Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No.1148 of 2021
With
O.A. No.1113 of 2021
O.A. No.1256 of 2021
O.A. No.1257 of 2021

Orders reserved on :03.09.2021

Orders pronounced on : ___.09.2021

Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)

O.A. No.1148 of 2021

Upendra Kumar
JIO-II/G
S/o Sohan Baitha
R/o C/o Sonu Tyagi,
H.No.132, Gali No.5, Main Road, Wazirabad 110084,
New Delhi

... Applicant

(through Advocate Shri K.C. Mittal, learned Senior counsel with Shri Yugansh Mittal)

Versus

Intelligence Bureau
Through Director,
Ministry of Home Affairs,
North Block, Central Secretariat, New Delhi-110001.

... Respondent

(through Advocate Shri Ravi Kant Jain)

O.A. No.1113 of 2021

1. Manoj Kumar Gope Aged 41 years
   JIO-II/G
   S/o Biswametar Gope
   R/o Qtr. No.936, Sector 03,
   Pushp Vihar, New Delhi-110017.

2. Rakesh Kumar Pandey
JIO-II/G
S/o Shaligram Pandey
R/o RZF 767/17 F Block,
Gali No.7, Rajnagar Part2, Palam, New Delhi.

3. Ashok Kumar
JIO-II/G
S/o Ram Kanwar
R/o H.No. 362, Ishwar Colony, Bawana,
Delhi-110039.

4. Raghuraj Singh
JIO-II/G
S/o Mahipal Singh
R/o Qtr. No.71, Road No.7,
Andrew's Ganj, New Delhi 110049.

5. Kuldeep Sharma
SA/G
S/o Lekh Raj Sharma
R/o G-1/147 SF Sector 16,
Rohini, Delhi-110089.

6. Sushil Kumar
SA/G
S/o Zila Singh,
R/o Vill. Madlauda, P.O. Madlauda,
Dist: Panipat, Haryana.

... Applicants

(through Advocate Shri K.C. Mittal, learned Senior counsel with Shri Yugansh Mittal)

Versus

Intelligence Bureau
Through Director,
Ministry of Home Affairs,
North Block, Central Secretariat, New Delhi-110001.

... Respondent

(through Advocate Shri Manish Kumar)

O.A. No.1256 of 2021

Muneshwar Tyagi, aged 39 years, Group C
JIO-II/G
S/o Dharamvir Tyagi,
R/o H.No.129, Type I, Sector 4,
Timarpur, New Delhi 110054.

... Applicant

(through Advocate Shri K.C. Mittal, learned Senior counsel with Shri Yugansh Mittal)

Versus

Intelligence Bureau
Through Director,
Ministry of Home Affairs,
North Block, Central Secretariat, New Delhi-110001.

... Respondent

(through Advocate Shri Ravi Kant Jain)

O.A. No.1257 of 2021

1. Chhatrashal Pathak, Age 39 years, Group C,
   JIO-II/G,
   S/o Shri Ravindra Nath Pathak,
   R/o H 307, Fortune Residency,
   NH-58, Raj Nagar Extension, Ghaziabad,
   Uttar Pradesh 201017.

2. Hari Shankar Verma, Age 51 years, Group C
   JIO-II/G
   S/o Shri Raghubir Singh,
   R/o H.No. 691, Type II, Pocket 2,
   Lodhi Road Complex, New Delhi-110003.

... Applicants

(through Advocate Shri K.C. Mittal, learned Senior counsel with Shri Yugansh Mittal)

Versus

Intelligence Bureau
Through Director,
Ministry of Home Affairs,
North Block, Central Secretariat, New Delhi-110001.

... Respondent

(through Advocate Shri Hanu Bhaskar)

O R D E R

Hon'ble Mr. R. N. Singh, Member (J):

In the aforesaid OAs, the applicants who were working as JIO-II/G on deputation, have challenged the same or similar order(s) regarding rejection of their absorption and have taken same or similar grounds and have prayed for identical relief(s). With the consent of the learned counsels for the parties, the present OAs have been heard together and thus are being decided by the instant common Order.

2. All the aforesaid OAs have been filed before this Tribunal between the second half of June 2021 to first week of July 2021.

3. A Misc. Application, being MA No.1806/2021 in OA 1113/2021 was listed on 28.7.2021 and in the said MA, the applicants have prayed for striking off the defence of the respondent on the ground that the respondent has not filed reply. However, in the facts and circumstances, the said MA was disposed of vide Order dated 28.7.2021 and the respondent was granted two weeks' further time to file reply and the applicants were granted three days'

time thereafter to file rejoinder, if any. The matter was ordered to be listed on 20.08.2021 with other two OAs, being OA No.1256/2021 and OA No.1148/2021 were also to be listed. The said Order dated 20.08.2021 was challenged before the Hon'ble High Court of Delhi by filing Writ Petition (Civil) No.8075/2021 and the said Writ Petition was disposed of vide Order dated 09.08.2021 with request to this Tribunal to consider this matter on 20.08.2021, further providing that if there be paucity of time, at least to dispose of the interlocutory application filed by the petitioners. The respondent was required to file the requisite affidavit within a week after supplying a copy of the same to the learned counsel for the petitioners. However, 20.08.2021 being declared as holiday, these matters came up for consideration on 23.08.2021, when it was contended on behalf of the respondent that the replies have already been filed. However, the same were not on record. Accordingly, orders were passed to bring the replies on record and a day's time was sought on behalf of the applicants to file rejoinder, if any and these matters were posted for 25.8.2021. On 25.8.2021, on behalf of the applicants, it

was stated that no rejoinder is required to be filed and with the consent of the learned counsels for the parties, these matters were heard at length. However, the learned counsel for the respondent after arguing at length sought an adjournment to seek fresh/further instructions from the respondent and these matters were posted for 26.8.2021. On 26.8.2021, the learned counsels for the respondent reiterated that the claims of the applicants have been considered in accordance with the relevant policy on the subject and to substantiate the same they are willing to produce the relevant records. Accordingly, the matter was posted for 31.08.2021 with direction to the respondent to produce their records in sealed cover by 28.08.2021 for perusal of this Tribunal. The respondent has produced the records in sealed cover. We have perused the same. On 31.08.2021, we were to pass the final order(s), however, learned counsel for the applicants had contended that the applicants had filed application(s) under Section 22(3)(a), (b) & (d) of the Administrative Tribunals Act, 1985 read with Rule 24 of CAT (Procedure) Rules, 1987 and also a further compilation of a few judgments and they are also very

necessary to be considered. However, the same were not on record(s) and, therefore, these matters were adjourned to 02.09.2021 with order to bring the same on record. Thereafter these matters were heard at length again on 02.09.2021 and 03.09.2021. Liberty was sought and was granted to the parties to file written arguments and to indicate the relevant paras of the judgments in the new compilation by 07.09.2021. We may note that in these circumstances, we have not been able to hear the applicants on 20.08.2021 in spite of the aforesaid Order dated 09.08.2021 in Writ Petition (Civil) No.8075/2021.

4. The applicant in OA 1148/2021 had approached the Hon'ble High Court vide Writ Petition (Civil) No.8077/2021. However, the learned counsel for the petitioner in the said Writ Petition had not pressed the same stating that the main matter, i.e., OA 1148/2021 was listed before this Tribunal on 20.08.2021. Accordingly, the said Writ Petition was dismissed by the Hon'ble High Court as not pressed vide Order dated 09.08.2021.

5. For convenience in writing the present common Order, the facts have been taken from the pleadings of OA No.1148/2021. The applicant while working in Central Reserved Police Force (CRPF) applied for deputation under the respondent and was selected in the rank of JIO-II/G and had joined as such under the respondent on 30.06.2014. The applicant's said deputation was initially for three years. However, the said deputation was extended further from time to time and the applicant had applied for his absorption under the respondent on 10.09.2020. The said application of the applicant was recommended by the sponsoring authority and was sent to the headquarters of the respondent for further consideration. The grievance of the applicant is that his application for absorption was not considered by the respondent as per the relevant policy dated 31.12.2015 and the law laid down by the Hon'ble Apex Court in the case of ***Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Limited***, reported in AIR 1999 SC 3443. Further grievance of the applicant is that his request for absorption had not been acceded to on the ground of his

working in Bureau of Immigration (hereinafter referred to as 'BoI'). The applicant is also aggrieved of the order of the respondent vide which the applicant is required to report to his parent department on expiry of his deputation period under the respondent. In the aforesaid background, the applicant has prayed for the following reliefs:-

> "a. Quash and set aside the Memorandum No.22/Estt(G-3)/2021(Abs-Feb-366 dated 17.02.2021 and Memorandum No.02/Imm/2021(11) dated 1.03.2021 and order No.6/Estt/2021(1)-9623-24 dated 01.04.2021.
>
> b. Quash and set aside orders of 7th extension dated 29.07.2020 of the applicant to the extent to report to his parent departments on the expiry of period.
>
> c. Direct the respondent to consider the applicant for absorption on his posts in accordance with the relevant rules and instructions in this behalf.
>
> d. Pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.
>
> e. Allow costs."

