Reserved on 10.02.2021

Pronounced on 22.02.2021

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/00006/2021
(U/S 19, Administrative Tribunal Act, 1985)

Rabindra Kumar Rout, aged about, 39 years, son of, Sri Narain Rout, resident of, 956-B, Railway Colony, 4 ½ Avenue, Nawab Yusuf Road, Civil Lines, Prayagraj-U.P. Presently posted as Senior Section Engineer, Telecommunication-I, Office of the Divisional Railway Manager, North Central Railway, Prayagraj-U.P.

.....Applicant.

By Advocates – Shri Shyamal Narain.

V E R S U S

1. The Union of India, through the General Manager, North Central Railway, Prayagraj-U.P.
2. The General Manager (Personnel), North Central Railway, Prayagraj-U.P.
3. The Principal Chief Signal and Telecom Engineer, North Central Railway, Prayagraj-U.P.

.....Respondents.

By Advocates : Shri L.M. Singh.

AND

Original Application No. 330/0054/2021
(U/S 19, Administrative Tribunal Act, 1985)

Rajesh Kumar Yadav, aged about 38 years, s/o Janardan Yadav, R/o 24D/I

Bank Road Prayagraj UP, Presently posted as Senior Section Engineer, Telecommunication-I, Office of the Divisional Railway Manager, North Central Railway, Prayagraj, UP.

……..Applicant

By Advocates – Shri Anil Kumar Singh.

V E R S U S

1. The Union of India, through the General Manager, North Central Railway, Prayagraj-U.P.
2. The General Manager (Personnel), North Central Railway, Prayagraj-U.P.
3. The Principal Chief Signal and Telecom Engineer, North Central Railway, Prayagraj-U.P.

.....Respondents.

By Advocates : Shri L.M. Singh.

O R D E R

Delivered By Hon'ble Mr. Devendra Chaudhry, A.M. :-

At the outset it is stated that the judgment is being delivered as a final judgment at the admission stage itself with the concurrence of the ld. counsels of both the parties. Furthermore, it is being dealt with in two OAs namely:**OA No. 330/00006/2021 and No. 330/0054/2021.** This is so because the facts of the matter in both the cases are almost identical and the ld applicant counsel, Shri AK Singh has at the outset permitted ld counsel Shri Shyamal Narain to lead the discussions in both the cases at the argument stage. The only difference in the case of OA **0054/2021** is that instead of the dispute qua the Roll Number being a violative issue with respect to the subject of being a prohibited impermissible distinguishing

mark, the concerned applicant in OA 54/2021 has put a **'U' as a distinguishing mark in his Answer Sheet.** Accordingly, with the consent of both the parties and for sake of convenience we are dwelling on the details of the original application 0006/2021 taken for the purpose of discussion. The OA 0006/2021, has challenged the validity of the result dated 30.12.2020 published in respect of the written examination held by respondents for making selection for promotion from Group C to group B in the post of Assistant Divisional Signal and Telecom Engineer/ Assistant Signal and Telecom Engineer ('ADSTE') against 30% Limited Departmental Competitive Examination (LDCE) vacancies for formation of professional Panel for the year 2017-2019

2. The following relief (s) is prayed:-

"In view of the facts, mentioned in Para 4 above, the applicant prays for the following reliefs:-

(a) That this Hon'ble Tribunal be pleased to call for the necessary records and examine the legality, validity and propriety of the respondents'action in cancelling the applicant's candidature at, or disqualifying him mid-way from, the promotional exercise for making selection for promotion from Group 'C' to Group 'B' to the post of Assistant Divisional Signal and Telecom Engineer/Assistant Signal and Telecom Engineer (ADSTE/ASTE, for short) against 30% Limited Departmental Competitive Examination (LDCE, for short) quota vacancies for formation of 'Provisional Panel' for the year 2017-2019.

(b) That this Hon'ble Tribunal be pleased to call for the records, including the answer scripts of the applicant in respect of both, Paper-I and Paper-II, of the written examination held by the respondents for making selection for promotion from Group 'C' to Group 'B' to the post of Assistant Divisional Signal and Telecom Engineer/Assistant Signal and Telecom Engineer (ADSTE/ASTE, for short) against 30% Limited Departmental Competitive Examination (LDCE, for short) quota vacancies for formation of 'Provisional Panel' for the year 2017-2019, and , if on merit, he is found successful and qualified, then, to include his name in the list of candidates, declared successful at the written examination and found eligible for the viva voce, with all consequential benefits.

(c) That this Hon'ble Tribunal be pleased to grant such other relief as the applicant might be found entitled to in the facts and circumstances of the case.

(d) ***That this Hon'ble Tribunal be pleased to award the costs of this Original Application in favour of the applicant, throughout."***

3. *Per* applicant, brief facts of the case are, that the applicant was selected to the post of Senior Section Engineer (SSE) in Group C under the Railways on 06.09.2010 in pursuance of a direct recruitment exercise carried out by Railway Recruitment Board Allahabad and the applicant is posted and working at Allahabad station since 2010. That, with passage of time he was eligible for promotion from Group C to group B on the basis of LDCE against 30% reserved quota as per selection procedure

comprising Written Test having 2 papers followed by Viva Voce test along with further marks to be allocated for record of service as per instructions governing promotion contained in Master Circular (Annexure-A2)

3.1 That the written test was held in pursuance of above notification on 27.09.2020 in which applicant participated and appeared in both papers, Paper-1 and Paper-2 of the written examination but when the results of the written examination were declared on 30.12.2020 (Annexure A-1), the applicant's name was missing. That as per his enquiries from reliable sources, he had secured 134 marks out of 150 in Paper-2 and in the range of 115-130 marks in Paper-1but still his name was not included in the list of successful candidates. That as per further knowledge, it appears that the candidature of the applicant has been cancelled due to possible violation of provisions contained in para-7 of notification of examination vide circular RBE No 29/2009 dated 23.09.2019 (hereinafter referred to as '2019 circular) whereby no correction /identification signs are permissible in the answer sheet and that if any correction/marking is made by the student, the answer sheet shall not be evaluated at all (Annexure A-6).

3.2 That, the applicant does not recall any such erroneous writing or impermissible correction or cutting and so non evaluation of the answer sheet is illegal. This is because, as per provisions of the 2019 circular the Evaluator should not evaluate any answer sheet with such impermissible

marking and since in his case his answer sheets have been evaluated therefore the Evaluator cannot now not evaluate his answer sheet on the grounds of the presence of some impermissible marking. Therefore, it is prayed that the respondents may be directed to evaluate the paper and declare the result as per the marks obtained by the applicant in written papers. Hence the OA.

