

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Dated: This 26th day of March 2021

Hon'ble Mr. Rakesh Sagar Jain, Member – J

Hon'ble Mr. Anand Mathur, Member – A

**T.A. No. 61/2149/2020**

**Connected with**

**T.A. No. 62/2964/2020**

**T.A. No. 61/2124/2020**

**T.A. No. 61/2149/2020**

1-Ashwani Kumar aged 37 years, S/O Mukhtyar Chand R/O ChhanRorian, Hiranagar, District Kathua, JKW No. 2950.

2-Updesh Kumar Sharma , aged 46 years S/O Late Naubat Ram Sharma VPO Lower Gaddi Garh, Jammu, JW No.1762.

3-Sanjeev Singh, aged 39 years S/O Swaran Singh R/O Karnarsi P.O.Dhani District Kathua JKW No.3899.

4-Mohinder Singh aged 39 years S/O Kehar Singh R/O Chak Malal Khour, Jammu,JKW-770.

5-Tilak Raj Sharma, aged 35 years S/O Dev Raj Sharma R/O Village Dhateryal P.O. Karloop Tehsil &District Jammu, JW 2943.

6-Bindu Sharma aged 39 years D/O Kesho Ram Sharma and W/O Updesh Kumar Sharma R/O VPO Upper Gaddi Garh Jammu, JWF-III.

7-Sohan Lal aged 35 S/O Milkhi Ram R/O VPO Dhamal Tehsil Hiranagar District Kathua- JKW-2041.

8-Ajay Kumar aged 33 years s/O Bua Ditta R/O House No. 633, Shushil Nagar, TaabTillo Camp Road, Jammu JW No.4526.

9-Pawan Kumar aged 31 years S/O Bua Ditta R/O House No.633, Sushil Nagar, Talab Tillo, Camp Road , Jammu JW No.8812.

10-Jagpal Singh aged 35 years S/O Bhadur Singh R/O Ward No.15, Patel Nagar Tehsil & District Kathua, J.K. 71.

11-Surjan Kumar ged 35 years S/O SagarMal R/O Raipur Satwari Tehsil & District Jammu JW 3311.

12-Rupindeer Singh aged 34years S/O S. Sher Singh R/OKoulPur Tehsil & District Samba, JW-974.

13-Jaswinder Singh aged 35 year S/O Ghar Singh R/O KoulPur Tehsil & District Samba JW-9424.

14-NarinderKumar aged 37 years S/O Late Tulsi Ram R/O Dhamyal Tehsil Hiranagar District Kathua JKW-241,

15-Mohinder Paul aged 35 years S/O Harbans Lal R/O Dhamyal Tehsil Hiranagar District Kathua.

16-Ajay Sharma aged 32 years S/O Hari Krishan R/O JourianW.No. 2, Tehsil AkhnoorDisitrixct Jammu JW-2073.

17-Naresh Kumar aged 35 years S/O Sukh Ram R/O VPO Mara Patti Tehsil Basholi , District Kathua JKW-2318.

18-Sanjeev Kumar aged 35 year S/O Sohan Lal R/O Garnadi Amala Tehsil HiranagarDistrict JKW-2042.

19-Rajinder Singh aged 36 years S/O Baldev Singh Chouydhary R/O Village Mawa Tehsil & District Samba JKW-121.

20-Mohd Shakoor aged 33 years S/O Nazir Hussain R/o Dhangri District Rajouri JRW-845.

21-Anwar Hussain, aged 41 years S/O Munshi Khan R/O Village Dadaj Tehsil Darhal District Rajouri JRW-90.

22-Mohd Araf Khan aged 42 years S/O MohdAlam Khan R/O KhanyalKote Tehsil Thana Mandi District Rajouri- JRW-1360.

23-Pervaiz Hussain aged 44 years S/O Mohd Azam R/O Chowkian Tehsil Darhal District Rajuri JRW-47.

24-Pervaiz ahmed aged 32years S/OManir Hussain R/OVillageDarhal Tehsil Darhal District Rajouri- JRW-1459.

25-Rekha Rani aged 40 years D/O Jagdish Raj W/O Ashwani Kumar R/o Dhangri Tehsil & District Rajouri JRFW-32.

26-Mohd Tafail aged 32 years S/o Mir Mohd R/O Village Dhangri Tehsil & District Rajouri JRW-1368.

27-Vijay Kumar aged 45 years S/O Rajinder Kumar R/O Village Dhangri Tehsil & District Rajouri JRW-1112.

28-Shafiq Ahmed aged 42 years S/O Hussain Mohd R/o Village Charhan Tehsil & District Rajouri JRW-258.

29-Ranjeet Singh aged 37 years S/O Onkar Chand R/O Village Hadat P.O. Dhar Mahanpur TehsilBasholi District Kathua JKW-295.

30-Prem Lal aged 47 years S/O Kapoor Chand R/O Village Bahadur Pur Tehsil Bishan District Jammu JW-5850.

31-Mohd Shabir aged 45 years S/O Shaib Din R/O Poonch City Ward No.2 DistriitPoonch JPW-331.

32-Ashwani Kumar aged 35 years S/O Sat Paul R/O Bahadur Pur Tehsil Bishnah District Jammu JW-6693.

33-Karan Paul aged 36 years s/o Parkash Chand R/O Village Bahadur Pur Tehsil BishnahDistrictJammu. JW-2194.

34-Jodh Singh aged 39 years S/O Jai Singh R/O Village Barwal Tehsil & District Kathua JRW-1759.

35-Subash Chander aged 44 years S/O Bodh Raj R/O KalalKass Tehsil & District Rajouri JRW-1222.

36-Kuldeep Raj aged 34yearsS/O Darbari Lal R/O Village GurhaMuhtian( Chapper) Tehsil HiranagarDistrictKathua JKW-3333..

37-Anil Kumar aged 37 years S/O BishamberDass R/O Chapper Tehsil HiranagarDistriictKathua.

38-Yash Paul aged 37 years S/o Som Nath R/o Village &P.O.SmailPur Tehsil Bari Brahmana District Samba JW 1644.

39-Surjit Kumar aged 34 S/O Kewal Kumar R/O Dhangri District Rajouri JRV-649

40-Baldev Kumar aged 33 years S/O Shankar Dass R/O Dhangri Tehsil & District Rajouri -860.

41-Gautam Raina S/o Late Sh. Vidya Sagar  
R/o H.No. 49 Lane No.2 Karan Nagar Jammu

..... Applicants

By Advocate:- Mr. Anuj Dewain Raina

V E R S U S

- 1- State of Jammu & Kashmir Through Principal/ Secretary to Government, Home Department, Civil Secretariat J&K Government, Jammu/ Srinagar.
- 2- Commissioner/ Secretary to Government, Department of Law Justice & Parliamentary Affairs, Civil Secretariat, J&K Government, Jammu/ Srinagar
- 3- Director General of Police Prisons Department, J&K Jammu.
- 4- The Inspector General of Police Prisons Department J&K Jammu Chairman Departmental Selection committee

..... Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G

c/w

**T.A. No. 62/2964/2020**

1. Javaid Ahmad Wagay (Age: 33 years) S/o Gh. Qadir Wagay, R/o Bona Devsar Kulgam.
2. Mushtaq Ahmad Bhat (age: 40 years), S/o Gh. Qadir Bhat, R/o Futiipora Budgam.
3. Shahnawaz Maqbool Beigh (age: 38 years), S/o Mohammad Maqbool Beigh R/o Pinglish Tral Pulwama.
4. Arshad Hussain Mir (age: 44 years), S/o Gh. Rasool Mir, R/o Zangalpora, Kulgam.
5. Mohammad Asif Itoo (Age: 33 years), S/o Mohammad Amin Itoo, R/o mandhole Kulgam.
6. Mushtaq Ahmad Shan (age: 36 years), S/o Gh. Hassan Shan, R/o Zangalpora Kulgam.

