Central Administrative Tribunal
Principal Bench

...

Original Application No. 1823/2002
Original Application No. 1442/2004

New Delhi, this the 22nd day of July, 2004

Hon'ble Shri Shankar Raju, Member (J)
Hon'ble Shri S. A. Singh, Member (A)

Paras Ram & Anr. -Applicants

(By Advocate Shri Arun Bhardwaj)

-Versus-

Union of India & Others -Respondents

(By Advocates Sh. R.K. Singh with Sh. Saurabh Chauhan and Sh. S.S. Tiwari)

1. To be referred to the Reporters or not? Yes

2. To be circulated to other Benches of the Tribunal or not? Yes

S. Raju
(Shanker Raju)
Member (J)

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OA No. 1823/2003

1. Paras Ram,
S/o Sh. Ami Chand,
R/o Vill. Mandhawali, P.O. Tigaon,
Faridabad-121101.

2. Ravinder Singh,
S/o late Balbir Singh,
R/o 184, Vill. & P.O. Maidan Garhi,
New Delhi-68. -Applicants

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India through
Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi.

2. National Council of Educational Research
and Training, through
its Secretary,
Aurbindo Marg,
New Delhi-6.

3. Prof Ved Prakash,
former Head DEME NCERT,
presently working as Advisor
Education Planning Commission,
Yojana Bhawan, New Delhi.

4. Sh. Sushil Kumar s/o Sh. Jalim Singh
R/o C-8, Gaurav Apartments,
I.P. Extension,
Patparganj, Delhi.

5. Shri krishna kumar s/o Sh. R.C. Singh,
R/o 31-B. DDA Flats (single storey)
New Kondli, Delhi.

6. Mrs. Tulika Verma w/o Sh. Rahul Verma,
R/o Q.No. 18, Type-II,
NCERT Campus, New Delhi-64.

7. Mrs. Kiran Juneja w/o Shri Rakesh Juneja,
R/o A-308, Shivalik, Malviya Nagar,
New Delhi.

8. Mrs. Karunesh Gambhir w/o Sh. M.K. Gambhir

R/o 42/9, Ashok Nagar,
New Delhi.

9. Sh. Madan Singh Yadav s/o Late Sh. J.S. Yadav
R/o RZ-23E/7B, Street No. 17,
Indra park, Palam Colony, New Delhi.

10. Sh. Rajesh Kumar s/o Sh. Phool Singh,
R/o House No. E-8/1, Siddharth Nagar,
P.O. Jangpura, New Delhi.

11. Sh. Devinder Kumar s/o Sh. Siri Ram,
R/o BE-342A, Gali No. 2, Hari Nagar,
New Delhi - 64.

12. Sh. Manish Singhal s/o Sh. S.C. Lal,
R/o MIG Flat No. 10,
Pocket: B-8, Sector 4,
Rohini, Delhi - 85.

13. Shri Ashish Jain s/o Sh. Y.K. Jain,
r/o 186, Chander Vihar,
Mandawali Fazalpur, Delhi.

14. Sh. Ratnesh Kumar s/o Sh. Sidhnath Sharma,
R/o H-203 [Type II) Kali Bari Marg,
New Delhi. ...Respondents

(By Advocate: Shri R.K. Singh with Sh.Saurabh Chauhan
for official respondents.
Shri S.S.Tiwari, for private
respondents.

OA-1442/2004

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S/o Sh. Ami Chand,
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its Secretary,
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3. Prof V. K. Jain,
The Controller of Examination,
DEME, NCERT,
Sri Aurobindo Marg,
New Delhi - 110 016. ....Respondents

(By Advocate: Shri R.K. Singh with Sh. Saurabh Chauhan)

O R D E R

By Hon'ble Shri Shankar Raju, Member (J):

Having grounded on the identical facts involving a common question of law, these O.As are being disposed of by this common order.

2. To resolve the controversy, a brief description of the facts is relevant.

3. Earlier OA No. 1823/2002 was filed by the applicants, who had been working as L.D.C., assailing the selection for the post of Assistant in NCERT. This court, having found large scale illegalities in the selection process, set aside the selection by an order dated 9.12.2002.

4. As the aggrieved parties, who were selected and appointed on the basis of the selection, were not made parties, they filed CWP no. 1134/2003 before the High Court of Delhi. By an interim order dated 14.2.2003, though the decision of the Tribunal has not been stayed, the orders of termination issued by the official respondents on 31.1.2003 have been ordered not to be given effect to.