4. *Per* contra,the respondents' have filed preliminary objection as well as short counter affidavit with respect to the interim relief prayed and pressed for by the applicant. That the preliminary objection is on the ground of non-joinder of necessary parties, viz the non inclusion of already selected and notified candidates whose results have been declared vide the impugned results of 30.12.20202. That, their non inclusion as respondent parties would deny them the right of hearing if the case of the applicant is considered. That such non-joinder is illegal as per law laid down by the Hon Apex court in the matter of Prabodh Verma vs State of UP, (1984) 4 SCC 251. Similarly in the matter of, Indu Shekhar Singh and others vs State of UP &Ors. reported in (2006) 8 SCC 129 the Hon Apex court has emphasized the necessity of impleading persons who would be affected by the determination of seniority which is very much the case in the present matter as it involves promotion. Then again, the issue of non impleadment of necessary parties has been considered by the Hon Apex court in the

matter of Vijayakumar Kaul and others versus Union of India reported in (2012) 7 SCC 610, wherein also the same view is reiterated.

4.1 Further that with regards to the principles of joinder of parties under Order-1 Rule-9 of the Code of Civil Procedure (CPC), the same has been emphasized in the matter of Ranjan Kumar and others vs State of Bihar and others reported in (2014) 16 SCC 187, wherein the necessity of including the persons who could be affected as a result of the writ petition is highlighted. Therefore there is need to include all the successful candidates notified vide the impugned order and since the applicant has not included them, therefore, this is a clear case of non-joinder of parties and the OA is liable to be dismissed at the threshold itself on account of this defect.

4.2 It is further submitted in the counter that as regards the making of impermissible markings by the applicant it has been made clear in the instructions to the candidates printed in the answer sheet itself (Annexure R2) wherein it is clearly mentioned that names and other sign indications should not appear in the answer sheet other than at the specified place otherwise the answer sheet will not be evaluated. Further as per guidelines dated 28.11.2016 (Annexure-R1) similar instructions are specified. That as per procedure accordingly, in the present matter, on completion of written

test, the answer book for the candidates was first codified and then sent to evaluators along with respective guidelines in separate sealed cover.

4.3 That in the case of the applicant the answer sheet of the applicant was coded as D-6 (D86 in the case of 0054/2021). That as per further procedure, after evaluation of the answer sheets the evaluator sends back the tabulation sheet with remarks if any with regards to impermissible markings by any candidate. That in the case of the applicant, the candidate whose answer sheet was coded as D-6, it was remarked as having a Roll Number written on the extra sheet attached with the answer sheet. In the case of D86 copy Bold 'U' mark. Accordingly, on receipt of the tabulation sheet, whereby suspected matters including the matter of the applicant was put up before the competent authority along with the copy of consolidated guidelines and the serious discrepancy of the writing of the roll number which is a mark of distinction on the answer sheet was noted and based on this, the case of applicant could not be processed further. Therefore, his name could not be included in the final result of the written test as the applicant had violated the guidelines for writing the answer sheet. Therefore, on merits also the applicant is not entitled to any relief and so the OA is liable to be dismissed.

5.0 We have heard the ld. counsels of both the parties at length and perused the documents made available to us including the written arguments made available in PDF.

6.0 On the issue of the respondents' preliminary objection it is to be stated at the outset that the issue of need of arraying additional private respondents who have been successful in the written examination vide the impugned notification would justifiably arise only when the results of the written examination have been declared by the respondents and the applicant found successful and eligible for viva voce test which is the next stage of the examination. We do not know at all if the applicant is going to pass the written examination whatever his happy apprehensions maybe. Thereforewe do not find it justifiable to have additional respondents being impleaded under the present conditions.

7.0 The key issue therefore to be decided now is as to what is the correct procedure for evaluation of the answer sheet as per extant guidelines and whether they have been followed by respondents and to what extent the applicant has complied with the said guidelines with respect to the answer sheet writing. Inorder to do this it would be important to examine the (i) remark made by the applicants in both the OAs (ii) instructions in the question paper and the answer sheet and (iii)concerned guidelines.

Abstracts of these are accordingly reproduced herein below for ready reference:

Para-6 of Counter concerning Remark made by applicant in OA 006/2021 in his answer sheet:

"…6. That after evaluating the Answer Sheets, the evaluator send back the Tabulation Sheet with marks of the candidates with stipulation for Code No.D-6 (Paper I) as follows:

*"**Code No.D6**: Role No. written on extra Sheet attached."*

Para-6 of Counter concerning Remark made by applicant in OA 0054/2021 his answer sheet:

"…6. That after evaluating the Answer Sheets, the evaluator send back the Tabulation Sheet with marks of the candidates with stipulation for Code No.D-86 (Paper I) as follows:

*"**Code No.D86**: Something written on extra sheet attached and then overwritten, and not attested by anyone. Bold '**U**' letter impression still visible ."*

Instructions in the question paper and the answer sheet:

Question paper abstracts A-5:

NORTH CENTRAL RAILWAY

Written Examination for the selection of ASTE(Gr'B'') against 30% quta (LDCE) in

S & T Department held on 27.09.2020

PAPER-1 (Professional subjects & General Knowledge)

[Max. Time hrs (Three hours) Max Marks-150]

Important instruction to Examinees:

Ikjh{kkfFkZ;ksa ds fy, egRoiw.kZfunsZ"k%

*(a) Do not write your name, designation**, roll number**, signature, address anywhere inside the answer book/extra-sheet except in the specified space on the top-sheet/fly-slip.*

VkWifLyiij&QykbZ@"khV&fn;s x, fufn'VLFkkudksNksMdjmRrjiqfLrdi=d ds vanjdghHkhvfrfjDr @viuk uke] inuke] jksyuacj] gLrkk{kj irk u fy[ksA

(b) Answer should be either in English or in Hindi. Use blue/black ink only to write answer.

mRrj ;krksvaxzsth ;k fganhesagksuspkfg,AmRjfy[kus ds fy, uhyhdkyhL;kgh dk ghmi;ksxdjsA

(c) Ensure signature of the invigilator/Officer- in-Charge on the answer book & extra –sheet if any.

mRrjiqfLrdkvkSjvfrfjDri=d ;fndksbZgksrks ml ijvUos'kdizHkkj&vf/kdkjh@dsgLrk{kjlqfufJrdjsA

(d) Attempt any FIVE questions from 'Section-A' & 'Section-B'.Answer all questions in 'Section-C'.

lsD"kuvkSj , lsD"ku ls ch&dksbZHkhikapiz"uks ds tokcnsaAlh&

(e) Maximum Marks allotted for each question has been shown against that question.

izR;sdiz"u ds fy, vkoafVrvf/kdrevad ml iz"u ds fo:) fn[kk, x, gSA

(f) In case of any dispute, the English version will be treated as authentic

fdlhHkhfookn ds ekeysesa] vaxzsthlaLdj.kdksizkekf.kdekuktk,xkA

Instructions given in the answer sheet Annexure: R-2 of the Counter

lkjh{kkFkhZ;ks ds fy, vko";d funsZ"k

Important Instructions for the Candidates

1& ijh{kkFkhZeq[ki`'B]vfrfjDrmRrjiqfLrdkrFkkiz"uesadghHkhviuk uke ;k vU; ladsr u fy[ksvU;FkkmRrjiqqfLrdk dk ewY;kaduughafd;ktk;sxkA

Candidate does not write name and other Sign/Indications in the answer sheet other than at the specified place otherwise answer sheet will not be evaluated.

