

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NOS. 969 & 1244 OF 2016

New Delhi, this the 5<sup>th</sup> day of May, 2016

CORAM:

HON<sup>Ø</sup>BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER  
AND

HON<sup>Ø</sup>BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

í í í í .

**In OA No.969 of 2016:**

1. Sandeep Kumar,  
Aged about 22 years,  
S/o Sh.Subhash Chandeer,  
R/o Harpalu Tal, Tehsil Rajgarh,  
Distt. Churu, Rajasthan 331305
2. Vikash,  
Aged about 23 years,  
s/o Sh.Ram Bhaj,  
R/o H.No.565, Gali No.3,  
Shakti Nagar, Jhajjar Road,  
Bahadurgarh, Haryana 124507
3. Ashvini Kumar,  
Aged about 23 years,  
s/o Sh.Mahender Singh,  
R/o VPO Hassangarh, Tehsil Sampla,  
Distt.Rohtak, Haryana 124404
4. Anil Gaur,  
Aged about 23 years,  
s/o Sh.Bal Kishan Sharma,  
R/o Vill. Amipur Baleni,  
Post Amipur Baleni, Distt. Baghpat,  
U.P. 250626

- (By Advocate: Mr.M.K.Bhardwaj)

1. Delhi Police & Ors,  
Through its Commissioner,  
Police HQ,  
I.P.Estate, New Delhi.
2. The Dy.Commissioner of Police (Recruitment Cell),  
New Police Lines, Kingsway Camp,  
Delhi

(By Advocate: Mr.Amit Anand)

**In OA No.1244 of 2016:**

1. Bijendere Kumar,  
Aged about 23 years,  
s/o Sh.SatvirSingh,  
R/o VPO Sikanderpur (Badha),  
Sec.85, Gurgaon, Haryana
2. Pankaj Chhikara,  
Aged about 23 years,  
s/ Sh.Rajbir Chhikara,  
R/o VPO Ladrawan, Distt.Jhajjar,  
Haryana
3. Pooran Mal Jat,  
Aged about 38 years,  
s/o Sh.Bhawara Ram Jat,

R/o VPO Barnagar, Tehsil Kotptli,  
Distt.Jaipur, Rajasthan 303106

4. Virender,  
Aged about 22 years,  
S/o Sh.Ajit Singh,  
R/o Village Rankhanda, P.O. Dawla,  
Distt.Jhajjar, Haryana
5. Anuj Tomar,  
Aged about 23 years,  
S/o Sh.Azad Singh,  
R/o Vill. Ranchhar, P.O.Ranchhar,  
Distt.Baghpat, Uttar Pradesh
6. Pankaj Kumar,  
Aged about 23 years,  
S/o Sadhu Ram,  
R/o VPO Imlota, Tehsil Charki,  
Dadri, Distt. Bhiwani, Haryana
7. Vijay,  
Aged about 21 years,  
S/o Sh.Vinod,  
R/o VPO Luhari, Distt. Baghpat, U.P.
8. Pawan Kumar,  
Aged about 26 years,  
S/o Sh.Karan Singh,  
R/o VPO Nandha, Distt.Bhiwani,  
Haryana
9. Kuldeep,  
Aged about 22 years,  
s/o Sh.Sultan Sharma,  
R/o VPO Kasumbhi,  
Distt. Bhiwani, Haryana 127021
10. Vikash Kumar,  
Aged about 22 years,

S/o Sh.Ajit Singh,  
R/o VPO Badsa, Tehsil-Bahadurgarh,  
Distt. Jhajjar, Haryana

11. Rahul Nagar,  
Aged about 23 years,  
S/o Sh.Ram Kumar,  
R/o VPO Sadat Nagar Ikla,  
Dasna, Distt. Ghaziabad, U.P.
12. Neeraj Kumar,  
Aged about 22 years,  
S/o Sh.Ram Singh,  
R/o Village Kunjpura, P.O. Tajpur,  
Tehsil-Narnaul,  
Distt. Mahendergarh, Haryana
13. Ashish Malik,  
Aged about 22 years,  
S/o Sh.Indrapal,  
R/o VPO Lank, Distt. Shamli, U.P.
14. Ravinder,  
Aged about 22 years,  
S/o Sh.Bharat Singh,  
R/o Village Raiya, Distt. Jhajjar,  
Haryana.
15. Rahul Kumar,  
Aged about 25 years,  
S/o Sh.Harkishan,  
R/o VPO Nainangla,  
Distt. Palwal, Haryana
16. Praveen Kumar Kataria,  
Aged about 25 years,  
S/o Sh.Dharambir Singh,  
R/o S-3, Block-43, Kalyanvas, Delhi 110091
17. Sunil,