5. By an order dated 29.7.2003, CWP 1134/03 and 1167/2003 have been disposed of setting aside the order passed by the Tribunal with a liberty to the petitioners therein to be impleaded as party respondents and the matter stood remanded back for consideration afresh.

6. Vide notification issued in the Employment News, the respondents notified 40 vacancies for the post of Assistant i.e. (6 for SC, 3 for ST, 10 for OBC and 21 for General). The Scheme of the examination consisted of a written test, objective test and an interview to test the knowledge of computer. In the written examination 525 candidates appeared. Names of the applicants in OA No. 1823/03 appeared in the merit list. Whereas 40 vacancies were available and the respondents had prepared a list of 56 candidates but they had called about 100 candidates for interview.

7. Before the Selection Committee could process the appointment, on an anonymous complaint received, Prof. Ved Prakash, Head, DEME was entrusted investigation into various illegalities committed during the course of selection process. In his report, scrapping of the entire examination has been recommended on account of glaring illegalities, which rendered eligible candidates into ineligible vice-versa to uphold the majesty and prestige of the organisation. The qualifying marks for general category candidates were 40 and for OBC, SC and ST were 32. In consultation with Prof. Ved Prakash and the Controller of Examination, out

of 26 recommended candidates, 18 have been recommended for appointment. Rest of them have been deleted. This had led to filing of the O.A.

9. By order dated 17.7.2002, appointments made were subjected to final outcome of the O.A. The matter was heard earlier and on careful examination of the record, having regard to the illegalities and irregularities at a mass scale, the selection had been set aside.

10. Later on, on directions of the High Court of Delhi, private respondents, who were petitioners in the CWP(supra), had been impleaded and on filing reply had been heard through their counsel Sh. S.S.Tiwari.

11. During the course of hearing of the O.A., the relevant record had not been produced by the respondents and the counsel had failed to explain the illegalities, therefore, Secretary, NCERT was called. By the time a new Secretary has taken over. Respondents furnished a Preliminary Report which was on the basis of an enquiry conducted during the course of pendency of the OA.

12. During the interregnum, when the Writ Petition against our order dated 9.12.2003 was subjudice before the High Court of Delhi, for want of stay a fresh selection process was initiated where the applicants in the OA had participated but could not be appointed. In pursuance of the selection process, 19 candidates have

been selected and two of them were issued the offer of appointment. However, the said offer of appointment was subject to final outcome of the OAs and Writ Petition.

13. In OA No. 1442/04 applicants who despite participation had challenged the process which, according to them, is vitiated by illegalities as well.

14. In the preliminary report, the respondents have found various illegalities in the selection process which led to appointment of private respondents in OA no. 1823/03. In the second selection also, the preliminary report shows large scale illegalities which inter-alia included in both the selections i.e. increase of marks of some of the candidates, rounding off marks in the descriptive paper and in the objective paper, signatures of checkers and evaluator were missing and there were interpolation in the selection process held during the course of pendency of CWP signatures of superintendent of the Examination Centre were conspicuously missing. There were over- writing in the marks allotted. This has been tendered for our examination.

15. Learned counsel for the applicant in both the OAs Shri Arun Bhardwaj, contended that on the basis of report submitted by Prof. Ved Prakash, illegalities are so rampant that it is difficult to weed out the beneficiaries of the illegalities. According to the report, by interpolation of marks, rounding off marks and missing of signatures of evaluator and checker, glaring irregularities have rendered eligible candidates ineligible and vice-versa. According to this, if the

selection process is not fair and it gets vitiated, the appointees of such a selection process do not get an indefeasible right of either appointment or to continue as an appointed candidate.

16. Whereas the official respondents though initially defended the selection by stating that Prof. Ved Prakash subsequently cleared all 18 candidates after removing the cases whether illegalities have been found to the enquiry report contends that there are large scale illegalities and irregularities in the selection.

17. Learned counsel further states that now onwards the respondents would entrust the selection to an independent body and ensure that the same is processed in a fair manner to maintain the prestige of the organisation.

18. Shri S.K. Tiwari, learned counsel for the private respondents, however, vehemently opposed the contentions and took a preliminary objection of maintainability of the OAs as to the locus standi of the applicants. According to him, having participated in the selection and failed, the applicants are estopped from challenging the process and for this, he relies upon a decision of the Apex Court in the case of **Om Prakash vs. Akhilesh Kumar Shukla,** (AIRS1986 SC 1043) as well as decision of the Apex Court in the case of **Chandra Prakash Tiwari & Ors. vs. Shakuntla Shukla & Ors.** [2002(6) SCC 127].