6. Impugned Memorandum dated 07.02.2021 (Annexure A-1) reads as under:-

> "No.22/Estt(G-3) 2021 (Abs)-Feb-366
> INTELLIGENCE BUREAU

(Ministry of Home Affairs)
Government of India

New Delhi, the 17 FEB 2021

MEMORANDUM

This is with reference to your memorandum No.02/IMM/2021(11)-371 dt. 2.2.21 & No.377 dt. 3.2.21 forwarding therewith applications of 24 CAPF personnel, presently posted under FRRO, Delhi for permanent absorption in IB.

2. The applications were duly considered but could not be acceded to, in light to applicable guidelines for absorption dt. 30.3.2020 stating that those officers who have done only BOI duty may not be absorbed. The said guidelines were framed under the provisions of MHA's letter dt. 28.7.98, which governs deputation to BOI. The concerned officials may please be apprised suitably.

3. This issues with the approval of AX/E.

Sd/-
(Joint Deputy Director/G"

7. The impugned Memorandum dated 10.3.2021 (Annexure A-2) reads as under:-

"No.02/Imm/2021(11) – 687
Intelligence Bureau
(Ministry of Home Affairs)
(Govt. of India)

New Delhi, the 01-03-21

Memorandum

Please refer to your memorandum No. 388/For(SIP-PC) dated 20.01.2021 and 493/For(SIP-PC) dated 25.01.2021 forwarding

therewith application of 24 CAPF personnel for permanent absorption in IB.

2. In this regard, please find enclosed IB Hqrs. Memo No. 22/Estt)G-3/2021(Abs)-Feb-366 dated 17.02.2021, vide which intimated that the applications were duly considered but could not be acceded to, in light of applicable guidelines for absorption dated 30.03.2020 (copy enclosed), stating that those officers who have only BoI duty may not be absorbed.

3. Keeping in view the above, it is recommended that henceforth, no application of deputationist for absorption in BoI/IB should be sent to BoI/IB/Hqrs, who have performed only BoI duly.

4. It is requested that CAPF officers, those found good and are keen to get absorbed may be posted out of some other groups/SIBx after 4 years so that after their 6th years deputation, if found appropriate they may be absorbed in IB. They may be informed accordingly.

Sd/-
(U.K. Sinha)
Assistant Director/Admn.-BoI"

8. The impugned communication dated 01.04.2021 (Annexure A-3) reads as under:-

"Restricted

ORDER

Ref i. IB Hqrs. New Delhi Memo No.22/Estt(G-3)/2021(Abs)-Jan-616 dated 19.03.2021
ii. IB Hqrs. New Delhi Order No. 20/Estt (G-3)/2020(5)-1153 dated 23.07.2020

In pursuance of IB Hqrs. order under references above, Shri Upendra Kumar, JIO-II/G (PIS No.141031), a deputationist CT/GD (No.

025171083) from CRPF is repatriated to his parent department.

2. Accordingly, he stands relieved of his duty from Patna Airport unit (under SIB Patna) w.e.f. 29.06.2021 (AN) with direction to report for duty to the DIG/Estt. Directorate General, CRPF, Block No.01, CGO Copmplex, Lodhi Road, New Delhi-03.

Sd/-
Additional Director"

9. Learned counsel for the applicant has argued that the applicant, who is posted as JOI-II/G under the respondent, has been denied consideration of his claim for absorption on the basis of Memorandum dated 30.03.2020 (Annexure A/5) mainly though the said Memorandum provides guidelines for absorption in the rank of ACIO-I/Exe. and ACIO-II/Exe. Learned counsel for the applicant has also argued that para 2 of the said Memorandum dated 30.03.2020 provides that while forwarding the absorption request of ACIOs, the guidelines may kindly be kept in mind. At the level of SA/Exe., JIO-II/Exe & JIO-I/Exe, we may continue with the current practice. He has further argued that the impugned Memoranda dated 17.2.2021 and 1.3.2021 are bad in law as well as on facts as they are passed by

wrongly relying upon the earlier Memorandum dated 30.03.2020 to deny absorption to the applicants, who are working as JIO-II/G. It is emphasized by the learned counsel for the applicants that para 2 of Memorandum dated 30.03.2020 duly protects the applicant in the matter of their consideration for absorption and, therefore, the action of the respondent in not acceding to the applicants' request of absorption is arbitrary, illegal, unjust and contrary to law. He has further argued that there cannot be any Memorandum denying absorption of JIO-II/G on the ground of posting in BoI of the respondent. He has further added that when the applicant was required to submit his application for deputation from CRPF to Intelligence Bureau, the respondent has not issued any instructions and as such there was no condition or ground that the deputationist who will be posted in BoI will not be considered for absorption and, therefore, once the applicants who are going to complete deputation period or have completed the same, that too, to the satisfaction of the competent authority under the respondent, the respondent cannot deny absorption on the ground which was never notified.

It is also argued that the applicants have no control so far as their posting is concerned and the applicants cannot be made to suffer in the matter of absorption on the ground of their being posted in a particular department, including BoI under the respondent, as the posting is controlled and administered by the respondent. To strengthen his argument, Shri Mittal, learned counsel for the applicants has placed reliance on various interim orders passed by the Hon'ble High Court of Delhi as well as one interim order passed by the Hon'ble High Court of Kerala. He has also placed reliance on the common Order/Judgment dated 25.3.2014 of a Division Bench of the Hon'ble High Court of Delhi in Writ Petition (Civil) No.7270/2021 etc. etc, titled ***K. Pradeep Kumar vs. Union of India and others***, etc. etc.

10. Pursuant to notice from this Tribunal, initially a short reply dated 25.6.2021 was filed on behalf of the respondent to oppose the prayer of the applicant for grant of interim relief. After hearing the learned counsels for the parties, this Tribunal passed the Order dated

29.06.2021 granting time to the respondent to file their detailed counter reply and the applicant to file rejoinder and as an interim measure it was ordered that repatriation of the applicant pursuant to non extension of his continuation under the respondent or he not being absorbed under the respondent shall be subject to the outcome of the OA. In view of the liberty accorded, the respondent has filed their detailed counter reply. However, no rejoinder has since been filed.

11. In short reply, it is asserted on behalf of the respondent that the absorption in non-gazetted ranks under the respondent is governed by the guidelines/policy dated 31.12.2015 which provides for the constitution of Screening Committee and recommendations of such Committee to be put up before the Director, IB. Upon receipt of request of the applicant for absorption, the same was put up before the Screening Committee for consideration based on service record of the applicant and such Screening Committee is constituted of the officers of higher rank than the officers who had sponsored the claim of the deputationist for

absorption. However, the Screening Committee after considering the service record of the applicant and recommendations of the sponsoring authority has not recommended the case of the applicant for absorption (Annexure R/1). It is also asserted that vide order dated 23.7.2020 vide which the deputation of the applicant was extended for 7th year, i.e. w.e.f. 30.6.2020 to 29.6.2021, it had been clearly mentioned that on completion of extended term of deputation, the applicant will stand repatriated from the respondent (Annexure A-3) and the said orders are not under challenge. In para G of the short reply, it is asserted by the respondent that the guidelines dated 22.11.2016 (Annexure R-7) of Ministry of Home Affairs (MHA) which govern deputationists posted at BOI, contain no provision for permanent absorption in Intelligence Bureau. It is also asserted in the said short reply that impugned Memoranda dated 17.2.2021 and 01.03.2021 (Annexures annexed as Annexures A-1 and A-2 along with the OA) do not pertain to the applicant. It is noted that the applicant has preferred not to file rejoinder or

any affidavit to dispute these contentions of the respondent.

12. In the detailed counter reply, it is reiterated by the respondent in para II under 'Preliminary Objections' that the impugned Memoranda dated 17.2.2021 and 1.3.2021 do not pertain to the applicant. It is further averred that the applicant's claim for absorption has been considered by the duly constituted Screening Committee and the said Committee after considering the entire service record of the applicant has not recommended the name of the applicant for absorption. It is further contended by the respondent that it is the prerogative of the borrowing department to consider as to which person they want to absorb, depending upon the utility of the person. The applicant has mostly worked in BoI and has absolutely no/miniscule experience in intelligence gathering activities. There is no illegality in the action of the respondent. It is further averred by the respondent that the applicant's claim for 'entitlement' to absorption on the basis of para 2 of Memorandum dated 30.3.2020 is not justified primarily

because the Memorandum nowhere mentions entitlement of JOIs-II/G/Exe. (or that matter of any rank) for absorption but rather specifies guidelines for absorption in the ranks of ACIO-I/Exe. and ACIO-II/Exe. in addition to the fact that absorption can never be asserted as a matter of right. They have also asserted that the order dated 01.04.2021 was issued before completion of the applicant's maximum tenure of 7 years and the applicant stands repatriated in accordance with the provisions of OM dated 17.2.2016 (Annexure R-4) of the DoP&T. The respondent has placed reliance upon the Order/Judgment of a co-ordinate Bench of this Tribunal dated 30.9.2014 in OA No.473/2014, titled ***B.S. Parihar vs. Union of India and others*** (Annexure R-9), and further on another Order/Judgment of this Tribunal dated 29.5.2021 in TA 35/2012, titled ***Vinod Kumar vs. Union of India and others*** (Annexure R-8). In para 4.5 of the counter reply, it is contended by the respondent that the law laid down by the Hon'ble Apex Court in ***Rameshwar Prasad*** (supra) is not of any help to the applicant in the facts and circumstances of the present case and in para 4.6, it is contended that in view of the

Judgment of the Division Bench of the Hon'ble High Court of Delhi in the matter of ***Udai Pal Singh vs. Union of India and others***, reported in 2009 (110) DRJ 426, the pre-existing guidelines for deputation/absorption in non-gazetted ranks were modified and a consolidated policy has been issued vide OM dated 31.12.2015 and all the cases for induction/absorption of deputationists, including those of the applicants, are processed in compliance with IB guidelines dated 31.12.2015 as well as DoP&T's OM dated 17.6.2010 (Annexure R-3), amended from time to time. The allegation of favouritism and bias has specifically been denied by the respondent in para 4.6 of their reply. It is again noted that the applicant has preferred not to file any rejoinder/affidavit to deny and/or dispute the averments made by the respondent in their counter reply.