- Aged about 23 years,  
S/o Sh.Babu Lal,  
R/o VPO Nangalmala,  
Distt. Mahendergarh, Haryana
18. Naresh Kumar,  
Aged about 26 years,  
S/o Sh.Inder Kumar,  
R/o Village Tatarpur, Tehsil & Distt.Palwal,  
P.O.Asaoti, Haryana
19. Chand Khan,  
Aged about 22 years,  
S/o Sh.Aas Mohammad,  
R/o H.No.135, Khanna Nagar, Loni, Ghaziabad, U.P.
20. Anoop,  
Aged about 24 years,  
S/o Sh.Devi Singh,  
R/o VPO Chiri, Distt. Rohtak, Tehsil Rohtak,  
Haryana 124514
21. Kehri Choudhary,  
Aged about 27 years,  
S/o Sh.Rajveer Choudhary,  
R/o 46/84-85, Kiran Patti, Mansarovar, Jaipur,  
Rajasthan 302020
22. Ashok Kumar Meena,  
Aged about 25 years,  
S/o Sh.Chand Ram Meena,  
R/o Vill. Sanvatrar, P.O.Jhiri,  
Tehsil-Thanagazi, Distt. Alwar, Rajasthan
23. Ravender Kumar,  
Aged about 36 years,  
S/o Sh.Balbir Singh,  
R/o VO Jat Behrar, Tehsil Mundawa,  
Distt. Alwar, Rajasthan 301714

24. Sandeep,  
Aged about 23 years,  
S/o Sh.Satyaveer,  
R/o VillageGopalpura, P.O.Badbar,  
Tehsil Buhana, Distt. Jhunjhunu, Rajasthan
25. Vinit Kumar,  
Aged about 23 years,  
S/o Sh.Sahnsar Pal Singh,  
R/o VPO Bahaura Kalan, Distt. Muzaffar Nagar,  
U.P.
26. Yashvir Malik,  
Aged about 23 years,  
S/o Sh.Chandrapal Singh,  
R/o VPO Parsoul,Distt. Gautam Budh Nagar,  
U.P. 203201
27. Hardiyal Singh Seshama,  
Aged about 25 years,  
S/oSh.Balbeer Singh Seshama,  
R/o VPO Jeenwas, Tehsil-Danta Ramgarh,  
Distt. Sikar, Rajasthan 332406
28. Ankit Baliyan,  
Aged about 24 years,  
S/o Sh.Om Vir Singh,  
R/o VPO Pur Baliyan, Distt. Muzaffar Nagar, U.P.
29. Ankit Kumar,  
Aged about 25 years,  
S/o Sh.Bhopat Singh,  
R/o Village Khaikhera, Distt. Meerut, U.P.
30. Dharmender,  
Aged about 22 years,  
S/o Sh.Chand Ram,  
R/o Village Jatwas, Distt. Mahender Garh,  
Haryana

31. Sonindra Kumar,  
Aged about 22 years,  
S/o Sh.Rishi Pal,  
R/o Village Kishanpur, Birana,  
Distt. Meerut, U.P.
32. Pradeep Kumar,  
Aged about 22 years,  
S/o Sh.Rattan Singh,  
R/o VPO Seka Mandhana, Distt. Mahender Garh,  
Haryana
33. Amit,  
Aged about 23 years,  
S/o Sh.Satyawan,  
R/o VPO Deorar, Distt. Jind, Haryana
34. Tek Chand,  
Aged about 22 years,  
S/o Sh.Rajendar,  
R/o VPO Bachhod, Distt. Mahender Garh,  
Tehsil Narnaul, Haryana
35. Rohit,  
Aged about 23 years,  
S/oSh.Begraj,  
R/o H.No.A-7, Khasra No.131,  
Street No.1, Neb Sarai, New Delhi 110068
36. Ashok Kumar,  
Aged about 24 years,  
S/o Sh.Lila Singh,  
R/o VPO Husaini, Jatwari,  
Distt.Mathura, U.P.
37. Arun Khan,  
Aged about 24 years,  
S/o Sh.Yashin Khan,  
R/o H.No.56, Akbar Pur Majra Palla,  
Delhi 110036

