

Reserved
(On 30.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the **06th** day of **September** 2018

Original Application No. 330/01717 of 2015

Hon'ble Mr. Gokul Chandra Pati, Member – A

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

1. Manoj Chakraborty, S/o late Durga Charan Chakraborty, R/o L-2/28 80 Feet Road Barra – 6, Kanpur. Presently working as Junior Engineer (C&W) NCR, Kanpur.
2. Rajendra Kumar, S/o late Shri Rampal, R/o Laxmi Colony Line S.P. Banglow Ke Samane Fatehpur. Presently working as JE under C.D.O. (C&W) N.C.R., Allahabad.
3. Naval Kishor Meena, S/o Hazari Lal Meena, R/o 22-A, Nirala Nagar Railway Colony, Kanpur. Presently working as Junior Engineer (C&W) Kanpur.
4. Rajesh Meena, S/o Ram Singh Meena, R/o 992/D Railway Colony Govind Nagar, Kanpur. Presently working as Junior Engineer (C&W), Kanpur Central.
5. Rameshwar Prasad Meena, S/o Nathu Lal Meena, R/o 992-A, Railway Colony Govind Nagar Kanpur. Presently working as JE under Senior Section Engineer (C&W)/GMC, Kanpur.
6. Arvind Ram, S/o late Mohan Ram, R/o Rajrooppur, Allahabad. Presently working as JE under CDO (C&W) NCR, Allahabad.
7. Sanjay Kar, S/o Hare Krishan Kar, R/o 11/42 Krishna Nagar Kanpur. Presently working as JE (C&W), Kanpur.

...Applicants

By Adv: Shri S. Narain

V E R S U S

1. Union of India through Divisional Railway Manager, Allahabad Division, N.C.R., Allahabad.
2. Senior Divisional Personnel Officer, Allahabad Division, N.C.R. Allahabad.
3. Senior Divisional Mechanical Engineer, Allahabad Division, N.C.R., Allahabad.

4. Anil Kumar, S/o Ram Ashray. Presently working as Technician Grade – I in the office of GMC (C&W), Kanpur.

. . . Respondents

By Adv: Shri L.M. Singh and Shri R.K. Mishra

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicants, being aggrieved by the order of the respondents to cancel the panel selected for promotion to the post of Junior Engineer (C & W) in Mechanical department (in short JE) through 25% talent quota promotion through the limited departmental competitive examination (in short LDCE), have filed the present Original Application (in short OA), with the prayer for following reliefs:-

- “i. Issue a writ order or direction in the nature of certiorari quashing the impugned order 07.12.2015 passed by respondent No. 2 and its Corrigendum dated 08/10.12.2015 (Annexure A-1 and A-2 to the compilation No. I.)*
- ii. Issue a writ order or direction in the nature of mandamus directing the respondents to*
- iii. Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.*
- iv. Award the costs of the original application in favour of the applicant.”*

2. The facts of this case are not disputed. The applicants, working as Technician Grade-III had applied to participate in the LDCE. Their applications were accepted after scrutiny alongwith 114 candidates who had applied for the same in pursuance to the notification dated 6.8.2012, and they were allowed to appear in the written examination held on 19.1.2013. The result for the said written examination was declared on 4.4.2013 selecting 16 candidates to have been successful for being appointed as JE under the 25% talent quota, in which all the applicants were selected to be placed in the panel dated 4.4.2013 (Annexure A-6). On the same day i.e. on 4.4.2013 another letter was issued directing that the selected candidates are to be deputed for 52-week training before appointment and the training was to be held from 8.4.2013 to 7.4.2014. All 16 selected candidates were relieved to report for training. Accordingly, the applicants also reported for training after being relieved.

3. On 4.4.2014, the Principal of the Training Institute wrote a letter to the respondent no.3 (Annexure A-8), informing that all the trainees have successfully completed the training after clearing the examinations and they should be given formal posting orders. Thereafter, vide order dated 21.4.2014 (Annexure A-8), all 16 candidates including the applicants were issued the promotion and posting order.