13. As in all the aforesaid cases, the basic reliance on behalf of the parties is the policy dated 31.12.2015 issued by the respondent and a copy of the same is on record as well as produced in sealed cover. We have

perused the same minutely. The said guidelines is on the subject of policy guidelines for deputation/absorption in non-gazetted rank in IB. First para of the said OM reflects that the same has been issued in supersession of their earlier policies issued vide OMs dated 13.1.1992 and 1.12.2010 and various policy decisions issued by the Ministry of Home Affairs and DoP&T have also been taken into consideration. Para 2 ix. of the said OM dated 31.12.2015 reads as under:-

> "ix. A deputationist officer would be deemed to have been relieved on the date of expiry of deputation period, unless the competent authority has, with requisite approval, extended the deputation period in writing, prior to such date of expiry."

The absorption has been dealt with in paras 2 xii., xvi, xix., xx. and xxi. of the said said OM, which read as under:-

> "xii. The absorption of a deputationist would be considered in the same rank in which he/she is officiating.
>
> xvi.A person proposed to be absorbed by the borrowing department should have a minimum of 18 years of service on the date, on which the absorption is proposed (15 years in the case of low medical category personnel).

xix. The recommendation roll for absorption should be initiated by an officer not below the rank of AD and recommended by an officer not below the rank of JD. While recommending a person for absorption, concerned JDs should examine his/her past performance and future utility to IB. APAR gradings/entries should be in consonance with the recommendations of the concerned JDs.

xx. Heads of the SIBx/Units at IB Hqrs. should monitor the performance of a deputationist from the very beginning. Opinion should be formed within the first three years whether the deputationist is suitable for absorption in IB. Due care should be taken while writing an APAR of a deputationist because absorption will be based on his/her service records which primarily constitute APAR grading for the last 4 years. APAR gradings should accurately reflect the quality of performance of the person being assessed.

xxi. A proposal for absorption should invariably reach us not before completion of 4th year and not less than six months *repeat not less than six months* prior to the expiry of the deputation term. NOC from parent department would be sought by IB Hqrs. and not by SIBx."

From the provisions of the aforesaid OMs dated 31.12.2015, it is evident that recommendation of the sponsoring authority is to be considered by the Screening Committee. Para 2 xxv. of the said OM further provides that **absorption would be made only in respect of those deputationists who have**

outstanding service records and aptitude for intelligence.

14. As the aforesaid OAs have been heard finally and are being finally decided by this common order, we are of the view that various interim orders, which have referred to and relied upon by the learned counsel for the applicants, are not required to be discussed herein. In this regard, we place reliance on a common Order/Judgment dated 03.08.2021 of a Division Bench of Hon'ble High Court of Delhi in Writ Petition (Civil) No.7575/2021 & Writ Petition (Civil) No.7608/2021, ***Subhash Kumar and others vs. Union of India and others***. In Para 17 thereof, the Hon'ble High Court held as under:-

> "17. Reliance placed by the counsel for the petitioners on order dated 26th July, 2021 of the High Court of Jammu and Kashmir in W.P.(C) No.1439/2021 titled Talvir Singh Vs. Union of India & Ors. is completely inapposite, as it is only an ad interim order and rights of the parties are yet to be conclusively decided."

15. We have heard learned counsels for the parties also on the Miscellaneous Application(s) filed under Section 22 (3)(a)(b) and (d) of the Administrative

Tribunals Act, 1985 read with Rule 24 of the CAT (Procedure) Rules, 1987. Prayer(s) as in such application(s) read as under:-

"a) The communication by which the cases for absorption were forwarded by the Controlling Officer to AEs to the FRRO, Delhi by various shift units where they were working alongwith their recommendations and service record.

b) The communication / file pertaining to the same having been sent and forwarded by ED FRRO, Delhi to the Headquarters of the IB for approval.

c) The entire file alongwith notings while considering the cases of the Applicants for absorption

d) The records pertaining to the selection and posting of the Applicants when they initially came on deputation from their parent department to IB.

e) File the records with regard to the absorption and the practice prevailing prior to 30th March, 2020.

f) the Joint Deputy Director may kindly be summoned for examination on oath and the inspection of the documents submitted by the Respondents may also be allowed

g) Summon court records and file of in WP(C) 850/2011 titled 'K Pradeep Kumar v. UOI', W.P.(C) 851/2011 titled 'Parmal Singh v. UOI' & W.P.(C) 856/2011 titled 'Jacab Kuriakose v. UOI'.

b) pass such other/further orders/direction(s) which this Hon'ble

Tribunal deems fit and proper in the facts and circumstances of the present case."

16. Provisions of Section 22 of the Administrative Tribunals Act, 1985 read as under:-

"**22. Procedure and powers of Tribunals –**

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and [after hearing such oral arguments as may be advanced].

(3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely :-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence of affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex- parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex-parte ; and

(i) any other matter which may be prescribed by the Central Government."

The provision of Rule 24 of the CAT (Procedure) Rules, 1987 reads as under:-

> "24. Order and directions in certain cases. - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

It is worth noting that it is on record(s), precisely as noted hereinabove, the applicants' claim has been endorsed/recommended by the concerned superior

authority(ies), and endorsement(s)/recommendation(s) have been placed before the duly constituted screening committee, consisting of three senior authorities, however, the committee did not recommend the claim of the applicants and such view has been accepted by the DIB, the head of the respondent. This is evident from the Annexure R-1 of the short reply. However, as the document was not certified, and we also wanted to see fair and legible copy of the relevant policy dated 31.12.2015, being referred to and relied by all the learned counsel(s), when it was offered by the learned counsel(s) for the respondent(s), we allowed them to place the document(s) in a sealed cover. However, we find the document(s) relevant are already part of the pleading(s)/reply/counter reply of respondent and the same have not been disputed by any pleading(s)/affidavit(s) of the applicant(s). In the facts and circumstances, it appears that at one hand, final disposal of the OAs has been pressed by the applicant(s) and on the other hand after completion of arguments, the disposal is being delayed by filing such applications(s). Accordingly, in the facts and

circumstances, we find the Miscellaneous Application(s) to be bereft of any merit. Accordingly, the same are dismissed.

17. The common Order/Judgment dated 25.3.2014 of the Hon'ble High Court of Delhi in ***K. Pradeep Kumar*** (supra), the relief claimed by the petitioner, who was on deputation from his parent employer- CRPF to IB was for absorption but due to the impugned order of the parent department, the absorption was denied. On perusal of para 3 of the said Order/Judgment dated 25.3.2014 of the Hon'ble High Court of Delhi, it is evident that the learned senior counsel appearing for the petitioner has stated that the petitioner does not press the relief for absorption by respondent No.2 by quashing of the impugned orders, the petitioner is only seeking the relief of consideration of his case for absorption by the Screening Committee of respondent No.2 pursuant to paras 7 and 8 of the impugned order dated 2.5.2011 of the respondent no.2. The said paras 7 and 8 as reproduced in the said Order/Judgment read as under:-

> "7. However, notwithstanding above, the absorption of deputationists to BOI in IB has

> been reconsidered and it has been decided to consider the absorption on benefits and liabilities inter-alia all-India transfer liability, that other deputationists have on absorption in IB.
>
> 8. Now therefore, Shri Jacob Kuriakose may if willing for absorption which would further be subject to concurrence of parent department, i.e, CRPF and fitness for absorption on scrutiny of the service records, may submit an unconditional undertaking that he is willing for absorption on the terms & conditions as contained in IB memo no.21/Estt(G-1)/2010-Absorption-7690 dated 01.12.2010 and serve anywhere in India."