38. Anil,  
Aged about 24 years,  
S/o Sh.Ved Prakash,  
R/o H.No.163, Bakkarwala,  
Delhi
39. Prashant Kumar,  
Aged about 22 years,  
S/o Sh.Yeshpal Singh,  
R/o VPO Bhainswal, Distt. Shamli,  
U.P. 247776
40. Neeraj Kumar,  
Aged about 22 years,  
S/o Sh. Pradhan Singh,  
R/o VPO Tajpur, Tehsil Narnaul,  
Distt. Mahender Garh,  
Haryana 123021
41. Dinesh Kumar,  
Aged about 25 years,  
S/o Sh. Prabhu Chand,  
R/o VPO Mandhana, Tehsil Narnaul,  
Distt. Mahender Garh,  
Haryana 123001
42. Harbir Singh,  
Aged about 25 years,  
S/o Sh.Gyase Ram,  
R/o Village Sunpura, P.O.Baidpura,  
Distt. Gautam Budh Nagar,  
U.P. 203207
43. Mohit Dahiya,  
Aged about 24 years,  
S/o Sh.Balwan Singh,  
R/o H.No.1016, A/26, Dahiya Colony,  
Gali No.2, Kakroi Road, Sonapat,  
Haryana





- õi) To quash and set aside the impugned list dated 23.02.2016 and direct the respondents to prepare the select list for appointment to the post of Constable (Executive) by excluding only 4 questions (No.1 to 4) as set out in Para 4.12 of the OA and by treating remaining 96 questions as valid questions.
- ii) To declare the action of respondents in removing the name of applicants from the list of selected candidates prepared for appointment to the post of Constable (Executive) as illegal and arbitrary and issue appropriate directions for giving appointment to the applicants as per the select list dated 17.07.2015 or the revised list prepared by treating the 96 questions including question No.A to M as set out in Para No.412 as valid questions.
- iii) To declare the action in revising the final select list by preparing merit list by reducing questions from 100 to 79 and giving 23.5 bonus marks as illegal, arbitrary and direct the respondents to prepare the select list for appointment to the post of Constable (Executive) pursuant to recruitment for Constable (Executive) in Delhi Police-2013 by treating the 96 questions out of 100 as valid questions and on the basis of marks obtained by the candidates by giving answer to aforesaid 96 questions.
- iv) To award costs in favour of the applicants and pass any order or orders which this Honøble Tribunal may deem just and equitable in the facts and circumstances of the case.
- v) To allow the OA with costs.ö

2.2 In OA No.1244 of 2016, the applicants, besides claiming the same reliefs as prayed for by the applicants in OA No. 969 of 2016, have prayed for one more relief, vide paragraph 8 (iv) of the O.A., as follows:

- õiv) To direct the respondents to fill up the vacancies of Constable (Executive) as remained unfilled due to non-joining, medical unfitness as well as for other reasons by appointing the applicants being qualified and suitable candidates.ö

3. The averments made, the grounds urged, and the reliefs claimed by the applicants in their respective O.As. are almost same. The respondents have appeared in both the O.As. By filing a counter reply in OA No.969 of 2016, they have resisted the claims of the applicants therein. The applicants have also filed their rejoinder reply thereto. No separate counter reply has been filed by the respondents in OA No.1244 of 2016. The respondents have submitted that in OA No.1244 of 2016 they would adopt the counter reply already filed by them in OA No.969 of 2016. Mr.M.K.Bhardwaj, the learned counsel for the applicants, and Mr.Amit Anand, the learned counsel for the respondents, have advanced their arguments which are common in both the O.As. Therefore, we are disposing of both the O.As. by this common order.

4. The facts and circumstances giving rise to both the O.As. are as follows:

4.1 The notification to fill up 523 (UR-262, OBC-142, SC 79, & ST-40) vacancies in the posts of Constables (Executive) Male in Delhi Police was published in the leading newspapers dated 27.1.2013, and the Employment News dated 26<sup>th</sup> January ó 1<sup>st</sup> February, 2013. All the candidates were put through the physical endurance and measurement test. The candidates, who were declared qualified in the physical endurance and measurement test, were issued roll numbers for appearing in the written examination. 39597 candidates, out of 50422 candidates, appeared in the written examination held on 16.11.2014.