4. In the meantime, one of the unsuccessful candidate, Sri Anil Kumar (respondent no.4), had filed the OA No. 117/2014, stating that there were irregularities in the selection process due to various reasons, one of the reason being permission to a number of ineligible candidates to participate in the examination. The OA was disposed of with a direction to the applicant to prefer a fresh representation before the respondent no. 2 who will decide the same. In response, the respondents constituted a committee for inquiry into the matter. During inquiry, it was found that out of 114 candidates shortlisted for appearing in the written examination, 59 were eligible candidates and 48 were found to be ineligible candidates who were allowed to appear in the written test. Out of ineligible candidates, 9 were finally selected out of total 16. The applicants are the rest 7 candidates, against whom no irregularity was found during inquiry.

5. After the inquiry, the respondents have decided to cancel the entire panel selected for promotion to the post of JE under 25% talent quota vide the impugned order dated 7.12.2015 (Annexure A-1). The show cause notice dated 8.12.2015 was issued (Annexure A-2) to all 16 candidates including the applicants to show cause as to why the promotion order of the applicants will not be cancelled and fresh selection process initiated.

6. The counter reply filed by the respondents have not disputed the facts. It justified the decision to cancel the entire process as well as the promotion of the selected candidates, including that of the applicants, by stating the following grounds:-

- Out of 114 candidates shortlisted for appearing in the written examination, 54 candidates were found ineligible as per the eligibility criteria for the post of JE. Out of 16 candidates who were finally selected, 9 were ineligible. The competent authority decided

that since more than 50% of the selected candidates were ineligible, the entire selection process was vitiated. Hence, it was decided to cancel the entire selection panel of 16 candidates.

- To protect the interest of the eligible candidates, it was decided, all of them would be called to appear in the fresh written examination to be held shortly and wide publicity is to be given so that all eligible candidates can apply for the test.

It was stated that a notification dated 10.12.2015 for fresh selection process has been issued. It is stated in para 5(d) of the counter reply that 114 applications were received and it was thought that all the applications were fulfilling eligibility criteria and hence, all 114 were called for appearing in the written examination. On subsequent scrutiny, it was found that 54 candidates out of 114 candidates were not eligible to apply, hence, they should not have been called to appear in the examination.

7. Heard Mr. Shyamal Narain, learned counsel for the applicant who, besides reiterating the averments in the pleadings, stressed on the following points:-

- Admittedly there is no adverse report about the eligibility of the applicants as the report of the inquiry committee clearly stated that out of 16 selected candidates, 7 cases (of 7 applicants) were eligible and rest 9 were ineligible. Since the inquiry has not revealed anything adverse against the applicants, cancelling the promotion, that too after the applicants have completed all the requirements like training, will be injustice for the applicants.
- The reason furnished by the respondents in the impugned order dated 7.12.2015 for cancelling the entire selection process is that 9 ineligible candidates were placed in the panel out of 16, which is more than 50% and this was a large number which has vitiated the whole process of selection. The reason furnished for treating the entire selection process is not supported by any rule/guidelines.
- Hon'ble Apex Court in the case of Union of India vs. Rajesh P. U., Puthuvalnikathu & Anr. In Appeal (civil) 5321 of 2003 in a similar case where the selection process was cancelled after considering

the report of the a committee constituted to inquire into the complaints and the cancellation was challenged by the affected candidates, upheld the decision of the High Court had directed to correct the mistake and to complete the selection as per the re-evaluation of the papers. The case of the applicants in the present OA is similar to the case cited and they are entitled for similar relief.

8. Mr. L.M. Singh, learned counsel for the respondents, countered the arguments of Mr. Narain and submitted that the respondents have concluded that the entire selection process to be vitiated as more than 50% of the candidates finally selected were found to be ineligible to participate in the selection process. He further submitted that the cancellation of the entire process was recommended by the committee constituted to inquire into the complaints about irregularities in the selection process and the inquiry revealed that out of 114 candidates who had applied, 107 had appeared in the written test, out of whom 59 candidates were found to be eligible and 48 ineligible, as mentioned in the impugned order dated 7.12.2015. taking into consideration the report of the committee, the competent authority has decided to cancel the entire selection process.

9. We have carefully considered the submissions and also gone through the pleadings. It is noticed that the respondents have not enclosed a copy of the report of the inquiry committee although the decision was taken on the basis of such report. The Tribunal, vide order dated 8.9.2017 had directed the respondents to file the copy of the report, but the order has not been complied. Hence, we allowed the respondents' counsel to file a copy of the report with written submissions by 4.9.2018.