In para 4, the Hon'ble High Court has given a finding that the contest in the present case is really between the Petitioner and the Respondent No.3 – CRPF i.e. parent employer, which has refused to give concurrence by its impugned order dated 16.12.2011 for absorption of the Petitioner by the Respondent No.3 and the Respondent No.3 has in fact raised additional grounds in its counter affidavit of administrative exigencies viz. lack of adequate personnel with it for disputing the relief claimed by the Petitioner for his absorption by the Respondent No.2. In the said facts and circumstances, the Hon'ble High Court has ruled in para 19 as under:-

> "19. In view of the above, this writ petition is allowed to the extent of holding that the Respondent No.3 has granted concurrence to absorption of the Petitioner by the Respondent No.2 organization, and for which purpose the impugned order of the Respondent No.3 dated 16.12.2011 is set aside, and it is held that Petitioner has the concurrence of the Respondent No.3/parent employer for being absorbed by the Respondent No.2. We may hasten to add that we are not making any observation whatsoever as to whether Petitioner should or should not be absorbed by the Respondent No.2 and as to whether Screening Committee of the Respondent No.2 does or does not find the Petitioner fit for being absorbed by the Respondent No.2. The Screening Committee of the Respondent No.2 will act in terms of the extant policies including all requirements of the Office Memorandum dated 01.12.2010 and will take a decision in accordance with law. This decision will be a speaking decision and will be communicated to the Petitioner within a period of one week of the same being passed. The speaking order/decision be now passed by the Respondent No.2, and the Screening Committee should consider the case of the Petitioner in accordance with law, within a period of eight weeks from today."

18. From very para 3 of the common Judgment dated 25.03.2014 of the Hon'ble High Court of Delhi, it is evident that the petitioner has not pressed the relief of absorption by quashing of the impugned orders and has sought relief of consideration of his case for absorption. This judgment was passed prior to issuance of comprehensive policy dated 3.12.2015 on the subject.

Moreover, the Hon'ble High Court has observed in para 19 thereof the judgment that they have not made any observation whatsoever as to whether petitioner should or should not be absorbed by the respondent and as to whether the Screening Committee of the respondents does or does not find the petitioner fit for being absorbed. However, in the cases in hand, it is evident from the pleadings that the applicants cases were endorsed/recommended by the concerned authorities, the same were considered by the concerned committee, consisting of three senior officers, however, the committee did not recommend for absorption. In spite of knowing about rejection of their claim for absorption months prior to approaching this Tribunal, the applicants have not chosen to make any representation, we are of the view that at this stage when the parties have already urged their grounds, the relevant order(s) has/have also not been challenged, no useful purpose may be served by requiring the respondent to pass further order for passing of any speaking order(s), etc.

19. In TA 35/2012 decided on 29.5.2015 by this Tribunal, the issue was challenge to the order of repatriation of the applicant passed by the respondent's organization, i.e. IB to his parent cadre and as to whether the Screening Committee deciding upon absorption is to be guided only by the gradings of the ACRs obtained by an incumbent during his tenure with the borrowing organization or other factors are to be taken into account. This Tribunal after considering a catena of their own judgments in various OAs as well as the law laid down by the Hon'ble Apex Court in ***Kunal Nanda versus Union of India & Anr.*** [2000 (5) SCC 362] in which the Hon'ble Apex Court had considered the right of the deputationist for absorption. The Tribunal has also considered the law laid down by the Hon'ble Apex Court in the case of ***Rameshwar Prasad*** (supra), being referred to and relied upon by the learned counsel for the applicants and other judgments of the Hon'ble Supreme Court and in para 6 of the said Order/Judgment, this Tribunal has observed as under:-

> "6. The issue as the one under consideration in the instant OA had come up for discussion in

Surender Singh versus Union of India & Others [OA No.2098/2014 decided on 12.03.2015] wherein the learned counsel representing the applicant had raised the same very issue as the one with which we are seized of. This Tribunal had taken the view that while making permanent absorption of an employee something more than the ACRs is taken into consideration. Here we are inclined to be in agreement with the learned counsel for the respondents that had it been a case of absorption of a person purely on the basis of ACRs then perhaps the Screening Committee comprising senior officers would not have been necessary, and absorption would have been a mere clerical exercise. However, that is not the case. While making absorption, the respondent organization also sees future potential of a person to be absorbed for gathering of intelligence and his capability for the task. This Bench had taken the view that a person despite having outstanding ACRs may be lacking in some of the attributes/qualities that make him good officer. Hence, there was something more than the gradings of the ACRs which the Screening Committee examines. For the sake of clarity, the relevant part of the order is being extracted hereunder:-

> "12. There is no denying that the respondent organization has counter espionage as its main duty. It is a secret organization with the sole output/input intelligence relating to security of the country against incursion of foreign agents, internal agents provocateurs and at subversive elements that hide within us. None can deny that the persons selected for this organization should have the qualities of maintaining secrecy, emerging into crowds, infiltrating the enemy ranks/organizations, gleaning and distilling intelligence inputs out of them. Therefore, it is the Screening Committee along which is competent

> to judge the functional utility of a deputationist in the long run for his potential to fit into the aforesaid role, and only such persons are retained who have the long time potential for this kind of work."

This Tribunal in para 10 of the said Order/Judgment has further held as under:-

> "10. In the instant case, we have looked at the original file and found that the issue has been fairly considered by the respondent organization. On the contrary, there are certain glimpses of sympathy towards the applicant and an eagerness to judge the issue fairly. We also take liberty to observe in this respect, if allegation takes place of proof, then every organization would be acting in mala fide manner in respect of every decision that is not to his liking. The analogy can be extended to the metaphor that it would have the effect of converting all employees frustrated in their quest for benefits into riders. We are afraid that such a position is absolutely untenable and cannot be allowed to develop."

20. Now we are taking into consideration the written arguments(s) and also the judgments by way of a subsequent compilation, filed on behalf of the applicant(s). In the written arguments, it is contended that the judgment of a co-ordinate Bench of this Tribunal in ***Vinod Kumar*** (supra) is not applicable as the NOC from the parent department is sought after due consideration is done by

the respondent. However, we are of the view that the ratio of this judgment will be applicable particularly in view of the fact that the same has been laid down by keeping into consideration a catena of judgments of the Hon'ble Supreme Court of India as well as of the Hon'ble High Courts, including the judgment of the Hon'ble High Court of Delhi in ***K. Pradeep Kumar*** (supra), referred and relied on behalf of the applicants.

21. The second limb of argument is that scrutiny of records is required to be taken and there is no selection on comparative merit for absorption. However, we may hasten to add the very policy dated 31.12.2015, requires consideration by a committee of three officer(s), who are senior to the officers endorsing/recommending the request for absorption. **Moreover, the provisions of para 2 (xxv) of the OM dated 31.12.2015 requires consideration of outstanding service records and aptitude for intelligence.** Who has or not the requisite aptitude for intelligence can be judged only by the respondent and not by this Tribunal. Moreover, in view of the judgment dated 25.03.2014 of the Hon'ble High Court of Delhi in ***Rajpal Yadav*** (supra) (see page (9)),

relied on behalf of the applicants, this Tribunal can't comment as to whether the applicants should or should not absorbed and as to whether the Screening Committee of the respondents does or does not find the applicants fit for being absorbed. We are in respectful agreement with the view of a co-ordinate Bench of this Tribunal in ***B.S. Parihar*** (supra) (Annexure R-9) that we will go into the process of decision making and not in the decision taken by the competent authority after following due process.

22. In the facts and circumstances as recorded hereinabove, it is evident that the judgment of the Hon'ble High Court of Delhi in the case of ***K. Pradeep Kumar*** (supra) is of no help to the applicants in as much as the same was passed in entirely different facts and circumstances. Moreover, para 19 of the Judgement that the Hon'ble High Court has not made any observation whatsoever as to whether petitioner should or should not be absorbed by the respondent No.2 and as to whether the Screening Committee of the Respondent No.2 does or does not find the petitioner fit for absorption by the Respondent No.2. It was only required that the

Screening Committee of Respondent No.2 would act in terms of the extant policies and a speaking order/decision was to be passed by the Respondent No.2. On perusal of para 2 (xxv) of the aforesaid OM dated 31.12.2015, referred to and relied upon by the learned counsels for both the parties, it is evident that it is not necessary that all those who have been inducted on deputation against the prescribed percentage are to be absorbed. Absorption has to be made only in respect of those deputationists, who have outstanding service records and aptitude for intelligence. In this view of the policy decision, mere the fact that the applicants continued even for extended period of deputation and are having outstanding service record and might have been recommended by the sponsoring authorities, it is not necessary that only on the basis of such recommendations and service record, they are having any enforceable right to be absorbed. It is always for the Screening Committee which consists of three senior officers to see and to judge the aptitude for intelligence, more so in absence of any proved malafide against the members of such Committee

23. By way of additional compilation, various judgments on behalf of the applicant(s) have been placed on record. However, while arguing the learned counsel for the applicants, Shri Mittal has referred to only the judgment of Hon'ble High Court of Delhi in ***Pradeep Kumar*** (supra) which we have already considered hereinabove. However, alongwith the written argument, he has mentioned the relevant paras of the remaining judgments.

24. Para 17 of ***Rameshwar Prasad*** (supra) has been mentioned to contend that in the matter of absorption, one cannot act arbitrarily or on whims and caprices of any individual. We respectfully accept this binding principle. This has already been considered hereinabove. Moreover, in view of the facts of the cases in hand, it cannot be held to be a decision arbitrarily taken by an individual officer.