7. Muzaffar Ahmad Naikoo (age: 32 years), S/o Ab. Gani Naikoo R/o Nagam Anantnag.
8. Mudasir Ali Padder (age: 38 years), S/o Ali Mohammad Padder, R/o Naymatpora Anantnag.
9. Zahoor Qadir padder (age: 33 years), S/o Gh. Qadir Padder, R/o Naymatpora Anantnag.
10. Mushtaq Ahmad Padroo (age: 35 years) S/o Gh. Qadir Padroo R/o Namatpora Anantnag.
11. Showkat Ahmad Dar (age: 36 years), S/o Nazir Ahmad Dar R/o Nagam Anantnag.
12. Bilal Ahmad Sheikh (age: 39 years) S/o Gh. Mohi-ud-din Sheikh R/o Punjpora Anantnag.
13. Altaf Hussain Sheikh (age: 35 years) S/o Nazir Ahmad Sheikh, R/o Mirhama Anantnag.
14. Farooq Sultan Bhat (age: 37 years), S/o Mohammad Sultan Bhat, R/o Nowshara Anantnag.
15. Khursheed Ahmad Lone (age: 38 years), S/o Gh. Nabi Lone, R/o Kalan Anantnag.
16. Ghulam Hassan Ganie (age: 49 years), S/o Abdul Aziz Ganie R/o Krandigam Anantnag.
17. Bashir Ahmad Mir, (age: 39 years), S/o Mohammad Ramzan Mir, R/o Sunsooma Anantnag.
18. Ajaz Ahmad Mir (age: 33 years), S/o Ab Aziz Mir R/o Nageenpora Kund.
19. Shabir Ahmad Bhat (age: 36 years) S/o basher Ahmad Bhat, R/o arigam Kulgam.
20. Mohammad Yaqoob Naikoo (age: 38 years), S/o Gh. Mohi-ud-din Naikoo, R/o Vessu Anantnag.
21. Reyaz Ahmad Mir (Age: 38 years), S/o Gull Mohammad Mir, R/o Baihama Kulgam.
22. Mudasir Ahmad Shah (age: 34 years), S/o Mushtaq Ahmad Shah, R/o Serigufwara Anantnag.
23. Mohammad Iqbal Bhat (age: 40 years) S/op AB. Rehman Bhat, R/o Tarigam Qazigund.
24. Gowher Hussain Dar (age: 36 years) S/o Ghulam Mohammad Dar, R/o Tarigam Qazigand.
25. Aijaz Ahmad Malla (age: 32 years), S/o Ali Mohammad Malla R/o Adigam Devsar.
26. Ishfaq Ahmad Paray (age: 37 years) S/o Gh. Nabi Paray, R/o Dialgam Anantnag.

27. Sheeraz Ahmad Dar (age: 33 years), S/o Gh. Hassan Dar, R/o Baihama Anantnag.
28. Fayaz Ahmad Ganai (age: 33 years), S/o Gh. Hassan Ganaie R/o Koil Pulwama.
29. Wasaeem Sajad Wani (age: 32 years) S/o Gh. Ahmad Wani, R/o Koil Pulwama.
30. Mudasir Mohammad Bhat (age: 33 years), S/o Gh. Mohammad Bhat, R/o Koil Pulwama.
31. Mushtaq Ahmad Wani (age: 34 years), S/o basher Ahmad Wani, R/o Hariparigam Pulwama.
32. Mohammad Maqbool Dar (age: 48 years), S/o Ab. Kabir Dar R/o Payir Pulwama.
33. Sheeraz Ahmad Ganai (age: 34 years), S/o Gh. Mohammad Ganai R/o Kai Chechkoot Pulwama.
34. Ali Mohammad Ganai (age: 36 years) S/o Ab Majeed Ganai, R/o Koil Pulwama.
35. Saleem Ahmad Wani (age: 43 years), S/o Mohammad Akram Wani, R/o Koil Pulwama.
36. Bilal Ahmad Dar (age: 41 years), S/o Ab. Razak Dar, R/o Achan Pulwama.
37. Abdul Aziz Kumar (age: 33 years), S/o Ab. Gani Kumar, R/o Boonur Pulwama.
38. Mohammad Muzaffar Allaie (age: 43 years), S/o Gh. Mohammad Allaie R/o Awantipora Pulwama.
39. Javaid Ahmad Bhat (age: 41 years), S/o Ab. Majid Bhat, R/o Awantipora Pulwama.
40. Shabir Ahmad Palla (age: 35 years), S/o Mohammad Anwar Palla, R/o Patipora Pulwama.
41. Sabzar Ahmad Bhat (age: 33 years), S/o Ab. Ahad Bhat, R/o Patipora Pulwama.
42. Fayaz Ahmad Malik (age: 40 years) S/o Ab. Khalil Malik, R/o Penjren Pulwama.
43. Maqsood Ahmad Malik (age: 31 years), S/o Gh. Hassan Malik, R/o Panzoo Pulwama.
44. Bilal Ahmad Kuchay (age: 35 years), S/o Mohammad Ismail Kuchay R/o Barsoo Pulwama.
45. Mohammad Shafi peer (age: 46 years), S/o Mohammad Maqbool Peer R/o Hariparigam Pulwama.
46. Mohammad Amin Bhat (age: 36 years), S/o Mohammad Ismail Bhat R/o Panzoo Pulwama.