2& ijh{kkFkhZviusikl] eksckbyQksu] dsydqysVj ,oadkxtkrvkfn u j[ksA

Candidate does not keep mobile phones, calculator or any other documents/ paper with them.

3& ijh{kk ds nkSjkuvuqfprlk/kuks dk iz;ksxdjusijvuq"kklfuddk;Zokgh dh tk,xhA

Disciplinary action will be initiated for using unfair menns.

Guidelines:

Annexure-R1 in the short Counter:

"…GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(GP)2015/2/8 *RBE No:142/2016*
New Delhi, dt:28/11/2016

The General Managers,
All Indian Railways and Production Units,

(Kind attn.: CPOs)

Sub: Consolidated Guidelines for Personnel Officers, Paper Settors& Evaluators of Question Papers of written examinations held as part of 70% Selection/30% LDCE for Promotion from Group 'C' to Group 'B' costs.

A Committee was constituted to review the pattern of Selections held for promotion to Group 'B' posts on the Railways. One of the mandates given to the Committee was to review the instructions issued from time to time relating to evaluation of answer sheets. Accordingly, these instructions have been reviewed by the Committee and in supersession of all existing instructions issued on the subject including those contained in Boards's letter no.E(GP) 2001/2/32 dated 07/07/2014, it is advised that following guidelines may be kept in view while holding Selections/LDCEs for promotion to Group 'B' posts.

2. INSTRUCTIONS FOR EVALUATORS:

(i) Evaluating the answer sheets without the secret numbers is not allowed.

(ii) Evaluating the answer sheets with the fly leaves is not allowed.

(iii) Evaluation of answer-sheets where the candidate has written his name on the answer sheet or where he has made some distinguishing mark on the answer sheet is not allowed. Evaluation of answer sheets even where secret

numbers are present but the candidate has written his name etc. in the other sheets of the answer book, is also not allowed. In case the candidate has violated any of these instructions, his/her answer-sheets are not to be evaluated.

(iv) Proper and uniform evaluation of the answer sheets, especially for narrative type of answers should be ensured. In order to achieve this objective, the officer evaluating the answer sheets before starting the evaluation, should keep ready important points in respect of narrative type questions & answer key for objective type questions furnished by the Paper-setter and handed over to him by the Dy.CPO(G)/Dy.CAO(G) and then only evaluate the answer sheets with reference to these answers.

(v) In both the objective type and narrative type answers, there should normally not be any over-writing/erasing of the marks awarded. However, correction of marks awarded by the evaluator, if genuinely warranted, may be made by striking off.

(vi)……

(vii) ……

(viii) The evaluating officer is fully responsible for totaling of marks in the answer scripts and also ensuring the correctness of marks entered against each secret number. He will hand over the following to the Dy. CPO (G)/Dy. CAO (G) or in their absence to the officer nominated by the General Manager:

(a) The evaluated answer sheets in a sealed cover and the important points & Answer Key, in a separate sealed cover.
(b) The statement of marks after plotting the marks against respective secret numbers in a separate third sealed cover.

3.…
(i)…..

"(ii)....Candidates. Both fly leaf as well as the answer book should be stamped and signed by the Gazetted Officer in charge of conduct of the examination. The employees should write their names and designations on the fly leaf only. After the answer books are received from the employees, the fly leaf should be removed and allotted a secret number which should also be simultaneously recorded on the corresponding answer book by Dy. CPO/G or Dy. CAO/G. The answer books should be sent to the examiner with secret numbers alone indicated on the answer books. The fly leaves removed from the answer books should be carefully preserved in a sealed cover, it being sealed by Dy. CPO(G)/Dy. CAO(G). This sealed envelope should be kept in the personal custody of the Dy. CPO(G)/Dy. CAO(G). In case of their non-availability, any other JAG/SG officer may be nominated by the General Manager.

(iii)…..

(iv) Any distinguishing mark on the answer script would make the answer script invalid

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Annexure A-3:

"..NORTH CENTRAL RAILWAY

Headquarters office
Allahabad

No. 797-E/Gaz/Gr.'B'Selection/30%/S&T/17-19 Dated 23.09.2019

7. This is for information of all concerned that in terms of Railway Board's letter No. E(NG)I-2008/PMI/18 dated 13.02.2009, no correction is permitted in the answers to objective type questions. In case any correction is made, that answer shall not be evaluated at all. The correction may be one of the following types (the list is illustrative and not exhaustive):

(a) Cutting
(b) Overwriting:
(c) Erasing;
(d) Scoring off a ticked answer in Multiple-choice and licking another answer and,
(e) Modifying the answer in any way.

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8. 0 As may be seen, the**Question paper submitted as Annexure A-5** by the applicant clearly states that **inter alia roll number is not to be written anywhere except as specified. In the case of the applicant in OA 006/2021 he has written the roll number admittedly and so made himself liable to action.** In fact the ld applicant counsel in his arguments stated that writing the roll number is not prohibited in the Master Circular, Circular of 23.09.2019 and Instructions in the Answer sheet. This evidence unfortunately implicates the applicant inasmuch that he has done a prohibited action by writing the roll number in the answer sheet. This is further substantiated by the instructions contained in the **Answer sheet wherein it may be seen that it is clearly specified that the candidate is**

not to write name and other sign /indications in the answer sheet other than at specified place. The applicant in OA 0054/2021 has made a mark of '**U' in the answer sheet as seen in the extracts above from the counter** and he has also violated the instructions. It cannot be also accepted that the roll number is not an identification mark and would therefore fall in the same category as making of a 'U' identification mark. Hence it cannot be argued that the applicant concerned in each of the OAs have not violated both the instructions in the QUESTION PAPER as well as the ANSWER SHEET.

