

ARIYASINGHE  
V.  
STATE TIMBER CORPORTAION AND 6 OTHERS

SUPREME COURT.  
FERNANDO, J.  
DHEERARATNE, J.  
PERERA, J.  
S.C.283/1993 (FR)  
SEPTEMBER 22, 1994.

*Fundamental Rights – Constitution – Violation of Article 12 (1) - Scheme of Promotion- Application of same.*

The Petitioner complained that the 9th and 10th Respondents were appointed to a Grade (1) Post overlooking him. It was his position that the scheme was bad and further not properly applied.

Further it was contended that seniority should have been given about half the weightage and the interview was superficial, and the weightage given too high.

**Held:**

(1) The weightage given to seniority vis-a-vis merit can vary depending on the responsibilities, skills and aptitude required.

(2) Where the interview performance relates to a senior post, interview would be relevant in assessing the candidate's suitability for the post.

**AN APPLICATION** made under Article 126 for infringement of Article 12 (1).

**Cases referred to :**

1. *Perera v Ranatunga*, S.C. 121/91, SCM 27.5.92 - 1993 - 1 SLR 39.

*Jayampathy Wickremaratne* for Petitioner.  
*Asoka de Silva, D.S.G.*, for 1, 2, 3 Respondents

*Cur. adv. vult.*

September 22, 1994.

**FERNANDO, J.**

The Petitioner complains that his fundamental right under Article 12 (1) has been violated by the appointment of the 9th and 10th Respondents to a grade (1) post in the 1st Respondent's service, overlooking him. Learned Counsel for the Petitioner submits that the scheme of promotion was bad, and that in any event the scheme was not properly applied.

In regard to the scheme of appointment, the Petitioner complains that only 20% of the marks were allocated for seniority, although Government policy required that promotion be based on seniority and merit; learned counsel submits that seniority should have been given about half the weightage. He also attacks the scheme on the ground that 30% of the marks were allocated for interview performance, and that was quite excessive.

In regard to seniority, the scheme provided an additional 20% for experience, one mark being allocated for each year of relevant experience. Accordingly, in effect 40% of the marks were allocated for seniority and criteria related to seniority. This cannot be regarded as unreasonably low. Further, although "seniority and merit" are the specified criteria, the weightage given to seniority vis-a-vis merit can vary depending on the responsibilities, skills and aptitudes required (*Perera v. Ranatunga*,<sup>(1)</sup>)

In regard to interview performance, learned Counsel cited certain Indian decisions which suggested that 30% is too high for interview performance. However those decisions are distinguishable for at least two reasons. They deal with the weightage to be given to an interview vis-a-vis a written examination, and secondly they relate to admission to universities and to recruitment, where this case relates to promotion to a senior post where an interview would be relevant in assessing the candidate's suitability for post in question.

We therefore hold that the Petitioner has failed to establish that the scheme of promotion was arbitrary, unreasonable or discriminatory.

The Petitioner's second contention is in regard to the application of the scheme. He claims that he should have been given ten marks for experience but was only given three. However an examination of the documents relied on by the petitioner establishes that he did not have ten years' relevant experience but only three, so that the allocation of marks was perfectly proper.

He also contended that he was only given six marks out of 30 for interview performance, that the interview was very cursory and lasted only 4 minutes; and that only four questions had been asked and none about the quality of his service. However, one of the members of the interview board swore an affidavit, in which, among other things, he referred to the examination of several documents produced by the Petitioner relevant to the quality of his past service. In his counter affidavit the Petitioner admitted the production of these documents. It is therefore clear that the interview was not superficial as claimed by the Petitioner, and that the interview board did endeavour to assess the quality of the Petitioner's services. In these circumstances, there is no justification whatever for the submission that the interview board acted unreasonably or capriciously in giving him low marks for the interview. In any event, the two successful candidates obtained eight and nine marks more than the Petitioner, so that any error in assessment really made no difference.

The Petitioner has failed to prove any violation of Article 12. The application is dismissed without costs.

**DHEERARATNE, J.** – I agree.

**PERERA, J.** – I agree.

*Application dismissed.*