47. Noor Mohammad Bhat (age: 38 years), S/o Ab. Gani, Bhat R/o Buchoo Pulwama.

48. Syed Basharat Maqbool (age: 33 years), S/o Syed Mohammad Maqbool R/o Haknar Pulwama.

49. Ashaq Hussain (age: 38 years), S/o Hamid-ullah Bhat, R/o Amirabad Pulwama.

50. Shafiq Ahmad Bhat (age: 41 years), S/o Gh. Mohi-ud-din Bhat R/o Diver Pulwama.

51. Mohammad Shafi Bhat (age: 42 years), S/o Ghulam Ahmad Bhat, R/o Pinglish Pulwama.

52. Mohammad Yousuf Lone (age: 43 year) S/o Gh. Mohi-ud-din lone, R/o Gulab Bagh Pulwama.

53. Muhamma Shafi Bhat (age: 39 years), S/o Gh. Nabi Bhat, R/o Kuchmulla Pulwama.

54. Nisar Ahmad Nayak (age: 37 years), S/o Ab. Hamid Nayak, R/o Durpora Pulwama.

55. Murtaza Amin Itoo, (age: 36 years), S/o Mohammad Amin Itoo, R/o Durpora Pulwama.

56. Irshad Ahmad (age: 34 years), S/o Mohammad Shaban Rather, R/o Lariyar Pulwama.

57. Zahid Maqbool (age: 35 years), S/o Mohammad Maqbool R/o Pinglish Pulwama.

58. Feroz Ahmad Ganie (age: 33 years), S/o Abdul Rashid Ganai R/o Kragam Pulwama.

59. Sat Nam Singh (age: 42 years), S/o Mohammad Akram Dar, R/o Tral Pulwama.

60. Farooq Ahmad Rather (age: 32 years), S/o Mohammad Akram Dar R/o Tral Pulwama.

61. Javid Ahmad Bhat (age: 33 years), S/o Kh. Gh. Rasool Bhat, R/o Yaungoora Srinagar.

62. Bashir Ahmad Bhat (age: 37years), S/o Abdul Ahad Bhat, R/o Batapora Ganderbal.

63. Rafeeq Ahmad Bhat (age: 32 years), S/o Ab. Ahad Bhat R/o Batpora Bandipora.

64. Javid Ahmad Nagar (age: 32 years), S/o Ghulam Mohammad Najar R/o manigam Ganderbal.

65. Shabiur Ahmad (age: 42 years0, S/o Ghulam Mohammad Najagar R/o Manigam Ganderbal.

66. Yousuf Hassan (age: 39 years), S/o Gh. Hassan Ahangar, R/o Cherar-i-Sharief Budgam.

67. Gh. Mohammad Sheikh (age: 49 years), S/o Mohammad Kamal Sheikh, R/o Banita Budgam.

68. Showkat Ahmad (age: 33 years), S/o Mohammad Yousuf Dar, R/o Hafroo Batpora Budgam.

69. Farooq Ahmad Lone (age: 35 years), S/o Mohammad Sultan Lone, R/o Tangmarg Baramulla.

70. Mohammad Ashraf Lone (age: 32 years), S/o Gh. Mohammad Lone, R/o Zangam Pattan Baramulla.

71. Gulzar Ahmad Hajam (age: 40 years), S/o Gh. Rasool Hajam R/o Vessu Anantnag.

72. Ranjeet Singh (age: 39 years), S/o Soba Singh, R/o Tahab Shadipora Pulwama.

73. Ab. Ahad Ganai (age: 41 years), S/o Gh. Rasool Ganai, R/o Sogam Kupwara.

74. Fayaz Ahmad Mir (age: 44 years), S/o Mohammad Gulzar Mir, R/o Hirri Bala Kupwara.

75. Javeed Yousuf Shah (age: 33 years), S/o Mohammad Yousuf Shah, R/o Shatogum Lolab Kupwara.

76. Aziz Ahmad Mir (age: 45 years), S/o Mohammad Yousuf Mir, R/o Rawatpora Kupwara.a

77. Hafizullah Pir (age: 39 years), S/o Pir Habibullah R/o Nagrimalpora, Kupwara.

78. Manzoor Ahmad Khan (age: 42 years), S/o Mohammad Yaqoob Khan, R/o Zurhama Kupwara.a

79. Nazir Ahmad Mir (age: 36 years), S/o Shareef Din Pir R/o Dudwan Kupwara.

80. Gh. Hassan Ganai (age: 39 years), S/o Ab. Rehman Ganai, R/o Tikipora Lolab Kupwara.a

81. Akhtiyar Ahmad Khan (age: 38 years), S/o Mohammad Suliaman Khan, R/o Cheepora Lolab Kupwra.a

82. Ab. Hamid Khan (age: 42 years), S/o Nasrullah Khan, R/o Haihama Kupwara.a

83. Sajad Ahmad Shah (age: 31 years), S/o Mohammad Abdullah Shah, R/o Mirnagh Kupwara.a

84. Ashaq Hussain Khan (age: 36 years), S/o Ab Majeed Khan, R/o Zurhama Kupwara.a

85. Riyaz Ahmad Ganai (age: 45 years), S/o Mohammad Sidiq Ganai R/o Sogam Kupwara.a

86. Ab Majeed Pir (age: 48 years), S/o Noor ud Din Pir R/o Dudhwan Kupwara.a

87. Farooq Ahmad Khan(age: 45 years), S/o Ab Rashid Khanm R/o Ab Rashid Khan, R/o Haihama Kupwara.
88. Mohammad Yousuf Ganai (age: 38 years), S/o Gh. Mohammad Ganai, R/o Pinglish Pulwama.
89. Mehraj-ud-Din (age: 43 years), S/o Mohammad Sultan Chopan, R/o Hadipora Baramulla.
90. Shabir Ahmad Wagay (age: 41 years), S/o Ghulam Ahmad Wagay R/o Hadipora Baramulla.
91. Nasir Ahmad Antoo (age: 47 years), S/o Ab. Ahad Antoo R/o Hadipora, Baramulla.
92. Syed Sajad-ul-Hassan (age: 40 years), S/o Syed Abdul Hamid, R/o Machipora Sopore Baramulla.
93. Shahbaz Ahmad (age: 35 years), S/o Mohammad Shafiq, R/o Manjakote Rajouri.
94. Kabir Alam (age: 42 years), S/o Faiz Alam, R/o Muglian, Rajouri.
95. Syed Mehraj-ud-Din (age: 34 years), S/o Mohammd Maqbool Syed Qadri, R/o Hariparigam Pulwama.
96. Javeed Ahmad Rather (age: 33 years), S/o Ab. Ahad Rather, R/o Sogam Kupwara.
97. Majaz Ahmad Wani (age: 34 years), S/o Ab Azia Wani, R/o Walki Kupwara
98. Tawfiq Ahmad Antoo (age: 47 years), S/o Khazir Mohammad Antoo, R/o Hadipora, Baramulla.
99. Mohammad Akbar Antoo (age: 41 years), S/o Mohammad Akbar Antoo, R/o hadipora Baramulla.
100. Mohammad Ashraf Lone (age: 48 years), S/o Ghulam Mohammad Lone, R/o hadipora Baramulla.
101. Javid Ahmad Wani (age: 44 years), S/o Gh. Rasool Wani R/o hadipora, Baramulla.
102. Mushtaq Ahmad Wani (age: 39 years), So Bashir Ahmad Wani, R/o hadipora Baramulla.
103. Tanveer Ahmad Wani (age: 33 years), S/o Ghulam Nabi Wani, R/o hadipora Baramulla.
104. Nazir Ahmad Wani (age: 43 years), S/o Bashir Ahmad Wani, R/o Hadipora Baramulla.
105. Manzoor Ahmad Wani (age: 39 years), S/o Gh. Mohammad Wani, R/o Dangiwacha Baramulla.
106. Mudasir Ahmad Bhat, (age: 33 years), Gh. Qadir Bhat, R/o Tral Pulwama.
107. Mohammad Shafi Ganai (age: 39 years), S/o Ab. Ahad Ganai, R/o Kupwara.a