25. Para 12 of the judgment of Hon'ble High Court of Delhi in ***Udai Pal Singh*** (supra), has been considered by a Division Bench of Hon'ble High Court in ***Mahendra Sinsinwar vs. Union of India and others***, reported in 2015 (5) AD (Delhi) 716, it has been held in para 14

thereof that since there was no policy to guide on what basis persons on deputation to Intelligence Bureau from Central Armed Police Forces would be permitted to be absorbed in Intelligence Bureau, directions were issued. It is not in dispute that the guidelines have since been issued and the guidelines vide OM dated 31.12.2015 holds the field. We may record that on page 5 of the counter reply to OA No.1257/2021, respondent has asserted that applicant joined the Govt. service on 11.06.2003 and didn't fulfil the minimum eligibility criteria of 18 years of service in terms of para 2 (xvi) of the guidelines dated 31.12.2015 for absorption at the time of consideration. This fact further strengthens the arguments of the respondent that the applicants have been considered in terms of the relevant guidelines. It is also contended by the respondent that the applicants have mostly worked in BoI and have absolutely no/miniscule experience in intelligence gathering activities. In these facts, this Tribunal can't arrive at a conclusion that the applicants may be suitable or of utility for being absorbed. These judgments under reference is of no help to the applicants.

26. We have also gone through the judgments of the additional compilation filed on behalf of the applicants and particularly, the paragraphs thereof reflected by the learned counsel for the applicants, which are as under:-

(i) ***Mohinder Singh Gill vs. The Chief Election Commissioner,*** reported in MANU/SC/0209/1977, the Hon'ble Supreme Court in para 8 of the judgment held as under:-

> "8.The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji, AIT 1952 SC 16,
>
> > "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
>
> Orders are not like old wine becoming better as they grow older:
>
> A Caveat.

We must, in limine, state that-anticipating our decision on the blanket ban on litigative interference during the process of the election, clamped down by Article 329(b) of the Constitution we do not propose to enquire into or pronounce upon the factual complex or the lesser legal tangles, but only narrate the necessary circumstances of the case to get a hang of the major issues which we intend adjudicating. Moreover, the scope of any actual investigation in the event of controversion in any petition under Article 226 is ordinarily limited and we have before us an appeal from the High Court dismissing a petition under Article 226 on the score that such a proceeding is constitutionally out of bounds for any court, having regard to the mandatory embargo in Article 329(b). We should not, except in exceptional circumstances, breach the recognised, though not inflexible, boundaries of Article 226 sitting in appeal, even assuming the maintainability of such a petition. Indeed, we should have expected the High Court to have considered the basic jurisdictional issue first, and not last as it did, and avoided. sallying forth into a discussion and decision on the merits, self-contradicting its own holding that it had no jurisdiction even to entertain the petition. The learned Judges observed :

> “It is true that the submission at serial No. 3 above in fact relates to the preliminary objection urged on behalf of respondents 1 and 3 and should normally have been dealt with first but since the contentions of the parties on submission No. 1 are inter-mixed with the interpretation of Article 329(b) of the Constitution, we thought it proper to deal with them in the order in which they have been made."

This is hardly a convincing alibi for the extensive per incuriam examination of facts and law gratuitously made by the Division Bench of the High Court, thereby generating apprehensions in the appellant's mind that not only is his petition not maintainable but he has been damned by

damaging findings on the merits. We make it unmistakably plain that the election court hearing the dispute on the same subject under section 98 of the R.P. Act, 1951 (for short, the Act) shall not be moved by expressions of opinion on the merits made by the Delhi High Court while dismissing the writ petition. An obiter binds none, not even the author, and obliteration of findings rendered in supererogation must alley the appellant's apprehensions. This Court is in a better position than the High Court, being competent, under certain circumstances, to declare the law by virtue of its position under Article 141. But, absent such authority or duty, the High Court should have abstained from its generosity. Lest there should be any confusion about possible slants inferred from our synoptic statements, we clarify that nothing projected in this judgment is intended to be an expression of our opinion even indirectly. The facts have been set out only to serve as a peg to hang three primary constitutional issues which we will formulate a little later."

(ii) ***Rajkumar and others vs. V. Shakti Raj and others***, reported in MANU/SC/1409/1997, the Hon'ble Supreme Court, para 16 thereof held as under:-

"16. Yet another circumstance is that the Government had not taken out the post from the purview of the Board, but after the examinations were conducted under the 1955 Rule and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the post 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 vs. State of & K MANU/SC/0208/1995 : [(1995) 3 SCC 486] and other decisions 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 1955 Rules, So also in the method of selection and exercise of the power in taking out from the purview of the 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."

(iii) ***National Institute of Mental Health & Neuro Sciences Vs. K. Kalyana Raman and others,*** reported in MANU/SC/9342/1992, the Hon'ble Supreme Court in para 8 thereof held as under:-

"8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary. The High Court however, observed, that Dr. Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of objections dated 18 February, 1980

filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr. Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was some what extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, should have stated that he did not satisfy the minimum qualifications prescribed for eligibility the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and re-assurance as to the related equality and justness of an effective consideration of this case. It is true that selection of the petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr. Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr. Kalyana Raman. The fact that he was placed second in the parcel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion."

(iv) ***P. Chidambaram vs. Enforcement Directorate***, reported in MANU/SC/1209/2019, the Hon'ble Supreme Court in para 54 thereof held as under:-

"54. The Enforcement Directorate has produced the sealed cover before us containing the materials collected during investigation and the same was received. Vide order dated 29.08.2019,

we have stated that the receipt of the sealed cover would be subject to our finding whether the court can peruse the materials or not. As discussed earlier, we have held that the court can receive the materials/documents collected during the investigation and peruse the same to satisfy its conscience that the investigation is proceeding in the right lines and for the purpose of consideration of grant of bail/anticipatory bail etc. In the present case, though sealed cover was received by this Court, we have consciously refrained from opening the sealed cover and perusing the documents. Lest, if we peruse the materials collected by the respondent and make some observations thereon, it might cause prejudice to the appellant and the other co-accused who are not before this court when they are to pursue the appropriate relief before various forum. Suffice to note that at present, we are only at the stage of considering the pre-arrest bail. Since according to the respondent, they have collected documents/materials for which custodial interrogation of the appellant is necessary, which we deem appropriate to accept the submission of the respondent for the limited purpose of refusing pre-arrest bail to the appellant."

(v) ***Nand Kishore Lalbhai Mehta vs. New Era Fabrics Pvt. Ltd. and others***, reported in MANU/SC/0739/2015, the Hon'ble Supreme Court in paras 9, 10, 12 and 14 thereof held as under:-

"9) Learned senior counsel further submitted that unless and until there is an amendment of the pleadings, no evidence with regard to the facts not pleaded can be looked into, for which he relied upon a decision of this Court in ***Bachhaj Nahar*** vs. ***Nilima Mandal & Anr.*** MANU/SC/8199/2008 : (2008) 17 SCC 491 wherein it was held as under:-

> "7. Feeling aggrieved, the plaintiffs filed a second appeal before the High Court. The High Court by judgment dated 14-5-2004 allowed the second appeal. The High Court held that the plaintiffs had failed to make out title to the suit property. It however held that the plaintiffs had made out a case for grant of relief based on easementary right of passage, in respect of the suit property, as they had claimed in the plaint that they and their vendor had been using the suit property and the first defendant and DW 6 had admitted such user. The High Court was of the view that the case based on an easementary right could be considered even in the absence of any pleading or issue relating to an easementary right, as the evidence available was sufficient to make out easementary right over the suit property. The High Court therefore granted a permanent injunction restraining the first defendant from interfering with the plaintiffs' use and enjoyment of the "right of passage" over the suit property (as also of the persons living on the northern side of the suit property).

10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

> (i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.
>
> (ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which

> is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.
>
> (iii) A factual issue cannot be raised or considered for the first time in a second appeal."

"12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take."

"14. The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in *Nedunuri Kameswaramma v. Sampati Subba Rao*:

> "6. … No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates

> proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."
>
> But the said observations were made in the context of absence of an issue, and not absence of pleadings."

(vi) ***Jayraj Jayantibhai Patel vs. Anilbhai Jayantibhai Patel,*** MANU/SC/4080/2006, the Hon'ble Supreme Court in paras 9. 10 and 13 thereof held as under:-

> "9. Article 226 of the Constitution is designed to ensure that each and every authority in the State, including the State, acts bonafide and within the limits of its power. However, the scope of judicial review in Administrative matters has always been a subject matter of debate despite a plethora of case law on the issue. Time and again attempts have been made by the Courts to devise or craft some norms, which may be employed to assess whether an administrative action is justiciable or not. But no uniform rule has been or can be evolved to test the validity of an administrative action or decision because the extent and scope of judicial scrutiny depends upon host of factors, like the nature of the subject matter, the nature of the right affected, the character of the legal and constitutional provisions applicable etc. While appreciating the inherent limitations in exercise of power of judicial review, the judicial quest has been to find and maintain a right and delicate balance between the administrative discretion and the need to remedy alleged unfairness in the exercise of such discretion.

10. Having said so, we may now refer to a few decisions wherein some broad principles of judicial review in the field of administrative law have been evolved.