19. On merit, it is contended that the private respondents, who are 11 in number, mostly belong to SC/ST/OBC and for them by applying the relaxed standard, the eligibility criteria is 32 marks. Having obtained the said marks even rounding off marks, shall not affect their appointment.

20. Learned counsel further states that missing signatures of the evaluator and checker do not vitiate the proceedings as checking is computerised and there is no requirement of any signatures. Moreover, it is stated that above error is attributed to the respondents and the same would not vitiate the appointment of the applicants.

21. Learned counsel states that in the second competitive examination applicants, knowing fully well, participated and remained unsuccessful, have no right to challenge the appointment. Learned counsel also propagates the doctrine of prospective overruling by contending that the operation of new law does not affect the old transactions. The mark sheet has been seen by NCERT and in consultation with Prof. Ved Prakash after scrutinizing the marks the private respondents were given offer of appointments. There is no discrepancy in Descriptive Paper. In Objective Paper, answers were to be crossed with pen and checked on computer. He placed reliance on a decision of the Apex court in the case of K.L. Nandakumaran Nair vs. K.I. Philip & Ors.[(2001) 8 SCC 537] to contend that marks-sheets/ tabulation sheets, in absence of any other material, have to be acted upon.

22. As regard the irregularity in awarding grace marks, it is stated that this would not affect the applicants and if the beneficiaries of illegalities in the selection can be weeded out, the appointment of those who have not gained from the illegalities and were eligible, their appointments cannot be assailed and vitiated. For this, he relies upon a decision of the Apex Court in **Union of India & Ors. vs. Rajesh P.U. Puthuvalnikathu & anr.** [(2003(7)SCC 285].

23. We have carefully considered the rival contentions of the parties and perused the material on record. We have also gone through the marksheets and question papers i.e. descriptive as well as objective as produced by the official respondents.

24. It is trite law that criteria for selection and short-listing criteria and other components for selection are to be devised by the executive unless these are found violative of Articles 14 & 16 of the Constitution of India or the action is arbitrary and malafide and the same does not warrant interference in a judicial review.

25. The Tribunal earlier perused the entire record and had come to a definite finding that due to mass illegalities and irregularities in the selection process which had been confirmed on an enquiry by Prof. Ved Prakash, the selection per-se was rendered illegal. The aforesaid finding has not been touched upon on merit by the High Court of Delhi. The matter is remanded back after setting aside the order of the Tribunal on the

ground of non-impleadment of the affected parties. However, a fresh consideration has been made on the rival contentions after perusal of record.

26. The objection raised by the learned counsel for the respondents on the basis of decisions in the cases of **Om Prakash and Chander Prakash Tiwari** that the person who participated in selection having failed to qualify have no right to challenge the proceedings, would not be applicable in the present case. The decision in **Om Prakash's** case by the doctrine of precedent under Article 141 of Constitution of India is overridden by a subsequent decision of three Judges Bench in **Raj Kumar and ors. vs. Shakti Raj and others,**(1997) 9 SCC 527 observing as under:-

> "16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K and other decision referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the

facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law."

27. If one has regard to the above, what has been settled is that if the selection is conducted malafidely in derogation of the rules even after participation the plea of estoppal or acquiescence would not apply as there is mass scale illegalities and irregularities in conducting the selection. Despite having participated, the applicants do have a right to challenge the selection process. Accordingly the objection raised is overruled.

28. In **Rajesh P.U.'s case** (supra) whereby this selection process was cancelled enblock the following observations have been made by the Division bench of the Apex Court:-

"On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions - which report itself seems to have been also produced for the perusal of the High Court - there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination - either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would

belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer-sheets with reference to correct answers and allotment of marks to answers of some of the questions. In additional thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it as impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."

29. If one has regard to the above, for want of relevant material to show widespread infirmities of an all-pervasive nature which could have undermined the process of selection in its entirety or as a whole making it impossible to weed out the beneficiaries of such illegalities and the selection can be reviewed but there is no need to cancel the entire selection.

30. In a recent decision rendered in the case of **Union of India & Ors. vs.O. Chakradhar**,[(2002) 3 SCC 146, the Apex Court has observed as under:-

> "12. As per the report of CBI the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if they may be some. The decision in the

case of **Christen Yadav** applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserves to be allowed."

