

SC decision

ITEM NO. 10

COURT NO. 3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s). 11977-11978/2012

(From the judgement and order dated 05/10/2010 and 29/07/2011 in WP(C)No. 6586/2010 and RP No. 490/2010 in WP(C) No. 6586/2010 of The HIGH COURT OF DELHI AT N. DELHI)

PRASHANT RAMESH CHAKKARWAR

Peti ti oner(s)

VERSUS

UNION PUBLIC SERVICE COMMISSION & ORS.

Respondent(s)

(With appln(s) for intervention and impleadment and exemption from filing O.T. and with prayer for interim relief and office report)

(For final disposal)

WITH SLP(C) NO. 11979-11980 of 2012

(With office report)

(For final disposal)

SLP(C) NO. 9333 of 2012

(With prayer for interim relief and office report)

(For final disposal)

Date: 20/02/2013 These Petitions were called on for hearing today.

CORAM :

HON' BLE MR. JUSTICE G. S. SINGHVI

HON' BLE MR. JUSTICE H. L. GOKHALE

HON' BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Peti ti oner(s)

Mr. K. T. S. Tul si , Sr. Adv.

Mr. Raj Kamal , Adv.

Mr. Pankaj Kumar, Adv.

Mr. Ni tin Singh, Adv.

Mr. Ami t Sharma, Adv.

For Applicants in

Mr. Vi krant Singh Bai s, Adv.

I. A. Nos. 11-12/13

For Applicants in

Mr. Vi jay Kumar, Adv.

I. A. Nos. 9-10/13

For Respondent(s)

Ms. Bi nu Tamta, Adv.

UPON hearing counsel the Court made the following

O R D E R

I. A. Nos. 7-8 and 13-14 of 2013 in SLP(C)Nos. 11977-11978 of 2012

Ms. Veena Adwani, the applicant who has appeared in person, requests that she may be allowed to withdraw the applications for impleadment as party to SLP(C)Nos. 11977-11978/2012 with liberty to avail appropriate remedy in the matter of destruction of her answer sheets by filing a petition before the Central Administrative Tribunal (for short, 'the Tribunal').

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The request of Ms. Adwani is accepted and the applications are dismissed as withdrawn with liberty in terms of the prayer made.

If the applicant files an application before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act') within one month from today along with an application for condonation of delay under Section 21(3) of the Act, then the Tribunal shall entertain the prayer for condonation of delay and decide the O. A. on merits.

I. A. Nos. 9-10 and 11-12 of 2013 in SLP(C)Nos. 11977-11978 of 2012

Learned counsel for the applicants seeks permission to withdraw these applications.

The request of the learned counsel is accepted and the applications are dismissed as withdrawn.

SLP (C) No(s). 11977-11978/2012, SLP (C) Nos. 11979-11980/2012 and SLP (C) NO. 9333 of 2012

These petitions are directed against orders dated 5.10.2010 and 29.7.2011 passed by the Division Bench of the Delhi High Court in Writ Petition No. 6586/2010 and batch and RP No. 490/2010, respectively.

For the sake of convenience, we have briefly taken into consideration the factual matrix of SLP (C)Nos. 11977-11978/2012.

In response to the advertisements issued by the Union Public Service Commission (for short, 'the Commission'), petitioner Dr. Prashant Ramesh Chakkarwar submitted applications for recruitment to Indian Administrative Services and other Allied Services. He cleared the preliminary examinations held in 2007, 2008 and 2009 but did not succeed in the main examination (written test and interview). After seeking some information by invoking the provisions of the Right to Information Act, 2005, the petitioner filed an application under Section 19 of the Act and questioned the method of moderation adopted by the Commission and prayed as under:.