10. The impugned order dated 7.12.2015 has stated the following to be the reason for declaring the entire selection to be vitiated:-

“09 out of 16 (more than 50%) candidates have found place in Panel No. CS/DPO/Selection/JE/C&W/TQ/2013 dated 04.04.13 declared (notified) vide L.No. 753 E/MC/C&W/25% Talented Quota dated 04-04-2013. This is very large number and has vitiated the whold process of selection. therefore, competent authority has decided for quashing of the provisional Panel bearing No. CS/DPO/Selection/JE/C&W/TQ/2013 dated 04.04.2013. On the recommendations of Committee and all actions taken after issue of this provisional panel on the following grounds:

- (1) *Process of forming panel for the post of JE(C&W) against 25% talented quota has its root of preparation of faulty eligibility list by the concerned cadre selection on the basis of which selection was conducted including those candidates' name who were not eligible as per terms and conditions mentioned in the notification No. 753 / E/EM II/ Intermediate 25%/Promotion/Selection dated 06.02.2012 and corrigendum to the Notification dated 18.09.12.*
- (2) *Ineligible candidates have found place in provisional panel in large number and also promoted to the post of JE(C&W) on the basis of faulty eligibility list depriving eligible candidates.*
- (3) *Large number of ineligible candidates have found place in the provisional panel which has vitiated the entire selection process.*

However as per Committee's recommendations, following remedial action to protest the interest of those candidates who were otherwise eligible but could not find place in the provisional panel bearing No. CS/DPO/Selection/JE/C&W/ TQ/2013 dated 04.04.13 declared (notified) vide L.No. 753 E/EM/C&W/25% Talented Quota dated 04-04-2013 are being taken:-

- (i) *Process of selection to the post of JE(C&W) against 25% talented quota may be started afresh taking base of original Notification No. 753-E/EM II/Intermediate 25%/Promotion / Selection dated 06.08.12 and corrigendum to the Notification dated 18.09.12 and all the 60 (59 + 01 candidate who is eligible but abstained in Written examination) eligible candidates as per list (revised eligibility list prepared after checking Service record of employees may be called for Written examination giving adequate time to them as per extant rule. Wide publicity regarding above shall have to be given. This recommendations is bases on position available in this case file that only 114 candidates had applied for the examination against notification and corrigendum dated 06.08.12 & 18.09.12 respectively.*
- (ii) *Candidates who qualify in the Written examination and fulfill all criteria of selection would be place in the provisional panel in merit order as per vacancies mentioned in the notification and thereafter promoted to the post of JE(C&W) in PB-2 Rs. 9300 – 34800 GP – Rs. 4200.*

(D) On the recommendations of Committee and orders of competent authority for quashing of the provisional Panel, as detailed above, the provisional Panel bearing No. CS/DPO/ Selection /JE/C&W/TQ/2013 dated 04.04.13 declared (notified) vide. L.No. 753 E/EM/C&W/25% Talented Quota dated 04-04-2013 is hereby quashed and the office order issued vide this office letter No. 753/E//ME II/JE/TQ/ on 21.04.2014 is hereby cancelled with immediate effect.

(E) All the employees place on the aforesaid provisional panel are here by reverted to their Substantive posts at their present station of working with immediate effect as detailed below:-

S. N.	Name of Staff (S/Sh.)	Father's Name(S/Sh.)	Present Post	Present Station	Reverted & Posted as	Posted in GP
1					
2.					
3.					
4.					

5.					
6.					
7.					
8.					
9.					
10	Rameshwar Prasad Mena	Nathool Lal Meena	JE(C&W)	GMC	Tech-I	2800
11	Manoj Kumar Chakravarty	Durga Charan Chakravarty	JE(C&W)	CNB	Tech-I	2800
12	Sanjay Kar	Hare Krishan Kar	JE(C&W)	CNB	Tech-I	2800
13	Nawal Kishore Meena	Hajari Lal Meena	JE(C&W)	CNB	Tech-I	2800
14.	Rajesh Meena	Ram Singh Meena	JE(C&W)	CNB	Tech-I	2800
15.	Rajendra Kumar	Ram Pal	JE(C&W)	ALD	Tech-I	2800
16	Arvind Ram	Mohan Ram	JE(C&W)	ALD	Tech-I	2800

From above, it appears that the only reason why the entire selection process was held to be vitiated was because large number of selected candidates (9 out of 16) were found to be ineligible. This is also reiterated in para 5(g) of the counter reply.