8.1 Now as regards the ld applicant counsel's argument that guidelines clearly state that should there be any prohibited mark then the answer sheet is not to be evaluated at all. That since the applicant by his alleged intelligence/confidential sources has got to know his marks, it means that the answer sheet has been evaluated even if there was an identification mark and so the Evaluator has violated the guidelines himself/herself and so the mark made by the applicants in both the OAs cannot now be read against the applicants. That, the error of the applicant has been therefore negatived by the said evaluation by the concerned Evaluator and so no longer can it be considered as an invalid action. Howevver, the argument of the ld applicant counsel if accepted, would lead us to conclude that the ipso facto illegal action has now become a correct valid lawful action on account of the answer sheet having got evaluated and so the applicant has

the right to be selected as his answer sheet is now a valid answer sheet with no violation and so the answer sheet as evaluated should be considered and the applicant allowed to appear for the next stage of selection such as the viva voce etc. **This indeed is a bizarre line of argument. First of all i**t is clear that if in evaluation of answer sheets any candidate has written his identification mark etc in the answer sheet, then the same cannot be considered as per guidelines. The instructions to the candidates printed on the question paper and the answer sheet also specify that. Thus, on the basis of above it is very clear that if there is any identifying mark on the answer sheet, the same is a violation of the instructions and the answer sheet is liable not to be evaluated.

8.2 Now secondly, it is also important to understand thatthevarious steps required in the evaluation of the answer sheet. In this connection, the ld respondent counsel has argued and also stated in the Counter, that as per steps involved in the evaluation of an answer sheet, the same is first codified. That then the codified answer sheet is sent to the Evaluator who then sends the Tabulation sheet after making any remarks as per guidelines with respect to any matter concerning the guidelines for evaluation. That this tabulation sheet is then put up before the competent authority along with the concerned guidelines who decides on the matter of any discrepancy if any which may have been noticed and remarked upon by the Evaluator during the course of evaluation and then the said competent

authority decides upon the particular case of the declaration of the results of the concerned examinee and if a discrepancy is found the result is not processed and not evaluated further.

8.3. It is clear from the submissions of the ld. respondent counsel and also as per the Counter, that the answer sheet of the applicant was codified and given the code number D-6 and that after codification, it was sent to the evaluator who **obviously** did not know the name of the examinee or the roll number at all. That during the course of evaluation, the Evaluator noticed the **roll number in the extra sheet attached with the answer sheet** and the 'U' mark in the case of the other applicant in OA 0054/2021 and stated this as a remark. It was not for the Evaluator to not to declare the result as he is not the competent authority as already stated by the ld respondent counsel. Moreso, the Evaluator would also therefore not know what the decision on the said or any impermissible marking would be at the level of the competent authority as the same is a decision of the competent authority and can be done only after the stage of evaluation is over from the side of the Evaluator. The concerned answer sheet with the said remark was accordingly placed before the competent authority whereby it was found that the case of the applicant could not be processed further as per extant guidelines and therefore his name did not find place in results of the written test. The applicant's argument that as the marks evaluation has been done, therefore the result has to be declared is not very

convincing because once the wrong is done, consequences have to follow and a purposeful interpretation of the instructions in the Question Paper / Answer Sheet read along with the Guidelines as abstracted above, cannot permit any advantage to the applicant for an alleged mis-step which actually is not a mis-step because the steps concerned in a complete evaluation process have to be read and interpreted as a whole and not separately with artificial division of parts in a manner such as to defeat the very purpose of having such instructions and guidelines. We would be shortly supporting this view with several citations by the Hon Apex Court.

8.3 Suffice it to say here that the argument that if an evaluation has been done which is admittedly wrong if there is an identification mark then the same wrong is erased. How can such a line of logic be accepted. First of all, the action of making an identification mark is wrong – writing of a roll number – is in fact specifically prohibited in the instructions contained in the QUESTION PAPER and again there are instructions in the ANSWER SHEET at the top of the sheet not to make any identification mark or make any mark other than at specified place. Now then to say secondly that even if the error was done by the candidate the same stands nullified because the evaluation has been done. That is to say that,(i) because the evaluation should not have been done at all,that (ii) the answer sheet should not have been evaluated in the first place,that (iii) on the basis of the impermissible mark it should have been left unevaluated and only then the unevaluated

step would be correctly followed and not otherwise is a legal chimera encouraged as it were – as in the present case –by the intelligence/confidential sources of the applicant in 006/2021 that he has got very high marks and so his answer sheet is deemed correctly evaluated so that he can be selected notwithstanding the illegality.

8.4 It is legal chimera because, it needs to be unequivocally understood that (a) the answer sheet of applicant has not beenconsidered evaluated on account of the distinguishing mark viz the role number marking / 'U' marking made by the applicant (as per concerned OA) in the attached answer sheet paper, that (b) it does not stand to justifiable equity that we are bound to set aside the wrong by the applicant and hold as if the incident did not occur and so the result of applicant must necessarily be declared just because determination of marks has been made and the said violation of the guideline even if by the evaluator or the competent authority becomes no longer a violation. Apart from this highly illogical argument, the key point to be reiterated is also that Evaluation is a complete process - involving both the tabulation of marks as well as examining of any violation of the answer sheet guidelines by any examinee and since the Evaluator cannot withhold result declaration qua any impermissible marking or any irregularity for that matter by a candidate in an answer sheet, and has to leave it for the decision of the competent authority, therefore, the steps with respect to tabulation and noticing of

any violation such as to distinguishing marks etc is a complete integrated process and to distinguish it in compartments does not seem logical and justifiable particularly so when it involves overlooking the gross violation of the guideline with respect to the prohibition ofidentification. To segregate the steps artificially with a view to accommodating one's view and then hold that wrong in one step erases the wrong in other is simply beyond our plausible logical comprehension.

8.5 We have also to understand in the first place thatstrict confidential and security measures like codification of answer sheet etc, and not writing or making of any identification mark in the answer sheet are specified because of the need to prevent any cheating and malafide in an examination. This is important, because if the evaluator and the potential evaluator or any other person of the establishment concerned are in cohorts then there is always a possibility that if there is an identification mark then the concerned answer sheet can be evaluated in favour of the examinee. That such relationships indeed be networked, is quite clear from the fact that in spite of all the confidentiality safeguards, the applicant from his confidential sources was able to get to know of the extremely confidential marks given and the same is stated by him in the OA.This brings into doubt the integrity of the applicant with respect to keeping the sanctity of the examination and evaluation system unblemished as he has taken a highly contentious unethical step in trying to ferret out his confidential

marks and stating them as his evidence for some alleged discrepancy in the evaluation process. It is almost like cheating on the face of it in an attempt to avenge a disputable wrong. This is surely a highly misconceived way for establishing justice and fair mindedness as well as preserving the sanctity of an examination system. Which law in a country can pardon a wrong to right a wrong.