- "i) Direct the respondent to produce all the records relating to the case including attendance sheets/Proforma F containing details of supplements taken, the answer books of the Applicants in all the subject and verify the irregularities committed by the Respondent in the evaluation of the answer books; and
- ii) Direct the respondent to produce attendance sheets/Proforma F (Containing details of supplements used) of all applicants to verify the number of extra sheet used by them and verify the irregularities committed by the Respondent;
- iii) Direct the respondent to produce raw and moderated marks of applicants and all other candidates in Civil Services (Main) Examination 2008 to verify justness of moderation system;
- iv) To strike down the system of moderation/scaling applied by UPSC after asking UPSC to explain the system;
- v) Direct the Respondent to bring uniformity on the system of awarding marks in personality test by reducing excessive subjectivity;
- vi) Permit the Applicants to carry out the inspection of the answer books in the Court.
- vii) direct the respondent to reexamine and re-evaluate the answer books of the Applicants where the irregularities are found to be existing in the evaluation process of Civil Service (Main) Examination 2008; and

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viii) direct the Respondent to declare the Applicants pass in the Civil Service (Main) Examination 2008 if after revaluation and proper valuation they get more marks than the mark achieved by the last candidate in the result who was called for interview and consider them for appointment."

The Tribunal briefly adverted to the factual matrix of the case and dismissed the original application vide order dated 13.5.2010 by recording the following observations:

"4. Identical OAs raising identical issues and identical arguments, even citing the same examples of UPSC's fallibility, have been considered by this Tribunal in the past. Some of the OAs are listed hereinafter:

- (i) Ravi Jindal Vs. Union Public Service Commission and Another, OA number 133/2007 decided on 21.02.2007;
- (ii) Kapil Malik Vs. Union Public Service Commission, OA number 1168/2007 decided on 18.07.2007;
- (iii) Dr. Bikram Singh Gill Vs. UPSC and Another, OA number 1389/2007 decided on 18.07.2008;
- (iv) Neeraj Kansal and others Vs. Union Public Service Commission, OA number 1747/2007 decided on 18.07.2008;
- (v) Ms. Nimmakayala Geeta Swapna Vs. Secretary (Personnel) and Another, OA number, 592/2008, decided on 26.03.2008; and
- (vi) Sh. Sandeep Kumar Vs. Union Public Service Commission and Another, OA number 2570/2008, decided on 27.11.2008.

5. We had considered the judgement of the Honourable Supreme Court in Pramod Kumar Srivastava Vs. Chairman Bihar Public Service Commission, Patna and others, (2004) 6 SCC 714, in which, inter alia, it has been held that:

"In the absence of any provision for re-evaluation of answer-book in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks."

This Tribunal has, after detailed examination of issues, held in the aforementioned OAs that the principle of moderation has been followed by the UPSC since 1949 and that the method cannot be faulted as subjective or unscientific. We need not go into these issues again in the OA in hand."

The petitioner challenged the order of the Tribunal in Writ Petition No.6586/2010. He relied upon the judgment of this Court in Sanjay Singh v. U.P. Public Service Commission (2007) 3 SCC 720 and pleaded that the method adopted by the Commission for evaluating the answer sheets of the candidates was arbitrary, illegal and contrary to the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

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The Division Bench of the High Court referred to the judgments of this Court - U.P. Public Service Commission v. Subhash Chandra Dixit (2003) 12 SCC 701, Sanjay Singh v. U.P. Public Service Commission (supra) as also the judgment of the Division Bench of the Gujarat High Court in Kamlesh Hari bhai Goradia v. Union and India (1987) 1 GLR 157 and observed:

- I Moderation and scaling of marks are two different techniques used by examining authorities for achieving common standard of assessment of marks.
- II UPSC does not apply the method of scaling of marks in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination and confines the application of the said method in evaluation of answer-sheets of the candidates pertaining to Civil Services (Preliminary) Examination.
- III The method of moderation of marks propounded by Supreme Court in Sanjay Singh's case (supra) is similar to the one applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination.
- IV The method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination has been approved by a learned Single Judge and a Division Bench of this Court.
- V The method of moderation of marks applied by UPSC in evaluating the answer-sheets of the candidates pertaining to Civil Services (Main) Examination has been approved by a Division Bench of Gujarat High Court in Kamlesh Hari bhai's case (supra), which decision has been impliedly approved by Supreme Court in Subhash Chandra's case (supra) and that the said aspect of Subhash Chandra's case has not been overruled in Sanjay Singh's case (supra).
- VI The application of method of scaling of marks was held to be arbitrary and illegal by Supreme Court in Sanjay Singh's case only in respect of Civil Judge (Junior Division) Examination conducted by UPPSC. No opinion was expressed by Supreme Court regarding the legality of method of scaling of marks applied by UPSC in evaluating answer-sheets of the candidates pertaining to Civil Services (Preliminary) Examination. "

The Division Bench of the High Court then considered the arguments made on behalf of the petitioner and rejected the same by observing that a few stray incidents of irregularities detected in the civil services examinations conducted in the past seven decades do not vitiate the sanctity of the procedure adopted by the Commission. The High Court also held that the writ petitioners are not entitled to relief because they had approached the Tribunal after a period of more than one year from the date of declaration of results and the selected candidates had not been made parties.