11. It is clear from the impugned order dated 7.12.2015 that the candidates who were ineligible have been identified and accordingly, 9 candidates who were ineligible for selection were identified. The nature of irregularity was that when the respondents allowed all 114 applicants for the test to appear in the written examination, out of which 107 candidates appeared, 48 out of 107 candidates were found to be ineligible. Out of these 48 ineligible candidates, 9 candidates were finally placed on the selection panel out of 16, which was construed to be a large number as it is more than 50%. There is no justification for such a conclusion and no rule or policy guideline of the Railway Board has been cited by the respondents in support of such a conclusion. If 7 candidates (instead of 9) would have been found to be ineligible, then would the entire selection process have been treated as vitiated? From the reasoning adopted in the impugned order indicates that in that case, most probably the entire selection would not have been treated as vitiated as the number 7 is less than 50% of total candidates selected.

12. Learned counsel for the applicants has cited the judgment of Hon'ble Apex Court in the case of Rajesh P.U. (supra), which also lays down the same principle that if in case of alleged irregularities in a

selection process, the tainted cases can be segregated, in that case, the entire selection process should not be cancelled. In that case, the selection process be cancelled only in respect of the candidates against whom irregularities are proved after identifying these candidates. For the candidates with no irregularities, cancellation of their selection process will not be justified. In the case of Rajesh P.U. (supra), the committee appointed to inquire into the process, had found irregularities only in respect of 31 candidates. Hence, it was held that the cancellation of the entire selection process is not necessary. It was held in the case of Rajesh P.U. (supra) as under:-

“In addition thereto, it appears the Special Committee has extensively scrutinized and reviewed situation by reevaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment. There was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational. For all the reasons stated above, we could not find any infirmity whatsoever in the judgment of the High Court which adopted a practical, pragmatic, rational and realistic solution to the problem. The appeal, therefore, fails and shall stand dismissed.”

13. We will also refer to the judgment dated 3.5.2006 of Hon'ble Supreme Court in the case of Inderpreet Singh Kahlon & Ors vs State Of Punjab & Ors (<https://indiankanoon.org/doc/753943>) in the Civil Appeal No. 3411-3421 of 2005, in which, Hon'ble Apex Court after reviewing the case laws on the subject has laid down the legal position in such cases involving cancellation of the selection process. In that case, the State Government as well as High Court had held the entire selection in the PCS Class I and Class II (Executive) was cancelled by Government of Punjab on the ground that for allegations against the then Chairman of the State Public Service Commission, criminal case was initiated against him, by treating the entire selection process to be vitiated. Similarly, for the

entire selection of the Judicial service during the same period was also cancelled on the recommendation of the High Court. After examining the past decisions/precedents on the subject, it was held by Hon'ble Supreme Court that it was wrong to consider the entire selection to be vitiated, without trying to find out if the cases where irregularities have been detected, can be identified as distinct from other cases where the candidates are not responsible for any irregularity. It was also held that the cases where the selection has been followed by appointment, then further steps are required to be taken before cancelling such selection/appointment. In the cases the appointment of the selected persons has been done, regarding the process to be followed before cancelling the selection or appointment, it was held by Hon'ble Apex Court as under:-

“We at the outset would furthermore notice that having regard the submissions made before us by Mr. Dwivedi and Mr. Rao that the services of the appellants before us were terminated not in terms of the Rules but in view of the commission of illegality in the selection process involved, we need not consider the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution of India. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. [See Secretary, State of Karnataka and Others v. Umadevi and Others, 2006 (4) SCALE 247] But before such a finding can be arrived at the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied.

If the services of the appointees who had put in few years of service were terminated; compliance of three principles at the hands of the State was imperative, viz., to establish (1) Satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) Whether the sufficient material present enabled the State to arrive at satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt.