8.6 We would now like to make some citations of the Hon Apex Court on the way the interpretation of rules and guidelines / instructions and as to how they are to be read.

8.6.1 Thus in the matter of Life Insurance Corporation of India v Retired LIC Officers Association, 2008 (2) SCC 150, it was held that –

> *"..Each word employed in a statue must take colour from the purport and object for which it is used. The principle of purposive interpretation, therefore, should be taken recourse to. .."*

8.6.2 Similarly the Hon Apex Court in the matter of **Chief Justice of Andhra Pradesh v L.VA. Dixitulu&Ors, 1979 (2) SCC 34, a five judge bench of Hon Apex Court comprising YV Chandrachud, the Hon CJ** held that –

> *63. "…The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it"(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is*

precise and plain and thus, by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object ought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

8.6.3 Similarly law has been laid down by the Hon Apex Court in several matters such as –

(a) **Union of India v Deoki Nandan Aggarwal, 1991 (5) SLR 16, pp. 22,23 held that -**

"….*It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Courts cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself…."*

(b) The Hon Apex court again held in the matter of **State of Bihar v Bal Mukund Sah, AIR 2000 SC 1296** that -

"…*It was not correct for the High Court to say that the language of the statute was capable of more than one interpretation and for that such interpretation*

which is not absurd or inconsistent should be followed. The Court is required to interpret the statute as far as possible agreeable to justice and reason. While interpreting a statute the courts have to keep in mind the underlying policy of the statute itself and the object sought to be achieved by it…."

(c) it has been held in the matter of Bhakra Beas Management Board v Krishan Kumar Vij, 2010(4) SCT 233 that -

"…*The courts will reject the construction which is likely to defeat the plain intention of the legislature even though there may be some inexactitude in the language used. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided…"*

(d) In Shiba Shankar Mohapatra v State of Orrissa, AIR 2010 SC 706 the Hon Apex court held that -

"…..*The question of application of the doctrine of contemporaneaexpositio is well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority.*

One may reach the conclusion that administrative interpretation may provide the guidelines for interpreting the Rule or executive instruction and may be accepted unless it is found in violation of the Rules itself. The Court may not be bound to accept the mistaken construction of the statutes by those who had been dealing with the working of the Statute…."

8.6.4 In Bihar State Council of Ayurvedic and Unani Medicine v State of Bihar, 2008 (1) SCC 336 held on the rule of construction wherein construction should be such that it may not lead to absurdity and laid down that -

"…Where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Out of the two interpretations, that language

of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. It is equally well settled that within two constructions that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purported to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion with the working of the system…"

8.6.5 In Cable Corpn. of India Ltd. v Additional Commnr. of Labour, 2008 (4) SCC 147, it is held that -

"…When the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, Courts are bound to give effect to that meaning irrespective of consequences.

When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself…."

8.7 The point to be understood is that there has to be a purposive construction of words and words used in **statute take colour from purport and object thereof-Rule of purposive interpretation must be resorted to**. In the present matter the purpose of having an Answer paper declared not evaluated is that whenever an irregularity of making of an impermissible marking is noticed, then the consequences should follow. To argue then that once the paper is evaluated the irregularity of the making of the marking is extinguished tantamounts to an illogical interpretation of the strict provision wherein the candidate-evaluator-examiner nexus is strongly discouraged so that the situation of cheating and illegal advantage being taken by a candidate are nipped in the bud and

the nexus not allowed to pervert the examination process. It is in this light that t**he impermissible marking or any such irregularity provision coupled with the consequence of non evaluation has to be read. The reading has to be in a constructive purposeful manner** and not in a misconceived manner so as to defeat the very purpose of having the instructions / guidelines. The interpretation of a provision in a statute or a guideline has to be read as a whole and not in bits and parts. In the present case the purport of the guidelines is that should there be impermissible marking then the paper shall not be evaluated. This is the intent and the purpose of the provision. Now if the evaluation has been done as in so called alleged giving of marks and during the course of such marking it has been noticed in the end that there is an impermissible marking then the correct logical and legal step to follow is that the paper should be withheld as to its declaration of result because of the illegality. The construction of the provision cannot be that just because the marks have been allocated in one or more questions answers, then the illegality is extinguished. Then again, the Question paper instructions clearly specify not writing the roll number in an unauthorised place. The Answer sheet instructions likewise prohibit making of any identification marking. So how can both these facts be overlooked. For the applicants to now also argue that they do not recall making such markings and therefore purport to deny the same cannot lie in their mouth because (a) it is an afterthought and a case of selective amnesia, (b) how can the Evaluator be interested to harm the applicant

when he does not know the particulars of the candidate as the answer sheet made available to him is codified and then given to him. We hold that the interpretation of statute as to their words, can have only one meaning and the language when plain or unambiguous or admitting only of one meaning as in the current case, no question of selective construction can arise. For the ld applicant counsel to construct that just because the answer sheet instructions do not mention that roll number specifying in the answer sheet is illegal / impermissible markingevenwhile hiding the factum that the question paper instruction specify clearly and then to go on and argue that this implies that roll number can be written wherever the candidate wishes is a preposterous and highly malicious construction of the provisions particularly when the question paper instructions debar the same explicitly. And who in this world and what common sense and law interpretation would state with any degree of conviction that presence of a roll number in an answer sheet is not an identification marking.

8.8. In fact the Hon Apex Court has on the other hand also very discerningly laid down that in the matter of i**nterpretation of statutes involving a situation of *Casus omissus* the resort to rule of permissibility and supplying words in statutory provision is in fact permissible where words appear to have been accidentally omitted or when existing words become deprived of their meaning.** Thus it has

been held in the matter of Rajbir Singh Dalal v Chaudhari Devi Lal University, 2009 (8) SLR 640, that -

> ***"…****The ordinary principle of interpretation is that words should neither be added nor deleted from a statutory provision. However, there are some exceptions to the rule where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning, and in this situation it is permissible to supply the words…."*

8.9. Let us conclude this series of case law by quoting the Hon Apex Court in the matter of Union of India v Priyankan Sharan, 2009 (120) FLR 202 wherein it laid down that -

> ***"…****Two principles of construction-one relating to casus omissus and the other in regard to reading the statute as a whole-appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v IRC 1966 AC 557 where at p. 577 he also observed : "that is not a new problem, though our standard of drafting is such that it rarely emerges".*

8.10. Thus the sum and substance of the above citations is that a constructive and purposeful construction has to be done wherever necessary so as to not to defeat the purpose of legislation / guideline etc.Otherwise the rule has to be interpreted as given but again with a

purposeful construction of the intent of the legislature so as not to defeat the purpose. The justification as discussed above provided by the ld applicant counsels would lead us to a grand journey of absurdity and surely defeat the intent of the laid down guidelines which is to deny nexus of the evil of the candidate and the evaluator / examiner having the malevolent goal of cheating and securing un deserved gain.Thus we cannot agree with the view that since marks have been allegedly given to the applicant on the answer sheet by the evaluator therefore the non-declaration of the result by the competent authority is illegal.