Shri K. T. S. Tulsi, learned senior counsel appearing for the petitioners strongly relied upon the judgment in Sanjay Singh's case (supra) and argued that in the garb of moderation the Commission had resorted to scaling of marks and this is legally impermissible. Learned counsel invited the Court's attention to the figures obtained by the petitioners from the Commission and argued that the entire selection should be quashed because 50% of the total selectees are always from the first

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50,000 candidates. Shri Tulsi submitted that this could not have been possible without manipulations and the Court should direct the Commission to produce the original marks obtained by the petitioners and other candidates to find out whether the so-called moderation was resorted to with a view to eliminate more meritorious candidates. Learned senior counsel further submitted that the roll numbers are given to the candidates in such a manner that the favorites of the officers/officials of the Commission come within the first 50,000 candidates and in this manner the chances of their selection are considerably enhanced.

Ms. Binu Tamta, learned counsel for the Commission referred to the averments contained in paragraphs 1 to 6 of the counter affidavit filed before this Court and argued that the method of moderation adopted by the Commission cannot be faulted on the ground that the same is contrary to the judgment in Sanjay Singh's case (supra).

In the counter affidavit filed on behalf of the Commission, the entire methodology of conducting the examination and evaluation of answer scripts has been explained in the following words:

"1. The UPSC conducts 14 structured examinations a year involving lakhs of candidates. Some of these such as the NDA and the CDS Examinations consist of Objective-type (multi-choice) Question papers with OMR answer sheets wherein candidate has to blacken the correct answer choice. Other examinations, including the Civil Services (Mains) have 'conventional' (essay-type) question-papers that require discursive handwritten answers.

2. While objective-type answer sheets are evaluated through a scanner and computer, conventional answer-books are evaluated manually by Examiners.

3. CIVIL SERVICES EXAMINATION:

The written examination has two stages, an objective-type Preliminary Examination for which around 5 lakh candidates are admitted every year, and around 12000 are shortlisted for the Mains Examination. The Civil Services Mains written Examination consists entirely of 'conventional' or essay type Papers. Each candidate takes 9 Papers- 5 that are compulsory/common to all candidates and 4 that are optional papers. The 5 Compulsory papers are General Studies-I, General Studies-II, Essay, English (qualifying only) and an Indian Language (qualifying only) as per choice of the candidate.

4. There is a basket of 55 Optional Subjects. These include:

(a) 30 Literature subjects- Arabic, Assamese, Bengali, Chinese, Dogri, English, French, German, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Pali, Persian, Punjabi, Russian, Sanskrit, Santali, Sindhi (Arabic), Sindhi (Devanagari), Tamil, Telugu, Urdu; and

(b) 25 non-literature subjects - Agriculture, Animal Husbandry & Veterinary Science, Anthropology, Botany, Chemistry, Civil Engineering, Commerce & Accountancy, Economics, Electrical Engineering, Geography, Geology, History, Law, Management, Mathematics, Mechanical Engineering, Medical Science, Philosophy, Physics, Political Science & International Relations, Psychology, Public Administration, Sociology, Statistics, Zoology.

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5. Each of the above 55 subjects has two Papers- Paper-I & Paper-II. Therefore, total number of Optional papers are 110, out of which the candidate has to take 4 (2 subjects of 2 papers each). The number of candidates opting for Optional subjects varies widely. In the CS(Mains) Examination in 2011 for example, there was 1 candidate each in Arabic Literature, Bodo Literature, Dogri Literature, German Literature, Persian Literature and Russian Literature. Kashmiri Literature had 2 candidates, Assamese Literature, French Literature and Santali Literature had 3 each, and Bengali Literature had 5. On the other hand, Geography had about 3900 candidates and Public Administration had over 6000.