Once such findings were arrived at, all appointments traceable to the officers concerned could be cancelled. But admittedly, although there had been serious imputations against Shri Sidhu being at the helm of the affairs of the Commission, all decisions made by the Commission during his tenure are yet to be set aside. We do not intend to enter into the said controversy as we were informed at the bar that the High Court itself is in session of the matter. We may, however, note that Mr. Dwivedi in his usual frankness stated that there may not be any answer to that query.”

It was finally held by Hon'ble Apex Court as under:-

“We must, however, express our satisfaction that no candidate for the year 2001 has been appointed. It is one thing to say that having regard to the nature of selection process, no person is appointed from the select list as no person has right to be appointed only because his name appears in the select list, but, in our opinion, a different standard must be adopted for terminating the services of the officers who had completed about three years of service. Some of them, as noticed hereinbefore, passed departmental tests. Some have been given higher responsibilities. They had completed the period of probation and some were

nearing the completion thereof. They presumably had been working to the satisfaction of the authorities concerned.

The impugned judgment as also the orders of the State Government and the High Court are, thus, liable to be set aside and directions are issued. Although the impugned judgments cannot be sustained, we are of the opinion that the interest of justice would be subserved if the matters are remitted to the High Court for consideration of the matters afresh. However, with a view to segregate between the tainted with non-tainted and that in the interest of justice the High Court should be requested to constitute two independent scrutiny committees one relating to the executive officers and the other relating to the judicial officers.

We would, furthermore, request the High Court to consider the desirability of delineating the area which would fall for consideration by such Committees within a time frame. Copies of such reports of the Committees shall be supplied to the learned counsel for the petitioners and/or at least they should be given inspection thereof. The parties shall be given opportunity to inspect any document including the answer sheets etc. if an application, in that behalf is filed. Such inspection shall, however, be permitted to be made only in presence of an officer of the court. The Appellants shall be given two weeks time only for submitting their objections to such reports and their comments, if any, on any material whereupon the High Court places reliance from the date of supply of copies or inspection is given. Having regard to the fact that the appellants are out of job for a long time, we would request the High Court to consider the desirability disposing of the matter as expeditious as possible and preferably within the period of three months from the date of receipt of the copy of this order. Before parting with the case, however, we may observe that it is expected that the State having regard to the magnitude of the matter shall leave no stone unturned to bring the guilty to book. It is the duty of the State to unearth the scam and spare no officer howsoever high he may be. We expect the State to make a thorough investigation into the matter. These appeals are allowed to the aforementioned extent and with the directions and observations made hereinbefore."

14. The situations when the entire selection process can be treated as vitiated have also been examined in the case of Smt. Kiran Juneja And Ors., Mrs. ... vs Union Of India (UOI) And Ors. by Hon'ble Delhi High Court (<https://indiankanoon.org/doc/1497046>), following the case laws decided by Hon'ble Apex Court including the cases discussed in para 12 and 13 above and it was held by Hon'ble High Court as under:-

"4. The two OAs, namely, OA Nos. 1823/2002 and 1442/2004 dealing with two selection processes for the filling up of the post of Assistants were taken up together by the Tribunal. The Tribunal directed production of the relevant records. The NCERT furnished a preliminary report, which was on the basis of inquiry conducted during the pendency of the OAs in both the selection processes. The preliminary report showed large scale illegalities in both the selection process, and included, increase of marks of some of the candidates; rounding off of marks in the descriptive paper and in the objective paper; signatures of checkers and evaluator were missing and there were interpolation in the selection process held during the course of pendency of CWP; signatures of superintendent of the Examination Centre were conspicuously missing; and there were over-writing in the marks allotted. There is no serious challenge to the said illegalities which crept in the selection process.

5. The only question, which was argued before the Tribunal, was:

Whether, as a result of these illegalities, entire selection process was required to be struck down or it was possible to weed out the

beneficiaries of the illegalities and, therefore, the quashing was to be limited to those beneficiaries only?

Whereas respondent Nos. 3 and 4 (applicants in the OA), contended that it was difficult to weed out the beneficiaries of the illegalities and, therefore, entire selection process stood vitiated, the argument of the other side was that the petitioners herein were not the beneficiaries of such illegalities at all, even as per the report and, therefore, their selection could have been maintained and should not be interfered with. In order to consider this aspect, the learned Tribunal went through the report of investigation before it. As per the report, following discrepancies were found in the first selection process, as is evident from the data:

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

Table-1 Category Minimum Qualifying score in D.P.