9. The next limb of the argument of the ld applicant counsel is that the concerned competent authority has not examined the issue of impermissible marking but some other non-competent authority has done so, is truly a desperate last straw in trying to save the candidate but pitifully so it does not stand scrutiny of legal finding asthere is nothing on record to assert that such a wrong has been done. We find no plausible reasons to summon any records also just to verify this matter as we hold that in the absence of any positive evidence we cannot adversely view the decision of non-declaration of results as having been done by a non-competent authority, moreso, as evidenced by the applicant's immense resources to bust the confidentiality and secrecy of the system by being able to ferret out marks of his answer paper when the same are not yet declared publicly.

10. The third limb of the argument of the ld applicant counsel is that the non-declaration of the result of the applicant amounts to cancellation of the result of the applicant and since this has been done without giving the applicant any prior notice, this is denial of opportunity of hearing to the applicant and so a violation of principles of natural justice *a la audi alteram partum.* On this count he has cited certain judgements of the Hon Apex court which are as below:

i. **Nidhi Kaim vs State of M.P.and Ors – judgement dated on 12 May, 2016**
ii. **Board Of High School &Ors vs Ghanshyam Das Gupta And Others on 6 February, 1962 Equivalent citations: 1962 AIR 1110, 1962 SCR Supl. (3) 36**

10.1 We may analyse the matter of Nidhi Kaim vs State of M.P.&Ors (*supra*) first. If we read the full judgement in detail, we find first of all that it deals with a situation involving cancellation/adjudication of results of an examination where mass irregularities were alleged. The ld respondent counsel did point out to this different set of circumstances when given the opportunity to rebut the arguments led by the ld. applicant counsel. Notwithstanding we deem it fit to look with an open mind and not be easily swayed by our Attitude – as Carl Gustav Jung, the very famous Swiss psychologist (also awarded Hon Doctorate by our very own 'Allahabad University')– a match to none other than the not less famous

Austrian neurologist Sigmund Freud himself had said in around 1903s that –**"Attitude is something of a readiness of the psyche to act or react in a certain way**…" and to have an Attitude means to have an *a priori* orientation to a definitive conclusion. Likewise, taking a cue from Jung we approach the Kaim (supra) judgement without any pre-disposition of our psyche and come straight to the relevant point which is found in paras 26-31 of the judgement. The same is reproduced herein below:

> *"….26. The case of the BOARD is that for taking the impugned action, they need not have proof of the guilt or complicity of the individual students in contaminating the examination process. It is argued that if there is some reasonably reliable material to establish the fact that the examination process insofar as it concerns the appellants was contaminated, the BOARD would be justified in law to take the impugned action. The moment contamination of the examination process is established, the BOARD is relieved of the legal obligation to comply with the rule of audi alteram partem concerning the students who are the members of the pairs identified by the BOARD (on the basis of the expert committee report) to be the beneficiaries of the contaminated examination process. According to the BOARD, tampering with the examination process took place on a large scale in each of the years in question, and it took place pursuant to a deep conspiracy involving several people. Following the rule of audi alteram partem in such circumstances would be an impracticable exercise and the same is not required to be undertaken in view of the judgments of this Court in Bihar School Examination Board v. Subhas Chandra Sinha & Others, (1970) 1 SCC 648 and B. Ramanjini& Others v. State of A.P. & Others, (2002) 5 SCC 533 to emphasise on the need to comply with the rule of audi alteram partem. The respondents also relied upon Board of High School and Intermediate Education, U.P., Allahabad & Another v. Bagleshwar Prasad & Another, (1963) 3 SCR 767 in support of their submission that the scope of judicial reliance is very limited in the cases of malpractices at examinations.*
>
> *27. On the other hand, appellants placed heavy reliance on the decision of this Court reported in Board of High School and Intermediate Education, U.P. v. Ghanshyam Das Gupta & Others, 1962 Supp (3) SCR 36 and Onkar Lal Bajaj & Others v. Union of India & Another, (2003) 2 SCC 673 to emphasise on the need to comply with the applicability of the rule of audi alteram partem.*

28. Ghanshyam Das Gupta and Subhas Chandra Sinha directly deal with the applicability of the rule of audi alteram partem in the context of allegation of copying in an examination. Ramanjini's case deals with cancellation of the examination (conducted for the purpose of some recruitment process) on the ground of leakage of question papers and Onkar Lal Bajaj (supra) deals with cancellation of allotment of petrol pumps made to a large number of people, on the basis of allegations that such allotment was vitiated as a consequence of a corrupt process of selection.

29. Bagleshwar Prasad's case (supra) was a case of cancellation of examination results of only two students (the respondent before this Court and another) on the ground that they had adopted unfair means. It was not a case of non-compliance with the rule of audi alteram partem. An inquiry was conducted by a Sub-Committee constituted for the said purpose, and it found that both the students were guilty of adopting unfair means. Both the students challenged the decision to cancel their examination. The High Court set aside the impugned order on the ground that there was no direct evidence on the basis of which a Committee could have come to the conclusion that the students had adopted unfair means.

This Court reversed the High Court decision and held that the very fact that both the candidates gave identical answers was sufficient evidence of adoption of unfair means in the examination. While coming to the conclusion, this Court observed that it would be "inappropriate in such cases to require direct evidence[13]" and in cases where direct evidence is not available "the questions will have to be considered in the light of probabilities and circumstantial evidence". This case also laid down the principles governing the judicial review of the decisions of educational institutions (examining bodies) in the context of the adoption of unfair means in examinations by the students. Though this Court held that the educational institution must "scrupulously follow the principles of natural justice" the scope of judicial review was held to be very limited and "it would …… not be reasonable to import into these enquiries all considerations which govern criminal trials".

30. It is not necessary to make any analysis of the judgment of this Court in Ghanshyam Das Gupta (supra) as the same was considered by this Court in Sinha's case, analysed and distinguished.