6. A) GENERAL PROCESS OF EVALUATION FOR 'CONVENTIONAL' (DISCURSIVE) TYPE PAPERS

(i) Head Examiner is called early (before the Examiners' meeting) and evaluates sample/ random answer-books for each Additional Examiner being called. All answer-books are coded with fictitious numbers prior to the start of the evaluation exercise.

(ii) The Examiners' meeting starts immediately after (i) above. Head Examiner and Additional Examiners discuss the question paper exhaustively and agree on assessment standards and evaluation yardsticks.

(iii) Each Examiner evaluates the specimen random answer-books allotted to him/her that have already been seen initially by the Head Examiner and indicates a tentative award. The answer-books are then scrutinized by the scrutiny staff for totaling errors, unevaluated portions etc. and where necessary, got revised by the Examiner.

(iv) After (iii) above, the Head Examiner meets each Additional Examiner, in turn, to compare evaluation standards based on marks awarded by each for the specimen random answer books. Reconciliation/ recalibration of standards, wherever required, is done, and marks are accordingly finalized for the specimen answer books.

(v) Ideally, once standards are thus set as above, assessment should be uniform. In practice, however, assessment standards tend to vary during the course of evaluation- with some examiners being 'strict' and others 'liberal'.

(vi) To ensure uniformity therefore, the Head Examiner re-examines a certain number of each Additional Examiner's answer-books to check if the agreed standards of assessment have been followed. The Head Examiner may therefore, after this re-examination, either confirms the Additional Examiner's award or revises it and indicates the revised award on the answer-book. Based on this revision (wherever done), the quantum of moderation to be applied (upwards or downwards) on the remaining answer-books evaluated by the Additional Examiner are determined. In extreme cases where the marking of the Additional Examiner is determined erratic based on the Head Examiner's check, all the answer-books evaluated by such an Examiner are re-examined by either the Head Examiner or by another Additional Examiner whose standards are seen to match those of the Head Examiner.

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(vii) Based on (vi) above, inter-examiner moderation is carried out and applied to each candidate (identified only by the fictitious code number). Before this is done, however, each and every answer book is scrutinized by the scrutiny staff and totaling errors, unevaluated portions, credit awarded to answers exceeding the prescribed number of attempts etc. are rectified and revised awards indicated on the answer-books under the initial of the Examiner(s).

(viii) After evaluation of all subject-papers is over, the performance of candidates in each is looked at based on marks awarded at the end of inter-examiner (intra-subject) moderation above. Candidates for this Examination choose any two optional subjects (each subject having two Papers) from among a basket of 55 diverse optional subjects (30 Literature and 25 non-Literature) - in effect, 4 Optional Papers from amongst 110. Apart from the differences in the scope and coverage of the syllabi; the difficulty level of the question-papers, and the standards of evaluation are therefore inevitably different and can vary from year to year across subjects/papers. Based on a holistic perspective, therefore, and with its decades of experience, the Commission applies upward or downward inter-subject moderation, wherever required. This is done to ensure a level playing field for all candidates. It is important to note that at this stage too, only statistics are taken into consideration with full anonymity as regards candidates' details.

(ix) Based on the inter-subject moderation, above, marks are finally awarded to each Paper of every candidate (as represented by the relevant fictitious code numbers). This final award subsumes all the earlier stages. It is only these final paper-wise awards that are then considered for preparing the common merit-list after decoding of the relevant fictitious numbers. In all subsequent processing, it is only the final (moderated) awards that are factored and the earlier stages are no longer relevant in this context.

B) PROBLEMS IN SHOWING EVALUATED ANSWER-BOOKS TO CANDIDATES

(i) Final awards subsume earlier stages of evaluation. Disclosing answer-books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) Totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny (b) The Examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague Examiners (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work (d) The Additional Examiner's work, having been found erratic by the Head Examiner, been re-checked entirely by another Examiner, with or without the Head Examiner again re-checking this work.

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(iii) The corrections made in the answer-book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP 3683/2012) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer-script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(v) With the disclosure of evaluated answer-books, the danger of coaching-institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer-books under the RTI Act) is real, with all its attendant implications.