31. In Union of India & Ors. vs. Tarun K. Singh & Ors., 2002 (3) ATJ page 185, the Apex Court has observed as under:-

"4. The question for consideration is whether the learned single Judge of Allahabad High Court was justified in interfering with an order of cancellation passed by the competent authority and direct that the process of selection should be completed. Needless to mention that subsequent to the order of cancellation, in view of the allegation of malpractice, the departmental authorities have held an enquiry into the matter and the result of that enquiry has revealed gross irregularities and illegalities as referred to in the judgment of the Division Bench of Allahabad High Court. Consequently the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by Court of Law. That apart, an individual applicant for any particular post does not get a right to be enforced by a Mandamus unless and until he is selected in the process of selection and gets the letter of appointment. In the case in hand, much before the so-called list of selection was approved by the Railway Board, the order of cancellation had emanated on the basis of the complaint received from so many quarters. In view of the subsequent findings of the enquiry committee which has gone into the matter, we have no hesitation in coming to the conclusion that the learned single Judge of Allahabad High Court was wholly in error in issuing the direction in question and, therefore, the Division Bench of Allahabad High Court was fully justified in interfering with the said order of learned single Judge of Allahabad High Court. The Division Bench of Calcutta High Court committed error in following the judgement of learned single Judge of Allahabad High Court. The judgment of Division Bench of Calcutta High Court is set aside and the judgement of Division Bench of Allahabad High Court is upheld. In the circumstances, we allow the union's appeals and dismiss the appeals filed on behalf of

the individual candidates. The appeals are disposed of accordingly. Any other question of law remains open."

32. In the above conspectus, we have to now decide whether on illegalities and irregularities committed during both the selection processes, it is possible to weed out the beneficiaries of such illegal selection?

33. Immediately after empanelment on selection, Prof. Ved Prakash analysied the examination results and his entire report for proper adjudication is re-produced:

Analysis of Assistant's Examination Results – A report

It is evident from the data:

- That the examination was written by as many as 510 candidates.
- That of 510 candidates, as many as 104 candidates were found eligible to be called for interview. The eligibility was determined on the basis of minimum qualifying marks for each paper which for Descriptive paper happened to be as under:

Table-1

Category	General	OBC	SC	ST
Minimum Qualifying score in D.P.	40	32	32	32

- That in 26 out of 510 cases the marks of the Descriptive paper were found altered. As a result of that 21 out of 26 candidates (84.6%) were pushed to scale the qualifying score.

- **See Table –2 & 3**

Table –2

No. of Candidates Called for Interview		
No. of candidates with altered marks	No. of candidates without altered marks	Total
21	83	104

Table –3

	General	OBC	SC	ST
Total Number of Candidates called for Interview	55	23	25	1
No. of Candidates with minimum qualifying marks- 40 for Gen. & 32 for others in D.P.	32	3	2	-Nil-
% of candidates bunching at the qualifying score	58	13	8	-Nil-
Of the total Number of 510, No. of candidates who have been pushed to the qualifying score	20 (36%)	4 (17%)	2 (8%)	-Nil-

- That of the total number of candidates called for interview, 32 out of 55 (58%) in general category, 3 out of 23 (13%) in OBC, and 2 out of 25 (8%) in SC category were found to be awarded minimum qualifying marks. It is quite alarming that 58%of the cases in general and 13% in OBC category got bunched at the minimum qualifying score of 40-a phenomenon which is **highly improbable** in such a situation.

- That there are quite a few candidates who have secured more than 40 marks in the Descriptive paper. Some of them have got as high a score as 50, 48,47,46 etc. When marks of such candidates are seen in relation to their marks in the paper of Rules & Regulations, it is observed that their corresponding marks are much lower in that paper as against those candidates who have just been awarded the qualifying score of 40 after alternation in the Descriptive paper. Strangely candidates with qualifying score of 40 in Descriptive paper have secured as high a score as 97, 90, 89 etc. in the rules and regulations paper as is evident from Table 3.1.

Table 3.1

Ten cases with lowest qualifying marks in DP and their Corresponding marks in Rules & Regulation Paper

S. No.	Roll No.	Marks in D.P.	Marks in R&R
1	98	40	97
2.	227	40	90
3.	31	40	90
4.	512	40	89
5.	311	40	82
6.	199	40	77
7.	808	40	82
8	689	40	76
9.	718	40	77
10.	403	40	77

Table 3.2

Ten cases with highest marks in DP and their corresponding marks in Rules & Regulations Paper

S. No.	Roll No.	Marks in DP	Marks in R & R
1	549	50	60
2	750	46	66
3	624	46	68
4	8	47	67
5	841	47	77
6	321	48	83
7	898	44	68
8	613	44	73
9	632	43	70
10	19	43	69

- That the data posted in table –3.1 strangely reveal that candidates getting highest & higher scores in rules & Regulations papers have secured merely a qualifying score of 40 and that too after alteration.