4.2 On 13.7.2015, a list of provisionally selected candidates was published by the respondents. 514 candidates were declared provisionally selected against 514 vacancies falling under different categories. As regards the remaining 9 vacancies, suitable candidates under Ex-Servicemen category were not available, and, therefore, the said vacancies remained unfilled. The category-wise cut-off marks were as under:

Category	Cut-off marks
General (UR)	72.72619013
OBC	71.02922038
SC	65.52272699
ST	66.01190442

4.2.1 However, during further scrutiny, it was noticed by the respondents that at the time of preparation and declaration of the result on 13.7.2015, one bonus mark had not been added to the total marks of the candidates whose height was measured as 178 cms or above at the time of physical endurance and measurement test. Therefore, the result was re-compiled, and after awarding one bonus mark to all the candidates whose height was measured as 178 cms or above, the revised result was declared on 17.7.2015.

4.2.2 As per the revised result declared on 17.7.2015, 512 candidates were selected against 512 vacancies falling under different categories. As regards the remaining 11 vacancies, suitable candidates under Ex-Servicemen category were not available, and, therefore, the said vacancies remained unfilled. The category-wise cut-off marks were as under:

Category	Cut-off marks
General (UR)	73.01406888
OBC	71.29004295
SC	65.57034595
ST	66.01190442

4.2.3 As per the revised result declared on 17.7.2015, the applicants of both the O.As. were provisionally declared as selected.

4.2.4 After the revised result was declared on 17.7.2015, all the selected candidates, including the applicants, were called for the purpose of completion of the codal formalities, i.e., medical examination, police verification, etc.

4.3 In the meanwhile, some of the candidates approached the Tribunal, vide O.A.No.3657 of 2015 (*Ankit Kumar & Ors Vs. Commissioner of Police, Delhi & Ors.*) and O.A.No.4258 of 2015 (*Anuj Kumar Vs. Commissioner of Police & Ors.*), questioning the correctness of Answer Key on the basis of which the OMR Answer Sheets of the candidates were evaluated.

4.3.1 After examining the grievances of the applicants in OA Nos.3657 and 4258 of 2015, *ibid*, the competent authority constituted an Expert Committee to examine all the issues raised by the applicants therein, and to submit its report for answer compendium and the resultant Answer Key.

4.3.2 On being apprised of the fact of constitution of the Expert Committee, the Tribunal, by its common order dated 8.1.2016, disposed of

O.A.Nos. 3657 and 4258 of 2015, *ibid*, with the direction that based on the report of the Expert Committee, the final action regarding recruitment process be taken by the respondents within two months.

4.4 On the basis of the recommendations of the Expert Committee, and the decision of the competent authority, 21 questions were removed, and all the candidates were awarded 21 bonus marks each, and correct Answer Keys for the four sets of Question Papers were prepared. Thereafter, the OMR answer sheets of all the candidates were re-evaluated, and the revised final result was declared on 22.2.2016. As per the result declared on 22.2.2016, 518 candidates were declared as provisionally selected against 518 vacancies falling under different categories. As regards the remaining 5 vacancies, suitable candidates under Ex-Servicemen category were not available, and, therefore, the said vacancies remained unfilled.

4.4.1 129 new candidates (who had not been selected as per the result declared on 17.7.2015) were included in the result declared on 22.2.2016, and 123 candidates (who had been selected as per the result declared on 17.7.2015) were not selected as per the result declared on 22.2.2016, since they all failed to make the grade and scored less marks than the cut-off marks for different categories of candidates after re-evaluation of the OMR answer sheets. These 123 candidates included the applicants of both the O.As. and some others.

4.4.2 As per the result declared on 22.2.2016, the category-wise cut-off marks were as under:

Category	Cut-off marks
General (UR)	81.08549745
OBC	79.49134163
SC	74.82251042
ST	75.75649313

4.4.3 The marks scored by the applicants, after re-evaluation, were less than the cut-off marks for different categories, as enumerated above.

4.4.4 Being aggrieved of their non-selection as per the result declared on 22.2.2016, the applicants have filed the present O.As. with the prayers referred to earlier.