In ***Council of Civil Service Unions*** v. ***Minister for the Civil Service***, (1984) 3 All ER 935 Lord Diplock enunciated three grounds upon which an administrative action is subject to control by judicial review, viz. (i) illegality (ii) irrationality and (iii) procedural impropriety. While opining that "further development on a case by case basis may not in course of time add further grounds" he added that principle of "proportionality" may be a possible ground for judicial review for adoption in future. Explaining the said three grounds, Lord Diplock said:

> By "illegality" he means that the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it, and whether he has or has not, is a justiciable question; by "irrationality" he means "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it; and by "procedural impropriety" he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness, but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunal's jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

"13. Recently in ***Rameshwar Prasad & Ors. (VI)*** v. ***Union of India & Anr.***, MANU/SC/0399/2006 : AIR 2006 SC 980, wherein a proclamation

issued under Article 356 was under challenge, Arijit Pasayat, J. observed thus:

> "A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.
>
> It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to be subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

(vii) ***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & others,*** reported in MANU/SC/0615/2015, the Hon'ble Supreme Court in para 19 thereof held as under:-

> "19) In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes

are treated as natural or fundamental, it is known as *'natural justice'*. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. *nemo iudex in causa sua*; and (ii) opportunity of being heard to the concerned party, i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a *'reasoned order'*.

(viii) ***B.S. Minhas v. Indian Statistical Institute and others,*** in Writ Petition No.1519 of 1979 decided on 19.10.1983, the Hon'ble Supreme Court in para 23 thereof held as under:-

"23. The next question that arises for consideration is whether the appointment of respondent No.4 as Director of respondent No.1 is illegal because of non-compliance with bye-law 2. Bye-law 2 does require that before appointment, the vacancy in the post of Director should be suitably publicised. In the instant case, it is admitted on both sides that no publicity whatsoever was given in respect of the 410 vacancy. The contention of Shri Garg, however, is that the bye-law having no force of statute, non-compliance with its requirement can not in any way affect the appointment of respondent No. 4 as Director of respondent No. 1. Shri Tarkunde, however, contended that assuming that the bye-law is not statutory, even so respondent No. 1 was bound to comply with it. In support of his contention he strongly relied upon Ramana Dayaram Shetty v. International Airport Authority of India. The Court in that case held:

> "It is a well settled rule of administrative law that an executive authority must be

rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Seton where the learned Judge said:

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

The aforesaid principle laid down by Mr. Justice Frankfurter in Viteralli v. Seton has been accepted as applicable in India by this Court in A. S. Ahluwalia v. Punjab and in subsequent decision given in Sukhdev v. Bhagatram. Mathew J. quoted the above referred observation of Mr. Justice Frank further with approval."

(ix) ***Professor Udaya Kumar v. Jawaharlal Nehru University through its Registrar,*** in Writ Petition (Civil) No.5496/2020 decided on 14.9.2020, reported in MANU/DE/1714/2020, the Hon'ble High Court of Delhi in para 34 thereof held as under:-

"34. In support of my observations I may allude to the judgement of the Supreme Court, relied upon by the Petitioner in ***Rameshwar Prasad (supra)***. Relevant paras of which are as under:-

> *"240. A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.*
>
> *241. It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. (See Shalini Soni v. Union of India [(1980) 4 SCC 544 : 1981 SCC (Cri) 38].)*
>
> *242. The Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle is that a decision will be said to be unreasonable in the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it*

should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.

243. As observed by Lord Diplock in CCSU case [(1996) 4 SCC 104 paras 9-10] a decision will be said to suffer from Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness if it is

"so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it" (All ER p. 951a-b).""

(x) ***Sanjay Kumar Arora vs. Union of India,*** in OA 4705/2015 decided on 26.4.2016 by this Tribunal, paras 6.2, 6.5, 11 and 12.1 thereof reads as under:-

"6.2 In *Rameshwar Prasad Vs. Managing Director, U.P.Rajakiya Nirman Nigam Limited & others* (supra), the appellant-deputationist challenged the orders passed by the Hon'ble High Court dismissing the writ petitions filed by him. The writ petitions were filed by him assailing the decisions of the borrowing department rejecting his application for absorption, and repatriating him to the parent department. Considering the facts and circumstances of the case, the Hon'ble Supreme Court has observed that whether a deputationist should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application of a deputationist, there must be justifiable reasons. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual. The Hon'ble Supreme Court held that

when the application made by the appellant for permanent absorption was in accordance with the rules/policy framed by the borrowing department, and when the competent authority of the borrowing department found the performance of the appellant as excellent during the period of probation and allowed him to continue on deputation without deputation allowance, the appellant stood absorbed. Accordingly, the Hon'ble Supreme Court quashed and set aside the impugned orders passed by the Hon'ble High Court, and the order issued by the borrowing department relieving the appellant from the post. The Hon'ble Supreme Court also directed the respondent borrowing department to pass order absorbing the appellant with effect from appropriate date in accordance with rules."

"6.5 In *K.Pradeep Kumar Vs. Union of India and others*(supra), the applicant, who was a Constable in the CRPF, joined IB on deputation and even got promotion to the rank of JIO, which corresponded to the rank of Head Constable in CRPF. Though he applied for permanent absorption, his parent department refused to grant concurrence for his absorption in the borrowing department on the ground that he had already received proforma promotion during his deputation tenure. He was also communicated adverse remarks in his APAR. At the intervention of the Tribunal and the Hon'ble High Court, the borrowing department considered his request for permanent absorption, but rejected the same. The respondent-borrowing department issued an order dated 28.8.2014 declaring that he was unfit for absorption. Pursuant to the order of the Tribunal, the borrowing department issued order upgrading his APAR, and his integrity was certified. Therefore, he filed the O.A. for quashing the order dated 28.8.2014 issued by the borrowing department, and for a direction to the borrowing department to permanently absorb him. On a perusal of the materials available on record, the Tribunal found that he was repatriated to his parent cadre on 10.8.2015 and was relieved of his duties with effect from 14.8.2015. Accordingly, he joined his parent department. Therefore, the Tribunal held that the applicant had a right to be

considered for permanent absorption in the borrowing department only as long as he was a deputationist with them. As the applicant joined his parent cadre, and was no longer a deputationist but an employee of his parent department, no right for absorption in the borrowing department subsisted in his case. Accordingly, the Tribunal declined to grant him the reliefs sought for by him, and dismissed the O.A."

"11. Admittedly, the respondent-NHAI considered the cases of two other deputationists S/Shri B.L.Meena and Manoj Saxena, and, after finding them suitable for permanent absorption, issued the offers of appointment/absorption, even in the absence of NOC/consent of the cadre controlling authority in the parent department. Their permanent absorption was subject to the submission of the consent of the cadre controlling authority in the parent department and/or acceptance of their resignation/voluntary retirement by the parent department. When, in the absence of consent/NOC of the cadre controlling authority in the parent department, the cases of S/Shri B.L.Meena and Manoj Saxena were considered, and offers of appointment/permanent absorption were issued to them by the respondent-NHAI under Regulation 13, *ibid,* with the rider that they should submit the consent of the cadre controlling authority in the parent cadre or the acceptance of their resignation/voluntary retirement by the parent department, we are not inclined to accept the contention of the respondent-NHAI that as the said S/Shri B.L.Meena and Manoj Saxena belonged to the Finance Cadre, and as their cases were considered and offers of appointment/permanent absorption were issued in their favour before issuance of the impugned circular dated 16.10.2015, the applicants are not similarly placed as the said S/Shri B.L.Meena and Manoj Saxena and are, thus, not entitled to be considered for permanent absorption in the absence of consent/NOC of the cadre controlling authority in the parent department. This apart, the case of one Sh.O.P.Bhatia, who was continuing as DGM

(Tech.) on deputation basis, was also considered by the respondent-NHAI in the absence of consent/NOC of the cadre controlling authority in the parent department, and offer of appointment on absorption basis was issued to him by the respondent-NHAI, with the rider that his absorption in NHAI was subject to submission of consent of the cadre controlling authority in the parent department and/or acceptance of his resignation/voluntary retirement by the parent department. Copy of the offer of appointment on absorption issued by the respondent-NHAI to Sh.O.P.Bhatia, DGM (Tech.) has been filed by the applicants along with their rejoinder reply. The respondent-NHAI has not rebutted the fact of consideration and permanent absorption of Sh.O.P.Bhatia, DGM (Tech.) even in the absence of consent/NOC of the cadre controlling authority in the parent department. Thus, it is found that the respondent-NHAI, in exercise of its power under sub-regulation (7) of Regulation 13, *ibid,* has taken a decision to consider the cases of deputationists for permanent absorption even in the absence of consent/NOC of the cadre controlling authority in the parent department, and also to issue offers of appointment on absorption basis in favour of the officers, who are found suitable for permanent absorption, with the rider that they should submit the consent/NOC of the cadre controlling authority of the parent department and/or the acceptance of their resignation/voluntary retirement by the parent department under the proviso to clause (d) of sub-regulation (5) of Regulation 13, *ibid.* In the above view of the matter, we have found much force in the contention of the applicants that the denial of consideration of their cases for permanent absorption solely on the ground of non-receipt of consent/NOC of the cadre controlling authority in the parent department amounts to invidious discrimination against them, and that the impugned circular dated 16.10.2015 stopping the ongoing recruitment process for the post of Manger (Tech.), being arbitrary and illegal, is unsustainable and liable to be quashed."