31,,,,,A lone circumstance could itself be sufficient in a given case for the examining body to record a conclusion that the students resorted to "unfair means on a large-scale" in an examination. This Court approved the conclusion of the Bihar School Examination Board that the students had resorted to unfair means on a large scale in one examination centre[17] and also approved the decision making process of the Board on the basis of circumstantial evidence. The lone circumstance that the success rate of the students who appeared

> *for the examination from the centre in question is too high in comparison to other centres.*
>
> *In such cases, the examining body need not hold "a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc." and the examining body's "appreciation of the problem must be respected." To insist on the observance of the principles of natural justice, i.e. giving notice to each student and holding enquiry before cancelling the examination in such cases would 'hold up the functioning' of the educational institutions which are responsible for maintenance of the standards of education, and "encourage indiscipline, if not, also perjury".*
>
> *Compliance with the rule of audi alteram partem is not necessary not only in the cases of employment of 'unfair means on large scale' but also situations where there is a 'leakage of papers' or 'destruction of some of the answer books' etc. This Court drew a distinction between action against an individual student on the ground that the student had resorted to unfair means in the examination and the cancellation of the examination on the whole (or with reference to a group of students) because the process itself is vitiated……"*

The key point in the citation is that compliance with the rule of audi alteram partem is not necessary in the cases of employment of 'unfair means'and the citation nowhere gives protection of the rule of audi alteram partum for pardoning use of unfair or unethical means by an examinee. Likewise in the present case we find that, we cannot overlook the fact that the applicant did err in the matter of making an unwanted, illegal and impermissible identification marking in his answer sheet. That this illegality had the potential of leading to adoption of unfair means and so, therefore, in the instant matter also, we are unable to agree to the need for blind adherence to the principle of audi alteram partum by way of giving any show cause notice / opportunity of hearing to the examinees whenever there is a reason not to declare the result for an irrefutable wrong done by the examinee during the course of writing his answers.

10.2 As regards the citation concerning **Board Of High School & ... vs Ghanshyam Das Gupta And Others in which judgement was delivered on 6 February, 1962 Equivalent citations: 1962 AIR 1110, 1962 SCR Supl. (3) 36,** the same is dealt with in the Nidhi Kaim (supra)matter at length because it is of much earlier vintage viz 1962 whereas Nidhi Kaimis more than half a century old (06th February 1962 to be exact) and its views are incorporated in spirit and substance in the Kaim (supra) judgment. The rule of ***audi alteram partum*** has its limitations is a key finding and we would like to explore this a bit more further with the help of other notable citations.

10.3 Thus, in the matter of **Union of India v Tulsiram Patel, 1985 (2) SLR 576, p.641,** the concept of natural justice has been quite indulgently explained -

> ***"….t****he first rule is "**nemo judex in causa sua**" or "**nemo debetesse judex in propria causa**" as stated in 12 Co. Rep. 114, that is, no man shall be a judge in his own cause". Coke used the form "**aliouis non debt esse judex in propria causa quia non potestesse judex et pars**" (Co. Litt. 141a), that is, "no man ought to be a judge in his own cause, because he cannot act as a judge and at the same time be a party". The form "**nemo potestesse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used.**
> The second rule - and that is the rule with which are concerned in these Appeals and Writ Petitions - is "audi alteram partem". that is, "hear the other side". At times and particularly in continental countries the form "**audietur et altera pars**" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely, "**qui alliquidstatueritparteinaudita altera, aequum licet dixerit, haud aequumfecerit**". that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right" (see Boswell's case) [1606] 6 Co. Rep. 48b,52a, or, in other*

> *words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done."*

Based on above foundations it has been held that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded.

10.4 Similarly, in the matter of **R.S. Dass v Union of India, 1986 (4) SLR, p. 88**, it has been held by the Hon Apex Court that the application of the *audi alteram partem* rule is not applicable to all eventualities or to cure all ills. Its application is excluded in the interest of administrative efficiency and expedition. Sometimes legislation itself excludes the application of the rule. It is difficult to conceive exhaustively all eventualities and circumstances for application or exclusion of the rule.

10.5 Again in the matter of **Union of India v Col. J.N. Sinha, 1970 SLR 748, p.751**, the Hon Apex court has held that it is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice that the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned

provision the principles of natural justice. The scope is again defined by the Hon Apex Court in the matter of **A.K. Kriaipak v Union of India, 1969 SLR 445, pp. 453-454**wherein it was held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.

10.6. In the matter of **Satyavir Singh v Union of India 1986 (1) SLR 255: 1986 (1) SLJ 1: 1985 (4) SCC 252,** Hon Apex court in a three- judge bench hearing comprising Hon Justices – Madon D.P, Tulzapurkar, V.D, and Pathak B.S, has laid down that -

> *"….the principles of natural justice yield to stet change with the exigencies of different situations and do not apply in the same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible and can be adapted, modified or excluded by statute and statutory rules as also by the constitution of the tribunal which has to decide a particular matter and the rules by which such tribunal is governed. In fact here also the principles of natural justice have been laid down as to consist primarily of two main rules, namely, "nemo judex in causa sua" (no man shall be a judge in his own cause) and audiatleram partem (hearthe other side). The corollary deduced from the above two rules and particularly the audi alteram partem rule was qui aliquidstatueritparteinaudita altera, aequum licet dixerit, haud aequumfecerit(he who shall decide anything without the other side having been heard, although he may have said what is right will not have done what is right" or as is no expressed "Justice should not only be done but should manifestly be seen to be done").*

Elaborating on this, the Hon Justice Madon D.P. has written so distinctively that -

> *"…It is well established both in England and in India that the principles of natural justice yield to and change with the exigencies of different situation and do not apply in the same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible and can be adapted, modified or excluded by statute and statutory rules as also by the constitution of the tribunal which has to decide a particular matter and the rules by the which such tribunal is governed. Instances of cases in which it has been so held are Norwest Hlst Ltd. v. Secretary of State for Trade and others, L.R. [1978] 1 Ch. 201, 227. Suresh Koshy George v. The University of Kerala and others, [1969] 1 S.C.R. 317, 322. A.K. Kraipak and others etc. v. Union of India and others, [1970] 1 S.C.R. 457, 469. Union of India v. Col. J.N. Sinha and another, [1971] 1 S.C.R. 791, 694-5. Swedeshi Cotton Mills v. Union of India,[1981] 2 S.C.R. 533, 591. J. Mohapatra & Co. and another v. State of Orissa and another, [1985] 1 S.C.R. 322, 334-5. and Maneka Gandhi v. Union of India. [1978] 2 S.C.R. 621, 681.*