- That the data clearly indicate that the examiner firstly seems to have arbitrarily identified those cases where the candidates have secured high scores in Rules & Regulation paper but did not qualify in Descriptive paper and subsequently altered their scores so as to enable them to qualify for the interview.

- That further more, low degree of **correlation** between the scores of two papers shown both in Table 3.1 and Table 3.2 confirms the aforesaid suspicion on the one hand and it also creates apprehension even beyond the boundaries of Descriptive paper on the other hand.

- That the aforesaid analysis of the data indicates **glaring** irregularities which would not withstand any test of scrutiny.

- That in such a situation when interviews have already been conducted, re-evaluation of the answer - scripts of the Descriptive paper might render some of the **eligible** candidates into **non-eligible** zone and vice versa and thus will further mess up the entire issue and thus **compromise** the **credibility** of the organization.

- That in view of the above, it is suggested that the **entire** examination may be scrapped and it may be rescheduled afresh because nothing is dearer than the **prestige** of the organization.

34. What has been recommended is scrapping of the entire selection on the ground that eligible candidates have become ineligible and vice versa and there were glaring illegalities which would not have withstood the test of scrutiny. On perusal of the sheet, we find that there has been consistent rounding off marks, conspicuous missing signatures of evaluator and checker. The preliminary report during the pendency of this OA in respect of respondents clearly shows that there were illegalities in the process whereby rounding off marks and signatures of the checker and evaluator were missing. In one of the cases the marks have been interpolated with someone making the candidate eligible. Not only the private respondents but the applicants' marks were also rounded off. Accordingly, on close scrutiny, the following illegalities have been found on a preliminary investigation carried out during pendency of the OAs:

"Upon close scrutiny of the answersheets of the candidates named hereinabove, the following irregularities have been noticed:

DESCRIPTIVE PAPER:

1. Increasing of marks of some candidates.

2. Rounding of 1/2 marks.

3. Marks of Karunesh Sodhi who got 33 marks inter-changed with the marks ok Sanjay Rohilla who got 41.

OBJECTIVE PAPER:

1. Signature of the checker missing in all the objective paper answer sheets.

2. Signature of the evaluator missing in some objective paper answer sheets.

3. Marks written in pencil and some cutting in some objective paper answer sheets."

35. Regarding the second examination, the following illegalities have been found :

"The bundle containing the answer sheets of 162 candidates handed over by Prof. V.K. Jain, Controller of Examinations, in sealed cover was opened and random checking of the same was conducted in the office of the LA, NCERT, and it was found that:

I: The GK Paper I (nos. 162) did not bear any marking 3 of the answer sheets (viz., of Roll nos. 5497 coded 242760, Roll no. 6328 coded 243068 of Shri Uma Kant & Roll No. 6568 coded 243164) did not bear the signatures of the Superintendent of the Examination Centre.

II: The written Expressions Paper II bore the markings, although in one bearing coded No. 240054 there were overwritings on the marks allotted. There are overwriting in the marking with regard to Roll No. 6328 coded 243068 of Shri Uma Kant. In the case of Shri Ravinder Kumar coded 242272, the marks in one place had been reduced by overwriting.

III: The Rules & Regulations Paper III were examined at random and the answer sheet of the same coded No. 240054 again

bore overwritings on the marks. There are overwritings in the marking with regard to Roll No. 6328 coded 243068 of Shru Uma Kant.

The undersigned specifically examined the answer-sheets of those GC candidates against whom there were specific complaints of manipulations, and at random checking the findings noted were found."

36. The contention put forth by the learned counsel of the private respondents that mostly appointees, 11 in number, belong to SC/ST or OBC for whom the qualifying marks, after relaxation, are 32 which make them eligible for appointment. Accordingly the interpolations have no effect and their appointments have been cleared by Prof. Ved Prakash even after his report. Accordingly, on weeding out the beneficiaries of the illegalities, the case of the applicants would not be affected and their appointments are in accordance with rules, the same cannot be countenanced. We find from the record that a short-listing process had been arrived at whereby out of several candidates 25 SC and 23 OBC candidates have found way to the interview. Had there been no rounding off marks the others, who were coming within the zone of eligibility, would have marched over the private respondentrs and would have been interviewed. This has deprived them an opportunity of equal participation in the selection. This is also the case with SC & ST candidates. As regard one of the general candidates who has been interpolated with someone the same is also an illegality showing that process was not transparent and mass enblock illegalities had taken place in both the selections which reflects on the integrity and functioning of the respondents organisation.