> "12.1 Accordingly, MA No.477 of 2016 filed by applicant no.1- Sanjay Kumar Arora for staying the operation of the order dated 29.1.2016 (Annexure MA-1) is allowed. The respondent-NHAI is directed not to repatriate applicant no.1- Shri Sanjay Kumar Arora to his parent department until his case for permanent absorption is considered and appropriate decision taken by respondent-NHAI in accordance with the direction now issued by the Tribunal."

(xi) ***G. Siva Rama Raju vs. Union of India and others***, OA No.2263/2014 decided on 18.9.2015 by this Tribunal, paras 8 and 11 thereof reads as under:-

> "8. He has further submitted that, admittedly, in 2012 selection also, there was no requirement of Outstanding ACRs and various individuals were absorbed with Very Good ACRs. The fact that cannot be ignored again is that the performance of the Applicants were satisfactory and hence, their deputation periods were extended for from time to time. He has also pointed out that this Tribunal, vide order dated 28.04.2014, directed the Respondents to delink the selection process and complete the earlier selection process initiated in pursuance to the office memorandum dated 28.11.2009 but the Respondents adopted the new criteria of average of the "Outstanding" gradings in the ACRs which is not apt in law. At the same time, in respect of various other persons, the average of "Very Good" gradings in the ACRs has been considered and they have been absorbed. There was also a finding of fact that the selection process of the year 2009 was complete in all respects but absorption letter could not be issued for want of NOC in some cases but the Respondents ignored that fact and conducted the new selection. Further according to the learned counsel for the Applicant, the Respondent-NHAI was supposed to recruit 25% (120 nos.) of posts in 2010, 15% (17 nos.) of in 2011 and 10% (48 nos.)

of posts in 2012 to the permanent cadre as per the original programme. But they have selected only 69 nos. of posts up to 2012 and about 100 nos. posts of Manager (T) on direct recruitment basis."

"11. We have considered the submissions made by the learned counsel for the parties. We have also perused the Respondent's record made available by their learned counsel. In our considered view, the decision of the Respondent-NHAI to repatriate the Applicants S/Shri G. Siva Ram Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chander Tejwani is nothing but an aribitrary and whimsical one. In fact its decision is a pervertion of the principle of right of consideration as understood in the service jurisprudence. The attitude of the Respondent-NHAI as reflected from their reply affidavit is that since this Tribunal has directed it to consider the case of the Applicants for absorption, it considered but rejected on the ground that they have only the right of consideration and not of absorption. It is well settled that the concept of consideration does not envisage an empty formality. Rather, fair play and reasonableness are the touchstones of any good administration. Arbitrariness and discrimination vitiate any process of selection. The Hon'ble Supreme Court in ***Man Singh Vs. State of Haryana and Others*** 2008 (12) SCC 331observed as under:-

> ".....Any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it".

It is seen that in the earlier round of litigation, this Tribunal came to the conclusion that the entire recruitment process adopted by the Respondents for the absorption of the Applicants who have been on deputation with them for a considerable period of time was quite arbitrary. The Applicants S/Shri G. Siva Rama Raju, Vinod Kumar Gupta, B. Ravi Shankar and Ram Chandra Tejwani have applied for absorption in terms of the Respondents

Memorandum dated 28.11.2009 based on the 'National Highways Authority of India Act, 1988' as amended by the third Amendment Regulations, 2009 and notified on 23.10.2009, according to which the deputationists with two years of continuous service and less than 56 years of age as on Ist day of January of the year in which they are considered for absorption, could apply. The Screening Committee constituted for the purpose, screened them and recommended them for absorption. They have also appeared before the Selection Committee on 15.03.2010 as the last stage in the process of absorption. But the said selection was not finalized only for the reason that the NHAI did not receive the No Objection Certificate ("NOC" for short) and Vigilance Clearance of some of the Applicants. The NHAI had also given an assurance before this Tribunal that they will fill up the posts by lateral entry only after the case of the Applicants for absorption was decided and the Tribunal directed it to complete the process of absorption within 6 weeks.

As it failed to comply with the directions, they have sought extension for compliance and this Tribunal **vide** order dated 29.09.2011 granted them three more months to them to comply with the aforesaid order of this Tribunal dated 25.03.2010 with the further direction that there will be no need for them to wait indefinitely for 'no objection' from the parent Department of the deputationist and it will be well within the jurisdiction to presume 'no objection' if the same is not reported/given by the Parent Department of the concerned deputationist. Neither the Tribunal nor the Applicants had any reason to disbelieve them as they were expected to issue the absorption order without any delay. However, the Respondents after carrying out the amendements in the Regulations on 24.08.2012, invited fresh applications for absorption **vide** OM dated 29.08.2012 dispensing the condition of NOC from the parent cadres on technical resignation of the Applicants concerned but reducing the maximum age limit from 56 to 55. The Ministry of Road Transport and Highways has also issued letter dated 20.09.2012 directing the NHAI that "the

officers who have completed more than ten years of deputation shall be repatriated and officers with ten or more years of remaining service only be considered for absorption. The Applicants had no grievance against the aforesaid decision as they have already been recommended for absorption and the Selection Committee met on 15.03.2010 did not finalize the selection only for want of NOC and vigilance clearance from the parent offices of some of the Applicants and they have also been specifically asked not to apply afresh for absorption in terms of the OM dated 29.08.2012. Subsequently, their applications have also been forwarded to the Screening Committee and it found them again eligible applying the norms prescribed in the Respondents Memorandum dated 28.11.2009 based on the 'National Highways Authority of India Act, 1988' as amended by the third Amendment Regulations, 2009 and notified on 23.10.2009. But the Selection Committee did not recommend their names as they followed different norms prescribed in the NHAI's amended Regulations dated 24.08.2012 and the letter of the Ministry of Road Transport and Highway dated 20.09.2012. We, therefore, held that the aforesaid decision of the Selection Committee was de hors the rules and directed the Respondents to delink the process of absorption of the Applicants initiated by them pursuant to their Memorandum dated 28.11.2009 from the process based on the subsequent Memorandum dated 29.08.2012 and to finalize the case of the Applicants for absorption strictly in accordance with the "National Highways Authority of India (Recruitment, Seniority and Promotion) Regulations, 1996" as amended vide National Highways Authority of India (Recruitment, Seniority and Promotion) Third Amendment Regulations, 2009 and notified it on 23.10.2009 and take a decision for absorption of officers. While so directing, this Tribunal was guided by the principle that once the statutory rules regulating the Recruitments are in place, the appointments have to be made in accordance with the said rules [***J &K Public Service Commission Vs. Dr. Narinder Mohan*** (1994) 2 SCC 630]. Further, the amendment to Recruitment Rules has

> no effect on vacancies that arose before such amendment and they will be governed by the un-amended provisions of the rules as held by the Apex Court in the case of ***Y.V. Rangaiah & Others Vs. N. J. Srinivasa Rao & Others*** 1983 (3) SCC 284 and the amended rules will not have retrospective effect and they cannot affect the right of the candidates adversely as held by the same Court. We have also followed the decision laid down by the Apex Court in its judgment in ***Commissioner of Income Tax, Mumbai Vs. Anjum M.S. Ghaswala and Others*** AIR 2001 SC 3868 that when a statute vests certain powers in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner prescribed in the statute and not in any other manner."

27. However, we find that these judgments are of any help to the applicants, particularly in view of the facts and discussions as made hereinabove. Moreso, when the facts and contents thereof have neither been quoted nor been argued. Besides, the facts and the law have already been discussed herein above. To our mind, they are not relevant to the issue involved in the present applications.

