for empanelment. In the case of petitioner, he had secured total 59.62 marks, whereas respondent No.3 had obtained 64.85 marks.

33. So far as the allegation of petitioner that the marks assigned for qualifying the interview should not have more than 15%, we find that prior to entering into the selection process for recruitment to the post of Administrative Officer, the petitioner did not challenge the criteria laid down for qualifying the examination and the interview. The fact remains that the petitioner participated in the selection process, however, having failed to make his place in the recruitment, he has challenged the selection process. On this aspect, the pertinent observation of the Hon'ble Supreme Court in various decisions has been spelt out in *Ashok Kumar Vs. State of* W.P.(C) 2659/2019



**Bihar** (2017) 4 SCC 357 which are as under:-

*“13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] , this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar [Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that : (SCC p. 107, para 18)*

*“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”*

*14. The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.*

*15. In Manish Kumar Shahi v. State of Bihar [Manish Kumar*



*Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , the same principle was reiterated in the following observations : (SCC p. 584, para 16)*

*“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , Marrispati Nagaraja v. State of A.P. [Marrispati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271] , Amlan Jyoti Borooah v. State of Assam [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] .”*



*Commission [Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] , candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.*

*17. In Ramesh Chandra Shah v. Anil Joshi [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129] , candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that : (SCC p. 318, para 18)*

*“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”*

*18. In ChandigarhAdmn. v. Jasmine Kaur [Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521 : 6 SCEC 745] , it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey [Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274] , this Court held that : (SCC p. 500, para 17)*



*“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”*

*This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462]”*

34. Also, in ***Tajvir Singh Sodhi and Others Vs. The State of Jammu and Kashmir & Ors.*** 2023 SCC OnLine SC 344, the Hon’ble Supreme Court has observed as under:-

*“69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a*



*Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.”*

35. The intent to interview a candidate is not only to evaluate his personality but also to assess the candidate’s capability depending upon the job requirement. The discretion lies with the interviewing authority to evaluate and assign marks to a candidate. It is the settled principle that a Court cannot step into the shoes of the Appointing Authority to examine the aspect whether the marks assigned to a candidate were less or excessive or not corresponding to the performance in the written test and the interview.

36. Having observed above, this Court is of the opinion that the learned Tribunal in the impugned judgment has rightly held that the selection had been carried out in accordance with laid down procedure and the petitioner ought to have raised the alarm at the time of notification of the advertisement or before the interviewing authority on the day of interview itself.

37. In nutshell, the petitioner, in the present case never challenged the selection criteria pursuant to notification of the advertisement and appeared in the selection process, however, when he could not find his place in selection list, he knocked the doors of the Court alleging *mala fide* at the hands of respondents, which cannot be permitted.



38. With aforesaid observations, the present petition challenging the order dated 25.07.2018 passed by the learned Central Administrative Tribunal, New Delhi in OA No.2662/2017, is hereby dismissed.

39. Pending applications are disposed of as infructuous.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(GIRISH KATHPALIA)**  
**JUDGE**

**SEPTEMBER 23, 2024**

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