108. Hilal Ahmad Thakar (age: 34 years), S/o Jalal-ud-din Thakar R/o Katbal Budgam.
109. Khursheed Ahmad Shah (age: 39 year), S/o Ab. Rashid Shah, R/o Lolab Kupwara.a
110. Javid Ahmad Shah (age: years), S/o Sonaullah Shah, R/o Punchpora Anantnag.
111. Mohammad Iqbal Malik (age: 35 years), S/o Ahmad Malik, R/o Bandipora.
112. Asif Iqbal Dar (age: 36 years), S/o Gh. Qadir Dar R/o Shutloo Rafiabad Baramulla.
113. Khursheed Ahmad Ganai (age: 36 years), S/o Ab. Rehman Ganai, R/o Ahmuji Kulgam.
114. Mohammad Afzal Lone (age: 39 years), S/o Mohammad Anwar Lone, R/o Noshara Anantnag.
115. Waheed Ahmad Dar (age: 36 years), S/o Ab Salam Dar, R/o Akhran Kugam.
116. Mohammad Saleem Bhat, (age: 41 years), S/o Mohammad Ibrahim Bhat, R/o Koil Pulwama.
117. Gh Jeelani Bhat (age: 32 years), S/o Ab. Gani Bhat, R/o Koil Pulwama.
118. Javid Ahmad Quzi (age: 35 years), S/o Mohammad Yousuf Quzi R/o Newa Pulwama.
119. Mushtaq Ahmad Wani (age: 46 years), S/o Gh. Nabi Wani, R/o Koil Pulwama.
120. Juneed Ul Nissar Wani (age: 32 years), S/o Nissar Ahmad Wani R/o Koil Pulwama.
121. Shabir Ahmad Lone (age: 40 years), S/o Sona0ullah Lone, R/o Hadipora, Baramulla.
122. Gulzar Ahmad Mir (age: 39 years), S/o Gh. Hassan Mir, R/o Nichloora Pulwama.
123. Hilal Ahmad Wani (age: 37 years), S/o Gh. Mohammad Wani, R/o Otibal Chadura Budgam
124. Gulzar Ahmad (age: 37 years), S/o Akhoon Ali Malla, R/o Lankercey Sankoo Drass Kargil.
125. Sajad Ali Malla (age: 37 years), S/o Akhoon Ali Malla, R/o Lankerchey Sankoo Drass Kargil.
126. Abbass Ali (age: 40 years), S/o Mohammad Kazim (R/o Pashlam Kargil.
127. Zakir Hassan (age: 39 years), S/o Mohammad Ismail R/o Lankercey Sankoo Kargil.

128. Syed Ahmad Shah (age: 42 years), S/o Syed Sidiq Shah, R/o Goshan Drass Kargil.

..... Applicants

By Advocate:- Mr. Jahangir Iqbal Ganai, assisted by Mr. Humaira

V E R S U S

1. State of J&K through Principal Secretary to Govt. Home Department, Civil Secretariat, Srinagar/Jammu

2. Director General of Police, Prisons, J&K, Jammu/Srinagar.

3. Inspector General of Police, Prisons Department J&K Srinagar.

4. Departmental Selection Committee/Board constituted vide Govt. Order No. Home-21 of 2004 dated 28.06.2004, through its Chairperson (IGP, Prisons Department), Kashmir.

..... Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G

c/w

**T.A. No. 61/2124/2020**

1. Ashaq Hussain, age 40 years, S/o Bashir Ahmed Lone. R/o Kotli, Bhaderwah

2. Gulzar Singh, age 39 years), S/o Sh. Shiv lal, R/o Village Karpal Nagri Parole.

3. Vinod Singh, age 42 years, S/o Sh. Hardev Singh, R/o Janglote, Tehsil & District Kathua

..... Applicants

By Advocate:- Mr. Anuj Dewan Raina

V E R S U S

1. The State of Jammu & Kashmir, through Principal/Secretary to Government, Home Department, Civil Secretariat J&K Government, Jammu/Srinagar.

2. The Commissioner/Secretary to Government, Department of Law, Justice & Parliamentary Affairs, Civil Secretariat, J&K Government, Jammu/Srinagar.
3. The Director General of Police, State of Jammu & Kashmir, Jammu/Srinagar.
4. The Inspector General of Police, Prisons Department, State of Jammu & Kashmir, Jammu/Srinagar Chairman, Departmental Selection Committee.

.....Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G

**O R D E R**

Per Hon'ble Mr. Anand Mathur, Member- A:

1. The present petition has been filed by petitioners, as detailed in the title, seeking the following reliefs:
  - i. Certiorari seeking quashment of Govt. Order No.134-Home of 2019 dated 06-02-2019, whereby the respondent authorities have terminated the selection process initiated pursuant to Advertisement Notification 539 of 2005 dated 25-08-2005, abintio.
  - ii. Issue writ in the nature of mandamus commanding the respondent authorities to bring to logical conclusion the selection process undertaken by the respondent authorities pursuant to Advertisement Notification No. 539 of 2005 dated 25-08-2005 in light of the decision taken by the respondent no. 2 vide U.O. No. (opn) 2009- 91 –Home dated

12-03-2014 as well as judgment dated 17.09.2013 in SWP 1953/ 2013.

- iii. Issue Writ in the nature of Mandamus commanding the respondent authorities to accord consideration to the case of the petitioner for the purpose of their selection and consequent appointment against the post of Jail Warder being eligible and pass through all the requisite tests conducted by the respondents in terms of selection process initiated for advertisement notification no. 529 of 2005 dated 25-08-2005.
  - iv. Pass such other appropriate writ command or direction as this Hon'ble Court may deem fit in the given facts and circumstances of the case
2. Petitioners are aggrieved by impugned Govt. Order 134-Home of 2019 dated 06-02-2019, whereby the respondents have terminated the selection process initiated for the post of Warder in the prisons department in terms of the Advertisement Notification No. 539 of 2005 dated 25-08-2005. It is the case of petitioners that they participated and successfully completed the eligibility tests in the selection process right but the respondents rather than bring to logical conclusion the selection process have terminated the same without complying with the directions passed by the Hon'ble Court as well as the opinion tendered to them by the respondent no.2. The impugned order has been passed in an arbitrary manner and

without application of mind giving no sound reasons for terminating the selection process.

3. Case of petitioners is that in pursuance of advertisement notification, respondent No.4 issued Notification dated 03-08-2010 followed by notice dated 01-09-2010 for holding of physical/ outdoor test on the scheduled dates as prescribed in the notice. The respondent authorities issued the advertisement notification in the year 2005 but took the next step in 2010 and that some of the candidates for whatsoever reasons did not appear on the scheduled dates. The respondents constituted a selection committee for undertaking the selection process and the Inspector General of Police, Prisons Department (Respondent No. 4) was nominated as a Chairman of the Departmental Selection Committee. The petitioners successfully completed the physical/ outdoor tests and were accordingly declared successful by the respondent authorities vide notification dated 18-12-2010 and the roll numbers of the selected candidates were published in notice dated 18-12-2010 and all such candidates were directed to appear before the selection Board along with their original testimonials on the scheduled dates. It was further stated in the notice that the candidates so selected shall be asked to undergo literacy test/ filling of the forms. The applicants being successful in the physical test appeared before the interview board on the said dates as provided in the notice and as directed by the respondents submitted their original documents.