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

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10. The Tribunal, in these circumstances, concluded that it was not possible to weed out the beneficiaries of the illegalities and the entire selection process had to be given a go-by. It, thus, negated the contentions of the petitioners herein that the interpolations, which were carried out, had no effect on the petitioners and their appointments were cleared by the committee. The Tribunal recorded that a short-listing process had been arrived at whereby out of several candidates, 25 SC and 23 OBC candidates had found way to the interview. Had there been any rounding of marks, the others, who were coming within the zone of eligibility, would have marched over the private respondents and would have been interviewed. This has deprived them an opportunity of equal participation in the selection. This is also the case with SC and ST candidates. As regard to one of the general candidates who has been interpolated with someone the same is also an illegality showing that process was not transparent and mass enblock illegalities had taken place in both the selection which reflects on the integrity and functioning of the respondent organization.
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15. In Union of India v. Rajesh P.U. (supra), the Apex Court held that in cases where it is possible to weed out the beneficiaries of illegalities, the selection process to that extent only be set aside leaving out the persons who had no concern with such malpractices. Following observations of the Supreme Court need a quote:

On a careful consideration of the contentions on either side in the light of the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions- which report itself seems to have been also produced for the perusal of the High Court? there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of candidates or by those who actually conducted them. If the Board itself decide to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering

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

16. In Umesh Chandra Shukla v. Union of India (supra) selection to Delhi Judicial Service was in challenge. As per the Rules, every candidate was required to obtain a minimum of 50% marks in each paper and overall 60% marks to qualify for interview. The High Court, which conducted the examination, granted 2 marks to every candidate in every paper thereby rendering many candidates qualified for interview. The Supreme Court held that grant of grace marks was illegal. Therefore, the selections of the candidates who were given grace marks was held to be bad in law. However, those candidates who were selected without any grace marks and in whose case no illegalities were found were declared successful. Likewise, in the case of Harshendia Choubisa v. State of Rajasthan (supra), the Supreme Court held, where the awarding of grace marks by the Government of Rajasthan on the basis of locality was found to be irrational, unreasonable and illegal. However, the Supreme Court directed that selection already made on the basis of erroneous interpretation cannot be disturbed and the subsequent interpretation will be given prospective effect. Moreover, even from the list of selected candidates who could not join were allowed to do the same and the relief to the appellant was limited only to their case only in the situation of their having better marks than the selected candidates.

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20. The Apex Court had the occasion to consider such an issue once again in a recent judgment entitled Inderpreet Singh Kahlon v. State of Punjab and Ors. . In that case one Ravinderpal Singh Sidhu was the

Chairman of the Punjab Public Service Commission between 1996 to 2002. Allegations were made against him that he got a large number of persons appointed on extraneous considerations including monetary consideration. Such appointments were said to have been made during the period 1998 to 2001. On consideration of the entire material placed before it, the State Government decided to cancel the entire selection made for recruitment to PCS (Executive Branch) and Allied Services in 1998. Regarding judicial officers appointed to PCS (Judicial Branch), the High Court constituted two Scrutiny Committees, which were accepted by the High Court. On the recommendations made by the High Court, the State Government terminated the service of those who were appointed on the basis of the selection made by the Commission against the vacancies of the years 1998, 1999 and 2000. The persons whose services were terminated approached the High Court by filing number of writ petitions, which were, however, dismissed by the Full Bench of the High Court. In these circumstances, they approached the Supreme Court.

21. The Bench consisting of Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice Dalveer Bhandari gave separate judgments, though with same conclusion. It was held that if an appointment is made in violation of Articles 14 and 16 of the Constitution of India, same would be void and nullity. In view of the law laid down by the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka v. Umadevi , the Court further held that when the services were not terminated in terms of Rules, but on the ground that various irregularities were committed in the selection process involved, the applicability of the relevant provisions of the statutes and the effect of provisions of Article 311 of the Constitution was not required to be considered. However, before terminating the appointments on this ground, the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied. The authority taking decision to cancel the process or terminate the appointment, if already appointed, had to establish that the process was tainted; that the entire selection process was liable to be cancelled and the question, which requires consideration in such matters, is as to whether due to misdeeds of some candidates, honest and meritorious candidates should also suffer. The Court opined that a distinction exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved. Only in the event it is found to be impossible or highly improbable that the tainted case can be separated from the non-tainted cases could en masse orders of termination be issued. Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non- tainted candidates.