5. It was contended by Mr.M.K.Bhardwaj, the learned counsel appearing for the applicants, that the respondents have illegally and arbitrarily removed 21 questions, and awarded 21 bonus marks to each of the candidates irrespective of the fact as to whether or not they had answered the said questions. As a consequence, even though the applicants had correctly answered some of the questions, out of the aforesaid 21 questions, by devoting considerable time, they have not been selected as per the result declared on 22.2.2016, and those candidates, who had been found less meritorious than the applicants, and had not been selected as per the result published on 17.7.2015, have been selected as per the result published on 22.2.2016. It was also submitted by Mr.M.K.Bhardwaj that most of the questions, out of the aforesaid 21 questions, were correctly set and could have been answered by the candidates, and therefore, the respondents ought not to have deleted those 21 questions and awarded 21 bonus marks to each

of the candidates. It was further submitted by Mr.M.K.Bhardwaj that since the applicants were declared as selected, vide result published on 17.7.2015, and all other formalities, viz., medical examination, verification of documents, etc., were over, they should not be deprived of appointment. In support of his contention, Mr.M.K.Bhardwaj relied on the decision of the Honøble Supreme Court in *Rajesh Kumar & Ors, etc. Vs. State of Bihar & Ors, etc.*, Civil Appeal Nos. 2525-2516 of 2013, decided on 13.3.2013.

6. *Per contra*, Mr.Amit Anand, the learned counsel appearing for the respondents, submitted that since 21 questions have been deleted, and all the candidates have been awarded 21 bonus marks each therefor, no prejudice can be said to have been caused to the applicants. After redetermination of the marks of all the candidates, the cut-off marks were fixed for different categories of candidates. The applicants, having failed to make the grade, have not been selected as per the revised final result published on 22.2.2016. Therefore, they cannot be said to have any right, far less legally enforceable right, to claim appointment on the basis of the result published on 17.7.2015, which is *non est* after publication of the revised final result on 22.2.2016.

6.1 In support of his contentions, Mr.Amit Anand placed reliance on *Kanpur University Vs. Samir Gupta*, AIR 1983 SC 1230; *Kumari Anjali Saxena Vs. The Chairman, Professional Examination Board, Bhopal and others*, AIR 1990 MP 253; *Merin Varghese Vs. State of Kerala & Anr.*, W.P. ( C ) No. 20644 of 2008, decided by the Honøble High Court of Kerala



on 9.7.2008; *Surinder Pal & others Vs. State of Punjab & another*, C.W.P.No.25413 of 2012 and connected writ petitions, decided by the Honøble High Court of Punjab & Haryana at Chandigarh on 1.5.2013; and *Mrityunjay Singh Yadav Vs. State of Uttar Pradesh* decided by the Honøble Allahabad High Court on 12.7.2007. We have carefully perused these decisions.

6.1.1 In *Kanpur University Vs. Samir Gupta* (supra), it has been held by the Honøble Supreme Court that the key answer should be assumed to be correct, unless it is proved to be wrong, and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. The key answer must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard it as correct. In case of doubt, the key answer has to be preferred.

6.2.2 In *Kumari Anjali Saxena Vs. The Chairman, Professional Examination Board* (supra), the Honøble High Court of Madhya Pradesh, following the ratio of the decision of the Honøble Supreme Court in *Kanpur University Vs. Samir Gupta* (supra), accepted the opinion of the expert, and rejected the contention of the petitioners that the key answers were incorrect.

6.2.3 In *Merin Varghese Vs. State of Kerala & Anr.* (supra), the expert committee concluded that the answers to the particular questions given in the original answer key were wrong. The petitioner questioned the change of answer key. The Honøble High Court observed that neither the

Commissioner of Entrance Examination nor the Court was an expert on the subject. Accordingly, the writ petition filed by the petitioner was dismissed by the Honøble High Court.