4. It is further averred in the petition that in addition to above notice published in newspaper 'Daily Excelsior' on 18.12.2010, respondents also despatched registered letters to selected candidates for the purpose of document verification and literacy test in which the applicants participated on 04.01.2011 to 06.01.2011. The petitioners further state that besides the above notification which came to be duly published in the local daily namely 'Daily Excelsior' vide its Edition dated 18-12-2010, the respondent authorities in addition to the notice had also sent registered letters to the selected candidates through postal department for the purpose of scrutiny of their documents as well as for undergoing literacy test.
5. It is the further case of petitioners that they participated in the literacy test which came to be conducted from 04-01-2011 till 06-01-2011. However, as per the applicants, further progress in the selection process stopped after holding of the literacy test. Thereafter, the respondents authorities had assured all the candidates including the petitioners that the literacy test would be disclosed shortly and thereafter a formal select list would be issued. Representations were filed in 2013 which except for a communication dated 05-03-2013 saying that no selection list of Warder has been released, evoked no reaction from the Government. Writ petition No. 1953/2013 titled Mohd Shabir v/s State of J&K was disposed by the Hon'ble High Court vide order dated 17.09.2013 directing the Government to finalise the selection

process in accordance with Rules within a period of one month from the date copy of order is served.

6. However, the process was not finalised which led to filing of Writ Petition SWP No. 1599/2017 wherein vide Order dated 17-09-2013, respondents were directed to file a detail affidavit as to why the process or selection for the post of Jail Warder initiated in the year 2005 has not been completed till date and the affidavit was filed in January 2018 by DGP, Prisons, J&K which reveals that the respondent authorities have been directed by the Respondent No. 02 to bring to logical conclusion the selection process as initiated in terms of Advertisement Notification dated 25-08-2005. The Hon'ble High Court vide judgment dated 30-11-2018 directed the respondents to:

- “a. The respondents shall take an appropriate decision with regard to whether the process of selection as initiated vide advertisement notice no. 539 of 2005 dated 25-08-2005 is to be abandoned
- b. In case the decision is to abandon the process of selection the order to that effect should be a speaking order giving details.
- c. Let an appropriate decision be taken by the respondents positively by 15-02-2019 if no decision is taken by this date the selection process conducted shall be deemed to be good and shall be followed by issuance of a select list by 05-03-2019. Appointment orders shall be issued within two weeks thereafter i.e.

by 20-03-2019. The schedule fixed shall be strictly complied with. In case the decision is adverse to the petitioners, they shall be at liberty to approach this Court again.

- d. Writ petitions are accordingly disposed of along with connected IAs”

7. As per, the petitioners, the respondents thereafter issued the impugned Government Order No. 134 of 2019 dated 06-02-2019 whereby the selection process initiated for the post of Jail Warder has been terminated. Petitioners challenge the impugned order on the following grounds:

- A. Impugned order of rejection is not speaking order as the respondents have failed to accord consideration to the legal advice tendered to them by the respondent no.2 vide communications dated 30-12-2013 and 12-03-2014 as well as the orders of the Hon’ble High Court.
- B. Impugned order is based on premises that no individual call letter/notices were sent to the candidates who had applied in response to the notification which is factually false as the respondent authorities after the issuance of advertisement notification had issued noticed dated 03-08-2010 as well as notice 01-09-2010 which came to be duly published in the leading newspaper of the State and sent separate intimation/notices through registered post.

C. Reason for issuing the impugned order is that lesser number of candidates opted to undergo the physical measurement test whereas the truth behind the appearance of the candidates is based upon the reason that the respondents after the issuance of advertisement notice in the year 2005 did not proceed ahead with the selection process for nearly 5 years and it was because of this reason that the candidates who came to be selected/engaged elsewhere did not come forward for appearing in the physical measurement test. However another reason for lesser appearance of the candidates was that initially the respondent had not disclosed the kind of physical measurement test but the respondents after 5 years had apprised the candidates that only such candidates would be permitted who complete a run of 1600 meters within a gap of 6 minutes as well as undergoing 100 meters race within 15 seconds and the respondents had kept various others physical test which could not have been undergone by the candidates who might have attain the age of 42 years as the respondents did not conduct the test for a period more than 5 years.

D. Respondents have taken the indefensible reason that there was no condition for conducting for any literacy test whereas this factum is also factually incorrect for the reason that the advertisement notification contained condition no. 4 which specially provided for conducting of test/interview and the

condition of literacy test had also been included in the notification dated 18-12-2010.

E. Respondents have issued the impugned order on the ground that the selection process came to stretched too long as such, the same cannot be brought to its logical conclusion which justification given by the respondents cannot be legally. The applicant cannot be made to suffer for the fault of the respondents and are entitled to selection against the post of Jail warder. The petitioners who have been rendered overage because of fault on part of respondents in not concluding the selection process, as such, the petitioners cannot be made to suffer by depriving them of their bonafide right of consideration for selection against the post of Jail warder.

8. Counter affidavit has been filed by respondent No. 3 (DGP, Prisons) wherein steps taken in pursuance of the advertisement notice dated 25.08.2005 have been chronological stated as below:

- 1) Advertisement notice for Warders on 25.08.2005
- 2) Criteria for warders sent for approval to Home Department vide letter dated 07.08.2009 and 21.12.2009.
- 3) The proposal for criteria and constitution of Range Level Screening Committee was approved, per communication No. Home/92/Jail/2009 dated 11.10.2010.
- 4) Vide Notice dated 31.08.2010, candidates asked to report and 2146 candidates appeared before the District Level

Committee out of which 1247 candidates qualified for physical/outdoor test.

- 5) 1201 Candidates vide Notification dated 14.12.2010 directed to appear before the Board for document verification and literacy test.
- 6) The then Mr. M.A. Anjum, Chairman of Board retired and Mr. Navin Agarwal took over and the Board vide letter dated 13.03.2012 requested the Government to take decision including whether to quash the advertisement or carry forward the process.
- 7) Home Department vide letter dated 22.04.2013 intimated that the Competent Authority desired that the new Director General Prisons (Mr. K. Rajendra Kumar) must take a view first.
- 8) Vide letter dated 06.11.2013, the DGP (Prisons) opined that the selection process may be withdrawn and fresh selection be ordered.
- 9) Home Department, vide letter dated 29.09.2014 took the stand that looking to the opinion of DGP (Prisons) referred the matter to Department of Law, Justice and Parliamentary Affairs for advice and advice was given by Law Department vide letter dated 12.03.2014 that “the selection process stand initiated and as per the law declared by Hon’ble Supreme Court, the posts referred for selection cannot be withdrawn at this stage.
- 10) Home Department vide letter dated 29.09.2014 intimated that the case was further examined in the Home Department

and again referred to Law Department who vide letter dated 07.07.2014 advised that “The legal position on the issue is still same, as such no further/different interpretation is possible. Hence the opinion already conveyed vide U.O. even dated 30/12/2013 and 12/3/2014 is reiterated as it still holds good.”