22. The Supreme Court also delineated the cases where selection process could be perceived to be tainted by categorising them as under:

(i) Cases where the 'event' has been investigated.

(ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded.

(iii) Cases where the selection was made but appointment was not made.

(iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules.

23. The Court drew the distinction between those cases where irregularities were found in the selection process before the appointments could be made and those where appointments had already been made. It is one thing to say that having regard to the nature of selection process, no person is appointed from the select list as no person has a right to be

appointed only because his name appears in the select list, but a different standard must be adopted for terminating the services of the officers who had completed about three years of service. In those cases where the appointees had put in a few years of service, the Court opined that before terminating their services, compliance with three principles at the hands of the State was imperative viz.:

(1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted;

(2) to determine the question that the illegalities committed went to the root of the matter, which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner;

(3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority had been found to be part of the fraudulent purpose or the system itself was corrupt.

.....

30. No doubt, there have been discrepancies in the selection process, as found by Prof. Vaid Prakash Committee on the basis of which he recommended cancellation of the results. However, the foregoing discussion would make it clear that the discrepancies were found in other cases and not in the case of the petitioners and it was also possible to separate the cases of the petitioners from those who were the beneficiaries of the irregularities. Prof. Vaid Prakash obviously did not examine the matter from this angle while suggesting cancellation. In view of the principles laid down by the Supreme Court in the judgments noted above, in particular the case of Inderpreet Singh Kahlon (supra) wherein the Supreme Court re-stated the legal principles after scanning through the entire case law, the situation where the cases of those who were the bona fide and innocent persons can be aggregated, the selection in respect of those persons is not to be cancelled."

15. From the above discussions, it is clear that as per the legal principles laid down by Hon'ble Apex Court, before cancelling the selection process entirely, the facts are to be examined carefully to see if the tainted cases can be separated from the cases where there is no evidence of any irregularity or malpractice so that the tainted cases can be cancelled. In case the facts are such that it is not possible to separate the tainted cases, then cancellation of entire selection process can be considered. If the selection has been followed by appointment, additional precautions are required to be taken as per the judgment in the case of Inderpreet Singh Kahlon (supra).

16. In the present OA, as stated in the impugned order dated 7.12.2015, the inquiry committee had found that 48 ineligible candidates had appeared in the written examination, out of 107 who had appeared for the examination. Out of ineligible candidates who appeared in the

examination, 9 were selected and placed in the selection panel consisting of total 16. There is no finding of any other irregularities in the examination as mentioned in the impugned order dated 7.12.2015 as well as in the pleadings of the respondents in this case. There is nothing on record to show that there was any other deficiency or flaw in the examination process, except for allowing 48 ineligible persons to appear. As revealed from the impugned order and the pleadings of the respondents, the entire selection was considered to be vitiated by the respondents, only on the ground that more than 50% candidates of the select panel of 16, were found to be ineligible to appear in the examination. If the number of candidates who appeared in the examination is considered, the number of ineligible persons appearing in the test was 48 out of 107, i.e. less than 50%. In this case, the promotion/appointment order was already issued after completion of training of the officers. Hence, as per law laid down by Hon'ble Apex Court, in *Rajesh P.U. (supra)* and *Inderpreet Singh Kahlon (supra)* with reference to the facts of the present case, we are of the considered opinion that the facts in the OA before us are squarely covered by the decisions and there was no justification on the part of the respondents to have cancelled the entire selection process, since the tainted candidates who were ineligible to appear, have been clearly identified by the respondents and the applicants were eligible to appear in the test and there is no irregularity against the applicants in the complaint or in the pleadings on record.

17. Accordingly, the OA succeeds and hence, it is allowed. The impugned order dated 7.12.2015 is set aside and quashed in respect of the applicants, who shall be allowed by the respondents to continue in service as per the orders of promotion to the post of JE. No costs.

(Rakesh Sagar Jain)
Member – J

(Gokul Chandra Pati)
Member – A

/pc/