6.2.4 In *Surinder Pal & others Vs. State of Punjab & another* (supra), the petitioners challenged the result/merit list. The Punjab Public Service Commission, after finding that there were large scale discrepancies in the key answers to various questions, en block granted grace marks to all the candidates irrespective of the fact whether such candidate had attempted the said questions or not. Rejecting the petitioners' contention that an undue benefit was conferred upon the candidates who had not attempted six questions which had been deleted by the Commission finding them to be incorrect, the Honøble High Court observed as follows:

õ It may be noted here that there is no allegation of mala fide upon the Commission and, therefore, what is required to be looked into is whether any prejudice has been caused by this action of the Commission to the petitioners or similarly situated candidates but answer to this question has to be in the negative. It has been admitted by the counsel for the petitioners during the course of hearing that Commission could have proceeded to take remedial steps to correct the mistake, which has occurred in the conduct of the examination, for which a fair and just procedure should have been adopted by the Commission so that no candidate is unduly benefitted or denied of a right which he is entitled to. It has also been admitted that the two papers for the preliminary examination consisted of 150 questions each and every question is valued at one mark. There was no negative marking. Obviously, had the questions been correct and the candidates attempted the same, they would either get one mark for the correct answer or nil mark for the incorrect answer. When the question itself has been found to be incorrect, the logical conclusion, which can be drawn, is that there can be no correct answer to such a question. Faced with the situation, Commission had to take the call either to grant marks to all

candidates for the deleted questions and to evaluate the result of the candidates out of full 300 marks or to grant no marks to any candidate for the said questions and evaluate and compile the result of the candidates out of 294 marks after deleting the six incorrect questions. Commission chose the first option and granted all candidates six marks across the board. In either of the situations, no prejudice would be caused to the candidates as the comparative difference of marks between the candidates would remain the same. By this process what would happen is that the cut off merit would go up by six marks when the same are added to all and the same would come down by six marks when six marks are deleted of all the candidates. The net result thus remains the same. Thus the action of the Commission is just and reasonable and, therefore, cannot be faulted with.ö

But the assertion of the counsel for the petitioners that pro rata marks should have been granted to the candidates according to the marks scored by the candidates cannot be approved. Had the said procedure been adopted by the Commission, it would have been unjust in the facts and circumstances of this case especially when there was no negative marking for incorrect answers. The said option would be effective and applicable and can be termed as just and reasonable in a competition where a candidate is penalized for a wrong choice exercised in the options given to a questioní ..ö

6.2.5 In *Mrityunjay Singh Yadav Vs. State of Uttar Pradesh* (supra), the petitioners, who appeared in U.P.Combined Pre Medical Test-2007 (CPMT-2007) conducted by Veer Bahadur Singh Purvanchal University, Jaunpur, questioned the correctness of the revised results declared on 21.6.2007, rectifying the technical errors in the results declared on 14.6.2007. They alleged manipulations and foul play in preparation of the revised results, and prayed for commanding the respondent-authorities to get a fresh CPMT-2007 conducted by the University having good reputation under the supervision of some independent agency. The Honøble High Court observed thus:

“To err is human. When the man takes help of machines there is always a possibility of error. In the present case, the Vice Chancellor/Chairman, CPMT-2007 maintained the secrecy of the questions papers and key answers and devised a method to keep secrecy of the code, which was otherwise very simple upto the publication of result. He also took care to own the responsibility and to explain the error and to provide key codes as well as key answers in the revised result. The intentions of the Vice Chancellor/Chairman, CPMT-2007 were never in doubt. The expert Committee examined and accepted the explanation and found that it was only because of bona fide technical error that the initial declaration of result dated June 14, 2007 could not be accepted. The defect however did not affect to change the marks of the students, who were given the answer books of Set-1. Their ranking, however, went down after the correct results of the Set-2, Set-3 and Set-4 of question papers was published.”

6.3 It was also submitted by Mr. Amit Anand that the decision in *Rajesh Kumar & Ors, etc. Vs. State of Bihar & Ors, etc.* (supra), being clearly distinguishable on facts, is not applicable to the applicants' case.

7. In *Rajesh Kumar & Ors. etc. Vs. State of Bihar & Ors.* (supra), the Civil Appeals arose out of a common judgment delivered by the Hon'ble High Court of Judicature at Patna, whereby the Hon'ble High Court directed the Bihar Staff Selection Commission to conduct a fresh examination and re-draw the merit list on that basis. For those who had already been appointed on the basis of the earlier examination, a fresh examination was directed by the Hon'ble High Court before they were finally ousted from the posts held by them. The appellants, who happened to be the beneficiaries of the erroneous evaluation of the answer scripts, assailed the order passed by the Hon'ble High Court in the Civil Appeals before the Hon'ble Supreme Court. The brief facts leading to the Civil Appeals were that by an advertisement