- 11) The Departmental Selection Committee (DSC) in its meeting on 15.01.2015 decided that the recruitment process be carried out to its logical conclusion in conformity with Home Department directions and re-measurement of height of candidates and conduct of literacy tested be outsourced.
- 12) Vide letter dated 19.08.2015, the proposal for accord of sanction and placement of funds was submitted to the Government.
- 13) Home Department vide letter dated 14.12.2015 sought a comprehensive report from Prisons department about the process of selection taken since 2005 which was replied vide letter dated 29.12.2015 with the submission that the Department is ready to complete the process with the request that the Government may like to take appropriate decision vide letters dated 13.12.2016, 14.03.2017 and 23.10.2017.
- 14) Home Department vide letter dated 13.06.2018 sought details/clarification which was provided by Prisons Department vide letter dated 29.06.2018.
- 15) Home Department vide order No. 134-Home of 2019 dated 06.02.2019 terminated the selection process on the grounds

that certain procedural irregularities/lapses were committed by the then DGP Prisons in recruitment process.

9. Heard learned counsels for the petitioners who, besides reiterating the averments in the pleadings, stressed that the impugned order has been passed by the respondent in an arbitrary manner and is bereft of reasoning and that the reasons advanced by the respondent to terminate the selection process are not borne out from the record or the facts of the case. It has been argued by learned counsels for petitioners that once the petitioners were permitted to appear in the recruitment test, process of which had been completed upto the final stage, in the sense only height of the candidates is required to be measured and therefore instead of taking the selection process to its conclusion by declaring the results and that the act of the respondents in terminating the selection process is arbitrary and illegal and based on unsound reasons and violates the rights of petitioners under Article 16 (1) of the Constitution and the T.A.s be allowed.
10. On the other hand, learned AAG for the respondents, countered the arguments of learned counsels for applicant and submitted that the respondents have concluded that the entire selection process is vitiated for the reasons given in the impugned order. He further submitted that the impugned order gives valid reasons for terminating the selection process and in any case, the petitioners have no indefeasible right to get appointment, therefore, the competent authority has rightly terminated the process.

11. The impugned order dated 06.02.2019 gives the following reasons for declaring the entire selection to be vitiated:-

“23. Whereas, on scrutiny of the records mentioned hereinabove, inter-alia, the following has emerged:

- (a) In terms of para 11.7 of the Jail Manual, the power to constitute Departmental Selection Boards for making recruitment to the Prisons Sub-Ordinate Service vests in the IGP (Prisons). However, the Home Department had exercised the power in pursuance of the said provision and constituted a Departmental Selection Committee/Board under the Chairmanship of the Director General of Police, Prisons. This implies that the authority to make selections for recruitment to the Prisons Sub-Ordinate Service vested with the Departmental Selection Committee/Board (Apex Committee), constituted, vide Government Order No. Home-221 of 2004 dated 28.06.2004;
- (b) The Apex Committee in its meeting on 23.08.2010 had decided the composition of the proposed District Level Screening Committees and also nominated the Chairman of each Committee for all the Districts, however, no formal order(s) for constituting the District Level Screening Committee(s) by the Prisons Department were issued as per the records made available by the Prisons Department.
- (c) Delegating the power to make selection to the District Level Screening Committees was in violation of the

instructions conveyed by the Home Department, vide communication dated 15.04.2020 and thus in violation of the legal principle “delegatus non potest delagare” which lays down that an agent to whom an authority or decision making power has been delegated by a principal or a higher authority may not delegate it to a sub-agent unless the original delegator expressly authorizes it, or there is an implied authority to do so.

- (d) No individual call letters/notices/intimation were sent to the applicants who had applied in response to aforesaid advertisement notice. The Physical Endurance Tests (PETs) were being conducted after a gap of nearly 5 years and thus, it was incumbent upon the Apex Selection Committee constituted by the Government to intimate the applicants by means of individual call letters, as provided in the advertisement notice issued vide notification No. 539 of 2005 dated 25.08.2005 under the caption “General Conditions”. This would have ensured greater participation of the applicants in the selection process and could perhaps be considered as one of the possible reasons for low turnout of the candidates for the physical measurement tests.
- (e) The above assertion is reinforced by the fact that out of 41182 applicants, only 2145 turned up in response to the aforesaid recruitment notices dated 03.09.2010 and 04.09.2020 for physical measurement tests. This

implies that only 5.2% of the total applicants participated in the physical measurement tests viz. initial phase of selection process conducted by the District Level Screening Committee(s)/Selection Committee(s).

24. Whereas, in view of the foregoing, the following specific deficiencies/procedural lapses have emerged, after critical examination of various aspects of the entire selection process:

- i. Prisons Department was authorized, inter-alia, to constitute District Level Screening Committee(s) for the specific purpose of screening/scrutinising of application forms of the candidates. These Committees were not authorised to conduct any test(s) related to the selection of Warder in the Prisons department;
- ii. Prisons Department had decided the composition of the proposed District Level Screening Committees and also nominate the Chairman of each Committee for all the Districts, however, no formal order for constituting the District Level Screening Committee(s) by the Prisons Department has been issued as per the records made available by the Prisons Department, Hence, the District Level Screening Committee(s) was/were not legally constituted;

- iii. The Prisons Department had specially stated/undertaken that a Member of the Central Board will act as an Observer with each Screening/Selection team. This undertaking/assurance has been observed in breach;
- iv. The composition of the District Level Screening Committee (s) had undergone change from time to time for conducting outdoor tests, notwithstanding the mandate of such committees to conduct these tests, thus, resulting in inconsistency in the constitution of the Committee;
- v. No individual call letters/notices/intimation were sent to the applicants, in the year 2010, who had applied in response to aforesaid advertisement notice pertaining to the year 2005. The physical measurement tests were being conducted after a gap of nearly 5 years and as such, it was incumbent upon the Apex Selection Committee constituted by the Government to intimate the applicants by means of individual call letters. This would have ensured greater participation of the applicants in the selection process and can perhaps be considered as one of the possible reasons for low turnout of the candidates for the physical measurement tests. Further, intimation by means of call letters for a test/interview was one of the conditions of the advertisement notice, issued on

28.05.2005. It needs to be noted that out of 41182 applicants, only 2146 turned up in response to the aforesaid recruitment notices dated 03.09.2010 and 04.09.2010 for physical measurement tests and thus only 5.2% of the total applicants came to participates in the physical measurement tests viz. initial phase of selection process conducted by the District Level Screening Committee(s)/Selection Committee(s);

- vi. The functions were required to be performed by the Departmental Selection Committee (Apex Committee) were performed by the District Level Screening Committees and vice-versa, in violation of the extant rules/instructions on the subject; and
- vii. Conduct of literacy test of the shortlisted candidates was not a part of advertisement notice.

25. Whereas, apart from the above, the then DGP (Prisons) have from time to time stated, inter-alia, that the selection process suffers from various flaws and procedural irregularities and suggested quashment of the entire selection process. Several members of the Recruitment Board have, inter alia, opined that the process has stretched very long and all the shortlisted candidates having attained ripe age and suggested that a fresh advertisement be issued for a transparent selection process.