10.7 The key conclusion that we arrive at is that the right of audi alteram can not only be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision warrant its exclusion; nor can the *audi alteram partem* rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, but that the principles of natural justice can in exceptional cases even be excluded. **Thus we can see that the principles of justice while being sacred have to be applied with all the judicial alertness at command with respect to, it, being used as a toolkit for enabling justice equitably and not indiscriminately. Otherwisethe *brahma astra*becomes a common *vajra* and its sharpness is blunted.** In the present matter, the Evaluator having received a codified answer sheet made the remark of the applicant writing the roll number/'U' mark which

is without doubt a mark of identification and then the matter was then decided upon by the competent authority different from the Evaluator as to non-declaration of the result, so how can now one argue any further,that a biased view was taken and there was need to issue a show cause notice to the applicant on the matter and the result withheld till such time the applicant gave a reply to the said show cause notice and decision taken thereupon followed by opportunity of appeal / review and what not - leading to a potentially massive delay in the examination process with all the potential of perjury in a possible attempt to deny the making of the fatal marking in the answer sheet. This would be taking the scope of audialterma partum beyond its justifiable limits, **something we have learnt as per above citations as being unacceptable judicially beyond a point.**

10.8 We would like to summarise the discussion on right to be heard by quoting some luminary Hon judges of the Apex Court. **Thus, Hon Justice P.S. Kailasam has famously said –**

> *"....the right to be heard cannot be presumed when in the circumstances of the case there is paramount need for secrecy or when a decision will have to be taken in emergency or when promptness of action is called for where delay would defeat the very purpose or where it is expected that the person affected would take an obstructive attitude."*
>
> **P.S. Kailasam, J. in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, para 182.**

On another occasion **Hon Justice Swatanter Kumar** elucidated that -

> *"There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty."*
>
> ***Swatanter Kumar, J. in Ramlila Maidan Incident, In re, (2012) 5 SCC 1, para 39***

10.9. At this juncture we would also clarify on the issue of limited powers of the courts to intervene judicially in an examination like process.We find this caution in a number of citations of the Hon Apex Court. Thus,the Hon Apex court in the matter of **Lalit Popli v Canara Bank, AIR 2003 SC 1795** held that -

> *"….whileexercising jurisdiction under article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority…."*

In fact the Hon Apex Court eloquently laid down in the matter of **Indian Railway Construction Co. Ltd. v Ajay Kumar, AIR 2003 SC 1843** that -

> *"…One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is 'illegality' the second 'irrationality', and the third 'procedural impropriety'.*
>
> *The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above ; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient…."*

Here also we do not find any reason to meddle with the administrative decision of non declaration of the result of the applicant for the illegality committed by them.

11. The discussions above betray the weakness in the argument of the ld applicant counsel which he has made with considerable effort. It strengthens our belief which we had at the initial stage itself, when we were wary of his citation of**Nidhi Kaim**(supra), that the citation, does not square with the facts of the present case on account of differing factual circumstances and an attempt to overstretch the need for show cause notice etc was a very laboured and weak argument.But allowing ourselves to be persuaded by the eloquence of the ld applicant counsel and without being impish about it, we did labour ourselves into the nitty gritty of the citation as we were wont to learn from anywhere and everywhere to try to render justice the most precious of *amrit* to an alleged sufferer. But what we have found unfortunately persuades us no further than to state and quite humbly so that neither of the applicants have in the matter suffered at the hands of the respondents in non-declaration of their resultsas they are the ones who have made the fatal mistakes now being attempted to be shrouded in the smog of denial, non compliance of guidelines and lack of opportunity. For a person who is expected to know the guidelines and their implication

having served as a Group C officer for long years, this kind of excuse is not kosher and he cannot hide behind interpretations *ex nihilio.*

12. In facton the basis of above discussions, we strongly assert that the explanation by the applicant in either case is an afterthought after realisation that he has erred in making the roll number mark / 'U' mark in the answer sheet which mistake is now sought to be covered by recourse to a misconceived interpretation of the guidelines and selective amnesia. We emphasize that no evaluation can be said to be complete till the answer sheet concerned is found to be correct in all respects and in our considered opinion, it cannot be argued by the applicant therefore, that mere evaluation of the answer sheet is an estoppel against non-declaration of the result of the applicant and would make his illegal identification mark legal in the eyes of law. This is truly a preposterous way of thinking and there is no way in which the possible attempt to cheat by way of placing an identification mark on the answer sheet can be overlooked. The Evaluator least of all as a person would have any animosity towards the applicant for spoiling his answer sheet by the remark of the roll number's / 'U' mark presence in the answer sheet due to the elaborate codification and secret bound process. And the fact that it is noticed at the end of the answer sheet is further proof that there was no *ab initio*attempt to have any malicious intent beforehand with respect to unbiased evaluation by the evaluator. Therefore, the applicant cannot escape from the liability of making the

identification mark by him and so has to suffer the consequences. Therefore, we do not find any force in the plea of the applicant with regards to directing mandatory declaration of result by the respondents. We find it noteworthy that the applicant seems to have confidential people in this establishment who have been able to tell him his so calledmarks and therefore it cannot be ruled out that the applicant may be in cohorts with unknown persons with regard to seeking a favourable result and God knows what other pre-planning with respect to taking diabolical steps so that he can qualify the examination and secure his promotion. On this we would quote **Hon Justice Khehar CJ here** who very pithily said -

> ***"Truthful conduct must always remain the hallmark of the rule of law. No matter the gains, or the losses."***
>
> **J.S. Khehar, C.J.** in Nidhi Kaim v. State of M.P., (2017) 4 SCC 1, para 98

13. Offcourse, we are conscious also of the fact that the law being as enunciated in the guidelines can hit hard should there be a fatal mistake as in the present case. But then we are guided by the maxim of **Equity-*Dura lex sed lex*- Thelaw is hard, but it is the law-Equity supplements law but cannot supplant it**. It is well settled that law prevails over equity if there is a conflict. Equity can only supplement the law, and not supplant it. **[CMD/Chairman, B.S.N.L. v Mishri Lal, 2011 (3) SLR 168.** In fact,equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law**[P.M. Latha vs State of Kerala, 2003 (3) SCC 541].**

14. We cannot therefore convince ourselves to read any action by the respondents lacking in law and deem that the guidelines and instructions are complete and have to be read in a complete manner without defeating the purpose for which they are meant.Thus, we are inclined to agree with the opinion of the ld respondent counsel and hold that there has been no justifiable violation of the guidelines and examination rules qua the evaluation and therefore the respondents have not ered in non-declaration of the result of the applicant.

15. In result, on the basis of the above discussions, the applicant concerned in either of the OAs 0006/2021 and 0054/2021 are accordingly not entitled to any relief and both the OAs are liable to be dismissed and are dismissed.

16. No costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/Shakuntala/