dated 14th August 2006, applications were invited by the Bihar State Staff Selection Commission from eligible candidates for appointment against 2268 posts of Junior Engineer (Civil), out of which 1057 posts were in the open merit category. The selection process, comprised a written objective type examination, held by the Staff Selection Commission who drew up a Select List of 210 successful candidates including 143 appellants in the appeals based on the performance of the candidates in the examination. The evaluation of the answer scripts was, however, assailed by 13 unsuccessful candidates (respondents 6 to 18 in the appeals) in CWJC No.885 of 2007. While the above writ petition was still pending, posting orders were issued to all those appointed. The selection process left nearly 2080 posts of Junior Engineers unfilled in the State. In the writ petition filed by the aggrieved candidates, a Single Judge of the Honøble High Court referred the Model Answer Key to experts. The model answers were examined by two experts, Dr. (Prof.) C.N. Sinha, and Prof. KSP Singh, associated with NIT, Patna, who found several such answers to be wrong. In addition, two questions were also found to be wrong while two others were found to have been repeated. Question No.100 was also found to be defective as the choices in the answer key were printed but only partially. Based on the report of the said two experts, a Single Judge of the High Court held that 41 model answers out of 100 were wrong. It was also held that two questions were wrong while two others were repeated. The Single Judge on that basis held that the entire examination was liable to be cancelled and so also the

appointments made on the basis thereof. Aggrieved by the order of the Single Judge, the appellants filed LPA No.70 of 2008 before the Division Bench of the Honøble High Court. By the order impugned in the appeals, the Division Bench of the Honøble High Court partly allowed the appeal holding that model answers in respect of 45 questions out of 100 were wrong. The Division Bench modified the order passed by the learned Single Judge and declared that the entire examination need not be cancelled as there was no allegation of any corrupt motive or malpractice in regard to the other question papers. A fresh examination in Civil Engineering Paper only was, according to the Division Bench, sufficient to rectify the defect and prevent injustice to any candidate. The Division Bench further held that while those appointed on the basis of the impugned selection shall be allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be given a chance to appear in another examination to be conducted by the Staff Selection Commission. While the challenge to the selection process referred to above was still pending before the High Court, a fresh selection process was initiated to fill up the available vacancies in which those eligible appeared for a written test on 29th July 2007. This test was held pursuant to advertisement No.1906 of 2006 issued on 29th November 2006. The result of the examination was, however, stayed by the Honøble High Court, while disposing of the appeal filed before it, with a direction to the effect that the same shall be declared only after selection in pursuance of the first

examination was completed. In the above context, the Hon<sup>ble</sup> Supreme Court, in paragraph 12 of the judgment, held thus:

õí í í .If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination in so far as the same pertained to ÷A series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.ö

(Emphasis supplied)

In paragraph 16 of the judgment, the Hon<sup>ble</sup> Supreme Court held thus:

õí í í Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any mal practice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.ö

(Emphasis supplied)

Considering the contentions of the learned counsel appearing for the appellants that the appellants were not responsible for the error committed

by the parties in the matter of evaluation of the answer scripts, or were guilty of any fraud, misrepresentation, or mal practice; that the appellants served the State efficiently and without any complaint for nearly seven years by then and might have become overage for fresh recruitment within the State or outside the State; and that their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any mal practice, or other extraneous consideration, or misrepresentation, would cause hardship to them and ruin their careers and lives, Honøble Supreme Court, in paragraph 18 of the judgment, observed thus:

õí í ..It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.õ

Finally, allowing the Civil Appeals, and setting aside Honøble High Courtø order, the Honøble Supreme Court issued the following directions:

- õ(1) answer scripts of candidates appearing in 'A' series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the



observations made in the body of this order and a fresh merit list drawn up on that basis.

- (2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.
- (3) In case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.
- (4) Such of the appellants as do not make the grade after reevaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.
- (5) Needful shall be done by the respondents ó State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.ö

(Emphasis supplied)

8. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contentions of the applicants.