26. Now, therefore, having regard to the above details and with the approval of the Competent Authority, the entire selection process, initiated in the year 2005, vide notification No. 539 of

2005 dated 25.08.2005, issued by the Prisons Department is hereby terminated/quashed, ab-initio, on the grounds indicated in paras 23, 24 and 25 hereinabove.

By order of the Government of Jammu and Kashmir.”

12. It is settled law that even if the candidates are found fit for appointment to the vacancies notified, they do not acquire an indefeasible right to be appointed but at the same time if the Government decides not to fill up the posts, it has to give valid reasons for its decision and not act in an arbitrary and unreasoned manner.
13. In *Shankarsan Dash v/s UOI*, 1991 (3) SCC 47, where the Hon'ble Apex Court has observed that mere selection may not confer right to the incumbent but at the same time the State or its authorities has no license of acting in an arbitrary manner and unless the reasons assigned while taking decision to cancel the process is being meted out with the mandate of law, the States' action is not beyond the scope of judicial review and if any decision is found to be arbitrary, appropriate directions can always be issued in the matter by the Court of law. It would be appropriate to quote the relevant portion of the judgment in *Shankarsan Dash's* case (*supra*):

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be

legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

14. The aforesaid judgment was further considered by the Hon’ble Apex Court in East Coast Railway and Another Vs. Mahadev Appa Rao and Others, AIR 2010 SC 2794 and it would be appropriate to quote the relevant portion of the judgment which is ad infra:

“It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ Court. If any such decision is indeed found to

be arbitrary, appropriate directions can be issued in the matter.

See also Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, (1993) 2 SCC 573 referred to by learned counsel for petitioners wherein the Hon'ble Apex Court observed that ““the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. No Government can adopt such a stand with any justification today.””

Learned counsel for petitioners also referred to Amar Nath Singh v/s Union Of India, (1997) AllWC894 : (1998) 3 UPLBEC 1885 wherein the Hon'ble High Court has observed that:

“Every candidate who has applied for a particular post in pursuance of the advertisement and who has gone through the rigour of the entire process of selection, in my view, is entitled to have a legitimate expectation for being considered for appointment, may be that he is ultimately not appointed. Appointment on a post in one thing while consideration for appointment is another. Both the things cannot be mixed up and the confusion, if any, in the mind of all and sundry, must be clear with reference to these two aspects of the matter, which are quite separate and distinct. The order of cancellation of the recruitment process cannot be attached with that much of sanctity as it may render it inviolable or beyond the pale of scrutiny. The law is that if an order has been passed to set at naught the entire selection process, it has to conform to the test of reasonableness and fairness.

The order should be passed bonafide and must be passed on some concrete and tangible material and certainly it cannot be the outcome of an arbitrary act imbued with subjectively.

9. The Courts certainly have the power and authority to consider the efficacy and sufficiency of the grounds and the material in the wake of which an order of cancellation came into being.”

15. The Hon’ble Apex Court is consistent in its view that the candidate appearing in a selection may not acquire any indefeasible right to a post but at the same time, the State or its authorities do not enjoy an unqualified prerogative to cancel a selection process in an arbitrary manner. Rather, it is the legal duty of the State or its authorities to be fair enough in its decision-making process and if that is held to be arbitrary, it is always open to be examined within the limited scope of judicial review and if that is not in conformity with the mandate of law, can certainly be interfered by the Court.
16. So, the question in the present case arises for adjudication is whether the impugned decision of the Government cancelling/terminating the selection process is supported by valid and cogent reasons and is not arbitrary/not in conformity with the mandate of law.
17. It was argued by learned AAG that the cancellation of the selection procedure was justified on account of the specific deficiencies/procedural lapses to have been found out by the Principal Secretary

to Government, Home Department in the selection process and therefore, no ground made out by the petitioners to seek the intervention of this Tribunal to review and set aside the impugned order. He has submitted that the impugned order is a matter purely of a policy decision to fill up or not to fill up the posts and there should ordinarily be no interference with such policy decision, while exercising power of judicial review.

18. It was also submitted by the learned AAG that no individual call letters/notices/intimations were sent to the applicants in the year 2010 when physical measurement tests were to be conducted after a gap of nearly 5 years and so, it was incumbent upon the Selection Committee constituted by the Government to intimate the applicants by individual call letters, as the same would have ensured greater participation and intimation by call letter for a test/interview was one of the ‘General Condition’ of the advertisement notice. And that out of 41182 applicants, only 2146 turned up in response to notices dated 03.09.2010 and 04.09. 2010 and therefore no due publicity was given for holding of physical tests. This submission of learned AAG is with regard to clause 34 (v) of the Impugned order.
19. Learned Counsel for the petitioners have taken us through the contents of Advertisement Notification No. 539 of 2005 dated 25.08.2005 and submitted that there is no condition in advertisement notice that the applicants were to be intimated by individual call letter. It is submitted by learned Counsel for petitioners that the notifications calling upon all the applicants to

appear in the physical/outdoor test on the schedule dates were published in the newspapers in Jammu as well as Srinagar. Learned Counsels further submitted that this averment of the petitioners has not been denied by the respondents in rebuttal and in any case, if the contention of the Home Department is to be accepted, then 41182 call letters through post office were to be issued to the individuals who had applied in response to the advertisement.

20. The contention of learned counsel for petitioners has force and to be accepted. The advertisement notice of 2005 does not contain any condition that it is incumbent upon the Apex Committee to intimate applicants to appear in the test by way of individual call letters. Even so, there is no rule which makes it incumbent upon the Apex Committee to issue individual call letters. There is no rebuttal to the averment in the petition that notice was published in the local newspapers which by itself can be construed to be giving sufficient notice to the candidates to appear in the physical test. Impugned order lays emphasis on the low turnout during the physical test. However, this is to be accepted. The notification is of 2005 and call for physical test is given in the year 2010. There is bound to be less turnout looking to gap of nearly 6 years between the advertisement and the physical test. Even so, 2146 candidates turned out for advertised 73 posts. A choice was given to the public at large to participate in the selection process and if there was a low turn out in 2010, why did the Administration wait till 2019 to cancel the selection process. This does not reflect nicely on the efficacy of the Administration and the reason given in the

impugned order for terminating the selection process. In fact, the process was terminated after a gap of nearly 14 years should be an eye-opener for the Government to evolve a time bound plan to finish the selection processes in the administration and reflect it in the ACRs of the Officer/s if the process is not completed in a time bound manner.