(vi) With disclosure of answer-books to candidates, it is likely that at least some of the relevant Examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognize from the fictitious code numbers and/or their markings, especially for low-candidate subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between Examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(vii) Some of the optional Papers have very low candidature (sometimes only one), especially the literature papers. Even if all Examiners' initials are masked (which too is difficult logistically, as each answer-book has several pages, and examiners often record their initials and comments on several pages-with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give-away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and Examiners in some of these low-candidate Papers is known to be limited. Any such possibility of the Examiner's identity getting revealed in such a high-stakes examination would have serious implications-both for the integrity and fairness of the Examination system and for the security and safety of the Examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the Paper-setter is also generally the Head Examiner.

(viii) The UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their

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anonymity, for which the Commission goes to great lengths. Once disclosure of answer-books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these Examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that Examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks-even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly."

We have considered the respective arguments and scanned the voluminous papers produced by the petitioners. In our view, the High Court did not commit any error by non-suiting the petitioners on the ground of non-impleadment of the selected candidates as parties to the original applications and the writ petitions. If the methodology of moderation adopted by the Commission is faulted, the entire selection will have to be quashed and that is not possible without giving opportunity of hearing to those who have been selected and appointed in different cadres.

De hors the above conclusion, we are convinced that the impugned order does not suffer from any legal infirmity. In Sanjay Singh's case, the Court was called upon to decide the legality of the method of scaling adopted by the U.P. Public Service Commission for recruitment to the posts of Civil Judge (Junior Division). After examining various facets of the method adopted by the U.P. Public Service Commission and taking cognizance of the earlier judgment in U.P. Public Service Commission v. Subhash Chandra Dixit (supra), the three Judge Bench observed:

"We cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refer only to the actual marks awarded by the examiner. "Valuation" is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20(3) specifically refers to the "marks finally awarded to each candidate in the written examination", thereby implying that the marks awarded by the examiner can be altered by moderation.

When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer-scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiners evaluate the answer-scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer-scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer-

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scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is "hawk-dove" effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to different examiners, there is all likelihood of different marks being assigned. If a very well-written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is "reduced valuation" by a strict examiner and "enhanced valuation" by a liberal examiner. This is known as "examiner variability" or "hawk-dove effect". Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of "examiner subjectivity" or "examiner variability" is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/judges. Where the case is of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer-scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer-scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answer-scripts and some answer books selected at random from the batches of answer-scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks, etc. may also be prepared in respect of the valuation of each examiner.)

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(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer-scripts valued by such examiner are revalued either by the Head Examiner or any other examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the examiners. In such a situation, one more level of examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of "moderation" would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

The Union Public Service Commission ("UPSC", for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in Civil Service Preliminary Examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer-scripts are evaluated by computerised scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer-scripts of descriptive/conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them."

From the above extracted portion of the judgment in Sanjay Singh's case, it is clear that the three Judge Bench had approved the method of moderation adopted by the Commission.

The argument of Shri Tulsi that in the garb of moderation, the Commission has resorted to scaling of marks and thereby deprived more meritorious candidates of their legitimate right to be selected does not commend acceptance because no material has been placed before this Court to substantiate the same. The mere fact that some of the candidates like the petitioner who cleared the preliminary examinations but could not cross the hurdle of main examination cannot lead to an inference that the method of moderation adopted by the Commission is faulty.

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The suggestive argument made by Shri Tulsi that the award of roll numbers was manipulated by the officers/officials of the Commission for ensuring selection of their favorites does not merit acceptance because the documents produced before the Court and the information obtained by the petitioner by making application under the Right to Information Act do not show that any candidate selected by the Commission had been deliberately given the particular roll number.

Equally meritless is the submission of the learned senior counsel that the selection of large number of candidates from the block of first 50000 should lead to an inference that the entire selection made by the Commission is tainted by mala fides. The table produced before this Court does not show that in each and every examination, 50% candidates were selected from those who were having Roll Nos.1 to 50000. That apart, in the absence of cogent evidence, the Court cannot accept such a spacious argument ignoring that between 4 to 5 lacs candidates appear in the annual examination conducted by the Commission for recruitment to Indian Administrative Services and other Allied Services.

In the result, the special leave petitions are dismissed.

(Sati sh K. Yadav)
Court Master

(Phool an Wati Arora)
Court Master