37. The preliminary report both of Prof. Ved prakash and Capt. K.K. Joshi, VSO, NCERT is an admission to the effect that both the selection processes had engrossed with material illegalities. We cannot by this standard weed out the beneficiaries of illegalities. The scope and zone of consideration was increased and ineligible persons have been inducted have found place in the list of appointed candidates. On presumption, we cannot draw any conclusion but the fact that both the selection processes incorporate an unfair selection process and glaring illegalities, we cannot expect such an action as fair. Rule of law shall have to prevail.

38. The decision in **Rajesh P.U.'s** case (supra) would have no application as there are relevant and concrete material to indicate widespread infirmities of all- pervasive nature which affects the entire process as a whole on irregularities and illegalities. The other selected candidates and those who could not be selected but for the illegalities have been deprived of a fair chance which is an antithesis and is invidious discrimination which does not pass the test of equality enshrined under Article 14 of the Constitution of India.

39. In **Chander Prakash Tiwari's case** (supra) when the selection smacks of malafide clearly rules that due to illegalities the one who has been selected and appointed is beneficiary to that but those who had deserved selection and when both the classes are inseparable the only remedy is to cancel the entire selection.

40. It is also a trite law that even after empanelment for selection one cannot get an indefeasible right to be appointed. This corollary has been held in **Ludhiana Central Cooperative Bank vs. Amrik Singh,** 2004 SCC (L&S) 56.

41. The appointment on an illegal process of selection does not confer an indefeasible right for appointment and such an appointment is no appointment in the eyes of law and is nullity. We are supported on this observation by the decision of the Apex Court in **R.Vishwanatha Pillai vs. state of Kerala,** 2004(1) SCSLJ 298. A wrong cannot give rise to a right.

42. Having satisfied that both the selection process have been vitiated enblock by large scale illegalities and irregularities the private respondents have no right to continue in their appointed posts. Moreover, the same was made subject to the final outcome of this O.A. The other set of selected candidates to whom offer of appointment has been sent on second selection, their appointment is also to be vitiated for illegalities and irregularities. In their appointment letters also it has been made clear that the same shall be subject to outcome of the present OAs.

43. Accordingly, we have no hesitation to allow these OAs. The selections held by the respondents are set aside. According, they are at liberty to issue orders of termination to the appointees. As stated on behalf of the respondents that the selection process shall now be fair and would be entrusted to an independent agency in the event the respondents notify

afresh the posts, the applicants as well as private respondents shall also be given an opportunity to apply without adhering to the age limit.

44. Having discussed and arrived at a conclusion of large scale illegalities and irregularities in the selection which are attributed to the NCERT which is one of the esteemed institution under the Ministry of Human resource Development to prescribe the mode of education and books to the students studying all over the country. It is expected from them to have conducted a fair selection process free from any irregularities and to act as a role model. Their own officers on enquiry have detected the above irregularities but agreed to make certain modifications and the selection was given effect to. Subsequently when the matter was subjudice on persistent efforts by this court to come to the conclusion with the records the respondents during the preliminary enquiry conducted afresh found both the selection process vitiated due to large scale illegalities and irregularities. This admission is unfortunate and mars the repute of the esteemed institution. This reflects upon the lackadiasical, negligent and motivated conduct of the officers associated with selections. The officers concerned associated with the selection process should have foreseen as well as realised the consequences. By this act of the respondents to which the responsibility cannot be shifted or denied many of the meritorious candidates have been deprived of equal opportunity to participate in the selection process. This non-transparent procedure adopted by the respondents led to humiliation of the department. We expect corrective measures to be taken.

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45. Secretary, Ministry of Human Resource Development be sent a copy of this order to fix the responsibility of the erring officials for appropriate action as the applicants have been made to face unduly trauma of this litigation which was unwarranted. We, therefore, impose a cost of Rs. 10,000/- on the respondents which shall be deposited by NCERT in the "Legal Aid Committee". The aforesaid amount shall later on be realised equally from the salary of those who shall be found responsible for the illegal selections.

46. With the above directions, the O.As are allowed.

Let a copy of this order be placed in the case file of each case.

(S.A. Singh)
Member(A)

(Shankar Raju)
Member (J)

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