21. The following facts are not in dispute as can be seen from the impugned order:
  - A. Home Department exercising the power under Para 11.7 of Chapter XI of Manual for Superintendence and Management of Jails in the State of J&K (2000) vide order dated 04.01.2004 constituted the ‘Department Selection Committee/Apex Committee’ comprising of DG Prisons amongst other officers to make selections in the Prisons Department (Refer page 2 of Impugned order);
  - B. As per decisions taken in the meeting chaired by Financial Commissioner (Home) on 11.02.2010, formation of ‘Department Selection Committee/Board’ was confirmed to make selections to various posts in the Prisons Department and constitution of Range Level Screening/Selections Committee (sub-committees) which would make selection at their level and provide a district wise list of selected candidates to the Departmental Selection Committee for final approval and orders (Page 3 and 4 of Impugned order);

C. Guidelines were conveyed to IGP (Prisons) vide letter dated 15.04.2010 by Home Department for initiating selection process in accordance with prescribed norms/rules governing the recruitment and that the Screening Committee can be constituted for screening/scrutinizing of application forms of the candidate but not selection which can be done by Departmental Selection Committee only (Page 4 and 5 of impugned order);

22. The impugned order refers to Clause 24 (i) in support of the decision for terminating the selection process and avers that Prisons Department was authorised to constitute District level Screening Committee for screening/scrutinizing of application forms of the candidate but not authorises to conduct any test related to the selection of Warder. And Clause 24 (vi) of the impugned order says functions of Departmental Selection Committee (Apex Committee) were performed by District level Screening Committee and vice-versa but fails to point such functions and makes the report ambiguous and unclear on this point.

23. We have gone through the material on record to see whether the District level Screening Committee conducted any test as referred to in the impugned order but have been unable to trace that any such test was done by the District level Screening Committee. The function of the District level Screening Committee is to initiated through its member as to the qualification/non-qualification of each candidate.

24. No doubt, the guideline issued by the Apex Committee on 23.08.2010 mentions about the selection lists submitted by the District level Screening Committee. However, the term ‘selection list’ is to be taken in a broader term rather than narrow view taken in the Impugned order. A list of persons who qualify or not qualify the physical test has to be prepared and in a broader sense, it is given nomenclature of ‘select list’. Regard also be had to the meeting convened by Finance Commissioner, Home department on 11.02.2010 where it is specifically provided that Selection Committee at lower level would provide the district wise list of selected candidates to the Departmental Selection Committee (DSC) for final approval and orders. In this sense, the final approval and order of selection is to be done by the DSC and this act of final approval is further strengthened by paragraph No. 7 of the Impugned order which mentions that:-

“The Department is free to constitute Screening Committees for screening/scrutinizing the applications received but these Committees cannot be assigned the responsibility of making selections. The Department Selection Committee/Board constituted vide Government Order No. Home 221 dated 28.06.2004 is the only competent authority to make selections in accordance with the prescribed norms.”

We cannot take the view that the officers of the J&K Police would misconstrue the rules and decisions and leave it to the District Level Screening Committees to make final selection when the situation is

very clear that it is only the DSC which is the competent authority to make selection.

25. It be also noted that Notification dated 03.08.2010 and 01.09.2010 calling the candidates for physical measurement/outdoor test etc was issued by office of IGP, Prisons Department, Srinagar, J&K. Thereafter, candidates who were successful in the physical/outdoor test were directed to appear before the Board with their documents and filling forms.
26. Clause 24 (iii) of the impugned order observes that the Prisons Department stated that member of Central Board will act as an Observer with the Screening team which has been observed in breach. From what material, this breach is discernible, has not been mentioned in the impugned order and contributes to the ambiguity in the impugned order.
27. Clause 24 (iv) runs counter to clause 24 (i) for it mentions that District level Screening Committee has undergone change from time to time for conducting outdoor test but District level Screening Committee has not been vested with authority to conduct any test and nor is there any material to show that the District level Screening Committee conducted such tests. Conducting the test and tabulating the results are two different acts.
28. Clause 24 (ii) of the impugned order is to the effect Prisons Department had decided the composition of the proposed District level Screening Committee and its Chairman but no formal order

had been issued in this regard, as per, the record made available by the Prison Department. Hence the District level Screening Committee were not legally constituted. We are unable to subscribe to this reason. Just because the formal order was not made available, the impugned order holds that the District level Screening Committees were held to be not legally constituted or in other words were constituted illegally. The Home Department could have asked the Police Department to verify/confirm the fact whether any such order was issued or not before taking such a view.

29. In the background of these facts, it is the plea of the petitioners that the irregularities were not such as to necessitate cancellation of entire process of selection process. Even if, there were some deficiencies, such deficiencies could not be said to be incurable. It has been further argued by the learned counsel for petitioners that looking to the counter affidavit of DGP, Prisons, it is clear that both the Prisons Department and Department of Law, Justice and Parliamentary Affairs were of the view that the selection process cannot be withdrawn, more so, looking to the law declared by the Hon'ble Supreme Court of India and this opinion was repeatedly given by the Law Department and yet the impugned order has been passed bypassing all reasons and in an arbitrary manner and placed reliance upon East Coast Railway Vs. Mahadev Appa Rao, AIR 2010 SC 2794 wherein it has been held by the Hon'ble Apex Court that:

“Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.”

30. It is nobody's case that no such reasons were set out even in any contemporaneous record or file. Looking to the reasoning adopted by the respondents, even assuming some of the flaws to be correct, it cannot be said irregularities were all pervasive and beyond correction. The various flaws and procedural irregularities, even if acceptable could have been rectified to carry out the selection process to its logical end. In fact there is no mention in the impugned order that the various flaws and procedural irregularities were of such a nature that they were not rectifiable.
31. We may refer to the observations of the Hon'ble High Court in *Amar Nath Singh v/s Union Of India*, (1997) AllWC894 : (1998) 3 UPLBEC 1885 that:

“I am conscious of the fact that a selection process is not sacrosanct. It can be cancelled, scrapped or annulled if there is concrete and reliable evidence of large scale bungling, malpractice, corruption, favoritism and nepotism of the like of if there is a violation of fundamental procedural requirements. It is true that fabrication would obviously either be not known or no one could come forward to bear the burnt. Nevertheless, there should be wealth of material to take the extreme and drastic step of scrapping the whole recruitment process, particularly when it has reached the final stage. The cancellation or scrapping of the recruitment has very serious repercussions and impact not only on the candidates who have undergone the rigorous of the test but on the general public and the Department itself. It also casts aspersions on the members of the Recruitment Committee. I am constrained to observe that the order of scrapping of the recruitment by the DG/RPF, may not be mala fide but is in utter violation of the established norms and devoid of the considerations fairness and reasonableness. The order is the product of irrelevant considerations and has been passed in a cloistered manner. The fact that there has been non-application of mind to the real question, i.e., of removal of the discrepancies and irregularities, is eloquent of the arbitrariness on the part of the DG/RPF. The recruitment has been doled out in a wholly arbitrary manner.”

32. In the absence of good and sound reasons in support of the impugned order, it must be held that the impugned order was

passed in unreasonable and irrational manner, the impugned order of cancellation of the entire recruitment process must, therefore, be quashed and set aside. Consequently, the petitions succeed and are allowed. The order impugned order No. 134- Home of 2019 dated 06.02.2019 passed by respondent Principal Secretary to Government, Home Department, Government of J&Ks cancelling the process of selection initiated pursuant to Advertisement Notification No. 539 of 2005 dated 25.08.2005 is hereby quashed and set aside and the respondents are directed to go ahead with the selection process further and take appropriate decision, as per the Scheme of Recruitment Rules and Advertisement notification. The exercise, as indicated above, be completed by the administration within three months from the date of receipt of certified copy of this order. T.A.s are accordingly disposed of. No costs.

(Anand Mathur)  
Member (A)

(Rakesh Sagar Jain)  
Member (J)

Arun