9. On a perusal of the Expert Committee's report, along with the correct Answer Keys and other documents annexed thereto, it is found that prior to the constitution of the Expert Committee, 07 questions, being reported to be wrong, had already been declared as void. Thus, the Expert Committee only examined the correctness, or otherwise, of 93 questions and the Answer Keys submitted by the paper setter in respect of each of the

question sets. It was found by the Expert Committee that 14 out of those 93 questions were to be cancelled/declared 'Null/Void' for reasons, like, none of the given options being correct, question having more than one possible answers, mismatch in the meaning of English and Hindi versions, etc. It was also found by the Expert Committee that in respect of 3 Nos. of questions, the correct answers were different from what the paper setter had given in his Key. Accordingly, the Expert Committee prepared the correct Answer Keys in respect of the four sets of questions. The Expert Committee's report, along with the correct Answer Keys for the four sets of questions, was accepted by the competent authority. Accordingly, 21 (7 + 14) questions were deleted/removed from all the question sets, and all the candidates were given 21 bonus marks each, irrespective of the fact as to whether or not they had given their answers to the same. The OMR answer sheets of all the candidates were re-evaluated on the basis of the correct Answer Keys, as recommended by the Expert Committee and accepted by the competent authority. After re-evaluation of the OMR answer sheets, and upon awarding of 21 bonus marks to each of the candidates, the result was published on 22.2.2016. Therefore, it cannot be said that the relative merits of the candidates were not properly assessed, and that less meritorious candidates, who had not been selected as per the result declared on 17.7.2015, were selected, and the applicants were not selected, as per the result declared on 22.2.2016. In our considered view, when all the candidates have been awarded 21 bonus marks each, because of the

erroneous questions, no prejudice or injustice can be said to have been caused either to the applicants or to any other candidate. It is pertinent to mention here that after re-evaluation of the OMR answer sheets on the basis of correct Answer Keys, and upon awarding 21 bonus marks to each of the candidates, the revised final result was declared on 22.2.2016, wherein not only the applicants of the O.As., but also several others, who had been declared as provisionally selected as per the result published 17.7.2015, did not figure, because of their not having made the grade.

10. As discussed in paragraph 7 above, the facts and circumstances of the case of *Rajesh Kumar & Ors., etc. Vs. State of Bihar & Ors.* (supra) are different from that of the present case. In that case, the appellants, who were beneficiaries of the erroneous evaluation of the answer scripts, had been appointed as Junior Engineers (Civil) and had served the Government for nearly seven years. Even after selection and appointment of the appellants, a large number of posts had remained unfilled. Considering these aspects and other relevant factors, the Hon<sup>ble</sup> Supreme Court, while directing re-evaluation of the answer sheets on the basis of correct answer key, and preparation of fresh merit list, observed that such of the appellants who would not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of the advertisement NO.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006. It is, thus, clear that the Hon<sup>ble</sup> Supreme Court did not uphold the selection and

appointment of the appellants who were beneficiaries of the erroneous evaluation of the answer scripts. But, in the instant case, before the offers of appointment could be issued to the applicants, pursuant to the result dated 17.7.2015, the respondents took appropriate remedial measure. On the basis of the recommendation of the duly constituted Expert Committee, the respondents removed 21 questions, and awarded 21 bonus marks therefor to each of the candidates. The OMR answer sheets were re-evaluated on the basis of correct Answer Key. Thereafter, the revised final result was declared by them on 22.2.2016. As per the result published on 22.2.2016, 518 candidates belonging to different categories were selected. Due to non-availability of suitable candidates belonging to Ex-Servicemen category, only five vacancies remained unfilled. Thus, we find that the decision in *Rajesh Kumar & Ors., etc. Vs. State of Bihar & Ors.* (supra) is clearly distinguishable on facts, and can be of no help to the case of the applicants. We would also like to observe here that consequent upon publication of the revised final result on 22.2.2016, the result dated 17.7.2015 has become non est, and that acceptance of the applicants' claim for appointment on the basis of the result dated 17.7.2015 would amount to reversing the result dated 22.2.2016, and granting undeserved advantage to the applicants over others who have been placed above the applicants in the merit list/result dated 22.2.2016 published by the respondents after re-evaluation of the OMR answer sheets. Therefore, we do not find any substance in the

contention of the applicants that having been selected as per the result dated 17.7.2015, they should not be denied appointment.

11. In the light of what has been discussed above, we hold that both the O.As. are devoid of merit and liable to be dismissed.

12. Resultantly, O.A.Nos.969 and 1244 of 2016 are dismissed. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**

AN