28. Written arguments have been filed by he learned counsels for the respondent in the respective OAs.

29. It is argued on behalf of the respondents that the original application as filed by the applicants is liable to be dismissed as the applicants herein have no inherent

right to be absorbed in the respondent organization. The applicants, being deputationist, only have a right to be considered for absorption, but not for absorption itself. The said right was extended to the applicants, when their application for absorption was duly considered for permanent absorption, but they were not found fit to be recommended for absorption. It is well settled law that for absorption in any organization, the three parties, i.e., the Lending Organization, Borrowing Organization as well as the person concerned (on deputation) should be on the same page and in case anyone is not agreeable, then the absorption cannot go through. In the facts of the present case, the respondent Organization, after considering their, service records, their potential for intelligence work and their capability to shoulder higher responsibilities in the organization etc. found them unfit for absorption in IB. Reliance has been made on additional judgments. Relevant paras and the details of such judgments are as under:-

(i) ***Kunal Nanda vs. Union of India & Anr.***, reported in (2002) 5 SCC 362, wherein the Hon'ble Supreme Court has held as under:-

> "On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation." (Para 6)

(ii) ***Maharashtra State Secondary and High Secondary Education Board vs. Partitosh Bhupesh Kumar Sheth***, reported in 1984(4) SCC 27, wherein the Hon'ble Supreme Court held as under:-

> "Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system

and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case. In the light of the foregoing discussion, we hold that the High Court was in error in striking down clauses (1) and (3) of Regulation 104 as illegal, unreasonable and void. We uphold the validity of these provisions." (Para 5:3)

(iii) ***M.V. Thimmaiah v. Union Public Service Commission***, reported in (2008) 2 SCC 119), wherein the Hon'ble Supreme Court held as under:-

"Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit in court of appeal to examine the selection of the candidates nor is the business of the Court to examine each candidate and record its opinion." (Para 21)

(iv) ***Union Public Service Commission vs. M. Sathiya Priya***, reported in (2018) 15 SCC 796, wherein the Hon'ble Supreme Court held as under:-

> "The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee." (Para 15)

(v) ***Commissioner of Police vs. Raj Kumar***, Civil Appeal No.4960/2021 decided on 25.8.2021 by the Hon'ble Supreme Court, wherein it has been held as under:-

> "Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute

> eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in *bona fides."* (Para 29)

(vi) ***Subhash Kumar and others vs. Union of India and others***, Writ Petition (Civil) No.7575/2021 and WP (Civil) No.7608/2021 decided on 3.8.2021 by the Hon'ble High Court of Delhi, wherein in para 7, it has been held as under:-

> "...15. It is clear from the above that the discretion to accept or reject a request for absorption will be exclusively with the parent CAPFs or the Cadre Controlling Authority, i.e. the respondent no.1 MHA. Every organization, including the CAPFs have to determine their own requirements of personnel and in light thereof decide whether they want to give NOCs in respect of their personnel to be absorbed by another organization. Similarly, it is for the borrowing department to decide whether they want to permanently absorb the deputationists working with them or to extend the period of deputation. In the present case, the counsel appearing for CBI has categorically made a statement that they do not wish to absorb the petitioners."

30. The reliance of the applicant on the Judgment of the Hon'ble Apex Court is also not found to be of any

help in view of the fact that this Tribunal in ***Vinod Kumar*** (supra) has considered the Judgment of the Hon'ble Apex Court in ***Rameshwar Prasad*** (supra) as well as various other Judgments of the Hon'ble Supreme Court. Moreover, in the case of ***Rameshwar Prasad*** (supra), even after expiry of his deputation tenure, the appellant was returned to the borrowing orgainsation and as he was deprived of deputation allowance and thus, it was ordered that he was deemed to have been absorbed. Whereas in the present case, the applicants' requests for absorption have not been acceded to and they have already been informed about their date of repatriation to their parent department.

31. We have perused the pleadings on records before us. We find that the applicants' applications for absorption along with their service records and recommendations by the sponsoring authorities have been considered by a Committee of three senior officers of the respondent. However, the applicants' applications for absorption have not been recommended by the concerned Committee. The judgment referred to and relied on behalf of the applicants and/or the respondent

clearly ruled that the deputationist has no indefeasible right for absorption and there is only right for consideration by the competent authority in accordance with the relevant policy on the subject. This view is further strengthened in view of the judgment of a Division Bench of the Hon'ble High Court of Delhi in the case of ***Mahendra Sinsinwar vs. Union of India and others***, reported in 2015 (5) AD (Delhi) 716. After considering the catena of cases including the judgment of the Hon'ble High Court in the case of ***Udai Pal Singh*** (supra) and that of the Hon'ble Supreme Court in the case of ***Rameshwar Prasad*** (supra), referred to and relied upon by the learned counsel for the applicants, the Hon'ble High Court of Delhi in paras 12 to 15 thereof held as under:-

> "12. But the observations in para 17 are important. The Supreme Court observed that whether a deputationist should be absorbed in service or not is a matter of policy. On facts, the Supreme Court held that since the Nigam had allowed Rameshwar Prasad to continue to work with it beyond five years and had stopped paying him a deputation allowance and made him work for another five years without paying the allowance, in view of the Rules he was entitled to be absorbed and there being no valid reasons given to justify the public interest in not according approval for absorption, the Supreme Court held that Rameshwar Prasad

was entitled to be permanently absorbed in the Nigam.

13. In the decisions reported as (2007) 5 SCC 580 *Arun Kumar* v. *UOI* and (2005) 8 SCC 394 *UOI* v. *V. Ramkrishnan* the Supreme Court held that a deputationist has no legal right to be absorbed to the post on which he was sent on deputation and that absorption of a deputationist is a matter of policy.

14. Since there was no policy to guide on what basis persons on deputation to Intelligence Bureau would be permitted to be absorbed in Intelligence Bureau by the various Central Armed Police Forces, under directions from this Court on March 11, 2011 in WP (C) 10806/2009 *Udai Pal Singh* v. *BSF* on January 17, 2012 policy guidelines have been framed and notified by the Ministry of Home Affairs and the relevant clauses thereof are noted by us. They read as under:-

> *"10. Any proposal for extension of deputation, shall be initiated by the borrowing organization/Department well in advance, and not less than 06 months prior to the expiry of deputation term and will be accompanied by the willingness of the person on deputation for such extension. It will also be ensured by the borrowing organization/Department that while sending requisition/request for extension, the service record/vigilance clearance certificate in respect of the person concerned is also forwarded to the parent CAPF to enable quick processing of the case.*
>
> *11. If during the period of deputation, on account of proforma promotion in the parent cadre the official concerned becomes entitled to a higher pay scale/pay band and Grade pay a in the parent cadre vis-à-vis that of the ex-cadre post, the official shall be allowed to*

complete his/her normal/extended tenure of deputation already sanctioned with the approval of competent authority, provided his total basic pay does not exceed the maximum of pay in Pay Band plus grade pay of the deputation post. No extension in the period of deputation shall be allowed to him/her after completing the sanctioned period of deputation.

12. A CAPF personnel proposed to be absorbed by the borrowing Organization/Department should have a minimum of 18 years of service on the date, on which the absorption is proposed by the borrowing Organization/Department. Also, the person proposed to be absorbed should already be on deputation with the said Organization/Department. This condition of 18 years shall be read as 15 years in case of low medical category personnel.

13. A requisition made by borrowing Organization/Department or willingness tendered by a person for absorption, will not automatically confer any right on an individual or the borrowing department to claim absorption as a matter of right. The discretion to accept or reject, a request for absorption will be exclusively with the parent CAPF or the cadre controlling authority i.e. Ministry of Home Affairs, as the case may be. In the case of Subordinate Officers and Other Ranks, the proposal for absorption shall be decided by the Director General of the CAPF concerned.

14. No person of any rank should be sent on deputation, if the number of vacancies in that rank exceeds 10% of the total sanctioned strength.

> *15. Personnel above the age of 50 years or in low medical category would ordinarily be permitted to be absorbed in any borrowing Organization/Department where they are working on deputation."*
>
> 15. We find that the case of the petitioners for permanent absorption in Intelligence Bureau has been considered as per the policy guidelines by the BSF and since we reject the argument that a deputationist gets an indefeasible right for permanent absorption if the post to which he is sent on deputation is capable of being filled up by permanent absorption, we dismiss both the writ petitions, but without any order as to costs."

32. With regard to challenge to Memorandum dated 17.2.2021 is concerned, we may note that the respondent has clearly taken a conscious policy decision that who have done only BoI duty may not be absorbed and that view has been taken keeping in view their own policy decision dated 30.3.2020 and keeping in view the Ministry of Home Affairs letter dated 28.7.1998, as noted above. The requirement of having aptitude in intelligence is provided in para 2 (xxv) of OM dated 31.12.2015 as well. Once such view has been taken as a matter of policy decision by the respondent that a person who is having experience of working only in BoI may not be considered for absorption, merely for the reason that in para 2 of the said Memorandum dated 30.03.2020

provides that the claim will be considered in accordance with the extant practice, the applicants will have no enforceable and indefeasible right for absorption. More so, in view of the fact that it is within the domain of the respondent and the Committee constituted to see as to whether person having experience of working only in BoI or otherwise will have the requisite aptitude or whether they will be suitable or will be of their any utility or not. The applicants have alleged favouritism and pick and choose, however, the same has been denied by the respondent in its counter reply. Besides neither rejoinder has been filed nor has the same been proved by the applicants by any additional affidavit or documents on record. Moreover, the Hon'ble High Court of Delhi in the case of ***Shyam Singh vs. Union of India and others***, reported in 2006 (128) DLT 346, in para 15 has held that 'Article 14 is a positive concept and no direction can be issued on the plea of discrimination, wherein the earlier decision itself was improper and wrong.'

33. From the aforesaid facts and discussion, it is evident that the applicants have been considered by the respondent for their absorption keeping in view their

service records, recommendations of the sponsoring authorities through a Committee consisting of three officers and not being recommended by the said Committee they have been refused absorption. In these facts and circumstances, in view of the law settled by the Hon'ble Supreme Court and Hon'ble High Court as few referred to hereinabove, we are of the considered view that OAs lack merit and accordingly, the same deserve to be dismissed and they are dismissed accordingly. However, in the facts and circumstances, there shall be no order as to costs.

34. Pending MA(s), if any, in the aforesaid OAs also stand disposed of accordingly.

35. Registry is directed to place a copy of this Order in each of the connected cases.

(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

/ravi/